

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Meeting
August 12, 2010
Approved as amended 10/7/10**

I. CALL TO ORDER

Paul Monzione, Chairman, called the meeting to order at 7:00 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Paul Monzione, Chair, introduced himself, the Planning Department, and the members of the Zoning Board:

- Mike Garrepy, Interim Planner
- Stacey Ames, Planning Assistant
- John Dever, Building Inspector and Code Enforcement Officer
- Lou LaCourse, Clerk
- Steve Miller, Member
- Tim Morgan, Member

Timothy Kinnon, Member, was not present at this meeting.

III. APPOINTMENT OF ALTERNATES

There are no alternates to appoint. None are needed this evening, as there are four of the five members present.

IV. STATEMENT OF APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds, which the Board must consider when making a determination. The purpose of the hearing is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against an appeal but all facts and opinions based on reasonable assumptions will be considered. In the case of an appeal for a variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a special exception, the Board must ascertain whether each of the standards set forth in the Zoning Ordinance has been or will be met.

V. APPROVAL OF THE AGENDA

T. Morgan made a motion to approve the agenda as set forth. Steve Miller seconded the motion, which passed without opposition.

VI. CONTINUANCES

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| Case #Z10-15 Debbie Glazier | Map 6 Lot 17-1 | Variance 640 Suncook Valley Road |
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Application submitted by Randy Couch on behalf of applicant Debbie Glazier to request a variance from Article 400 Section 450 Table of Uses to allow a dog grooming and boarding facility with an apartment. This parcel is located in the Rural zone.

P. Monzione read the case into the record. He invited the applicant to come forward to present the application. He also asked everyone present to sign in. He also asked that anyone who intends to speak identified himself for the record.

P. Monzione stated he understands they are here on a continuance from a previous meeting. Steve Miller asked if the applicant should have a choice whether to go forward or not, based on a new quorum. P. Monzione answered

no; if they were down to three members, which is a quorum, they would need a unanimous decision by only three members. Since there are four tonight, that is not a choice they provide. The Board is ready to proceed on the regular schedule. Randy Couch, Steve Beranger, and Debbie Glazier came forward to present.

Mr. Randy Couch would like to say he is embarrassed by how he treated these meetings; he treated this like it was a very small project that should go right through the ZBA. After all, the only exterior changes to the property were a driveway change and some chain link fence. The interior had minor changes, showing how well the building will adapt to the business they are proposing, and the business itself is a simple dog daycare center. It's true that it started out on a larger scale, but they realized they were scaring the neighbors with the number of pens, so they scaled way back, making the plan even simpler. That is no reason for him to think that this Board could see that this was a great business for the town, and an awesome family business for Ms. Glazier's family. Tonight, he is going to show, in the Board's own terms, that this is a great business for all involved, even the neighbors.

The site plans he has given the Board show the change to the driveway to get people in and out as easily as possible. This has been on the table from day one. Yes, Route 28 is a busy road, but their plans show over 600 feet of sight in both directions leaving the driveway. The area manager for the DOT personally showed up here and expressed that this is a very acceptable plan for them; he thought this would get them through a very important issue.

The next issue he would like to address is the dog waste issue. The Board has asked for a plan; they have had one since the beginning. Although it has been finalized, it has still been pretty much the same plan all along. Dog waste, whether in the building, on asphalt, or on the lawn, will be picked up immediately, put in plastic bags, then into a Waste Management storage container to be picked up weekly. This was always on the plan, although they were not sure in the beginning how often it would be picked up by Waste Management.

That wasn't enough, even after taking it to this finalized stage, they continued with how many pounds of waste it would be and how many bags, and should that be enough time for pick-up. Truth to be told, they don't know how many dogs per day will there, or how much crap will be generated and stored for the week. The plan they have is for a best possible client base; if it isn't enough and the smell permeates across Route 28, through the trees and 350 feet away up to Miss Lane's house, he is sure by that time they will have realized that the plan needs to be altered to two or three pickups per week, but they don't anticipate that at this time. They have the power to change that at any time, if necessary.

The next item he would like to address is the barking dog noise. They have been asked from the beginning what they are going to do about the noise, and from the beginning they have said excessive barking will not be permitted. They laid out a plan of separating dogs, walking troubled dogs, putting them in their separate pens, and in the case of impossible dogs, letting the owner know they can't have them there any more. And yet, this still seems to be an issue. They have a plan, and it's a good one. Once again, if it's too weak, it can be altered but they do not see that as necessary at this point.

Also, in their documents, if they do falter on that, the Lane's have the dog enforcement officer to call, or the code enforcement officer; they have recourse either way. This should not be an issue. He finds it ironic that the only one complaining about the noise is the lady behind him who keeps complaining that she can't hear what they're saying.

Another item that keeps coming up is what other animals will be cared for – horses, donkeys, monkeys – who knows whatever else. It's true – Ms. Glazier has a three foot donkey and a three foot horse in a very clean pen and stable area, which the elderly Miss Lane has referred to a couple of times. These are family pets; this is a very loving family toward its animals. It's easy to see their love for their animals; they take great care of them as a family. Once again, to put this point to rest, this is a dog facility. It will have a cat room that they don't know how to anticipate the demand for. It is available; they can only hope that noise won't be an issue.

They are here for the powers of the ZBA special exceptions; to hear the special exceptions from the terms of the ordinance upon which such Board of Adjustment are required to pass under such ordinance. A special exception should be granted because it would promote public health, safety, and general welfare to the community by offering a small business into Alton that fits with the Master Plan and gives tourists and locals a place to leave their pet taken care of for the day.

Paul Monziona asked to interrupt the applicant. Mr. Couch granted that. P. Monziona stated that he was of the impression that this application was for a variance because the Table of Uses does not permit this use anywhere in the Table of Uses and particularly in this zone that the location is in. Mr. Couch answered that to be correct. P. Monziona clarified that they are doing this as a variance, not a special exception; they are two different things to proceed under. A special exception is well defined and has specific things in it that qualify for special exception; those are listed in the zoning regs. If they are seeking one of those things that is specified in the zoning regs, then they proceed under special exception. If they are seeking to do something that isn't permitted in the zoning, then you proceed with a variance. This is a variance, so the criteria for a variance are the criteria they look at. Mr. Couch asked if this was not a special exception for this type of variance. P. Monziona explained that they are two different things; if he is getting into a special exception and the arguments and facts to support special exception, he wants to clarify and inquire in order to clarify that they will be applying the criteria for variance to this, not the criteria for special exception. That is something different; he will go so far as to say that the application is correct; a variance is what they need, not a special exception. Mr. Couch said that he thought there were special exceptions to each type of variance. P. Monziona explained that if the zoning regs allowed a dog facility such as this by way of special exception, it would specify that in the regs, and then he would apply for a special exception, which is a different application than a variance. The criteria are different. That is how they would proceed because the reg itself would say "dog grooming or daycare facility" is permitted by special exception. Then they would be proceeding under that and trying to fulfill those criteria. They are proceeding under variance.

S. Ames asked Mr. Couch if he has a copy of the application because that is what they want to touch on. He asked if he has to read all that; P. Monziona said that he does not. The members can read it and he can highlight anything on it and discuss it as much as he deems appropriate. Mr. Couch asked that the members read all that; it is more than he wants to read, especially with the print so small.

Mr. Couch stated that from the beginning, he thought the plan they had laid out is a great family business. The Board asked the questions, they answered, and they have plans laid out for all the questions asked. If they look at the aerial photos, they will see that the land itself is very well suited to the business. They have two neighbors who desperately do not want it there; they have not shown any factual evidence why they should not have it there. They just don't want the noise and there will be no noise, as they have stated over and over, and they have recourse if there is noise. They can call somebody and get it taken care of.

Lou LaCourse addressed one of the handouts and asked if it had been typed since the last meeting. Mr. Couch answered that it was.

Mr. Couch recalled that during the last meeting, he had been asked what the hardship was. He had asked them to explain that and they said it's necessary to show hardship; in other words they said why would they let her put that there and not somebody else. Nobody else is asking; when they did ask a few years ago, the Board agreed to it. He asks the question if somebody else, why not her?

If they want him to go over the criteria, he will, but it will be slow because he is having a hard time reading it. P. Monziona again told him it is up to him; if he wants to present this he can take his time or highlight any of the items he would like. The members have this document and are capable of reading it themselves. He is free to highlight or emphasize any of the arguments he might wish.

Mr. Couch decided to go through what items he could. In regard to the denial of the variance causing unnecessary hardship, the short answer is that the owner's trade is dog grooming and pet sitting. Her family loves animals and

the proper care of them is very genuine. Not allowing her to pursue her dream, which is in character with the rural zone, would deny her reasonable use of the property and cause an unnecessary hardship because that is how she plans to pay for her mortgage.

The zoning restrictions as applied to the property interfere with reasonable use of the property. He thinks that goes without saying. If you can have livestock in the rural zone, dogs are less likely to get loose than livestock.

P. Monziona asked if there was anything further the applicant would like to add to the presentation. There was not. He asked if any of the members had questions. Steve Miller asked how much money they have invested into the business so far, and how much did they anticipate putting into the business over the next 12 months. Mr. Beranger answered that in purchasing the home, she has roughly \$125,000; the total investment will be in the \$225,000 range when all is said and done. That will cover landscaping, supplies, upkeep to the building, and maintenance costs which will be minimal for lawn mowing and the sign. The house is painted, the building is there, the furnace is new, the water system is fine, the heating system is redone, the ventilation system is being installed. They want to work within that budget, which is doable. They are looking at the payback; if they have 25 dogs, they have to pay back their expenses. It's not going to be a huge money maker, but it is an opportunity for her to raise her family and have an income without having to have babysitters or letting the kids just come and go as they please. It will give them a trade and a learned skill for some future endeavor of their own.

P. Monziona referred to the written submission which references an aerial photo; he has a bunch of photos but could not locate the aerial. He did find it amongst the other photos. He added that since the last time they were here, he has received the supplemental information and found it very helpful to him; he understands it a lot better. The in-law apartment is going to end up being the business. Mr. Couch confirmed that to be correct. P. Monziona asked if the living space would remain the living space; they are going to continue living there. Ms. Glazier confirmed that. P. Monziona asked if the in-law apartment, which already exists there, is going to end up being the business. Ms. Glazier confirmed that to be correct. Mr. Couch added that a lot of it is going to be in the basement.

P. Monziona asked about the length of the driveway; he had seen something that indicated it would be 85'. He asked if the dogs would be in the basement or behind the building, and the driveway goes 85 feet from Route 28 to the structure. John Dever took a measurement from the white line on Route 28 to the front of the house; it was 85 feet, then another 49 feet to the back of the house. The back of the house is approximately 135' from the white line. P. Monziona added that the photos are also very helpful.

T. Morgan addressed John Dever; he noted the map and the photos and asked if the photos depict an adequate buffer for this business. Mr. Dever said that he does; the question had arisen what the distance is to the closest structure, which is down the road toward Alton, which is 260 – 270' away. There is at least 200' of heavily wooded area between them. There is an equal buffer across and down the road either way. The numbers on the four dwellings across the street show the distance taken from septic plans; they are 635', 637', and 655' either from the property line or the road. The other 651' is close. He tried to lay this out to give an idea of the distances involved. T. Morgan thanked him, stating that this is helpful.

P. Monziona invited further questions from the Board. There were none.

P. Monziona invited public input in favor of the application. There was none.

P. Monziona invited public input in opposition to the application being granted. There was none; public input was closed.

The Board began deliberations.

P. Monziona stated that the rural zone allows livestock and animal maintenance; there are a lot of animals that are noisy and smelly and yet they are permitted. This is also a situation where enforcement is another issue; their private rights people can bring if this constitutes a nuisance down the road; that is a risk they would have to take. If

he was living next door, and it got to be a nuisance, if they moved in next to him after he had been there first, he would pursue a remedy. If the noise is loud, they can pursue a remedy through the town, so the Board does not have to be concerned with those issues. Those are other ordinances and laws that don't pertain to them. The uniqueness, when they talk about hardship, is that it is located in a zone where the table of uses just doesn't mention dog care. It mentions a lot of other animals. The question is reasonable use.

T. Morgan stated that the information supplied for this meeting is very helpful and answers a number of the concerns he voiced last week. P. Monziona agreed; the stuff they got from John Dever is also very helpful. The length of the driveway helps him a lot in this; to conceptualize this was difficult until he saw the photos, to see where this is and the driveway with the sight lines.

The members moved on to the worksheet.

1 – L. LaCourse stated that the variance **will not** be contrary to the public interest. There are a few things that come up in his mind, but there are other ordinances that will take care of that. 250' to a barking dog is nothing. He lives out in the woods and hears barking dogs a quarter of a mile from his house. Trees or no trees, it doesn't much matter. He believes other ordinances will take care of that issue, if it comes up. P. Monziona agreed; he does not think any of this is contrary to the public interest. There may be some neighbor concerns, but there are remedies for that. Overall, he does not see any evidence that establishes that this will be contrary to public interest. T. Morgan does not believe it will be contrary to the public interest either; it does not alter the essential character of the neighborhood at all. Steve Miller agreed that the variance will not be contrary to the public interest; the public interest of Alton is to be business friendly. It is the rural zone; there are significant buffers between all the neighbors. A kennel business is needed in Alton; his gut feeling is that it will be successful and it will be good for the town.

2 – P. Monziona stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. This is in the rural zone; generally the maintenance and business of livestock is permitted. This is keeping with the rural character, and it is keeping with the intent of the Master Plan. T. Morgan agreed that it is in harmony with the Master Plan and he does not think the health, safety and character of the neighborhood is threatened by this. He also looked at the town ordinances this afternoon; the noise ordinance is not applicable as it specifically excludes areas where there is agricultural use permitted. However, the animal noise ordinance is applicable and would protect the neighbors if it were in fact a problem. S. Miller agreed that the request is in harmony with the ordinance; this type of business absolutely compliments what a rural zone is set up for, to make room for businesses such as this. All the constraints he had concerns with have been answered to his satisfaction. L. LaCourse agreed.

3 – T. Morgan stated that by granting the variance, substantial justice **will** be done. He thinks that, as a couple of the Board members have pointed out, this is an important service to the town, and he hopes it is a successful one. S. Miller agreed, adding that the applicant has made a significant investment and by looking at the business plan, he believes she is committed to a successful operation and is committed to living in harmony with the neighborhood. L. LaCourse agreed for all the reasons previously mentioned. P. Monziona also agreed.

4 – L. LaCourse stated that the request **will not** diminish the value of the surrounding properties. It is natural for neighbors to be wary when something new comes along. If you have a new neighbor come in and move in next to you, your whole world changes a little bit. He thinks time will prove that this will work out well. P. Monziona agreed; he thinks there were some legitimate concerns expressed by neighbors at the last hearing when members of the public came forward in opposition, but he does not think any of those concerns rise to the level of constituting evidence to demonstrate that property values will be diminished, particularly given what they have heard tonight about where the animals will be and how the business will be operated. The pictures that were provided cause him to think that this operation will not diminish the value of the surrounding properties. T. Morgan agreed; he does not think there is any evidence submitted that this would affect the surrounding property values. S. Miller also agreed;

there is an investment being made in the business. His gut feeling is that the assessed value will probably go up, not down after 12 months.

5 – P. Monziona stated that for the purpose of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; there is a fair and substantial relationship existing between the general public purpose of the ordinance provision and the specific application of that provision to the property, and the purpose of the proposed use is a reasonable one. Based on the above analysis, special conditions **do** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. He added that understanding the definition of unnecessary hardship for purposes of this criterion, he thinks that the special circumstances of this property are that it is located in the rural zone and the Table of Uses omits to include a description of this type of animal business, but yet permits other animal type business involving livestock and so forth. That to him satisfies the uniqueness of the property. The Use is reasonable, and he believes these criteria are met. T. Morgan agreed, adding that, unfortunately, they are faced with an inclusionary zoning ordinance that is silent with regard to this use. He thinks what the applicant proposes is a needed service for the community; there is also some uniqueness with regard to the construction of the building; that it was designed initially with this sort of use in mind, and this use is a reasonable one. S. Miller agreed, adding that if not in a rural zone, then where. L. LaCourse agreed.

T. Morgan made a motion to approve the request for Case Z10-15 as presented. S. Miller seconded the motion which carried without opposition and the request for variance was granted.

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| <p>Case Z10-17 Alton Bay Campmeeting Association</p> | <p>Map 34 Lot 33</p> | <p>3 Variances and 1 Special Exception Mount Major Highway</p> |
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Applications submitted by JH Spain Commercial Services, LLC on behalf of applicant Alton Bay Campmeeting Association to request a Special Exception from article 300 section 320 to allow an expansion of use for up to 26 new dwelling units to be allowed year round occupancy; a Variance from Article 300 Section 325 to request relief from the minimum parking requirements; a Variance from Article 300 Section 325(B) to allow parking spaces within the 5 foot parking area setback requirement; a Variance from Article 400 Section 433 to allow 42 cottages be reconstructed where the Residential Zone does not permit the proposed density.

P. Monziona read the case into the record. Rachel Goldwasser from the law firm Orr and Reno introduced herself, as well as Joe Spain from JH Spain Commercial Services, Mark MacLeod from HL Turner Group, Richard Uchita from Orr and Reno, and in the audience, Richard Smith from the Alton Bay Campmeeting Association.

Ms. Goldwasser thanked the Board for the time to hold a special meeting. She also thanked Stacey for setting this up. The Alton Bay Campmeeting Association or the ABC Association is here requesting ZBA relief, which if granted would permit the ABCCC to rebuild nearly all of the units lost in the Easter 2009 fire. If developed, it would include 16 single family units and 10 duplex cottages which would equal 20 units in those 10 duplex cottages, for a total of 36 units, meaning that 7 units that were in existence before the fire will be eliminated.

Before jumping into the presentation, she wanted to address some issues that came up during the site walk. She knows that it was requested that they provide a previous conditions plan, so they are doing that now; that will let the members see what the status of the site was prior to the fire. Moving on to the second issue that came up during the site walk, there were some questions about building design in Phase 2, and why some of the units on the far end of Phase 2 are located where they are. Mr. MacLeod will address that question.

Mark MacLeod explained that they realized there was a proximity to the embankment there; if you look at earlier editions you can see that there were additional units that extended north. Due to the various constraints of building setbacks and everything, they have got those pulled back as far away from the embankment as they can. One of the issues they have to contend with is a series of existing septic drywells in the area between those northernmost duplexes. He used a plan of the site to indicate the area under discussion. There is a series of drywells there; the

designer doing the septic suggested they maintain a 35 foot (tape turnaround). They are not modifying them, tying into them, or putting anything additional into them; they're just avoiding them so they don't negatively impact them.

P. Monziona clarified the location of these sites; Route 11 is behind. He asked if those structures are there now. Mr. MacLeod answered that the structures are the proposed structures; he had been referring to the drywell structures, which are existing. P. Monziona clarified that the structures shown on the plan, with Route 11 behind them, are proposed structures. Mr. MacLeod confirmed that to be correct. P. Monziona asked if there were any dwelling structures or any other structures located there presently; Mr. MacLeod answered that there are not.

T. Morgan asked what the dry septic service. Mr. MacLeod answered that he does not know exactly which units they serve, but they are up in this area (indicated on the plan). There are a couple of septic tanks and pump chambers; he has a plan showing the lines going to them, but not necessarily which units are on them. T. Morgan asked if the new units would be on them. Mr. MacLeod explained that every new unit that they are proposing is going into one of the new leach fields that is being proposed.

Ms. Goldwasser spoke about the issue with the existing septic, which services buildings that are already in use at the facility; they would be impacted if the new buildings were moved up the hill, toward the ABC community. Mr. MacLeod again referred to the plan; the green highlighted circles are the existing drywells and the dotted blue lines coming to them are the series of forced mains that feed the distribution boxes ending up in the septic systems. The rectangles highlighted in purple are the proposed buildings, with the required setback.

P. Monziona spoke about the site walk; he did not see anything in the written materials that indicated that buildings were being proposed to be constructed where buildings had not previously existed. When he went up and did the site walk, he became aware for the first time that this request, this plan for which variances are being requested, includes the construction of dwelling structures in locations where they never existed previously. That made him wonder whether there isn't additional need for variances being sought here; the last thing he read and the last variance that is on the agenda as they are requesting is to allow 42 cottages to be reconstructed where the residential zone does not permit the proposed density. He is wondering how that affects a per lot/per dwelling issue, and whether they are into another variance request because of that. Or, are they treating this all as one parcel, and they're putting 42 structures on one parcel? How much land per structure do they require? He did not know that; what he originally thought they were trying to do was to reconstruct the cottages that had burned down; to put them back in the place where they were, and to do that with less density because they were actually going to eliminate cottages by having fewer, and then to build them in a way that they were going to be better because of fire resistant materials and better architectural design, and better layout; to make the whole area safer for any number of reasons. Then he learned for the first time that they are actually proposing to put dwellings in places that they weren't before.

Mr. Uchita acknowledged that he was right; the written materials do not explicitly say anywhere that the new units are going in places where there have heretofore not been units. However, he does recall telling the Board at their first meeting that they were spacing these units out primarily for fire protection purposes because they have to maintain the building separation under the new code. They couldn't put the units back in the places where they were previously, but they wanted to do their best to retain the number of units that they had previously. They haven't done that either; they are down 7, which is fine with them. They are seeking not 42 but 36. Because of the building separation and the fire protection issues, they have had to go into areas that have heretofore not had units. All of that said, locating a residential structure in a spot that has heretofore not had a unit there doesn't require any kind of zoning relief by itself. What may require zoning relief, and he will go into that more during the density variance is possible zoning relief relating to the retention of the density that was there originally. Remember, this is all one big property that is there; it's not individual lots. P. Monziona stated that had been his question; they are treating this as all one parcel, and the number of units permitted on one parcel under the zoning regs. He asked Mr. Uchita if by locating structures in areas where they were not previously located, they are actually making it a less dense community in general. Mr. Uchita answered that the locations don't make it less dense but the number of

units they are asking to construct make it less dense because before the fire they had 43 units out there that were ultimately destroyed; they are now down seven to 36. Actually, even if you look at it as one big giant parcel they are, by 7 units, less dense than they were pre-fire.

P. Monziona explained that what he meant by less dense, not necessarily in the sense of pure numbers on the same lot, did it enable them to spread out more. What he meant by density was instead of the structures being so crowded in together, that by now building structures in areas where they weren't built before, they could maybe spread these out a little so they are not as tightly constructed as they were previously. Mr. Uchita answered absolutely; they may remember Joe Spain showing them the little circles around each of the buildings that demonstrate the building separation. The other thing it has allowed them to do is that there were buildings that were in particular setbacks, whether they were building setbacks or Shoreland setbacks, they have been able to pull those out of those areas as well. In the lay version of the word less dense, they are also less dense. Mr. Uchita does not know that that requires any further zoning relief than what is already in front of the Board. P. Monziona acknowledged that was another good point, and his query because, again he had to frankly admit that he has not looked at this from that perspective yet, and he guesses it would pertain to their argument about the variance for proposed density, the number of dwelling units per acre or lot that they have is something they are going to have to deal with here when they get to the last variance. He did not know whether by putting them in places – arguably if they were grandfathered and they wanted to construct them in the footprints, maybe this variance would not be needed. What he became concerned about was that now they are going to put dwelling units where they did not exist previously, and whether that somehow was going to trigger a need for further variance of putting additional structures up without appropriate acreage per structure. He thinks Mr. Uchita's answer clarifies it for him a little bit; this is all one parcel of land. This again is a unique circumstance for the Board because they are dealing with one lot, if you will. There are individual dwelling units they are selling almost like condos, but they are not. They are dealing with one lot, one parcel of real estate. He asked if there was one owner of record – one title owner. Mr. Uchita answered that there is – the Alton Bay Campmeeting Association.

The location of the buildings; obviously if they were in a setback the location of the buildings would require additional variance relief, but they are not, so the location of the buildings doesn't affect that density variance. In fact one of the things they are going to hear from him is that they may not need that variance because truly what they are doing is reconstructing, in terms of density, what they had previously out there. They are just in slightly different locations to meet building and fire code requirements. There is a darn good argument out there that this is a non-conforming use which they have not abandoned; they seek to continue it. The town is allowed to say however, they are not allowed to continue this non-conforming use if there are health, safety, or welfare problems; in this instance, fire protection. One of the reasons they dropped from 43 to 36 is because they couldn't perfectly make the fire protection issues work well at 43. They can make them work well – by well he means to the satisfaction of the town – at 36. He will talk more about non-conforming uses and the ability to continue non-conforming uses, and raise the issue of whether they even need the density variance or not. If they do, he will then take them through the reasons why they believe they are entitled to a density variance. P. Monziona stated that they are going outside of the footprint, and that is what gives him concern. If they were going to come in and simply reconstruct these in the footprints that existed, then they have not abandoned them by virtue of fire and maybe they are grandfathered and up they go again. He thinks what caused him to say that an additional variance may be required is that once they decide to build a building somewhere on that lot where it never existed, he does not know whether grandfathering would then apply to that but he thinks by virtue of the fact that they are requesting this variance to allow a proposed density that is not otherwise permitted, they'll have it covered. Mr. Uchita reminded him that it is not the use that is non-conforming here; residential uses are permitted in this district. What are non-conforming here are two things – parking and density. They are simply seeking to reestablish with slightly fewer units the density that existed prior. If the use were not permitted here, and they were now moving the buildings around and changing footprints, then yes, they would have an issue here.

S. Miller asked if he is following the problem correctly; the average separation per unit is going to be increased, and they are going to be from a number of parcels being outside the setbacks to going to be within the setbacks. Mr. Uchita answered that they are going to be compliant with the setbacks going forward, whereas they were not

compliant with the setbacks before. S. Miller stated that they have lessened the entire footprint but at the same time increased the average separation per unit by moving other units to a different location and by using a duplex system as opposed to singles on top of each other. Mr. Uchita said that was right and that one of the magic things they are hearing is that with this proposal they are more zoning compliant than they were before the fire.

Ms. Goldwasser explained that one of the significant issues that came up on the site walk was what the buildings in Phase 2 would look like from Route 11. Joe (Spain) has put together a rendering for them.

Mr. Spain stated that they had done a couple of renderings of how these (the duplexes) would look off of Route 11, and also from across the Bay. They are very focused on aesthetics, so they are looking to give it that Victorian edge. As they can see on the left hand side with the red duplex, they are even proposing a little patio at the lower end of the slope. If they remember correctly, back in 1945 there were cottages that existed at the base of that slope. There is a level plateau about 8 feet down from the Conference Center parking lot on the top side. It enables them to develop the patio. The other thing he wanted to point out is, and it was an eye-opener for him at the site walk, was the constructability. They have a number of different locations they have to be very focused on, like concrete retaining walls. They have to go in and retain existing topos that are against existing cottages in Phase 1. They have to be concerned about retaining the slopes that exist in Phase 2, and make sure they are holding back everything. They're also retaining the front basement wall. Their focus is aesthetic value. They even have Pop's looking very nice in the rendering.

Mr. MacLeod brought up another issue that came up at the site meeting had to do with the issue of where water would go if one homeowner had to pump out his basement. There are methods of construction to help prevent that; they can waterproof foundation walls and use foundation drains and things like that. Those are pretty much standard today. Soils here work in their favor. The water table is generally low. The soils themselves are very porous. If they find during construction that water could become an issue in some of these units, one of the benefits of this new storm water management system they have is that they could, if there is nowhere to accommodate an area on site, they can always use the retention system.

Ms. Goldwasser referred to another issue that came up that is a little bit confusing. They are asking for 26 year round cottages. They are including in that 26 any units on the site that are currently being used year round. Right now there are approximately 5 cottages that are used year round on the site. With their variance, they are asking for a total of 26 including the five already there, so up to 21 of the new ones with the ones on the site now. They are not looking for 26 plus whatever is there today; they are looking for 26 total.

Finally, there were some questions regarding maintaining the proposed residences as two bedrooms and making sure they remain two bedrooms if there is an expansion. The first thing to recall is that all of these buildings are what is permitted via DES regulations for the septic systems. DES is going to be watching to make sure the new septic systems that are in place are not being overloaded; each of those bedrooms are permitted and tied to those septic systems. They are not permitted to have three bedrooms even with the septic system they have designed. DES regulations will require these units to be two bedroom units and no larger than that. In addition to that, the community has regulations that require any new construction to be permitted through the community, and the community has said that they will not permit more than two bedrooms in these units because the septic systems can't manage it. There are two different controls there on the expansion of the units that are being proposed.

S. Miller asked if the year round units would be congregated in one specific area, or would they be scattered. Ms. Goldwasser explained that the idea is that there can be up to 26 year round units at any given time; all of the buildings are going to be built to code, which means that all of them could be year round. More than 26 can't be used in any given year as year-round.

Mr. MacLeod explained that there can't be rotating usage of those either because, by the nitrate calculations those leach fields can only take a certain number of year round residences. For instance, the two smaller ones toward the southern end of the site and the one down by Circle Road, each can only accept 5 year round residences. You could

not concentrate all of the year rounds down in one area because that is going to be determined by how the septic systems are routed. Just by the nature of the design of the septic systems, that is going to have to be determined ahead of time, and will be. It can't be a moving target from year to year. Mr. Spain added that with the septic design, they have to be cautious about what units already are occupied year round. For instance, down on Rand Hill Road, there is one cottage that is year round now. They have to make sure it is tied into a particular leach field, and that they don't overload that system with any additional units.

P. Monziona confirmed that each structure will be built for year round construction; these are four-season homes. Mr. Spain agreed. P. Monziona went on to say that they are capable of being lived in because they are four season homes; they will be insulated and heated and will have everything they need. If, for example, the town offered public sewage and water supply to that area, and the town tapped them into public sewage, and they no longer had to care about nitrates and septic, now there would be the potential that all 36 units could be occupied year round with people in there year round because the dwellings would accommodate that use. Mr. Spain agreed.

Ms. Goldwasser added that with the request they are making, they are limiting the use. They would have to come back before this Board and request the additional occupancy. P. Monziona agreed, but added that the only way it is going to be policed is by turning on and off of the water supply to the units; there will be valves included in the infrastructure that will allow the town to turn off the water supply to all but 26 units during the winter months. He is just envisioning down the road; the way they are seeking this application, if granted, the condition on it would be that it would be limited to 26 year round uses. At that point however, how they would police it, other than by the water valves which is okay for now, would be a practical problem for the Board to consider.

S. Miller asked if a water meter on each unit would mean they could police the operation, just by checking the water meter. P. Monziona agreed; this is just something for them to consider. There is a potential for that, and there is potential perhaps for violation of the condition down the road and the burden, if any that the town would have to assume to police it in the first place. One of the justifications for limiting the year round use of some of these dwellings is a safety issue, so you know you don't have 36 units up there in what is otherwise an impermissible density that are being used constantly throughout the winter with heat and all things going that could increase the potential for fire. It is a different story if these are seasonal cottages than if people are there through the winter. If the buildings are all going to be built such that they all could be occupied year round, there is a potential that people will use them year round unless the town does something to prevent it.

S. Miller asked if there are X number of people using them in the summer, which is the maximum when it is full density, other than possibly icy roads, how does that change the safety issue if the same people come back during the winter. P. Monziona explained that he is referring to additional time of occupancy is one factor. A building that sits empty probably has less of a fire hazard than one in which people are using electricity and heat and whatever else goes on in a home. If the house is sitting empty, there may be less of a potential that it will burn than if people are in it using all the things and doing all the things people do inside a structure. A cigarette or something plugged in that causes a fire, and you do a Cause and Origin and find out somebody left something on or whatever it is. The least amount of time a building is used means the safer it will be in terms of a fire potential.

Mr. Spain added that there has been a lot of discussion between the Fire Department and the Water Department; one of the requirements on the Fire Department side is to have an alarm system that is going to be tied into the Central Station. In regards to the Water Department, they are going to be turning it off and draining the systems down. The cottage units are going to be policed by the Conference Center; they will give a list to the Water Department and those ten units will be turned off and unoccupied through the winter months.

P. Monziona stated that he thinks it is appropriate that they as a Board not only look at the snapshot picture of how things exist today but rather the long term potential of these structures given that they are going to be built as four-season structures. The only limitation they are going to have in the use, if the variance is granted, is a condition placed on the variance, and then it will have to be policed by the town in a manner of water supply. Down the road, should that change, there is another burden the town would have to have in policing that condition. Again, who

knows who the owner may be in 20 years? It is just a consideration that is appropriate for the Board to look at so they make sure they know they are dealing with every unit being a year round unit.

S. Miller asked if the year round units would be heated with oil or propane. Mr. Spain answered that they would use propane. S. Miller asked if the propane tanks would be underground. Mr. Spain answered that they would. S. Miller asked if all propane tanks for the whole system would be underground. Mr. Spain answered that any new building would have underground tanks. S. Miller asked what the average size of the tank would be. Mr. Spain answered that at this time there would be 100 gallons per unit. S. Miller asked if anyone would be allowed heating oil. Mr. Spain answered that they would not. L. LaCourse asked if a 100 gallon tank was sufficient for someone living there year round. Mr. Spain explained that it would take more frequent fills, but yes it is.

L. LaCourse asked about the special exception for the 26 year round cottages; it is going to be like musical chairs where today it is this one and next year it is that one. Mr. Spain corrected that, saying that they would be specific buildings. The cottage buyer will request year round use from the Conference Center; the leach fields are going to determine the number of year round cottages per location. For instance, in that Phase 1 location, that center leach field will support five year round. L. LaCourse asked if, once they have issued permission for five specific buildings, it is not going to be this building this year and that building next year – it will be the same five buildings always. Mr. Spain agreed.

Ms. Goldwasser turned the floor over to Mr. Uchita so he could cover the first two requests.

Mr. Uchita felt that it was important to get some of the questions that arose during the site walk out of the way because members were curious about particular issues. They will move on now to the meat of their presentation. As he indicated the first time he was here, he is going to handle the density issue as well as the seasonal to year round use issue – the variance and special exception related to those two items. Ms. Goldwasser will handle the parking relief that is needed.

Mr. Uchita started with the density variance which is to permit 36 cottages in a site that already does not comply with the density requirements in the ordinance. The impact of the variance, if approved, means that they will have 7 fewer cottages than they had before the fire. The new cottages are in locations and contain designs that the town can support, from an emergency access perspective, from a fire protection perspective. What they do, if this variance is approved, is that they will retain the cottage like atmosphere that is part of this community, as opposed to the 9 unit building design that came in earlier; this really was a departure at some level from the type of community that is there now. The density they hope to create with the rebuild is much more like the community you see there now, and that was there previously.

There are two different ways of looking at this request for 36 units. You can treat this request as a continuance of a non-conforming use, which was not abandoned, which the ordinance allows them to do. If they look at section 320 of the ordinance, one is allowed to continue a non-conforming use if it is not abandoned; they have not abandoned it. In order to abandon it, two things have to happen. One, the use has to cease for 18 months or more, and secondly, the owner has to demonstrate no intent to continue with the operation and the use. They certainly have been in front of this board since the fall, and now hoping to continue the non-conforming use. The non-conforming use here is the density; it is not residential use, it is the density they are seeking to continue, and actually drop a little bit.

P. Monziona pointed out that they have an area non-conformity as well as density. The use is the use; it's residential and they are not even dealing with use as part of this equation. What they are talking about is an area regulation that regulates the number of dwelling units in a given space in terms of density and this is non-conforming and pre-dates the zoning regs. It's the density that is out of conformity. He also asked if 18 months and intent was a conjunctive thing; it would have to be both the 18 months and the intent for abandonment to have occurred. Mr. Uchita stated that he was simply suggesting that they want the non-conforming use to continue and they have not abandoned it. P. Monziona commented that his question earlier had been whether by locating a

structure in a different spot, that constitutes abandonment for that structure and you lose that structure. You don't get 43 when you build one over here and the footprint is over there; that's an abandonment of that structure, with an intent not to go back to it and therefore, you need a variance to build it over here because you've lost your grandfathering by not building in here and choosing to build it where it never existed before. That's why he brought that up earlier.

Mr. Uchita answered that is only true if the location of that structure were in fact a non-conforming issue. For example, if they were in a building setback and they wanted to rebuild in that setback again, they would have to rebuild in the same footprint. If they move away and abandon their right to do that, then they will have satisfied the abandonment section of the non-conforming use section of the statute and they lose their rights. Here though, they are not seeking to rebuild on those locations that were in the shore land setback; the only thing they are asking to do is re-establish with slightly fewer numbers the density that was there previously. The location issue never comes to this board for zoning relief because they are not asking for that kind of relief here.

P. Monziona stated that he hears what he (Mr. Uchita) is saying. Mr. Uchita asked if Paul agrees that this is just a continuance of a non-conforming use, and they don't need the density variance. He is going to go ahead and proceed with the density variance presentation because it is important from a practical perspective. From a practical perspective, they need to get on to the Planning Board; what they don't want this Board to do is to get gummed up in the issue. If they are having trouble thinking of it the way he is urging them to think of it, they need to just deal with it as a variance and get on with it. What they don't want to do is have a further delay, because they are teed up to go to the Planning Board next week.

Mike Garrepy stated that he has reviewed the file and reviewed the plan. He has spoken to Richard (Uchita) about this on a couple of occasions as late as this evening. He has to agree with the way he presents the case; Mike does believe that the density of the use is what legally was not conforming. Some of those structures were conforming to setback and some were not. The structures were not the issue; it was the density of use inside those structures. He thinks everything they are proposing with their plan is bringing the site more into conformance with all the structural setbacks, fire code issues, building code issues, and with the density. He does not believe that a variance is required for this density issue. That makes life easier for the Board.

P. Monziona answered that he disagrees completely; what's not conforming is the number of units on this parcel. It is non-conforming with the density requirements of the zoning regs. Once they abandon the footprint, at least in his opinion, they've lost the unit and depending on how many lots they are abandoning, they do need this variance for density. Maybe it's a matter of mathematics at this point; counting how many they are choosing to build on the footprint and how many they are going to relocate someplace else. It would seem that they gave up 7 and so 36 are still remaining. Once they abandon the footprint, they have lost their grandfathering on density and they are wise to have this application in front of the Board for a variance on density. That is his thought right now, and he has not heard the balance of the presentation, but they are non-conforming because they have too many units on the parcel based on the regs and if they were to rebuild those exactly on the footprint they would not need a density variance, in his opinion. Because they have chosen to relocate them to other locations and they are still non-conforming with the number of units, he thinks the variance is needed and they are right to have this application here. He knows it is an argument they are making as part of this; the way he sees it, it is not a use issue. It's an area variance and it's because of density. Their 36 units are still beyond what's permitted.

Mr. Uchita commented that they can agree to disagree on this. He added that there is no distinction between use and area variance anymore, though that is not his (P. Monziona's point). The point is that if they move the location around, do they need the density variance again. He would rather proceed with the density variance presentation; if the Board feels comfortable, they can grant the density variance, then to get tied up and delayed further on the project.

P. Monziona stated that he is not speaking for the board; he is just giving some feedback on how he is thinking about it. Mr. Uchita stated that even if he proceeds, he sees nothing preventing this Board from saying it is

interesting, but this Board does not think they need the variance. They are welcome to return to that or not, as the case may be.

Mr. Uchita proceeded, taking the Board through the density variance. They believe the variance is not contrary to the public interest. The density drives their ability to improve the existing conditions that are there; fire protection, access to the site, septic issues, the improvement to the water system and the parking that Rachel (Goldwasser) is going to address. It produces the resources to fund those improvements. It is obviously in the public interest. It is obviously in the public interest to get some of the cottages back onto the tax rolls that are not there now. It is in the public interest to take advantage of the reconstruction opportunities to create a safer site both inside and outside the site in terms of increased safety and onsite facilities. He thinks it is in the public interest to take advantage of the reconstruction that this variance will provide. He thinks there is also a public interest in allowing a land owner to restore his or her site in concert with legitimate health, safety and welfare issues. The ordinance intends that a person be allowed to restore their site when a casualty loss of some kind occurs, as long as in restoring the site you do not create new safety problems and new health and welfare problems. They have taken all this into consideration and designed the site the way they have to address those health and safety concerns. Now, to allow the density at a reduced number of 36 units, they think is a better situation than what was there previously and should be permitted as in the public interest because they are restoring some of what was there previously.

They think it is in the spirit of the ordinance to grant this variance. One critical principal in both the ordinance as well as in New Hampshire law is that absent valid safety, health, and welfare concerns one should be able to rebuild what they had before. The Constitution says this; the State statute RSA 674:19 says this, and the ordinance says this. Allowing the community to rebuild at a density that they had before, but at the same time making sure that density does not create any health, safety or welfare problems, hence the reduction in units, the building separation, the locations of those units, is in the spirit of the ordinance. It is somewhat in the spirit of the ordinance if they present the Board with a proposal that is more zoning compliant and less dense than what was previously. They are moving the project closer to what the ordinance would require. They are not perfectly in compliance with it, but they are moving it closer, and that certainly is within the spirit of the ordinance to urge a property owner to bring a property more in compliance with the zoning ordinance. Also, it is within the spirit of the ordinance to preserve the type of community that one has. Here, you can imagine what that community would look like if they just left a hole there where those units used to be. It would be a very different community than the community these folks are use to. It is within the spirit of the ordinance to preserve a community once it is there. Allowing them to achieve the density they are seeking will allow them to retain this walkable community, the sense of a close-knit neighborhood, and the encouragement of the fellowship and the engagement of the citizenry that are there on that particular project that would not exist with the hole that would exist without the density. The variance protects those important values and is thus in the spirit of the ordinance.

In terms of substantial justice, this is a very vexing element. Basically, as he reads the case law, what you need to do is look to see if there would be an injustice to the applicant if the variance were denied, and then compare that injustice to the applicant with whether the public achieves some gain by denying the variance, despite whatever injustice the applicant suffers. They believe their injustice is there inability to rebuild what was there before, and they think that once safety and public welfare issues and concerns are addressed, there is no public gain then that outweighs that injustice by turning around and denying the variance. If the community were not able to rebuild pursuant to the density it seeks now it would really change the character and the core of that neighborhood. It frankly would encourage a new application with big cottages and big houses that would reduce the density even further and take away from the character of this neighborhood as people tried to figure out what density might work for the Board, those houses are going to get bigger and bigger, and away from the character of what is already there in terms of architecture, sense of community, and the philosophy of the community. This is not what this neighborhood is about, or what this end of the bay is about. They do not see any public gain that outweighs what would happen if they were not allowed to build at this density. Once the safety issues are addressed, they believe there is no public gain that is obtained by denying this variance. The loss to the community would be enormous if they deny the variance.

In terms of the value of surrounding properties the density variance is going to have a positive impact. They are going to have a slightly lower density, and they are going to have safer buildings and safer roads. There are going to be better units; the architecture is wonderful and quite pleasing, and he thinks it is going to be a better community. Overall, there certainly is no evidence that surrounding property values would be harmed; in fact, there is no evidence that suggests that even at the prior density property values were harmed.

In terms of hardship, they need to demonstrate that there are special conditions of the property that distinguish it from others in the area. This property is unique because it is already there; it's not like they are walking in and trying to establish this community today. The community is already there, and that by itself, with the density it is at, makes it unique. If they deny the density variance, that community doesn't go away; it just continues to exist there. It is also unique because of the circumstances under which they are coming to the Board. They are seeking to rebuild after a casualty loss; that is different than sort of brand new construction on a green field that has never been developed before. They are seeking to rebuild what they had before, and that makes the property unique. The other thing that is hard to explain (tape ended) ...is absolutely critical. It is also a unique aspect of what makes this property the way it is.

As a result of that, there really is no fair and substantial relationship between the purpose of the ordinance and the specific application to this site. The purpose of a density provision is to ensure that there are a reasonable number of units within a particular size property, so that one may come to expect when they come into a neighborhood that there is going to be one unit per acre or one unit per half acre. He has that expectation when he moves into an area that that's what it's going to be. Here in this community that has been there for decades and decades, everyone knows what they are moving toward and into if they are moving into or near the community. To literally enforce the ordinance in this community and to cut back or deny the density variance would actually change the character of the community rather than let it return to the character that was there before. As long as they satisfy the health and safety issues that come with density, they ought to be allowed to return to the density they were at previously.

They think the use is a reasonable use because it re-establishes the core of what was there before, especially in Phase 1; it is consistent with their prior use but it is safer and better. This community serves as a good buffer between the commercial properties on Route 11 and the residential properties further up the hill and up Rand Hill Road, and in the scheme of things this is a very reasonable type use that they are proposing to go in there, even at the density that they are seeking variance relief for.

That is the density variance presentation. He is happy to proceed with the special exception for an expansion of a non-conforming use; the expansion of permitting up to 26 cottages to be occupied year-round. Unfortunately, he is going to do the same thing again as he just did in the variance, which is to tell the Board that there is at least a suggestion that this particular special exception to go from seasonal use to year round use is not needed. When they applied to this Board for the special exception relief, he included a copy of a case he hopes they all had an opportunity to read; the Devaro 12 Atlantic v. Town of Hampton. What that case basically stands for is the conversion from season use to year round use doesn't constitute an expansion.

P. Monziona asked if Mr. Uchita would want them to make the ruling on the variance for density before he makes any other presentation. Mr. Uchita answered that he would be happy to follow however the Board would feel most comfortable. There is some science to ruling on the density variance because if they turn that down, they would probably pack up their bags and go home. Without the density variance, other things become unraveled. P. Monziona agreed, stating that as one of the reasons he suggested it. With Mr. Uchita's permission, he inquired of the rest of the Board members to see if they agreed. T. Morgan answered that he thinks it would be the most logical step. P. Monziona explained that they would get the worksheet out and actually make a decision on the density variance. S. Miller suggested leaving it up to the applicant; he has significant risk and investment, and it should be his choice. Mr. Uchita said they would be happy to have a vote on the density, especially where it is fresh in their minds. P. Monziona agreed with that thinking; Mr. Uchita has just finished the presentation on that and the arguments are down as they go through the worksheet.

Worksheets were provided. P. Monziona invited questions from the Board concerning only the variance from Article 300 Section 433; the description of the case that he read said to allow 42 cottages. Mr. Uchita explained that they are now down to 36; the variance would be for 36 not 42. P. Monziona explained that he had recalled that and it had sunk in, but he wanted to make sure of the total number to be constructed, which is 36.

S. Miller asked about justice versus injustice, and if there is a shift in the amount of public gain or not. In the calculus, what is the difference in assessed valuation in both the properties and the buildings, the anticipated calculation of the assessed value or the taxes from the former situation before the fire, to the present situation? Mr. Uchita answered that he does not know that they have quantified that. He explained that the units that were destroyed were seasonal units and quite old with construction which, if the assessor went out today and those units were still there, he would characterize that as old, old construction. The value of the units that are going back in, in terms of the value of the construction and the quality of the construction, not only for fire and safety purposes, but for general aesthetics, if they were to aggregate those together, he certainly would suggest that it is well beyond the units that were lost. He wishes he could tell Steve that they had done a fiscal impact analysis to make a determination of that. He can safely say that for Joe (Spain) and those in the community, the value of the 36 they are hoping to get exceeds the value of what was there previously, if for no other reason than the quality of the construction and age of the construction.

P. Monziona invited further questions from the Board. Hearing none, he opened the floor to public input in favor of granting the variance for proposed density to permit the 36 units of cottages. Bob Gedney, 6 Autumn Avenue in the Campground; he has been there for 40 years. His father brought him there; his children were brought there, and now their children are brought there. His father was the head of the Conference Center and was involved with the 1945 fire. They've been working and trying to keep that place in a good family-related situation. Everything there is family from sports and music camps they have there, as well as drama camps, video camps, and they have young adults and retreats that come there. That's what the buildings are used for, and the cottages are all taxed by the town. They pay a fee to the Campground for the maintenance of the roads. Those are managed; the town does tax the buildings – he would guess they could be as low as \$30,000 or as high as \$100,000. He can't verify that; it is all in the eye of the beholder. They were all summer cottages; these new ones are going to be very nice cottages and homes and they would be winterized and have all the things you would want if you were moving into one. That's where he stands, and he is definitely in favor of it.

p. Monziona asked Mr. Gedney if, after being there as long as he has been, and having his family involved in two serious fires, and as a resident of the town, he has any concern about fire safety with the idea of putting back a number of units in a relatively small space in this amount of density. It has been through it twice; one most recently and fortunately nobody really got hurt. Mr. Gedney answered that with the designs they are putting in with the hardy plank, and the insulation they are putting in, and the distance they are taking between the cottages, and there aren't any big pine trees. The pine trees were a really big factor, with 35 MPH winds and 60' pine trees, the flames carried over the top and also through the leaves that were around. That's what caused this, and then the wind swiftly changed and came back. There are no more pine trees there; they have taken everything down. That's going to make a big difference; they take more pine trees down every year. He thinks density is a question, but there are a lot of things that enter into that. The buildings are separated very nicely. The roads are legal size roads so two can pass and the fire trucks can come in. There will be sufficient water for hydrants, and he thinks it has passed the fire chief. He is going to feel very much safer, and he thinks others will as well. If he was buying one he would say he has a pretty safe home there.

Marilyn Sylvester is the owner of one of the cottages that burned; her sister's cottage and those of all her neighbors burned as well. She wanted to express to the Board that those like her and Bob Gedney spent their whole lives on the Campground. She knows there is a big concern about how many people will be there for the winter; there are very few people that ever spend winters here. There are a few cottages; her mother in law did spend the winter here in Alton Bay. Most people it's a summer; the retired people stay through September and into October, but the water would typically be turned off and they would go to the warm. She would urge the board to allow this variance; her sister is from Raleigh, North Carolina and she enjoyed coming up. For her and many others it's a

second summer; where do they go and where do they stay because they don't have a place anymore. It's a wonderful community; they worked closely together. For a lot of people that was really strange. For them it was very quaint; the neighbors got along and enjoyed each other. The closeness was only for a couple months of the year, so if you got tired of your neighbor, in September you would go home. They really were a close neighborhood; they did things together and had a pot luck every summer and enjoyed time together. For them it's really sad. She has a place to stay because her mother-in-law passed away, so they are staying at her place and will be buying it. She calls it the abyss between where her cottage is; her 10 year-old son used to be more limited because he had friends right there in the neighborhood. Now the leash is a little longer, because there is no neighborhood and no friends. It's really sad for her to walk through the abyss to get to any other part of the Campground. She urges the Board to understand that for many of them this is just a summer place that they love; they love Alton Bay. They consider it their home in the summer; as they (the members) all love their homes, there are people that even just grand children that come up. They can sell their house, but you can never sell your cottage because this is where they all come in the summer. She urges the Board to let them build as soon as possible because all the people really just want to come back and have a community again.

Diane Gedney came forward to speak; she has only been on the Campground for about 9 years. What she can tell them is that it is a fabulous place and a wonderful community. There are people on the campground who, if they could put those cottages back exactly as they were, they would want to do that, despite the fact that they were real close together; despite the fact that they were old, old, old; and despite the fact that the fire happened and the way it did. They would do that because of the relationships and the people and the love that they have for Alton Bay and coming to the Conference Center. On the other hand, there is also a Board there that sits, and has said that they need to know they are going to go back to the town, and they are going to say it needs to be a community again. It's not going to be as close as it was as far as proximity, but it will be safer, it will be wonderful, it will offer some families to be there more often, and it will allow families to continue in a manner in which they do, which is to be there on a seasonal basis. It's a wonderful place; it's a wonderful organization, and she would encourage each of the members to come and hear the programs they do and the concerts they have had for the youth. It's a community that is doing a lot of good things, not only for the town, but for the people outside of this town. She thanked the Board for their time, and asked for their consideration to let them move forward with this project and let them rebuild the community they all love dearly.

P. Monziona asked if there was anyone else wishing to speak in favor of the application. Seeing no one else, he asked if there were any who would like to speak in opposition. There were none. Public input was closed.

The members proceeded directly to the worksheet.

1 – T. Morgan stated that the variance **will not** be contrary to the public interest. He thinks what has been proposed here is the best proposal they have heard so far. It is well thought out, well planned, and well presented. The plan will enhance the appearance and safety of the neighborhood and it also does not alter the essential character of the neighborhood, which is both historically unique and an unusual type of neighborhood. S. Miller and L. LaCourse both agreed. P. Monziona also agreed, adding that these structures could be rebuilt in their footprints in their total number and the Campground has agreed to reduce that number. They are building better, safer structures with less overall density in the laypersons sense of the word. This actually serves the public interest by this plan.

2 – S. Miller stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. As a matter of fact, the community actually pre-dates the Master Plan and it is so much in harmony with Alton Bay that it is a landmark not unlike the Bandstand itself, which is on the front of the annual report. He would be averse to changing the character of the property. L. LaCourse agreed. P. Monziona agreed and added that he was very concerned and would have been very willing to deny this application as counsel for the applicant has pointed out, if there were grounds for convenience, health and safety; when you think about this Campground and the fires, he thinks they need to be very vigilant and careful as a Board. He has seen nothing from the fire department; they have gone out of their way to satisfy the concerns of the fire chief in the way they have designed this and the fewer

units they have applied for and everything they have done to make sure a water supply is there, and with the materials that are going to be used, they are improving the health and safety of the area with this plan. T. Morgan also agreed and added that as Mr. Gedney pointed out, the residents will feel enhanced health and safety, and he thinks the character is preserved; it is the history they are preserving with this.

3 – L. LaCourse stated that by granting the variance, substantial justice **will** be done. For all the reasons they have already stated and because this is a very well thought out plan; they have gone out of their way to really insure the safety of all the people who are going to be living there, and at the same time, meeting the town in the middle to create a win-win situation. He appreciates that. P. Monziona agreed; Attorney Uchita and Rachel laid this out perfectly; all of what they said established readily that by granting the variance substantial justice will be done. T. Morgan agreed. S. Miller agreed that substantial justice will be done, and the Town of Alton will benefit considerably, both economically as well as having the community as close to what it was. The only victims are the people who are unable to rebuild.

4 – P. Monziona stated that the request **will not** diminish the value of the surrounding properties. It's interesting to consider what the surrounding properties are. The elevation of Pop's looked beautiful in the picture. He thinks that by doing this the value of the surrounding properties will not only not be diminished, but will be enhanced to restore this campground and do it in such a beautiful way. He sees no evidence that anything will be diminished. T. Morgan agreed; there has been very little evidence with regard to property value, but the reasonable conclusion can be drawn from what they have seen, and that property values will be enhanced. S. Miller agreed; it is a big point that the community itself is a buffer and a wonderful transition from a retail area into a residential area – it is a perfect buffer and transition. L. LaCourse agreed.

5 – T. Morgan stated that **no** fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. This is a historically unique property; it is a neighborhood that has existed in this way for a good many decades. He thinks that the provisions of the ordinance are not applicable to a situation like this. The ordinance has a different meaning and a different intent, and a different place in the community. The proposed use is a reasonable one and is not changing. S. Miller and L. LaCourse both agreed. P. Monziona also agreed and added that the ordinance as it currently exists would permit these structures to be rebuilt and the density to be reestablished in a way that would not be as safe as what is now being proposed. As has been described, this is now becoming more conforming with our ordinance; the use isn't changing. The use is reasonable as a campground with cottages and so the proposed use is a reasonable one.

6 – S. Miller stated that based on the above analysis, special conditions **do** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. What they have done is come back with a much safer community; a more conforming community; a community that is less dense and significantly more compliant to the zoning regs. L. LaCourse agreed. P. Monziona agreed as well; he thought the presentation laid out a lot of unique aspects of this neighborhood that go to this specific criterion of unnecessary hardship. If it couldn't be reestablished, and he would just incorporate those described in his response; not only the walk ability and the closeness, but all the things that count are described so well. As he was listening to them he thought that this criterion was well met. T. Morgan agreed.

T. Morgan made a motion to approve Case Z10-17 with respect to the variance request to allow 36 cottages to be reconstructed on the subject property. S. Miller seconded the motion which passed with all in favor.

Mr. Uchita will next address the special exception request for what has been characterized as an expansion of a non-conforming use, and that expansion relates to permitting up to 26 cottages to be occupied year-round in this particular community. The Board has heard to some extent the reason why this is attractive to them; there has been some demand, some experience by the Campground to have people live there year-round. There are a couple of people who do so now. It's for them also a safety and security issue to have some more people up there to keep an eye on the area during the winter months. There are also from time to time some winter events and retreats during school vacation week or something like that. It would help them to have some year-round use up there. It is highly

likely, as one of the people who lives in the Campground stated, that they will not have 26 units occupied year-round; there is not that kind of demand for it right now. Rather than come in to this Board every time they want one, they thought they would go for what they think is reasonable, given what the septic systems can handle.

He indicated, regrettably perhaps, that he is going to do the same thing to them that he did with the last one, which is to suggest that perhaps this special exception may not be needed. He started to talk a little bit about the Devaro 12 Atlantic v. Town of Hampton case which is included in their submission. The case stands for the proposition that mere conversion to year-round use without more is not an expansion of a use. What that case involved was that there were some seasonal apartments down on Hampton Beach – they are all familiar with Hampton Beach and its crowded conditions – there were 9 units in 2 different structures and they were stepping back and they were converting the 9 units to 7 units and making the 7 units year round. The town said they thought that was an expansion of the use because of the parking situation. He explained that what was non-conforming about that particular set of buildings was not that the use was non-conforming; they were allowed to have those buildings there. What was non-conforming about it was that the parking was not in conformance with the ordinance in the way it was set up. The town took the position that now the parking situation, which is non-conforming, would be year round and the non-conformity would be exacerbated. Now instead of just having it seasonal, it would exist year-round.

The court there said that the conversion to year-round use without more is not an expansion, and they were also to some extent looked to the fact that the site was coming into greater compliance; that by reducing the number of units on that site they were actually reducing the parking demand. Here, what makes them non-conforming is not that residential use is not permitted in the district, but rather the density is non-conforming, and then as they will hear from Rachel, they don't theoretically have the parking for every single unit that they saw on site when they took their site-walk. Their use is residential, which is permitted by the ordinance whether it is seasonal or not. They are not expanding the non-conforming aspect of the property. They are not making or expanding the density; they are contracting the density. They are not expanding the degree of non-conformity related to parking; in fact, as Rachel will tell them, they are actually increasing the amount of parking that has historically been available up there. If they had an ordinance provision that said these kinds of uses could only be used seasonally, or if there had been a previous approval for this site restricting it to seasonal use, then they would be expanding the non-conforming use. In this case they don't have that situation; that is not to suggest though that year-round use can't be regulated by the Town and by the State. They already went through the fact that the Town can regulate that through water use, and they have already heard the plan on water use. They have also heard from Rachel that the Town as well as the State as well as the community can regulate the number of bedrooms there to insure that they don't have year-round use in units that have many more bedrooms than would otherwise be permitted, both by the Town and by the State.

He would urge them to at least take a look at the fact that this may not be an expansion of the non-conforming use of parking, or the density. Much like the previous presentation, he is also prepared to tell them, if they disagree with him, which is fine, that they qualify for a Special Exception as an expansion of a non-conforming use. He asked Chairman Monzione if he should stop or keep going.

T. Morgan asked if, suppose the Board agreed with his position that it is not an expansion of use in that the case controls the situation. What control does the town have over the 26 units that they have proposed; is the town better protected by bringing a special exception that is limited to 26 units, or is there some other means of making sure there aren't other conversions of the use? Mr. Uchita suggested that in the absence of a special exception they would go to the Planning Board, which they still have to do after this, and say to the Planning Board that only 26 units up there could be year-round and ask them to impose a condition to that affect. They may not have the teeth in a special exception, but you would have the teeth in a condition they could then utilize their zoning powers to enforce. Even if this Board doesn't act, they would ask the Planning Board for that condition because frankly that is the presentation they are going to make. There is also a practical consideration and that is the State regulation; he will not hammer away on that again except to say that the capacity of the systems only allow for so much. But,

they would promise and say on the record that they will ask the Planning Board to impose that condition as part of their site plan approval.

P. Monziona read the case when he first reviewed the application; he thanked Mr. Uchita for supplying it as it was helpful. He is wondering whether the courts ruling was generalized enough to be a sweeping, broad statement of the law that when one goes to year-round use from seasonal use it doesn't require any request of a special exception or anything outside of zoning. He is thinking if it was more fact specific to that case, then one might say that given the total circumstances of this location and everything else that goes along with it, then he thinks an argument could be made that a special exception is needed for a change of use here at this campground as opposed to what was being sought in Hampton Beach and whether one could make it factually. He has not seen that language recently, whether it was a comment by the court saying you should not need this ever or whether it was in this particular instance thought to not be necessary.

Mr. Uchita agreed; this court was not saying any time something goes from seasonal to year-round it never implicates a special exception or whatever permitting was needed in Hampton. What he thinks the court did say there is that without more switching from seasonal to year-round does not constitute an expansion of a non-conforming use. If they were in a district that did not permit residential use it certainly would be an expansion of a non-conforming use. If they were in a district that said campgrounds can only be used for seasonal use, they would certainly be expanding their non-conforming use. If they were getting them to try to change a condition that required seasonal use they certainly would be expanding something they had not previously permitted before.

None of those situations is the case here; in fact, they have a very factually similar situation to the people down in Hampton in that it is not that the use is non-conforming, it is that the parking, much like them, is non-conforming, and their density is non-conforming. They are not expanding their density; they're actually contracting their density. They're not expanding the non-conformity related to parking; they are actually it better because they are going to supply more parking spaces than what were there previously. There is nothing, when they talk about the expansion of a non-conforming use; they are doing nothing with regard to those uses that are non-conforming. They are not touching them except by making them better.

P. Monziona wondered if the conversion from a seasonal use to a year-round use would make it more non-conforming with regard to density and other things in which they are already non-conforming. In other words, when they take a situation where the buildings they are seeking to expand the use of; where they are seeking to turn it into year-round use, they are already in non-conformity with regard to other criteria, whether then, under those circumstances, the court might view a year-round use as being an expansion of use.

Mr. Uchita explained that if the ordinance defined density in terms of seasonality as well as acreage, unit per acre basis that might be a good argument; it doesn't do that, it simply defines density as a number of units per acre. It doesn't say whether those units are or are not seasonal or year-round. He does not think the density thing gets them there, and he does not think the parking gets them there. He went on to say that, if you think about it, the Town of Hampton had a pretty good argument; they said the parking was non-conforming and if those people are here year-round as opposed to just summer, it is going to exacerbate it and they would have it year-round now instead of just in the summertime. The courts said that was not the way their ordinance was set up; it is not the way it fits. It is not an expansion of a non-conforming use. They have a case that is much closer actually to the case here if you look at it in terms of the concepts that each municipality is facing.

P. Monziona asked Mr. Uchita if he has the case handy; he wants to see that applicable portion, if he has it. Mr. Uchita produced a copy. S. Miller thought the case was right on point; he tried to find a definition of "substantial" in the ordinance and it just isn't there. He does not think it is in the eye of the beholder, but he thinks they are not talking about 26, they are talking about 21. Five are already in existence; he asked if those five got a special exception before or did they just happen. Mr. Uchita believes they just happened and deferred to Mr. Smith to tell him if he is wrong. S. Miller asked Mr. Uchita if he believes that happened in violation of any ordinance. Mr. Uchita answered no. S. Miller stated that he thinks the definition of substantial is one of the elements. Twenty-one

out of 172 units are 12% of the Campground; he intuitively does not think that comes under the definition of substantial.

P. Monziona stated that what he understood the Supreme Court said was that converting the use of the dwellings units from seasonal to year-round did not expand the non-conformity with regard to parking. In other words, you're not in conformity with the parking requirement whether you live there year round or seasonally. It seems like the decision is limited to the trial court's finding that. In other words, the trial court found that living in your unit year-round didn't make you in any greater non-conformity with regard to your parking spaces. You are either in conformance or non-conformance regardless of whether you live there year-round or seasonally. In this particular application they are bringing, why are they seeking a special exception for year-round use – regardless of parking; they already know that whether they are in conformity with parking or not is not dependant on whether they are there year-round or seasonally, at least according to the Supreme Court. Under what reg. are they seeking the special exception, and why?

Mr. Uchita answered that there was some concern expressed by the town, and maybe a special exception might be needed for an expansion of a non-conforming use based on going from seasonal to year-round. Again, it is the same issue as before; rather than get into a debate with the Board, find out they needed it and say goodnight, then have to come back next month, they put it in so that if the Board determines that they really do need it, even if they think they don't, then it's there and they can proceed. He went on to say that they have two non-conforming aspect of this site – density and parking. Whether they are there year-round or seasonally doesn't affect that non-conformity. The section of the ordinance they are under is the expansion of a non-conforming use; the non-conforming aspect of their site is not being expanded; in fact, it is being improved and contracted.

P. Monziona reiterated that they are not in conformance with parking, and they are not in conformance with density, regardless of whether they are there seasonally or year-round. They've inquired to seek a variance for density non-conformity and that's been granted. They are going to be seeking relief with regard to parking; he is not sure under what authority they are now seeking relief with regard to seasonal and year-round use.

Mr. Uchita stated that they elected to file it as a back-up; they can't afford to lose the time of having the Board then determine that they should be in for the Special Exception. They decided to apply for it just in case; if the Board decides to short circuit the process and say they don't need the special exception, they are happy to withdraw it.

P. Monziona said the applicant would want to hear the Board say they don't need it before they withdraw it, but the question is whether the applicant is willing to withdraw it before the Board says that. Mr. Uchita answered that the interesting part of that is that the Board is the arbiters of their ordinance; if they say he needs it, he is prepared to proceed. If they honestly think he doesn't, he is prepared to withdraw it. (End of Tape)

P. Monziona informed Mr. Uchita that the Board would deliberate on whether they want him to proceed on this. Mr. Uchita agreed.

T. Morgan stated that he does not think they need the special exception in this case. They are addressing the non-conforming issues with the two variance requests, and the other changes they are proposing, which is to add 21 units which will be year-round rather than seasonal is not an expansion of a non-conforming use, and doesn't require an exception.

P. Monziona asked if the town parking regs reference year-round versus seasonal use; they do not. He sees that if somebody makes an argument that the Devaro decision is limited to the facts of this case, which dealt with parking; he can see why they brought it. He can see why with an abundance of caution they otherwise would want a special exception. The special exception that they are seeking is to allow expansion of a non-conforming use; he asked Mr. Uchita what section 320 says. Mr. Uchita answered that there are two sections that deal with why they are in front of the Board tonight. The most specific section is 320(a) 4, which deals with the expansion of a non-conforming use. Then, they have to meet the regular requirements for special exception under 520 2. The truly applicable one

to kick them off would be 320 (a) 4. That's only if they get to the point where they believe it is an expansion of a non-conforming use. They are already under that; that is what 4 does.

S. Miller stated that there are 5 houses that have been year round and asked for how long. Mr. Smith stated that one has been in use for over 45 years; one of the others has been in use for over 10 years; one has been for 5 years, one has been for 2 years, and the last has been about 15 years, but he is unsure exactly. S. Miller queried that they have had 5 houses already theoretically in an expansion of a non-conforming use, or they in fact were not. Precedent has been set going back 45 years; his query is whether they were in violation of an ordinance.

P. Monziona explained that he does not think it sets precedent as much as they might be grandfathered because they existed prior to zoning and they are allowed to continue. Or, some zoning reg. prohibited a year-round use and yet they did it anyway and they are in violation. What he does not find is any zoning reg. that prohibits year-round use or that requires seasonal use. That is not what is being sought after here; the applicant isn't coming in saying they can't use their dwelling structures year-round. There is no ordinance he is aware of in the zoning that specifically limits or restricts year-round use of a dwelling structure. Mr. Uchita agreed. P. Monziona continued, stating that it is not like they are here saying that under the zoning regs they are only allowed to use their cottages seasonally; they would like to use them year-round and therefore they're applying for a special exception to permit that. They don't need to do that because we don't have a reg. that prohibits year-round use of a cottage. What they are doing, if he understands correctly is because their property up there is non-conforming with regard to density and parking, and because they now seek to expand the use of certain units to year-round use, they felt it wise to apply under 320 (a) 4 for an expansion of a non-conforming use. They do that in the context of Devaro, where the Supreme Court said that the trial court did not err on the facts of that case in finding that the expansion of a dwelling unit to a year-round from a seasonal did not affect the fact that there was a non-conforming use for parking. They were non-conforming anyway, whether they were year-round or not. Somehow, they extrapolate from the Supreme Court's ruling there that perhaps the applicant does not need to be there with a special exception since the Supreme Court is saying that converting from seasonal to year-round does not influence the con-conformity with parking. It doesn't make it worse or better; they are still in violation. You're not in any greater violation due to living there year round, but they are not in any less violation either.

Mr. Uchita pointed out that they will actually be less in violation; P. Monziona agreed and stated that he had been referring to the Hampton case. The applicant will be in less violation if they get their way with regard to their plan because they are going to improve the situation with parking and so forth. Mr. Uchita commented that land use attorneys are very conservative; if they think they might need something, they throw it up there and if they are told they don't, they're really happy to go home early.

P. Monziona stated they are deliberating on that now; he is going to be requesting Mr. Uchita's permission to do what they are doing so that there is no objection. They can probably vote among themselves as a Board on this subject of whether they need this application for special exception, if that is what the Board wants to do.

T. Morgan stated that he does not think they need it. L. LaCourse agreed; everything he has heard indicates that they don't need it. S. Miller asked if the following would help at all – a zoning ordinance adopted under RSA 674:19 shall not apply to existing structures or to existing use of a building; it shall apply to any alteration of a building for use or purpose in a manner which is substantially different from the use to which it was put before alteration. He went on to say that there is no definition of substantial. P. Monziona stated that they are not even changing the use; they don't even have to get into substantial because they are using it for residential before and after. S. Miller believes that the RSA says they do not need an exception. P. Monziona agreed with S. Miller that they are not seeking to change the use in any way; it remains residential.

P. Monziona invited a motion on the issue of whether a special exception application in this case is needed.

T. Morgan made a motion that in this case a special exception under Article 300 Section 320, to allow expansion of use for the 26 dwelling units to be used year round is not necessary. L. LaCourse seconded the motion which passed by unanimous vote.

P. Monziona stated that they have determined unanimously as a Board, based on the arguments made and the evidence before them that they do not need a special exception with regard to the use of these units. As the Board understands it, there will be other conditions placed on them by a number of other factors; perhaps by the Planning Board, but certainly by the details they have provided about septic and so forth about how they will be able to use those units.

Mr. Uchita made two final comments before turning the presentation over to Rachel Goldwasser. He reiterated their pledge that they will offer that condition up to the Planning Board, so that it is absolutely crystal clear; he hopes the whole world heard him say that and holds them to that. He also stated for the record that, to clean up their files, he would withdraw the Special Exception application.

Ms. Goldwasser picked up with the presentation, moving to the variance regarding the number of parking spaces. As they will recall from the conversation a few weeks ago, the application reads slightly differently than the variance they are requesting tonight. The variance they are requesting tonight is a use variance to Section 325 to permit 541 parking spaces where 729 are required. She repeated the numbers at the request of the chair.

They had gone over last time why that number changed; they do not need to do that again; she stated she would be as brief as possible. This proposal includes adding more than 150 new parking spaces, even though only 72 spaces would be required for the residences that are being built. The Board will recall that the reason the applicant believes this is an appropriate number of spaces has to do with the unique nature of this community under three main points that she wants to make regarding the community and why the parking spaces will be sufficient.

The first is that it is a private and walkable community; as they heard and as they saw on the site walk, the typical use of the cottages is a drive up and park use, and then walk around the community and enjoy it without getting back into one's car. Therefore, a parking space for each individual use just doesn't make sense.

The second unique piece of the community that relates to parking is the simultaneous use. People come for the benefit of the community and the group activities, and they come just as they would to some big multi-use facility. They come, they park, and they go from different uses without moving their cars from one place to another. The simultaneous use results in a need for fewer parking spaces. Therefore, the various amenities and associated parking are inter-dependant. If they were coming to the Board with a restaurant in one location and then a chapel half a mile down the road, those would be independent uses that would require independent parking. Because these uses are all grouped together and are all interdependent, the need for the maximum number of spaces just isn't there.

The third is the seasonal nature of the community which lends to its walkability. The Board has heard that the vast majority of the folks who go up there go in the summer time when walking is much more likely to happen. In the winter time the number of cars parked up there is just much, much lower.

The combination of all these factors – the walkable community, the simultaneous use, and the summer focus – means that the requirements of the ordinance which is over 750 parking spaces just doesn't make sense for this site. They are asking for the Board's help with this request so that the community doesn't need to create more parking than really makes sense. The proposal makes environmental sense; it permits the town to avoid a sea of asphalt in the buffer zone they have talked about between the lake and the residential community that is up the hill. It also makes sense because the community can provide overflow parking off-site if parking becomes an issue in a one-time use. It avoids that sea of asphalt where one might be needed once every ten years or so. Overflow parking is available.

With the permission of the Board, she offered to move into the elements of the request. The first element is that the variance will not be contrary to the public interest. This request is a pragmatic solution to a combination of a number of unique features on the site. It's a pragmatic view of adding 150 spaces to provide closer to what the ordinance would require while still recognizing that the site is very unique. It permits the beneficial expansion of roadways and they have seen that the access for fire and health and safety is there while still permitting to increase the number of parking spaces. It does not require unnecessary impervious surfaces which would really be against the public interest in a situation so close to the lake. It also supports the core of the community as a walkable community, which is also in the public's interest.

The variance is in the spirit of the ordinance because the goal of the ordinance is really to make sure that a developer doesn't create more demand for parking than they are going to supply. They don't want anyone to build a mall and then not have enough parking and create a public safety hazard or have people parking on the street, doing things they shouldn't be doing. That is the reason they have the ordinance they have; in this situation, because of these unique factors, the spirit of the ordinance, to protect the safety and welfare, is there without requiring that number of parking spaces.

The variance does substantial justice; it would be an injustice to require a sea of asphalt where one isn't necessary, and to change the nature and character of this community as a walking community by adding lots and lots of parking spaces that just truly are not necessary for the way that the site is actually used. That would be an injustice to the applicant and to the community that is there. She noted that the community isn't asking to be relieved of all its parking requirements; they are adding parking spaces. They are not asking for total relief; they are asking for middle ground. Again, because of the way the site is used, there is no public gain from requiring 700 spaces on this site; they're just not needed.

Property values won't be impacted for abutting properties. They believe property values may in fact be enhanced again, as the Board has said in earlier applications. In this situation if they pave the whole place it could really adversely affect abutting properties in a way that not requiring that sea of parking would be more beneficial to them.

The fifth element is the unnecessary hardship element. The Board has heard already about the special conditions that are already in existence on the property. This property provides a full complement of services; they provide tons of social services; they provide a dining hall; they provide a full complement of services that are walkable and that the community members walk to and access every day. Those elements together create a unique circumstance which is completely distinguishable from other properties in the area. The second is that there is no fair and substantial relationship between general public purpose and a specific application. As they have discussed the issue addressed in the ordinance is trying to avoid creating a demand which outstrips a demand for parking. In this situation, the demand will be met with the number of parking spaces that are being provided. The third issue is that the proposed use is reasonable; they believe that this parking is reasonable and encourages the ongoing use of the site as it is uniquely used with the built-in services; it is well within the public's interest.

Ms. Goldwasser noted that at the site walk some issues were raised as to whether they needed all of those parking spaces; are all 500 some odd parking spaces really necessary. What they would suggest is that if that is something the Board would like to contemplate, providing some flexibility, they could suggest a condition that would permit a little bit of flexibility with the number of parking spaces. If a few parking spaces needed to be eliminated due to the site once construction begins, that would permit the applicant with some flexibility.

T. Morgan asked if that flexibility would include having 541 as the top number. Ms. Goldwasser explained that there suggestion is that they might say that 15 to 20 parking spaces could be eliminated; they've heard that the total number of parking spaces... P. Monziona stated that would be like amending their application for a further variance; he is not sure they as a Board should be put in a situation, or want to be in a situation where they would be amending their application. They are seeking fewer than what is permitted; for the Board to lower that number for them – he thinks the Board has to leave it up to the applicant to tell them what variance they are looking for and

not necessarily give them a greater variance than what they are asking for on their own. If she sits there and decides they should ask for 520 instead of 541, they would deal with that. The Board has to judge the criteria based on a specific number they are contemplating.

If he remembers correctly, when they had the last session, the way she arrived at the 729 was looking at Section 325 of the reg.; she determined the types of structures and use of structures located on the entire Campground, and then using the reg. requirements – for example, they have one building that falls under the category of church. The regs require 1 space for every 6 seats they have in the Tabernacle. Then they have a dining hall and they compared that to a restaurant. Whatever they did, they took it as a whole and determined what buildings should fall under what categories, and determined the total number of parking places. Ms. Goldwasser confirmed the process. P. Monziona recalled that she had given the members a breakdown of that, as to how she did it, to show them how she classified something as a restaurant or as a church. They may not have an exact description in the reg. to meet a building, but it may be analogous. The tabernacle may be analogous to church; their dining hall may be analogous to restaurant. Ms. Goldwasser clarified that what it doesn't do is provide which section she applied, but they should be able to figure it out based on the standard used. P. Monziona asked if any of them were in compliance. Ms. Goldwasser answered that what they didn't do was to go look and see; she is not sure if the ordinance would tell her if she needs to be within ½ mile of the Tabernacle to see if there are 190 spaces in that vicinity. There certainly are 190 spaces on the lot, so the Tabernacle by itself is in compliance.

P. Monziona explained that normally when one comes for a parking variance, one is dealing with a specific structure or building, or a specific use within a building. You can see what the parking lot is. The reason he asked that is because it might have made their job a tad easier if they could look at it and say that as they go through the various buildings... Lodgings or dwellings require one space per room or something like that; if you have a guesthouse or something analogous to that, and the parking spaces that are assigned or designated for people who stay there, or even the cottages where two per dwelling unit are required. He asked if they had gone through it and thought that as they were asking for 541, a lot of what they have up there already is in compliance. It is just that when they add the whole thing together, they go out. In other words, where they have listed what is needed, they weren't able to say what they currently have, and that is because their spaces go all over the entire Campground as opposed to... They can't say they need 190 for the Tabernacle and they currently have 80 or 90 there dedicated to the Tabernacle.

Ms. Goldwasser explained that they did do a regional analysis that sort of looks at cottages and where they are; she pointed out that parking is very fluid in this area; if they look at the original conditions plan they handed out earlier, and they look at the part of the site that burned down, there is virtually no parking there. What people did was to park elsewhere on the site and they walked. Maybe they dropped off their groceries and they parked their car across the site and walked over. That's what the traditional use is. If she looks at being the owner of this cottage over here (indicated on the plan) she does not have a reserved parking space. The parking is very fluid, and when they talk about simultaneous use, that is a really important point to keep in mind. It isn't the way you would look at a normal parking lot where unit 22 may have parking spots A and B. In this situation there are not assigned parking spots.

P. Monziona stated that the reason he has that concern too is, and he thinks it is better for the applicants in getting this, if the variance is granted that it is a variance that holds up. He thinks they have to consider this for the future as well; he knows he has been saying this and maybe gets to the point of being irritating. He thinks they are required as a Board not to look at this as the Campground or the Christian Conference Center. He thinks they have to look at this as a bunch of buildings located in one spot, and whether the parking requirements and the variance are appropriate. The fact that the client uses the area in a certain way for certain purposes and makes a certain use of it today he doesn't think is sufficient to carry the day. He thinks that again, six months from now the whole world changes drastically and the whole place gets sold, and someone else is using it. They never know what is going to happen in the future and they will have granted a variance; if it were a variance granted specifically on its current use, the way her clients are using it, he is not sure that would be a good variance.

Their obligation is to view these buildings as buildings and to view the land as land and to recognize that anybody could be up there 6 months; 5 years; ten years from now and the town would be stuck with what they do. He doesn't want anyone coming back looking at him in the grocery store and saying he is one of the guys that messed that thing up five years ago. He would say he thought it was going to be the Christian Conference Center forever. He thinks as they view the criteria, they need to look at them with the idea that change is possible and put it in a context of what could happen. That's why he wondered if there were some portions of this that were pretty much in compliance anyway and that they are really not out; plus the fact that the parking requirements are incredible anyway. The fact that they would need 729 spaces up there under the ordinance; they are working on zoning regulation changes and he thinks that is one of the things they need to bring to the Planning Board and the Town's attention. He thinks they need to revisit the parking regulations; they are bound by them now.

S. Miller asked if they could issue a variance that ends if ownership changes. P. Monziona answered that the variance runs with the land; there are all kinds of conditions that you can put on variances; he is not sure he knows the definitive answer to the question. When you put conditions on variances, they should be conditions that can feasibly and reasonably be enforced and upheld, and that don't put additional burdens on the town to try to police or enforce. He thinks the general rule for them to use is that the variance runs with the land; once they grant it, it goes with the property and if it gets sold, that variance gets sold with it. Once they allow something to exist on a property, the next person who gets that property has the right to that variance. It will run with the land.

S. Miller asked if they issued a variance with a septic tank for a two bedroom, and they want to change it to a 12 bedroom, the variance ends. P. Monziona answered yes, because they put the condition that it can only be a two bedroom. S. Miller asked why they couldn't put a condition on a variance like this. P. Monziona stated that to put a condition that they grant the variance but only if the Christian Conference Campground is the owner; to put a condition with a specified owner are a little tricky. They're a little hard to enforce. They go beyond what is a reasonable approach to it. He thinks their best approach is that they grant the variance, and it runs with the land.

Mike Garrepy realizes he has jumped into the process midstream, but he feels again with this variance request that it is not necessary, and he is surprised the applicant didn't bring it up as an issue; perhaps they were moving well ahead in the process. He thinks that what they are doing here is rebuilding units and coming into compliance with those units for parking. Each of those units has their own two spaces, which is what is required under the ordinance. He does not think, in fact he knows, that our ordinance does not require the entire site to come into compliance with zoning. If that were the case, they would have to be here for other variances as well, which they have not identified; like use variances because certain things are not allowed in the residential zone that exist there today. They are not asking for the entire site to be brought into compliance with zoning, just what is being proposed. They are doing that and they are adding an additional 70 plus spaces that they do not technically, in his opinion, need to add. This is another case where he does not think they need the variance, but they are here because perhaps it was suggested by the Planning Board; that the applicant should come before this Board for that request. They're doing that in the spirit of cooperation with the town to try to move this thing forward; he just does not think they need it. As the planner, when they get to the site plan review process, as they have suggested, he thinks some flexibility in the number would help the Planning Board through their process. He thinks it would, as they identify certain areas where perhaps they don't need as much parking as they are showing today on their plans, they can reduce impervious surfaces, and they can perhaps bring some units away from buffer zones without having to cut trees; that's possible as they go through site design. The Planning Board would benefit from some flexibility in that number, and he does not believe they need to be here to begin with.

T. Morgan stated that after reading the statute at section 325 he is not sure they need to be there either. It says "in any zoning district if any building is constructed or enlarged, or if any land use is established or changed after the effective date, off-street parking shall be provided in accordance with the following parking requirements." The argument could be made that they are not doing any of those things that drive them to come into conformance with this. He wonders if the variance is really necessary, or if it is a matter of what the Planning Board tells them they will or will not approve as part of the site plan.

P. Monziona explained that was the reason he was asking his question about whether part of this already is in conformity; in other words, they are going to have the parking spaces that the reg. requires for the dwelling units. That went to his earlier question that the way they presented this was that they took the whole area and said they needed 729 and they would like to have 541. His questions were whether any section of it is in compliance, like the dwelling units or whatever so the Board could deal with a lesser application that maybe they only need a variance for this section. Again, they can't single out any given area. They don't have dedicated lots per building so they have to approach it as a whole.

He went on to say that he took the opposite view; when he read 325 – “if any building is constructed or enlarged, or if any use of land is established or changed after the effective date, off-street parking shall be provided for the entire use in accordance with the following parking requirements.” That made him worry that the last thing they decided may have been a problem because they changed the use and they are constructing buildings; he thinks it is wise to be there with a variance. He thinks it is appropriate to be requesting a variance for the parking because they are building buildings up there after the effective date and they are in fact changing use, although the Supreme Court says that going from seasonal to year-round is not a change of use; residential is residential. To him, it is wise to have the application for variance; it is the applicants' choice whether they choose to proceed or withdraw, or perhaps the Board wants to deliberate on the subject on whether the variance is even needed, with the permission of the applicant.

Mr. Uchita thinks it would be helpful to do that is because when they went to the Planning Board they were told that they really thought they needed the variance and would not accept the application as complete without it. That said, they know under state law that the Zoning Board is the final decider of what the ordinance says, not the Planning Board. If they (the ZBA) tell the Planning Board they have read the ordinance and do not read the ordinance to require the variance and send that directive to the Planning Board, they will be fine. They would need this Board to have reached that conclusion, so to do something similar to what they did previously, if that is the direction of the Board, would be very helpful to them.

The Board deliberated on the subject of whether the applicant even needed this variance. S. Miller thinks it is appropriate; again, it is their risk and their investment, and their decision. L. LaCourse pointed out that a lot of what P. Monziona had been commenting on seemed to hinge on the word “entire.”

P. Monziona stated that, with the permission of the applicant, the Board will decide on the issue of whether they believe the reg. requires them to be here with a variance for the parking requirement that they have. He led off by saying he thinks they need the variance. He may be outvoted 3 to 1 ultimately when the decision is made. They are building buildings and if they are constructing anything up there... It may be that they only need to come before the ZBA and see if... Maybe he doesn't know if they need the variance because maybe they only need to comply with 325 with regard to the buildings they are constructing. It brings into question that they have other buildings up there too and everything shares the parking. He thinks they need the variance.

T. Morgan thinks Lou's (LaCourse) point is well taken in that the word entire in here... Mike Garrepy inserted that it is the entire use, not the entire site. It says that parking shall be provided for the entire use. The use is the residential use, and what they propose is to build 36 residential units and therefore they are providing those 72 spaces. P. Monziona does not think that is true. Mike Garrepy added that it is not talking about all the other uses on the site; it is specific to the buildings that are being constructed or enlarged for that particular use. They have a unique situation on this site because it is a campus with multiple uses; they are only talking about the specific uses they are rebuilding. They can interpret it as they are deliberating either way; his literal read of both this section and section 320 is that don't. If you read the language clearly, in his mind, it is for that use in particular. They are not only doing that, but they are also providing another 75 or 80 spaces in addition to that to become more conforming with their con-conformity.

L. LaCourse stated that the language is ambiguous at best; it is far from clear. To just use the word “use” is a generalization at best. It might be something they want to look at and clarify.

P. Monziona stated that the problem here and why he thinks they need the variance is because they don't have dedicated parking just for the residential buildings they are building. Their application incorporates all of the parking for the entire parcel, which is how they got to the 729 figure. The reason for that is that they still have other buildings there; they have multiple uses going on at the site, and they have no dedicated parking. They take the parcel as a whole and try to decide if they have enough parking for the entire parcel to accommodate all of the various uses going on and all the various structures on the parcel. They submit the application as a parcel; if they were coming and saying everything else on the parcel is well taken care of parking wise, and now they are building 36 new units and they have 2 spaces for each of those units, then they wouldn't need anything. But, they are rebuilding buildings and because they are rebuilding buildings, he thinks they trigger section 325; once you trigger 325, he thinks you have to look at the parcel as a whole. If you look at the parcel as a whole, it requires 729, and they need a variance. He is only one opinion on whether they need the variance.

T. Morgan wondered, from a practical perspective, if somebody appeals the decision of this Board, a court will be interpreting their interpretation of those words; if they have gone through a variance and granted a variance, their judgment is a little stronger and their rationale is harder for a court of appeals to overturn. John Dever commented that when they were looking at the variance, they were looking at the whole parcel not just that particular area. Personally, he feels it is appropriate to have the variance.

S. Miller does not think they need the variance; he agrees with John (Dever) that they need to consider the whole parcel. The use has not changed, no building has been enlarged. Maybe it has been attached, but essentially no building has been enlarged. It's not a traditional use of a restaurant; they are comparing it to a restaurant. It's a dining hall which can be construed as an extension of their home where they meet with their larger family. It's not a place for going out to eat tonight; how about bopping over to the dining hall? The chapel may be more of a chapel than a sanctuary – he doesn't know. The motel is not the traditional motel where people look to Expedia or drive by and decide to stay there. It is for guests of the community; none of these large buildings are traditional. If you go just by how many parking spaces the people need to live there, you are looking at about 338; they are looking for 541 spaces which means there is space for an additional 200+ cars which is an additional 400 people which can accommodate at their suggestion, the most they have ever had at a concert or something like that. He feels that if the 541 was out of line, he would probably have a problem with it, whether it is a variance or not. He does not see the need for a variance because this is not a traditional use.

L. LaCourse asked if people outside of the ABCCC were allowed to go to the tabernacle, or the dining hall, or the concerts and videos. Ms. Goldwasser stated that it is open to the public; the typical use on the site is that there are certain special events that attract people from outside the community, but most of the use in the community is from people who live there. There are a few special events every year where they might draw from throughout the state for a concert or something. L. LaCourse thought that the tabernacle might be every week; Ms. Goldwasser answered that it depends on the summer. Just because you have a special event does not mean you are drawing people from outside of the community. There are some people who don't live there who do use the site; that is one of the reasons they think the 500 spaces makes sense; it doesn't make sense to just have 2 spaces per unit. There is a need for some leeway there.

P. Monziona stated that his concern is that if the Holiday Inn or the Marriott Corporation comes by next week and buy this place and they get 541 spaces and they turn it into the place where you can go to dinner or drive by and stay; in his opinion they cannot determine this application based on what the applicant is doing presently on the property. That variance for 541 spaces if granted is going to run with the land; if that makes it attractive to the Holiday Inn Corporation, the whole entire way the property is used could be changed. Granted, maybe further variances would be needed to change some of the uses in some of the buildings, but if they are using it for lodging and dining and all the stuff they are doing now, they wouldn't. He thinks they have to view this with a long term plan. S. Miller asked if the Holiday Inn were to buy it, would they need a variance to buy it. P. Monziona answered that they would not to buy it. P. Monziona said suppose they come in and buy all the units as they are

and rent them out as resort units to anybody and anyone. S. Miller asked if to build a hotel they would have to come before the ZBA. (End of Tape)

P. Monziona stated that he would entertain a motion whether they should vote to decide whether the variance application is needed.

S. Miller made a motion that the variance in this particular case is not needed. There was no second, so the motion failed.

Ms. Goldwasser commented about the way they are thinking about the variance. The way the parking variance works is that they calculated the uses on the site and seen that they need 729; of those they are providing 541. If any of the uses on site change, then the variance is no longer good; the variance is predicated on the uses. You can't get to use the 541; you can't plop in a Hilton and change the uses. The tabernacle can't become a dance hall that is used three times a week as a dance hall because the number of parking spaces that they were counting is based explicitly on the use in the situation on the site. If a new owner cam in and ran it as a Campmeeting Association and the use was a simultaneous use that is the same as they are looking at today, then they are okay with the 541 spaces. If some other owner comes in with a use that is different than the use they have used to count this they need to come back for a parking variance, assuming their use requires more than 541 spaces. She hoped that was helpful in considering the future; the parking numbers are only based on the use and they are intrinsically connected with each other. You don't want to separate them too much because that is where they get really worried about the future of the site.

P. Monziona explained that what he had been saying is that if they have a building on this site where they conduct concerts and those concerts generally attract so many people both living on and off the location. Then some other owner uses the building for concerts, but they promote it on the radio stations and they put it in the newspaper and bring in acts that will draw hundreds of people who want to see those performers; it's still a concert hall, and they have given it 541 spaces along with everything. He thinks it is prudent for them as a Board in going through the criteria to consider that when they grant the variance it runs with the land and that there are circumstances feasibly – they hope it will always be the Christian Conference Center – but he thinks their job is to at least consider the potential that it could. They can't restrict that; they can't say that one condition of the variance is that they can never sell the property. He does understand that, and she is correct to a great extent – it is dictated by use.

Ms. Goldwasser stated that it is the simultaneous use, and they are granting it for that. If someone came in and took the tabernacle and didn't have it interacting with anything else, she thinks they would have a right. The other thing is if they want to consider a condition that says if there is a parking problem the owner of the property has to come back to the town and deal with it, then so be it. They are happy to answer to that call; if there becomes a parking problem, they are happy to come back to the town and resolve it. That would also run with the land.

L. LaCourse commented that as he looks at the plan, none of the older cottages have parking. Ms. Goldwasser explained that some of the older cottages that continue to stand have parking near them. Most of the cottages that burned down were in such close proximity to each other that they just didn't have a whole lot of parking near them. This plan does not show parking on them; they probably walked by cottages that have two or three spaces of even one space right next door to them. Those folks don't lay a particular right to those spaces.

P. Monziona asked if there was anything further. Mr. Uchita answered that they have submitted their argument in terms of the parking variance. They will stop; there is one more to go, which he thinks is an easy one.

T. Morgan asked if this parking variance addresses the spaces that are shorter; that is the next one coming up.

P. Monziona opened the floor to public input in favor on granting this variance. Marilyn Sylvester came forward and stated that it has been interesting listening to this parking; she was at a Planning Board meeting where they went on parking. Honestly, all they have heard today is very accurate. On a Sunday morning, when all the cottages

are full on a busy weekend – her cottage is on Beacon and they had parking on Circle. Half of the cottages that burned, and maybe more, would park in Circle. The majority parked in the Circle area; there was plenty of parking there. On a Sunday morning when they all went to church, cars did not move. Everybody walks. Her 80+ year old mother-in-law, when she was living, would walk. Her mother walks; most people would walk to church. That is the way it was. The tabernacle and the dining hall are not open at the same time; when the dining hall is open, there is no service at the tabernacle. There is parking in other areas of the Campground, some closer to their cottage and some have to walk a distance but everybody finds parking. She does not know if there has ever been a concern; she has spent every summer of her life on the Campground and she does not know that there has ever been a problem with people on the Campground parking in the town and being a nuisance. They don't have problems parking; they always had plenty of parking in Circle. She would urge the Board that this really isn't an issue; they are going to have fewer structures up there; most people do not have more than one car. Her family has two cars because they are able to commute to their jobs. Her sister comes up from North Carolina as many people are from out of state; they only bring up one car. The fact that each unit now has two dedicated parking spaces is way more than most of them will use. There are some older people who would be driven up by family and wouldn't even have a vehicle. She thinks it is ironic that there is so much concern about parking; she realizes they have an ordinance, but she would urge them to be reasonable. They are able to deal with the parking on the Campground because there is plenty of space and most people who are able do walk to the functions. There are people who travel from the town or other areas to the Campground for church or concerts, but that is minimal. Most of the people on the Campground are walking to these functions.

Bob Gedney spoke about how he is in favor. Everyone has said it and they all kind of agree but they have issues that are very important as far as the town. This is a walking community, as was stated. They even walk to the beach and on Saturday and Sunday with the Craft Show going on, they don't drive down, and they walk. All these buildings that are used – it is the same people after church that eat in the dining hall. The motel goes over to the church. The Tabernacle is a meeting room with many different types of Christianity; the youth have programs. He is in favor of the parking; every little cul-de-sac has a place for people to park. They would park there and go down to their cottage. It works pretty well now and he thinks that two parking spaces with all the new cottages would be very good.

P. Monziona asked for public input in opposition to the application. Seeing none, public input was closed.

P. Monziona asked the applicant if there would be dedicated parking spaces for the dwelling unit structures that are being built. Ms. Goldwasser answered that there are parking spaces available in the vicinity and there are parking spaces underneath some of the new units. P. Monziona recalled that they have been hearing that they would be dedicated, but would that prevent somebody who might need to park to go to the tabernacle from using one of the spaces. Are they going to be dedicated spaces? They are still looking at the parcel as a whole and the number of spaces as a whole. It just so happens that it shakes down to two per dwelling unit, but they are still going to be sharing the parking up there.

Ms. Goldwasser explained that the new units all have two spaces per unit in the close vicinity of those units; they are in the area for those units to be using. She also noted that the count for the seating in the tabernacle is based on church use; not based on recreational or night-club use because that is what the building really is. The concerts and other functions tie directly into that goal and that use.

The Board moved on to the variance worksheet.

1 – P. Monziona stated that the variance **will not** be contrary to the public interest. There is going to be ample parking given the layout they have seen and given the uses of the structures as they are permitted to be now. Even running with the land, those uses will tie in and restrict the parking into the future, and so this is not contrary to the public interest. T. Morgan agreed. S. Miller agreed and added that the site is unique and demands will equal supply, and there will be less asphalt, which is a benefit to the community. L. LaCourse agreed.

2 – T. Morgan stated that the request is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. The convenience, health, and safety are addressed, and the character of the neighborhood is one of walking; this helps to preserve that character and to preserve the history of the area, so he thinks it is in harmony. S. Miller agreed; protections do exist and he has a strong comfort level with management that they will be enforced. L. LaCourse agreed also; if anything, it is going to be more in conformity than it was previously. He knows there are some concerns with the Police Department and with the Fire Department because nothing is perfect. This situation is going to make it much better than it was before. P. Monziona agreed; he does not think that the demand is going to outstrip the supply, and he thinks with fewer cars up there it is actually going to be a safer area than if they were requiring the entire 729 spaces. That would be overloading the area with parking in an unnecessary way.

3 – S. Miller stated that by granting the variance, substantial justice will be done. It would be an injustice to add asphalt where none is needed. 700 units are not needed and this is a totally non-traditional residential area. L. LaCourse agreed; he believes if they can minimize non-pervious surfaces, it is a good thing. P. Monziona agreed and added that the character of the neighborhood, including the fact that it is a walk in community will carry over no matter who is occupying that area, the character remains and the accessibility by walking will be equally available, no matter who is up there. T. Morgan agreed.

4 – L. LaCourse stated that the request will not diminish the value of the surrounding properties. For the same reasons they granted the previous variance, a lot of thought has gone into this planning; if anything property values are going to increase not decrease. P. Monziona agreed and added that there has been no evidence before them from abutters or anyone else that would provide a basis to determine that property values will be diminished. T. Morgan agreed. S. Miller also agreed and added that it will be more aesthetically pleasing and significantly safer and the assessed value he would anticipate would go up significantly.

5 – P. Monziona stated that no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. He thinks the applicants counsel had it absolutely right when she said the purpose of the ordinance is to make sure that no one is creating a greater demand for parking than can be accommodated; that is one of the purposes. By having 541 spaces that will more than satisfy the demand given the layout as they have seen it. Also, the proposed use is a reasonable one; the number of spaces being proposed are more that adequate in his opinion, and the proposed use is not changing and is therefore reasonable. T. Morgan and S. Miller agreed. L. LaCourse also agreed and added that he believes the property is for all intents and purposes self-contained, and that the number of parking spaces they are talking about is going to be feasible for the use.

6 – T. Morgan stated that based on the above analysis, special conditions do exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. This is a unique property and he thinks, based on the above analysis, it is not necessary to impose the ordinance on it. S. Miller agreed; he is convinced that significant protections are already in place, especially with the self-policing aspect of the community. L. LaCourse agreed. P. Monziona also agreed and added that he thinks the unique layout of the property, and his analysis of all of this is based on the plan that has been submitted with the application and how the structures are going to look and where they are going to be located, but no matter who is occupying it or policing it, it lends itself very well and without any issue in his mind to this type of parking that is being requested.

T. Morgan made a motion to approve the application for Z10-17; the variance with regard to the need for a reduced number of parking spaces that number being 541 spaces. A condition of the approval is that none of

the uses of the various buildings change without the applicant coming back before this Board to address the parking issue. S. Miller seconded the motion which passed unopposed.

The motion carries with regard to that application, including the condition regarding uses of the structures.

Ms. Goldwasser presented the final variance request of the evening which is a variance to section 325 (B) to permit parking spaces featuring a 20 foot deep parking bay resulting in no setback from the private driveways abutting those spaces where a five foot setback would be required. At the outset, she reminded the Board again, just like in the last request, that they have a slight change. In their application they request approximately 25 shorter spaces; with the new plans they provided before the last meeting the request is now approximately 50, which she will show on the plan.

There are three main areas where they are proposing the parking spaces without the 5 foot buffer. The first are the ones in front of the hotel – there are 21 there. There are two in the triangle. The ones alongside the baseball field are the additional ones – there are 17 there. There are some inside of the Circle – there are 12 there. S. Miller asked if they are asphalt or gravel. Ms. Goldwasser believes there are some of each. Mr. McLeod pointed to the spaces along the ball field and in the Circle in Phase 1; they would all be a grass surface only used in overflow conditions, not full time. They are not going to be paved, but will be available. L. LaCourse asked for the reason for asking for relief from the five foot setback. Ms. Goldwasser explained that the ordinance requires them to provide a five foot setback from every parking space. L. LaCourse asked what the reason is that they do not want to provide it. Ms. Goldwasser answered that they do not have the space; if they look at the plan, the parking spaces they can see on the plan that are adjacent to the ball field are near the septic area and they can't put parking spaces on top of the septic. They lose the five foot setback but they are able to provide the overflow parking of 17 spaces, which will be grass. The same is true of the Circle; there is a septic system in the middle of the Circle, so they want to make sure they attempt to provide as many parking spaces as make sense but some of the spaces, by nature of the plan, just can't be that wide. She thinks he hit on a really good point about asphalt versus grass and who is using these. Her understanding is that the main reason for this is to make sure snow removal can be done in a safe fashion. The vast majority of the use on this site is in the summer; those spaces she mentioned are the extra spaces that won't be used particularly in the winter the vast majority of the time. There just isn't that much use on the site in the winter anyway.

L. LaCourse asked if there is something that drives the spacing between the leach fields; could they be closer together. Mr. McLeod answered that they need that space for the piping and the distribution boxes and things like that. It has to do with the state regulations for individual fields and that sort of thing. One thing he does want to add to that is that the other spaces that are shorter that were pointed out; of those 21 in front of the motel, 11 are there now that don't have the five foot setback. They are just continuing that row along the front there with an additional ten; rather than making, because of the road that travels through there, they are just continuing that row of spaces. The two in the triangle have to do with the detention system under there. All those spaces, even though they do not have the five foot setback, they do meet the town's required dimensions for the parking spaces themselves.

P. Monziona asked if that was true for every parking space for which they are seeking relief on the setback. Mr. McLeod confirmed that they meet the dimensions. P. Monziona asked if not having the setback would interfere with snow plowing. Mr. McLeod answered that it would not in his opinion. Ms. Goldwasser added that it is important to realize that all these streets (indicated on the plan) have been widened to satisfy the health and safety concerns of the community. The spaces they are looking at are on a street that is much safer and much better designed for access than it is today. All these streets are going to be a much better layout in size and everything for the purpose of improved emergency access. In addition, from a snow removal perspective, if they look at where the spaces are located that are shorter, there are significant areas for snow removal in the vicinity of those spaces. They do not believe they are going to have a problem with snow removal lacking that five foot setback, especially when you couple that with the use on the site during the winter and with the amount of open space. She pointed to the area with the 12 spaces; there is a whole area around the septic field they can put snow into. The same is true on

the baseball field and the triangle. They have areas they can move snow into and get it out of the way if they have to use those spaces together with all the other spaces on the site that all do meet this regulation.

S. Miller asked how they address handicapped parking and the setback; is there any handicapped parking. Ms. Goldwasser answered that none of the handicapped spaces are the shorter ones. The shorter ones aren't being used to meet the handicapped requirements; they have handicapped spaces and they are the regular spaces. S. Miller asked if the motel has to have handicapped parking. Mr. McLeod stated that they do have one space there without the five foot setback, but it does have an aisle next to the space. S. Miller asked if any of these are near the dining hall or the tabernacle. Ms. Goldwasser clarified that two of the shorter spaces in front of the motel are shorter spaces (indicated on the map). The spaces at the other locations that are handicapped are the regular length. She does not believe that any of the other spaces identified have been designated handicapped spaces. S. Miller asked if they did need a handicapped space for the public places. Ms. Goldwasser indicated them on the plan; they are right next to the tabernacle and there are handicapped spaces next to the motel and dining hall.

Mr. McLeod explained that handicapped spaces are driven by the number of total spaces provided. It's not necessarily that a motel needs so many and an administration building needs so many; it's this number of accessible spaces need to be provided per so many total spaces. P. Monziona asked if that number is based on the 541. Mr. McLeod answered that it is based on the 72 because those are the dedicated permanent spaces that are new spaces being provided. P. Monziona stated that those are requirements they are going to have to meet that have nothing to do with the Board here tonight; as a point of interest Mr. McLeod is saying that the dimensions of those parking places, in the handicapped accessible spaces, are compliant. Mr. McLeod affirmed that they are. P. Monziona asked if they setback in the instance of those two or so that they have pointed out.

L. LaCourse asked what the change was that occurred that caused them to change the number of spaces they need relief of. Mr. McLeod answered that the size of the leach fields caused it; they needed to be a bit larger when they were refining the numbers for that. When that footprint expanded it encroached on the space they had originally been using at the head of those parking spaces.

Ms. Goldwasser introduced a couple of issues to consider. Other than the 26 year-round uses, which will be permitted after tonight, on the site, pending the Planning Board approval, the vast majority of the use on this site in the winter is group retreats coming and staying at the motel. Those people come in groups; they drive up together or they often bus up together. They are organized; if there is a snow event by which the ABCCC community requires to take substantial action to clear the parking spaces, it will be able to instruct these people to move their vehicles elsewhere or to take whatever steps are necessary to clear. This isn't your traditional free for all parking; people come to the mall and park wherever they want to. This is a situation where if you have more than those 26 people visiting the site in the winter there will be controls available to let people know where they should and shouldn't park. The community will be able to substantially manage any issues that come up from the lack of setback in those fifty spaces.

S. Miller asked if the bus that brings them up will be able to park in a traditional parking space. Ms. Goldwasser explained that when she said bus, she was really talking about a van. They come in the 16 passenger church vans. They will stay in the motel for a weekend retreat for a school break retreat where a church group may come up and use the facility as a winter retreat. They may rent the motel rooms and visit the dining hall, but again, from a five foot setback issue, because they are coming as a group and using the site as a group it is much easier to manage where they park and how they park and protect the site from any issues with the five foot setbacks.

Ms. Goldwasser offered to go through the five elements of the variance if the Board wishes; she would also be happy to end here and address any questions they may have, whatever the Board desires. The members had no questions, nor did P. Monziona feel there was a great need for her to go through the elements of the variance.

P. Monziona opened the floor to public input in favor of the application being granted. There was none. He opened the floor to public input in opposition to the application being granted. There was none. Public input was closed.

The members proceeded directly to the worksheet.

1 – L. LaCourse stated that the variance **will not** be contrary to the public interest. From the information they have heard relief is needed and he does not feel it will have any adverse affect. P. Monzione agreed, adding that he would say that the site walk for him, in addition to the presentation this evening, was very helpful and useful to look at the spaces and see what they look like without a five foot setback. From his view and based on the information provided today, he does not see how this variance will in any way be contrary to the public interest. T. Morgan agreed. S. Miller also agreed, adding that he believes it is good land management and that there is definitely a need for the increase in motel spaces.

2 – P. Monzione stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. Once again, he says that not based entirely or exclusively based on the use by the Campground of this area. This variance without the setbacks, no matter who uses the space there, is not contrary to the zoning ordinance or the Master Plan. This is a very minor change in these parking spaces and they will continue to be safe and snow plowing and everything else will be able to be accomplished. T. Morgan agreed. S. Miller agreed and added that there are no safety concerns that need to be addressed. L. LaCourse also agreed.

3 – T. Morgan stated that by granting the variance, substantial justice **will** be done. A lot of the reason for the request of this variance is to fit in leach fields, septic fields, and improve roads. Those are good goals and he does not think the public has any need to override those goals. S. Miller agreed; a five foot setback is at best a minor inconvenience. L. LaCourse and P. Monzione agreed.

4 – S. Miller stated that the request **will not** diminish the value of the surrounding properties. A major concern is that it be aesthetically pleasing and that all safety concerns including handicapped parking were addressed, so he feels comfortable that they will not be diminished. L. LaCourse, P. Monzione, and T. Morgan all agreed.

5 – L. LaCourse stated that **no** fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. Also, the proposed use is a reasonable one. In this case just asking for relief from the setback is very reasonable. P. Monzione stated that the special conditions of the property are the location of the septic systems and the other conditions as described and depicted on the plan. It's going to be his suggestion that any condition of this variance, if granted, require that it be done in strict compliance with the plan that has been submitted. Given that plan, he agrees. T. Morgan and S. Miller agreed. P. Monzione added that the proposed use is not changing, so it is a reasonable one.

Mike Garrepy requested permission to interrupt deliberation. Initially, P. Monzione refused, unless there was a point of order issue; once deliberation is begun, all input is to cease. Mike requested that they suspend deliberations for one minute; he thinks it is important. P. Monzione suspended deliberations so Mike Garrepy could address the Board. Mike pointed to P. Monzione's statement that he wants to base the decision on this plan limits the applicant and the Planning Board from doing any changes to the plan with respect to those spaces. He wanted the Board to know that. P. Monzione answered that he has done that quite frequently, and what he is saying is that, and to clarify the record on that, they have been given an application. That application contains a certain layout and a plan. Their decision is based on that and that only. If that changes, they need to come back before this Board. If the Planning Board alters this plan, the variance doesn't apply and they have to come back. They can't make a decision for a variance based on what might be or what could be or what ultimately gets changed. They are relying on the layout of this plan as presented to them; they are relying on the representations of the applicant as to what's going to be there and they are required to stay within that plan for this variance to be valid. That is his condition; if the plan changes, and the variance hasn't been determined yet, but he would suggest in the motion, if they get to the point of a motion, that one of the conditions be that if this variance is going to be granted it is granted based on the layout as they have currently presented. If that layout changes for any reason then that condition isn't met and they would have to be back to present a new layout.

Mr. Uchita started to speak; P. Monziona explained that there is a problem in that technically when they are deliberating they are past the point of public input and accepting evidence for the record to do this. They are already on the end of the criteria; if they start entertaining more information there is a question whether they start all over on the worksheet. Mr. Uchita stated that he is not going to offer any factual information; he is going to make a further suggestion along the lines of Mr. Garrepy. He would ask the Board... They're happy to come back if there is a change in this plan. He thinks the threshold question the Board should ask when they come back is whether the change is materially different; if it is not then he does not think they need to go back through. If they take one space and move it here, he suspects the Board would say it really is not materially different. It is different, but not materially different. What he is trying to say as a matter of process is that he hopes the Board simply undertakes an evaluation of whether there is any material difference in the plan before it requires them to go back through a variance analysis. P. Monziona stated that the point is well taken, if and when they get to that. He has regularly suggested conditions on the granting of a variance to be based on the representations the applicant made to the Board including the representations as depicted in the submitted plan. They are relying on the configuration and the information that is before them as they grant the variance. Mr. Uchita stated that he and P. Monziona do not disagree about that.

6 – T. Morgan stated that based on the above analysis, special conditions **do** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. In this case it would because they can't comply with the setback requirement and still maintain safe and appropriate layouts for the septic system and the other conditions, and because of the special conditions of the property the zoning ordinance can not be literally enforced. T. Morgan, S. Miller, and L. LaCourse all agreed.

T. Morgan made a motion to approve Case Z10-17, that portion of the application dealing with a variance to allow fifty of the parking spaces on the site to be short, that is not to have the five foot setback; the applicant is to comply with the plan and the application as submitted. L. LaCourse seconded the motion which passed with all votes in favor.

The variance was granted.

VI. NEW BUSINESS

T. Morgan explained that the Town Manager has approached him about setting up a committee to interview and hire a new planner; he would like to have a volunteer from this Board to sit on this committee to interview and make recommendations with regard to hiring of the new planner. S. Miller and L. LaCourse would be available.

VIII. ADJOURNMENT

T. Morgan made a motion to adjourn. S. Miller seconded the motion which passed without opposition.

The meeting adjourned at approximately 10:30 p.m.

The next regular meeting will be September 2, 2010 at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session
(Recorder not in attendance – transcribed from audio tape)