

Members Present: Chairman; Richard Quindley; Marcella Perry; Charles Westen; Lyndon Avery; Alternate; Timothy Kinnon

Member absent: Vice-Chairman, Keith Chamberlain

Others Present: Planner, Kathy Menici; Secretary, Stephanie N, Verdile and others as identified below.

Call to order: Chairman- R. Quindley called the meeting to order at 7:02.m. He introduced the members of the Board, Planner and Secretary.

Appointment of Alternates: Chairman R. Quindley appointed Alternate, T. Kinnon for the vacant position in the absence of K. Chamberlain

Approval of Minutes: Motion made by M. Perry, seconded by C. Westen to approve the minutes as corrected from March 3, 2005, motion carried by 4-1 with R. Quindley abstaining.

R. Quindley read into the record the purpose of the hearings and stated the rules of procedure.

Election of Officers: M. Perry nominated R. Quindley to remain as Chair, seconded by C. Westen, motion carried with all in favor.

L. Avery nominated M. Perry as Vice-Chairman, seconded by C. Westen, motion carried with all in favor.

R. Quindley nominated C. Westen as Clerk, seconded by M. Perry, motion carried with all in favor.

Approval of Agenda:

K. Menici discussed the changes to the order of the agenda. She informed the Board that Case#ZO5-08 requested to be continued until in the May 5, 2005 meeting.

Motion made by M. Perry, seconded by L. Avery to continue Case#ZO5-08 until May 5, 2005 at 7pm and approve the agenda as modified, motion carried with all in favor.

NEW APPLICATIONS FOR PUBLIC HEARINGS:

K. Menici announced the first case as follows:

Case#Z05-09

Map 3, Lot 7-1

Special Exception

Kendall Stapley

276 Prospect Mountain Rd

Application submitted by the property owner Kendall Stapley for a Special Exception as cited in the Zoning Ordinance Article 300, Section 301, Table of Permitted Uses. The applicant seeks to have a retail store located within his residence. The property is located in the Rural Zone.

K. Menici noted the Waiver Requests as listed in the application: Section 7.2.1 – Sheet Size; Section 7.2.6 – Scale; Section 7.2.7 – Dimensions; Section 7.2.9 – Survey Accuracy; Section 7.2.14 – Building Lines; Section 7.2.15 – Locus; Section – 7.2.16 – Legend; Section 7.2.18 – Abutting Properties; Section 7.2.19 – Location; Section 7.2.20 – Details on Abutting Properties;

Section 7.2.23 – Natural and Cultural Features; Section 7.2.24 – Zoning District Boundaries;
Section 9.14 – Parcel Size.

Motion made by C. Westen, seconded by L. Avery to accept the waiver requests and accept the application, motion carried with all in favor.

Kendall Stapley, property owner, gave his presentation to the Board. He said he has had a small part time Antique guns and Collectible business in Barrington and wants to move the operations to his home in Alton. He said he has a Federal ATF license to sell firearms. He is planning on putting a desk, telephone and filing cabinet in an existing room in his house and his operations are strictly by appointment and expects to have 1-4 customers a month. He said he has plenty of parking.

M. Perry asked if he has spoken to the Police Chief when he moved to town but he has not seen the comments from the Fire Chief.

T. Kinnon spoke about the questions from the Police and Fire Chiefs.

K. Stapley said that he has spoken to the Police Chief and K. Menici provided him copies of the Police and Fire Chief's comments. The Police Chief's comments were related to the applicant installing an alarm system in his house. K. Stapley said he currently has outdoor lighting on his house.

R. Quindley reminded the Board that the application is to protect in the neighborhood and he still has to go through the Minor Site Plan Review Committee.

K. Stapley said he does feel it is necessary to install a fire alarm system seeing as he services about one customer a month.

M. Perry asked if ammunition would be stored on site.

K. Stapley said he will not carry or store ammunition and only if something is very hard to locate he may carry a small amount and he does not carry black powder ammunition. He said he does not feel a sprinkler system is needed per the Fire Chief's request. He said he has a fire proof cabinet to store the guns that will be lag bolted to a concrete floor. He said he is limited to what he can carry due to his Federal License. His house has automatic lighting on the outside that are motion detector activated.

M. Perry said they are speaking about a security system that may be installed to protect from burglaries.

K. Menici said that the applicant will still have appear before the Minor Site Plan Review Committee and the Committee members are the Fire and Police Chiefs, the Highway Agent and her. The Fire and Police Chiefs will have an opportunity to meet with the applicant to provide comments and conditions.

C. Westen asked if the applicant would consider installing an alarm system and he said yes.

M. Perry spoke about an automatic fire alarm system being installed if it was required by the Fire Department. K. Stapley said if it was required he would, however he thinks that request is based on whether or not he will be storing black powder and other ammunition on site. He would like to speak with the Fire Chief to see what his concerns are.

R. Quindley opened up the hearing for anyone to speak in favor of the application.

Cindy Balcius- abutter, 229 Prospect Mountain Rd, said she wasn't speaking specifically in favor of the application but has concerns about the application. Her concerns are about a business selling guns in the Rural Zone that is predominately agriculture and residential. She also has

concerns are about ammunition in the neighborhood. She spoke about target practice that takes place in her neighborhood and the instances where she has had to have people removed from her property because of illegally shooting on her property and it is usually kids. She spoke about the past instance of a gun dealer in town whose inventory was stolen and created a scene with the police in their neighborhood. She has concerns about the possibility of theft occurring on the site in the neighborhood. She asked about the status of antique guns and what types. She spoke about the security light not being excessive and not having a security light on all night; especially if only one or 2 customers a month are being served but can she agree with the security system as being needed.

K. Stapley said there would not be ammunition stored on site. He said the type of weapons fall under ATF regulations and he is inspected frequently by the ATF to check his weapons. He said the security lighting would be normal lighting like other neighbors have.

R. Quindley asked about the type of guns. K. Stapley said mostly he deals in old Winchesters and lever actions and antique and collectible and his market is focused on a particular customer base. He deals with Law Enforcement personnel and has sold to those types of groups.

C. Westen asked about handguns and will he carry them or just rifles.

K. Stapley said he would deal in handguns but only according to his permit restrictions.

M. Perry asked if he keeps an inventory of the guns or does he special order guns. K. Stapley said no he will not keep inventory he will meet with the customer and they order what the customer wants and then the customer comes back to pick it up. He said he only uses catalogs and will not be showcasing any guns.

T. Kinnon asked about the security lighting and the operation.

K. Stapley said he has motion lights around his house and one light is a 60watt light by his garage. He said the neighbor across the street has 2 giant sodium lights in the farmhouse he said his lights are less intensive.

C. Balcius spoke about the lighting and would not like to see it on 24 hours. She asked about the number of guns being stored on site. K. Stapley said for business purposes only what is ordered he said there would not be an inventory only what is ordered will be stored on site until the customer comes to pick up the gun.

C. Balcius said she spoke in favor for an alarm system and there has been issue of safety in the neighborhood before and if he expands he should come before the Planning Board.

R. Quindley asked for clarification on how many guns will be kept on site and K. Stapley said only a few for sale.

C. Westen asked if K. Stapley has a personal gun collection and what the size is.

K. Stapley said he has a personal collection and it is all stored in his fire proof case he spoke about and he has 10 long arms and a couple of handguns.

C. Westen said so he owns about 15 of his personal weapons.

K. Stapley said his entire collection is in the secure safe.

Jill Royer- abutter, and wants to know how the guns are tested will they be shooting on the property.

K. Stapley said he does not fire the guns on the property and if they want to they go to a range to shoot.

R. Quindley opened up the public hearing for those opposed to the application, there being none he closed that portion of the hearing.

R. Quindley closed the Public Input portion of the hearing and the Board went into deliberations.

Board Discussion: After reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, The Alton New Hampshire Zoning Board of Adjustment has determined as follows:

R. Quindley read all the criteria into the record as follows:

Statement:

1. A plat has been/has not been accepted by the Planner in accordance with Alton Zoning Ordinance Section 420 b. and a recommendation has been made.

Reason-C. Westen, L. Avery, T. Kinnon and M. Perry confirmed the Planner has accepted the plat, the board has accepted the waivers and a recommendation has been made.

2. The specific site is/is not an appropriate location for the use.

Reason- C. Westen said since it will be a small home business, no testing of firearms will be held on site, no sufficient amount of firearms will be kept on site for more than a short period of time, he said it is an appropriate location for the use. L. Avery, T. Kinnon, agreed. M. Perry agreed and said it is an allowed use in the zone and if it meets with the requests by the Fire & Police Departments she agrees with the proposed location.

3. Factual evidence is found/is not found that the property values in the district will be reduced due to incompatible uses.

Reason- C. Westen said because of the size of the business at this time, he believes the property values will not be reduced. L. Avery said it is a complete in-home business and believes the property values will not be affected. T. Kinnon spoke about the limited amount of customers the business will serve, he believes the property values will not be reduced. M. Perry said there has not been demonstrable facts that the business will devalue properties.

4. There is/is no valid objection from abutters based on demonstrable fact.

Reason- C. Westen said that abutters spoke and he believes their concerns were addressed and they were not against the proposal. L. Avery agrees with C. Westen, T. Kinnon agrees that the abutters concerns were addressed. M. Perry does not agree and believes there are valid objections from the abutters based on the problems of guns being stolen from the area. R. Quindley said he believes there is no valid objection from the abutters because the abutters said they were not either for or against the proposal. T. Kinnon added that if the security system is installed it would address the major concerns of the abutters.

5. There is/is no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking.

Reason- R. Quindley said there is parking available on site and there will not only one customer at a time. C. Westen said that the parking was addressed and there will only be one customer at a time. L. Avery said the business is by appointment

only. T. Kinnon said based on pictures of the site there is more than enough parking on site to handle one customer's vehicle. M. Perry said that only one or two cars a month will be added to the neighborhood and does not believe there will be any nuisance created.

6. Adequate and appropriate facilities and utilities will/will not be provided to insure proper operation of the proposed use or structure.

Reason- R. Quindley said it is primarily a residence and there will not be a lot of customers in at once related to the business. C. Westen agrees and said adequate safeguards have been made to the storage of the weapons and the applicant will address the security issues with the Police and Fire Chiefs when he meets with them. T. Kinnon L. Avery and M. Perry agreed with all of the reasons discussed.

7. There is/is not adequate area for safe and sanitary sewage disposal and water supply.

Reason- R. Quindley said it is an existing residence it looks like the disposal and supply systems are new. C. Westen, said since it is a residence there will be no necessary changes made. L. Avery and T. Kinnon agreed and M. Perry said she does not believe there will be any added burden to the septic system or water.

8. The proposed use or structure is/is not consistent with the spirit of this ordinance and the intent of the Master Plan.

Reason- R. Quindley said it is in the Master Plan to be operated in that zone, T. Kinnon, C. Westen, L. Avery and M. Perry all agreed

Motion made by M. Perry, seconded by C. Westen, to approve Case #ZO5-09 as all Special Exception criteria being met and the approval be contingent upon the requests of the Fire & Police Departments be met to their satisfaction. There was no discussion on the motion, the motion carried with all in favor.

K. Menici announced the next case

Case#Z05-10

Map 41, Lot 18

Variance (Area Variance)

John Dassoni

Echo Point Rd

Application submitted by Tom Varney, Varney Engineering, on behalf of the property owner John Dassoni for a Variance as cited in the Zoning Ordinance Article 200, Section 227 A.1, Setback Requirements. The applicant seeks to construct a 9' x 32' porch and a 4' x 10' porch within the required 30' setback from Lake Winnepesaukee. The property is located in the Lakeshore Residential Zone, the Town of Alton's Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection Overlay District.

The Board discussed that there are no waiver requests with this application.

Motion made by C. Westen, seconded by L. Avery to accept application as presented, motion carried with all in favor

Tom Varney, agent for the applicant, and Vilma Dassoni, property owner, were present to represent the application.

T. Varney said the cottage is on Echo Point Rd and was built in 1956 and the owners are

remodeling the cottage and want to add two porches. The cottage currently does not have a porch on the lakeside and they are requesting a variance to build two porches; one on the first floor level and one on the bedroom second floor level. T. Varney said one porch would be 9'x32' and the other would be 4'x10'. He said most of the area of the porches will be out of the 30' setback and some of the porches will be within the setback. He said the shoreline is very irregular on the site causing a hardship and the property does not open up to the lake, there is no porch on the front and to go to the lake they have to access it from the side entrance. He said the owners would like to enjoy the lake.

M. Perry asked about the dimensions on how far it is from the setback.

T. Varney said he is encroaching about 7' into the 30' setback from the water.

T. Kinnon asked if other structures in the neighborhood have similar decks and porches setup in relation to the shorefront for this cottage.

T. Varney said the neighbor to the right has a large porch.

T. Kinnon said he went to the site and there was one on the left side and the plan does not show a porch on the left.

T. Varney said the houses on either side of the Dassoni's line up even with each so the porches will not be intruding on the neighbors on either side.

R. Quindley said from the pictures it looks like the cottage has been rebuilt from the foundation up. He said it looks like the whole front has been done and T. Varney said yes.

T. Varney said they tore the roof off and added a second floor.

C. Westen asked if there are any windows in the second floor.

Mrs. Dassoni said the master bedroom will be on the second floor and there will be sliding doors there to the porch.

M. Perry asked if the permits have been pulled for the project and if the permits included the addition of the porches.

T. Varney said the permits were pulled for the current construction and they did not include the proposed porches.

T. Kinnon asked if there were porches or decks on the previous structure and T. Varney said no.

The Board discussed the small porch on the side, off of the kitchen, and V. Dassoni said they want to have a view of the lake and there are no doors or porch to view the lake and they would like to install sliding doors on the porches so they can have access to the lake.

L. Avery asked about stairs being installed off of the new porch and where will they be located.

V. Dassoni said yes they will have stairs and they will be on the left side.

C. Westen asked if the stairs would be in the setback and T. Varney said no.

M. Perry said the side deck looks like it already goes into the setback and the owner said it goes against the house.

R. Quindley asked if the side deck protrudes beyond the edge of the house. T. Varney said no.

C. Westen asked about the irregular cut into the shore and if it was natural and T. Varney said he cannot tell if it is man made or natural. C. Westen spoke about the large rock on the site and was asking if it was put there. T. Varney said he did not know the history of the property.

M. Perry asked about pictures that show the neighborhood to see if the proposal would fit well in the neighborhood.

K. Menici said that the house and the proposal is very compatible to the neighborhood and T.

Kinnon said he went to the neighborhood and other homes have similar porches and decks in size and they would be comparable.

R. Quindley opened up the public hearing for anyone to speak in favor of the application.

Jay Meehan- abutter-110 Echo Pont Road he is speaking as an abutter and as a member of the Echo Point Association. He said the Association is in favor of the proposal.

C. Balcius- she is not an abutter and is neither in favor nor against the application; but spoke about NH DES Shoreland Compliance. She asked the ZBA when an applicant comes to the ZBA for a Variance, does the ZBA ask that applicant if they know about the Shoreland Variance that is required from the NHDES.

R. Quindley said the Planner's recommendation is that all State and local permits be obtained before a building permit is issued.

C. Balcius clarified that that a Shoreland Variance has to be filed with the NHDES before a building permit is issued. R. Quindley said yes.

R. Quindley read the letter into the record from Thomas C. Salvetti, an abutter and Vice-President of Echo Point Association in favor of the application.

T. Varney said they have a new NHDES approved septic system indicated by a note on the plan submitted.

R. Quindley asked if it was going to be installed and T. Varney said yes.

C. Westen asked if it was new septic system and T. Varney said yes

R. Quindley closed the public portion of the hearing after no further discussion from the public.

The Board went into deliberations to discuss the application as follows:

Public Interest- The variance will / will not be contrary to the public interest.

Reason- R. Quindley said there are no objection form abutters and the plan shows that the proposal will not interfere with any other house in the neighborhood. C. Westen said there are not any public interest problems; provided they obtain the state approval provided it is necessary and 2 abutters and the local property owner association spoke in favor of the proposal. L. Avery agrees and said no one has spoke against it the proposal they have spoken in favor of it. T. Kinnon agrees and M. Perry said it will not be in contrary to the public interest.

Spirit of the Ordinance- The request is / is not in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed.

Reason- R. Quindley said there are other porches in the area in the same condition as the applicant and there is a slight encroachment into the 30' setback due to the natural irregular jog in the shoreline. C. Westen agreed and said the irregular jog causes the hardship if it were not there, there would be no need for the variance. L. Avery said he agrees and the other homes in the neighborhood have porches and this proposal is keeping with it. T. Kinnon and M. Perry agree the proposal will fit in the neighborhood.

Substantial Justice- by granting the variance, substantial justice will / will not be done.

Reason- R. Quindley said by the hardship is the natural irregular shoreline and substantial justice will be done by granting the variance and the whole porch will not be in the setback

area. C. Westen substantial justice will be done and there are 2 small children involved and the proposal will provide safety benefits. L. Avery agrees and he said the porches will provide an enhancement to the property which otherwise would be difficult to obtain without the porches. T. Kinnon agrees and said an injustice would be served if they were not allowed to have them because their neighbors have similar structures. M. Perry agrees and said having access to the lake is justifiable and there are safety issues regarding the children without the porches and substantial justice will be served.

Value of Surrounding Properties- The request will / will not diminish the value of the surrounding properties.

Reason- R. Quindley said the proposal will bring all the properties into line and there will not be a detrimental effect in granting the variance. C. Westen said by granting the variance it will enhance the surrounding properties. L. Avery, T. Kinnon and M. Perry all agreed.

R. Quindley read the following statement into the record:

Hardship- Boccia- Area Variance Request Criteria

(1) An area variance is/not needed to enable the applicant's proposed use of the property given the special conditions of the property.

(2) The benefit sought by the applicant can /cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

The Board discussed the following:

R. Quindley said there are special conditions with the property due to the irregular shoreline and he does not believe there is another method that can be pursued other than an area variance. C. Westen agreed and said moving the house back is not an option. L. Avery agreed. T. Kinnon said the only other option would be to move the house and that is not feasible. M. Perry said because of the uniqueness of the lot the benefit by granting the variance will be sought.

R. Quindley read the following statement into the record:

(3) Based on the above analysis, special conditions do / do not exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

Motion made by C. Westen, seconded by L. Avery to approve Case# ZO5-10 as all the criteria for an Area Variance being met and with the condition that the property owners obtain all other state and federal permits that may be required regarding the wetlands. Discussion on the motion- K. Menici recommended that all state, federal and local permits be obtained and copied to the Alton Planning Department prior to the issuance of a building permit.

Amended Motion-C. Westen amended his motion to approve Case#ZO5-10 as all the criteria for an Area Variance being met and to include the condition that all other state, federal, and local permits that may be required regarding the wetlands be obtained and copied to the Alton Planning Department prior to the issuance of a Town of Alton Building Permit, L. Avery seconded the motion, motion carried with all in favor.

R. Quindley called for a 10-minute break at 8:00pm

R. Quindley called the meeting back to order at 8:10.

R. Quindley recused himself from Case#ZO4-23, Case#ZO5-05 and Case#ZO5-06, due to the fact that he was not present for the March 3, 2005 meeting when the cases were presented. He designated M. Perry to preside as Chairman for Case#ZO4-23, Case#ZO5-05 and Case#ZO5-06.

K. Menici read the next case into the record

Case #Z04-23

Map 53, Lot 3

Administrative Appeal

Robert Gayner Trustee

62 Temple Drive

Application submitted by Walker & Varney P.C. on behalf of Robert Gayner Trustee for an Administrative Appeal from a Cease & Desist Order issued by the Town of Alton Building and Code Officer on September 28, 2004. The property is located at 62 Temple Drive in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District. This application was continued from the December 2, 2004 and March 3, 2005 meetings.

M. Perry stated that Case# ZO4-23 has been continued from the December 2, 2004 meeting and explained that on March 3, 2005 the Board listened to the presentation for the case from the applicant, R. Gayner and his attorney R. Varney. She said the applicant and his attorney completed their presentation to the Board and the case was opened for public input and there was one person who spoke favorably on the case and there was a letter read into the record from an abutter in favor of the application. She said the public input session was closed and the case was continued until tonight. She said that the Board met with the Town Attorney for clarification and said the ZBA will not accept any public input and the ZBA will deliberate and make a decision regarding the Administrative Appeal. She explained that Case#Z04-23, Administrative Appeal will deal with the Cease & Desist Order.

The Board began discussion on the Administrative Appeal application.

T. Kinnon said the Code Enforcement Officer was correct in his determination that the structure exceeded the Zoning Ordinance Height Restriction of 15'. He said the Cease& Desist Order was the appropriate course of action.

L. Avery agrees with T. Kinnon's statement and he said the building that is there now differs greatly from what was permitted.

M. Perry suggested that the Board review and discuss the original building permit application that was submitted to the Town of Alton. M. Perry gave the ZBA a sheet she created outlining the time line of events. She explained it is factual information based on dates and information that was presented.

C. Westen spoke about the time line and he said it presents a problem and the information that was faxed to NH Department of Historical Resources gives the appearance that architectural renderings of the boathouse were faxed and on May 14, 2003. He spoke about there was no architectural rendering that was submitted to the Town of Alton for the permit that was similar to anything that was sent to the NH Department of Historical Resources. He said the Town of Alton's building permit application was requested in October of 2003. He said that gives the appearance that the applicant had an idea that he wanted to deal with something much different than what he requested.

M. Perry said she also has issues with what was submitted to the Town of Alton. She said the copies that were given to the Town of Alton of the renderings show different types of drawings prior to the date the application was submitted to the Town of Alton for the building permit. The Board clarified that they are discussing the Administrative Appeal application at this time and discussing their opinions.

T. Kinnon spoke about the sketch that was submitted with the building permit application for the Town of Alton that shows a 15' ridgeline on a hip roof. He said that was not what was observed by the Code Official in August of 2004.

M. Perry said that is correct and she spoke about the copy of the drawing in the original building permit application that shows the building having a 15' ridgeline with a hip roof. She spoke about the different renderings of drawings is what is actually built. The rest of the Board agreed with the statements of T. Kinnon and M. Perry. M. Perry said that the reasons for the Cease & Desist Order were placed on the property were valid.

L. Avery agreed with M. Perry's statement and referred to the copy of the Town of Alton's building permit states: "Work to be done construct a 38'x38' dug in boathouse as per Wetlands Permit". L. Avery also spoke about the Wetlands Permit stating that the: "Boathouse shall be a single story structure, ridgeline not to exceed 15' in elevation above the high water level". He said the drawing that was submitted with the building permit is within what was permitted but now what is there is not within what was permitted. He said the Building Inspector acted correctly in putting a Cease & Desist Order on a violation of what was permitted. M. Perry agreed.

M. Perry asked if there was any more discussion on the application, there being none she called for a motion.

Motion made by T. Kinnon, seconded C. Westen to deny the Appeal for the Administrative Decision, Case#Z04-23.

Discussion on the motion- M. Perry asked if he was denying or upholding the application. T. Kinnon said he is denying the appeal. K. Menici said that by denying the appeal T. Kinnon is upholding the decision. M. Perry agreed.

Motion made by T. Kinnon, seconded by C. Westen to uphold the decision of the Building Inspector on the issuance of a Cease & Desist order on September 28, 2004 and deny Case#Z04-23 the request for an Administrative Appeal, motion carried with all in favor

K. Menici read into the record next case into the record as follows:

Case #Z05-05 Map 53, Lot 3
Robert Gayner Trustee

Equitable Waiver of Dimensional Requirements
62 Temple Drive

Application submitted by Walker & Varney P.C. on behalf of the property owner Robert Gayner Trustee for a request for an Equitable Waiver from Dimensional Requirements in order to maintain the height of a boathouse in excess of 15' as required by the Alton Zoning Ordinance Article 200, Section 228A height restrictions for boathouses. The property is located at 62 Temple Drive in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District. This application was continued from the March 3, 2005 meeting.

The Board went into deliberations as follows to discuss the case.

Statement

1. That the violation was noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

Reason: C. Westen said it was noticed by the Building Inspector and the NHDES Representative discovered the violation at that point and photographs were taken and the NHDES was going to research the application and contact the Building Inspector.

L. Avery said at the time when the violation was noticed, the building was not completed anywhere near like what is now. He said there was some discussion about the length of time between the time the violation was noticed and the time he was notified of about 50 days.

M. Perry referred to RSA 674, Local Land Use Planning And Regulation, there is no time frame limit. L. Avery said that is the portion that speaks about being caught within a specific time. He asked if M. Perry was referring to the time a violation goes unnoticed. M. Perry said there is no limit on the time frame for reporting either. M. Perry said the inspectors noticed the violation on August 6, 2004 and when they first knew there was a violation.

C. Westen said that the Town of Alton Building Inspector and the NHDES Wetlands Inspector were together and they spoke to a contractor that was working on site on August 6, 2004. C. Westen said Mr. Gayner said he was not concerned when he was told about the inspectors and did not attempt to contact Mr. Boyers (Town of Alton Building Inspector) about the problem and they continued to work on the building. C. Westen noted that at the time the inspectors noticed the violation, the building was just a shell and that was shown in the initial photographs of the violation. He said now the photographs show the building in the state that called for the Cease & Desist Order was issued. M. Perry spoke about the building being completed after the inspectors were on site.

The Board discussed that the time the inspectors noticed the violation and were on site the building was substantially complete on August 6, 2004. The Board discussed that they agree with the statement that the building was substantially complete.

M. Perry asked if there was any more discussion and asked the Board for their decision.

M. Perry, L. Avery, C. Westen and T. Kinnon were all in agreement that the violation was noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

2. That the violation was not an outcome of: ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, **or** bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

M. Perry stated that the:

1. The violation was not an outcome of ignorance of the law or ordinance
2. The violation was an outcome of failure to inquire
3. The violation was an outcome of obfuscation
4. The violation was an outcome of misrepresentation

M. Perry called for discussion on the first statement.

“The violation was not an outcome of ignorance of the law or ordinance”

L. Avery said the applicant he was told what to do and he knew what he had to do. He said he was told by the NHDES that he would have to go to the Town of Alton.

C. Westen said the applicant was aware and at least the agent who was doing the building is aware, that if you substantially change the plan, he would have to submit another building plan to the Town of Alton.

T. Kinnon agreed and said by the applicant's actions as far as getting the only building permit and then applying to the NH Department of Historical Resources and then re-applying to the NHDES. T. Kinnon said he believes that the applicant did know there knew there was a substantial process that needed to be followed and he failed to do that process with the Town of Alton.

M. Perry agreed with T. Kinnon's statement and found it odd that the applicant would go through all the processes with the NH Department of Historic Resources and the NHDES Wetlands and leave the Town of Alton out of the process. She does not believe that it was an oversight on the applicant's part. C. Westen, L. Avery and T. Kinnon agreed with M. Perry's statements.

C. Westen said the building that was constructed is not the same that the building permit was applied for.

M. Perry clarified that what C. Westen said has to do with the misrepresentation aspect. C. Westen agreed.

L. Avery said the drawings that were sent to NHDES are like what is built now but nothing like what the Town of Alton approved.

T. Kinnon referred to the drawings and said of the four drawings but two match one type of structure and two match another type of structure. M. Perry said none of the renderings T. Kinnon spoke about are what was submitted to the Town of Alton.

T. Kinnon said the drawings are misleading and they show misrepresentation.

M. Perry agreed and spoke about the minutes from the March 3, 2005 ZBA meeting. She referred to the point C. Westen made that the applicant poured the concrete for the walls in April so that the roof that the Town of Alton had approved would not have fit on the structure they were building.

T. Kinnon clarified that the applicant said the walls were poured during the winter. The Board agreed with that statement. T. Kinnon said that was shortly after the town building permit was issued but prior to getting the “approval” from the NHDES to change the structure. He said he didn't believe the applicant got an actual approval from NHDES to change the structure. He said the letter from the NHDES stated that it wasn't within their jurisdiction to make an amendment to the building plan because it wasn't going outside of the original footprint.

L. Avery also spoke about the same letter from the NHDES where the applicant was told to go back to the Town of Alton.

T. Kinnon also spoke about the NHDES permit having language of the 15' height restriction.

M. Perry read into the record for clarification the Board agrees with the following statements:

1. The violation was not an outcome of ignorance of the law or ordinance
2. The violation was an outcome of failure to inquire
3. The violation was an outcome of obfuscation
4. The violation was an outcome of misrepresentation

C. Westen, L. Avery, T. Kinnon, and M. Perry all agreed.

K. Menici reminded the Board that they have to decide if those conditions were satisfied and that if the Board was going to grant the Equitable Waiver they would move on to the next criteria.

M. Perry reviewed the Board's decisions on the four statements regarding the violation and called for a motion.

Motion made by L. Avery, seconded by T. Kinnon to deny Case#ZO5-05, the request for an Equitable Waiver based on the findings of fact outlined by the Board.

The Board decided that:

1. The violation was not an outcome of ignorance of the law or ordinance,
2. The violation was an outcome of failure to inquire,
3. The violation was an outcome of obfuscation,
4. The violation was an outcome of misrepresentation

The motion carried with all in favor.

K. Menici read the next case into the record as follows:

Case #Z05-06

Map 53, Lot 3

Variance (Boccia-Area)

Robert Gayner Trustee

62 Temple Drive

Application submitted by Walker & Varney P.C. on behalf of the property owner Robert Gayner Trustee for a request for a Variance from Dimensional Requirements in order allow the height of a boathouse in excess of 15' as required by the Alton Zoning Ordinance Article 200, Section 228A height restrictions for boathouses. The property is located at 62 Temple Drive in the: Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District. This application was continued from the March 3, 2005 meeting.

M. Perry said that after reviewing the petition, hearing all the evidence, and by taking into consideration personal knowledge of the property in question the Town of Alton Zoning Board of Adjustment has determined the following:

1) Public Interest- The variance will not be contrary to the public interest

Reason- T. Kinnon agrees and said that particular structure would not harm the public interest in any way. He said it is a good looking structure and architecturally it will fit the area. C. Westen said the artists rendering and the work that was done was very nice and would not harm the public interest. M. Perry said based on the setting of the lot she does not think on the lake it is attractive but it will not affect anyone else. L. Avery agreed and said it will not affect anyone else and it is a nice looking structure and there is an abutter that has spoken for it and agrees it would not be in contrary to the public interest.

Spirit of the Ordinance- The request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed.

Reason- M. Perry said because it is on the waterfront there are other larger setback homes and large structures that are larger than this. C. Westen and L. Avery, T. Kinnon agreed

Substantial Justice- by granting the variance, substantial justice **will not** be done.

Reason- M. Perry said substantial justice will not be done by granting the variance because of the misrepresentations of the application and the other reasons they denied the Equitable Waiver. L. Avery said he agrees with M. Perry and there were different avenues the applicant could have taken. He said he could have moved the structure to maintain setbacks and he could have come to the ZBA first. C. Westen said substantial justice will not be done because he believes the procedure showed deliberate attempts to either deceive or bypass the Town of Alton regulation for a 15' boathouse.

Value of Surrounding Properties- The request **will not** diminish the value of the surrounding properties

Reason- M. Perry said based on the nature of the building it will not diminish the value of the surrounding properties because it is an attractive building. T. Kinnon said based strictly to the value of the surrounding properties he believes it would not diminish them and C. Westen and L. Avery agreed .

M. Perry read the Hardship- Boccia- Area Variance Request Criteria as follows:

- (1) An area variance **is not** needed to enable the applicant's proposed use of the property given the special conditions of the property.
- (2) The benefit sought by the applicant **can** be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance

Discussion- T. Kinnon said an Area Variance would be needed because of where it is located and it would need a Variance to exist where it is. M. Perry agreed and said it could on the property. C. Westen said that it is not what the applicant applied for. T. Kinnon said he does not see the hardship having the structure located where it is.

M. Perry clarified the statement that "An area variance *is not* needed to enable the applicant's proposed use of the property given the special conditions of the property".

She said the applicant could still use it but he does not need it there. L. Avery said he agrees and the building did not have to be there and it could have been located elsewhere on the property and maintain setbacks. C. Westen said if he had done it properly he would have had to get another permit to build a structure above ground and not a boathouse and he does not see the hardship.

K. Menici reminded the Board that the height of the structure is under question not a setback issue. L. Avery said it is a height and a setback issue because he does not maintain the 30'. The Board all agreed with L. Avery and said it should be both setback and height issues.

C. Westen said he could have put the garage on another part of the property not on the back of the boathouse so there is no hardship.

T. Kinnon said there is sufficient area on site for the train style structure to be located rather than attached to the boathouse. M. Perry said the intent that the building was supposed to be a replica,

it was never a replica of anything on that property and there was ample space on the property to locate the train like structure anywhere not over the boathouse.

T. Kinnon said there was never a station on that property to begin with and there is a similar structure located in West Alton there is a similar structure that is one half to one third of the size of the structure that the applicant built. He said so the applicant went much larger than what was historically found in Alton for a railroad station.

M. Perry read the following:

(3) Based on the above analysis, special conditions **do not** exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship.

Reason- M. Perry said there is no unnecessary hardship because; the applicant could have done something else with the boathouse, they could have built it to the specs they submitted to the Town of Alton and if they had wanted to make a change they could have come back to the Town of Alton.

C. Westen said he feels there is no hardship claim because the applicant was notified by the NHDES that he was required to go back to the Town of Alton and that the Town of Alton has a height restriction for boathouses. He said the applicant did not come back to the Town of Alton so he does not see any hardship issue.

L. Avery agrees with the reasons that C. Westen spoke about.

M. Perry asked if all the Board members agreed with the findings they had discussed and all agreed with no opposition noted.

Motion made by T. Kinnon, seconded by L. Avery to deny the Area Variance request for Case#ZO5-06 as not all the criteria have been met as outlined, motion carried with all in favor.

OTHER BUSINESS:

K. Menici spoke about Old Business about setting up a work session and would rather talk about it when the Chairman is available. The Board agreed.

Motion made by L. Avery seconded C. Westen to adjourn at 8:45pm, motion carried with all in favor.

Respectfully submitted,

Stephanie N. Verdile
Alton Zoning Board of Adjustment Secretary