

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT**

**Public Meeting
November 5, 2009
APPROVED 3-4-10**

I. CALL TO ORDER

The meeting was called to order at 7:05 p.m. by Paul Monzione, Chair.

II. INTRODUCTION OF BOARD MEMBERS

Paul Monzione, Chair, introduced the following:

Stacey Ames, Planning Assistant
Sharon Penney, Town Planner
Timothy Kinnon, Member
Timothy Morgan, Member
Stephen Hurst, Vice Chair
Paul Monzione, Chairman

Representative from Board of Selectmen not present

III. APPOINTMENT OF ALTERNATES

None required

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

S. Penney stated that they have a letter from Tom Varney for Case Z09-16, Carl and Donna Backman, requesting a continuation of their special exception application hearing until the December 3, 2009 meeting.

P. Monziona asked if the letter would be made part of the record; it will be. He asked if this is the second continuance request for this case; S. Penney answered that it is the second continuance.

S Hurst made a motion to accept the request for a continuance of Case Z09-16 until December 3, 2009. Motion was seconded by T. Morgan and passed by unanimous vote.

S. Penney stated that there is a request for continuance of Case Z09-16, Stephen and Raquel Rogers. Due to professional and personal relationship, Chairman Monziona recused himself and turned the chair over to S. Hurst, the vice- chair.

S. Ames stated that Mr. Rogers had requested a continuance to February, 2010. She raised a concern about abutters; if they choose to continue that far ahead, she would recommend that they do so with the caveat that the applicant re-notifies the abutters, by certified mail, about the continued date.

T. Morgan asked how many continuances there have been in this case. S. Ames answered that they are within the three allowed; some of the continuances have been due to lack of quorum on the Board.

S. Penney mentioned that this continuance is contingent on permits from NH-DES, so if it gets to February and they still want another continuance, she would like to revisit at that time. The Planning Board has been dealing with this type of situation going beyond the parameters of continuances by denying the application without prejudice and having them resubmit. This is because it is really a lot of babysitting for the Planning Department, and they lose track after four or five of these.

T. Morgan clarified that S. Penney was talking about denying without prejudice in February, not at this meeting. S. Penney confirmed.

T. Morgan made a motion to accept the request for continuance in Case Z09-12 until the February, 2010 meeting, and that they take the recommendation of the Planning Board and require that at the applicants expense, the abutters are to be re-noticed. T. Kinnon seconded the motion, which carried with three votes in favor and none opposed.

P. Monziona asked for any other changes to the agenda; there are none.

T. Kinnon made a motion to accept the agenda as amended. S. Hurst seconded the motion, which passed by unanimous vote.

VI. CASES

Case #Z09-18 James Curvey	Map 21A, Lot 23	Special Exception 126 Pipers Point Lane
------------------------------	-----------------	--

Application submitted by George Pellettieri of Pellettieri Associates, Inc. on behalf of applicant James C. Curvey to request a special exception from Article 300 Section 328 to allow the construction of a cupola to provide light and ventilation of the boathouse and is allowed by Special Exception. This parcel is located in the Lakeshore Residential zone.

S. Penney stated that this is a height Special Exception regarding the construction of a cupola on a previously approved boathouse.

P. Monziona stated that the Board would hear from the applicant first, then open for Public Input, both in favor of and opposed. The Board will then go into deliberation and determination on each application. He asked that speakers keep their voices up when they are speaking, and before speaking, they should identify themselves for the record.

George Pellettieri, a landscape architect and the agent for the applicant, James Curvey, introduced himself. With him were Ari Pollack of Gallagher, Callahan, and Gotrell and Stewart Anderson of Christopher P. Williams Architects.

Ari Pollack spoke, stating that they are here on a Special Exception request for a property located at 126 Pipers Point Lane. It is a shorefront lot on the lake. The property is being redeveloped by the owner. One of the features of that redevelopment is to add a new boathouse. The boathouse was approved by DES on July 1, 2009; for the record it received Wetland Permit 09-567. The approved boathouse includes design for a rooftop cupola, which will extend from the roofline height of fifteen feet to a total boathouse height of just under twenty feet. The DES approval allows for the boathouse to be constructed up to that twenty foot limit. Alton Ordinance Section 328(A) limits the height of the boathouse to fifteen feet unless a Special Exception is approved by the Board.

The cupola is decorative in nature but it will provide light and ventilation for the boathouse interior. It is open on the inside to see up into the cupola. The sizing and orientation are shown on an enlargement of the sketch that came with the application packet. It is a central cupola feature that is roughly five by five in dimension.

The Special Exception test as set forth in Section 328(C) specific to height issues addresses the primary concern as to whether the additional height will constitute a hazard to any established airport. Airport traffic concerns make a lot of sense when you are talking about features such as towers, spires, smokestacks, or other of the examples listed in this section. In the context of this boathouse, the concern is mitigated because DES sets a secondary height limit at twenty feet; they are not looking to exceed that in any way. At a twenty foot limit, the boathouse will be

surrounded by a stand of taller, mature trees that exist now on the site and are being preserved. In terms of any aviation issues, the trees would extend higher than the limits of the boathouse.

In terms of the other traditional Special Exception criteria stated in the Town's ordinance, the location of the boathouse can be considered appropriate as determined by DES. They examine things like watercraft traffic hazards and other waterfront related issues and determined by their approval that the location was appropriate.

There is no bathroom facility requiring consideration of any sewage disposal concern. The boathouse itself is a permitted waterfront use and consistent with the ordinance as a whole. It is discussed in several places.

Their request for action is given the limited nature of the relief they are requesting, which is to put the cupola on the roof and essentially add five feet to what is already a permitted use. Given the special facts relating to this property, the trees and the approval of the location by the state, he is hoping the Board will find that they have satisfied the ordinance's criteria and grant the Special Exception to allow construction up to the twenty foot limit.

Mr. Pollack invited questions. T. Morgan stated that they have a copy of an existing conditions plan, and he noticed that at some point they went before the Planning Board for property line adjustment. He asked Mr. Pollack to show on the plan where the property line adjustment took place, and where it is relative to the boathouse. A large rendition of the plan was placed on the easel. The applicant pointed out the line adjustment and the location of the boathouse. T. Morgan stated that leaves a piece of property with a razed building that's not on the lake anymore. The applicant stated that the residence is no longer there. T. Morgan asked if it is now a piece of property with no residence and no access to the lake. The applicant pointed out that it has access to the lake and showed that on the plan. It has the minimum square footage required by Alton.

P. Monzione asked if this is a rebuild on the boathouse; it is new construction.

S. Penney stated that this was a lot line adjustment. It was creative, but absolutely above board. They have actually significantly reduced the impervious surface there, and she thinks that is why DES was quite amenable to this. The initial expansion of the main residence includes a porch addition; part of the lot line adjustment was in that vicinity. It was a substandard non-conforming lot. It is all kosher.

S. Hurst asked if any of the abutters would be impacted, view-wise, due to the additional height of the cupola. Mr. Pollack answered that anyone who feels that way certainly could be there tonight; he does not know who is behind him. His personal opinion is that by extending a cupola feature five additional feet, which is already surrounded by some existing landscaping and trees would not provide any additional barrier. That was not raised as an issue in the DES preceding regarding the boathouse as a whole.

P. Monzione stated that one of the things they have to look at is that impact, as was seen in the 328(C) requirement. He asked if the building was already in place. Mr. Pollack answered that

the boathouse is under construction. The issue is whether they can go to the full height they are looking for. P. Monziona clarified that they haven't done it already; Mr. Pollack said no.

Mr. Anderson spoke about the issue of the view from neighboring lots. With the demolished property, the neighboring lots actually have an improved view of the lake, even with the boathouse constructed. Mr. Pellettieri stated that the existing vegetation that is going to remain in place between the abutter and the boathouse would obscure the roof elevation of the boathouse. P. Monziona clarified that they are representing that as they lay this out and locate it on the lot, and having looked at it from the standpoint of abutting properties, an additional five feet would not, to their knowledge, impact any abutters view of the lake. Mr. Pollack answered that is correct; they are all familiar with the property; they've been to the site, and that is their representation.

P. Monziona stated that the application references a neighboring cupola that is of similar height and asked where it is in relation to their building. Mr. Anderson used the plan to reference the location. P. Monziona asked for a total area dimension of the cupola, other than the requested height. Mr. Pollack answered that it is 25 square feet and five feet high, which is 125 cubic feet.

S. Hurst asked if the cupola has a purpose other than for decorative reasons. Mr. Pollack answered that it would also provide some light and ventilation into the interior of the boathouse. It's the design plan to have that be an open area space into the cupola; it is not going to be a closed ceiling with purely a decorative feature. There will be some operative windows, and it will actually have a function. P. Monziona asked if anyone would be able to go in it; Mr. Pollack answered that there would be no access from the interior, but it would be an open space. P. Monziona asked if it would be lit; Mr. Anderson answered that the cupola would have some low-level lighting in it. This would be down-lighting to allow for nighttime use. Mr. Pollack added that there would be some safety lighting on the boathouse.

P. Monziona stated that there were a number of conditions that were obtained with regard to the construction of this boathouse; there were approximately 7 conditions received from the Planning Board that needed to be met in order to construct the boathouse. Mr. Pollack answered that there were conditions in relation to the lot line adjustment; there were also conditions levied by the state in terms of wetland approval to build the boathouse. It is their intention to comply with all of them.

P. Monziona invited further questions from the members. There were none. He then invited further information from the applicant; there was none.

P. Monziona opened the floor to public input in favor of the application; there was none. He asked for public input in opposition to the application; there was none. Public input was closed.

DELIBERATION:

Before deliberation began, S. Hurst pointed out that there had not been a vote to accept the application as complete. P. Monziona asked for a motion to accept the application.

T. Kinnon made a motion to accept Case Z09-18 as complete. S. Hurst seconded the motion, which passed by unanimous vote.

T. Kinnon stated that a plat **has** been accepted by the Planner in accordance with Alton Zoning Ordinance Section 520B and a recommendation has been made. All members agreed.

T. Morgan stated that the specific site **is** an appropriate location for the use. It's a boathouse on the lake and a cupola on top of it seems appropriate. All members agreed.

P> Monziona stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. There is nothing in the record and no one has spoken or presented anything in that regard. This is a boathouse, and it is compatible. All members agreed.

S. Hurst stated that there **is no** valid objection from abutters based on demonstrable fact. No one appeared to object against this. All members agreed.

T. Kinnon stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. The cupola will not be high enough or in such location to pose any hazard to pedestrians or vehicular traffic. All members agreed.

T. Morgan stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. It is a cupola and requires very little in the way of facilities and utilities. P. Monziona stated that given the representation as to the function of the cupola, that no one is going to be in it, and that it is just to provide light and ventilation. All members agreed.

P. Monziona stated that there **is** adequate area for safe and sanitary sewage disposal and water supply. This is not applicable. All members agree.

S. Hurst stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. All members agree. P. Monziona added that it is permitted under the Special Exception and all conditions have been met.

P. Monziona stated that as part of the deliberation they have had a representation that the conditions of the Planning Board and DES have required for purposes of the lot line and construction of the boat house be met. It would be his suggestion that those conditions be incorporated in any approval of this.

T. Kinnon made a motion to approve Case Z09-18 contingent upon the conditions being met relative to Case P09-4, which includes DES requirements. T. Morgan seconded the motion, which passed by unanimous vote.

Case Z09-19 Alton Bay Campmeeting Association	Map 34, Lot 33	Sp. Exception, 2 Variances Mount Major Highway
--	-----------------------	---

Application submitted by Melissa Gulbrandsen of Alton Law on behalf of applicant Alton Bay Campmeeting Association to request a Special Exception for a proposed gymnasium, a variance to permit multi-family housing, and a variance to allow nine units per multi-family structure. This parcel is located in the Residential zone.

P. Monziona stated that there are several matters being presented on behalf of the same applicant. They may or may not interrelate and overlap in terms of consideration and whether they can consider the criteria for granting or denying one without knowing the configuration of what the rest of it would look like; that is why they may overlap. Logistically, it would be a good idea to proceed on each of these applications one at a time. He is leaving it up to the applicant to suggest how they might want to proceed in terms of an order that makes sense.

Melissa Gulbrandsen of Alton Law Offices is here on behalf of the applicant, which is the Alton Bay Campmeeting Association. There are several agents here in the room on behalf of the Association; Jeff Green is the surveyor who is with her at the table. Joe Spain, the design builder and general contractor working on the project, is present. Also here is a representative from the H. L. Turner Group who can speak to the engineering and architectural issues. There are also representatives from the Association.

M. Gulbrandsen stated that she feels it would make the most sense to proceed starting with the first variance requesting relief to permit multi-family units. The second variance would be a request to have nine units as opposed to five in an individual multi-family structure. If they do not prevail on the first variance request, the second would be moot. The gymnasium is a special exception and almost a stand-alone issue which they can address third.

P. Monziona asked if they could get the application for variance for relief to permit the multi-family units first and then they can decide whether they want to accept that application as complete.

S. Penney brought up a point of order; when she was going through the Planner Review it appears that the Special Exception is not needed because on the Table of Uses recreational uses not for profit in a residential zone is an accepted use. This looks like a clerical error within the column; she thinks they are only looking at two applications. P. Monziona clarified that the gymnasium is permitted as it is a not for profit recreational use anyway in the residential zone.

P. Monziona asked M. Gulbrandsen if she would like to officially withdraw the application for Special Exception for the gymnasium with the understanding that it isn't needed since it is a use that is permitted in a not for profit recreational area in the residential zone. M. Gulbrandsen stated that is her understanding. P. Monziona said that he understood that Special Exception application was to construct a building that does not currently exist. M. Gulbrandsen said that

was correct. P. Monziona went on to ask if it was an application for Special Exception for use. M. Gulbrandsen said she had looked at the chart and thought they needed a special exception. Sharon had just showed that to her, and there is a yes next to it. P. Monziona clarified that the gymnasium is permitted for purposes in that zone as a structure that is permitted, but he wondered if the application addressed the idea of constructing it in this area in terms of any variances for setback or density or anything like that. M. Gulbrandsen confirmed; S. Penney reiterated that this application is not necessary. It's generic because it does not name gymnasium per se, but that's the closest definition Melissa could come to.

P. Monziona announced that the next item that they had to look at was the application for variance for relief to permit the multi-family units. He confirmed that there is a separate application for each of these items. M. Gulbrandsen answered that she had done it as two applications just to be conservative and clear. P. Monziona asked if the plan attached is referenced in both; M. Gulbrandsen answered that it is. There is a lot of overlap between the two arguments.

T. Morgan clarified the order of the applications. M. Gulbrandsen pointed out that the zone allows duplexes, but it does not allow multi-families, so the first request for relief is to do multi-family with anything greater than a duplex. P. Monziona said this is to permit multi-family dwellings in a residential zone; this is a variance from Article 400, table of uses.

T. Morgan made a motion to accept as complete the application for variance for the multi-family dwellings in the residential zone included under case Z09-19.

T. Kinnon brought up that the application is to ...rebuild those forty-three housing units destroyed in the fire. Seventeen single family cottages, which they are not looking at. There are four duplexes, which M. Gulbrandsen stated also are not being looked at because they are permitted in the zone. T. Kinnon asked if the two multi-unit structures are the only ones being considered. M. Gulbrandsen said that they are. T. Kinnon asked if it is relevant to have those listed under the description; the singles and the duplexes. M. Gulbrandsen explained that she felt that even though she had wondered herself if this was providing too much information and causing confusion, she didn't want the Board to think that she wasn't sharing the whole plan. She wants them to be aware of the overall project, but what they need zoning relief on is just the multi-family; just the nine. They still have to go to the Planning Board in terms of configuration, floor plans, and that sort of thing. T. Kinnon expressed that his concern is that later on down the line, if this does get approval from them that might muddy the waters with that on the application when they are not really considering any part of that. They are only considering the two nine unit structures. S. Penney suggested that could be addressed in the motion as a caveat. P. Monziona agreed and stated that it is a valid point. They can clarify for the record orally that the application, although it references other construction of other units and buildings, it is informational only and that the application is specifically limited to a variance for two multi-unit structures with nine units each. M. Gulbrandsen agreed that this is correct, and stated that the application, in section three, does specify which section she is asking for a variance from. To the extent the Board chooses to grant it, they could say they are just giving the relief from the Table of Uses for the two multi-family structures. P. Monziona stated that with that understanding a more or less an oral amendment or modification to the application to clarify that is all it is

seeking to do, regardless of what it says in the descriptive portion. That would be the application they are determining whether to accept.

T. Kinnon stated that a further concern is that, if it does get approved by the Board, he doesn't want the impression given that they are approving the other units.

Paperwork/comment letters were provided to Board members who did not have them.

T. Morgan modified his motion to accept the application for variance for multi-family dwellings with the understanding that the application has been modified in part by the questions and responses from the applicant; accept it as complete. T. Kinnon seconded the motion, which passed unanimously.

M. Guldbrandsen provided handouts to the members and planning staff. She wanted to explain the pictures she handed out so the Board would have a sense of the overall project.

There are two packets of information. One has two pages and the other has multiple pages. The first packet with the two pages, on the front shows an architectural rendering of the multi-unit structure that they are discussing. The second page shows the gymnasium, which at this point is not relevant to the Board, but was part of their packet. The larger packet also has an architectural rendering which shows the gymnasium attached to the multi-family structures. That is not what they are proposing, but she did want the Board to see what some of the concepts are that have been tossed around. The next page shows a floor plan of the multi-unit structures, again just for reference purposes. The following pages have explanations of the calculations for septic, and the notes from a meeting with Dick Quinley on water issues. Those will be presented in more detail as she does her presentation. The last page is a smaller version of the overall site plan.

M. Guldbrandsen continued; as most are aware, there was a fire in the spring, on Easter Sunday in 2009, which destroyed forty-three cottages in the Alton Bay Christian Conference Center. The land at the Center is owned by the Alton Bay Campmeeting Association. Individual people own the separate structures, so it's a fairly unusual real estate arrangement where you have a religious association who actually owns the land and individual people who own their structures. The structures are all transferred by deed, which is recorded at the Registry of Deeds. It's most analogous to a manufactured housing development; a mobile home park, basically.

Again, forty-three cottages were destroyed, and the mandate of the Board of Directors of the Association is to figure out a way to rebuild those forty-three cottages. Unfortunately, they can't be rebuilt in the locations where they were because the structures, as the Board can take judicial notice, were densely packed into the area. They did not meet setbacks. The structures were pre-existing, starting in the 1800's as tents, and over the years the tents were modified into cabins and cottages, and over the years they have been made more and more into structures and separate individual cottages.

The challenge really is to come up with a way to permit these forty-three homeowners to be able to rebuild their homes on the land of the Association. Essentially, the way to accomplish that is through using multi-family housing, which permits density and basically is a safe way to avoid

the issues of setbacks and fire safety regulations which require separate structures to be set back from one another. The proposal is to put in, and again this is background information, seventeen single family structures in the area where the forty-three had been, and four duplexes in the area where the forty-three had been. Those two building projects don't require Zoning Board relief; that's permitted as rebuilding of the pre-existing structures.

In order to make the numbers work, they need to have multi-family structures within another area of the Association. If they look at the smaller site plan, and there is one up on the board as well, there is space. The overall parcel is twenty-eight acres, so there is space in the area essentially contiguous to Route 11 to put the multi-family units.

The zone is the Residential zone and it is permitted to have duplexes, but multi-family structures, which are allowed in some areas of the town, are not permitted under the ordinance. Therefore, they need a variance in order to have any kind of multi-family construction.

Taking a look at the standards for granting a variance, the first standard is unnecessary hardship. This property is unique in that it is twenty-eight acres owned by the religious association with individually owned homes on that communally owned land. The property has been in this configuration since the 1800's. The applicant is seeking to rebuild the same number of units that were destroyed in the fire. The prior structures did not meet existing setback codes and they were clustered around a very small private drive. The small private drive was actually a factor in the fire because fire apparatus was unable to get in to the structures as easily as it could have if that drive was up to standards. Part of the rebuilding process here involves upgrading those roads, widening the roads, widening the access and rebuilding structures with appropriate setbacks from one another.

Again, in order to rebuild that same number of units and in order to comply with the current building codes, multi-family development needs to be employed. If they were not able to use multi-family development, approximately half of the destroyed structures would not be able to be rebuilt. This would be an unnecessary hardship to those homeowners.

The second point the Board will look at is whether there is a fair and substantial relationship between the general purpose of the zoning ordinance and the specific restriction of the property. The general purpose of the ordinance is to promote health, safety, and the general welfare in the town of Alton. Here, the specific restriction prohibiting multi-family dwellings in the zone does not represent a fair and substantial relationship between the general purpose of the ordinance.

They have a twenty-eight acre lot; therefore, there is sufficient space to erect multi-family dwellings on the parcel. As such, there is no fair and substantial relationship between the general purpose of the ordinance and the specific restriction. She would like to Board to be mindful of the general request they are making; to be permitted to construct multi-units greater than a duplex in one structure. If they were to approve this and deny the second variance they would have to come up with a plan to have five units per structure, which is what the zoning ordinance permits. If they are sitting there thinking nine units sounds like a lot but they like the idea of multi-family, the time for them to insert that argument would be on the second application. In other words, the relief they are requesting now with this application is to be able to do at least

five units per structure, which is what the ordinance requires. Their proposal, as the Board knows, is to do nine units per structure, but she wants the Board to be clear that there is a middle ground as well.

The third point the Board will be considering is whether or not the variance would injure the public or private rights of others. Again, they are just trying to replace units that were already on the site. In the replacing, the units will be safer and more aesthetically pleasing. They have one builder who will be building all of the units. They're not going to be identical; they're not going to be cookie-cutter, but they will all have a general aesthetic called the gingerbread style. She does have some pictures of architectural features that she wants to give to the Board so they can see that it is going to be a comprehensive approach but not identical. (Pictures handed around)

What they have in front of them is a packet of photos of actual existing cottages with features that will be replicated in the newly constructed multi-unit projects. If they look back at the architectural sketch of the multi-unit structure, they can see that there are peaks, and there are areas for railings, and the little features that they notice along the cottages in the pictures.

Because of this comprehensive approach to designing and building the entire forty-three units, it is their position that the variance relief requested here would not result in any injury to public or private rights of others.

The next point that the Board will be considering is whether the request is the minimum variance that will grant the reasonable relief to the owner and is necessary for such reasonable use. She wanted to show them the pictures/drawings of the large structure; the gymnasium plus the two nine unit buildings. One of the first ideas was to have that as a single structure with eighteen multi-family units. Through the planning process with the group that has been working on this project, they decided to break that down into two smaller structures. She thinks that is relevant to the Board's analysis in that they are limiting the amount of relief they are requesting from the Board. Again, the point of this is that there would be no way to get eighteen additional single family structures or even duplexes in the area available for construction. The only way to obtain the same number of units is to incorporate multi-family dwellings into the site.

The next point is whether the request is in harmony with the spirit of the zoning ordinance and the intent of the Master Plan. Again, the rebuilding project is designed to enhance the health, safety, and aesthetic qualities in Alton Bay. By having one single design team and build team complete the entire project, the project will be comprehensively structured to improve health and safety components of the site. In her opinion, this is a perfect example of orderly development, which is what the ordinance and Master Plan call for. It's also in harmony with that area of Alton Bay. There is a fair amount of commercial activity in that area of the Bay, but one of the predominant features is the Conference Center itself and the cute cottage aesthetic you see as you drive by.

The next point that the Board will consider is whether the request is contrary to the public interest. They argue that it is not contrary to the public interest because the project will enhance the fire safety in the area, improve the setbacks of the structures, and continue the tax base to the town through forty-three separate housing units.

They believe substantial justice will be accomplished because each property owner who had a house in Alton, in the Bay, on the Conference Center will be able to have a new house in the Bay, on the Conference Center. There is no way that each owner is going to be able to rebuild in their old footprints in their old location, and that's unfortunate, but that's a requirement of the setback codes and the building codes. Nobody is going to be able to rebuild in the exact same location. If there was a fire and one structure was lost, that one person would have the right to rebuild. If there was a fire and two structures were lost, two people would have the right to rebuild. The problem here where substantial justice is a relevant factor is that they have forty-three people who each, as individuals, should have the right to rebuild. They shouldn't be denied that right simply because it was a mass fire and they all shared a loss at the same time.

They don't believe that the request will diminish the value of surrounding properties. There were this number of units on the Campground, the newly constructed units will be cohesive, the new site will be safer, and each home will be constructed to current housing standards. For that reason they see no likely decrease in the property values of surrounding homes.

M. Guldbrandsen invited questions.

T. Morgan stated that somewhere he had seen a note that there was a consideration that these new places would be year-round.

M. Guldbrandsen answered that at this point in time some of the cottages in the Conference Center are year-round. They have municipal water and the town shuts off the water for many of the units but not all. She does not know which units are year-round now and which are not. The proposal is that the new structures will be year-round. They are going to be designed with winterized insulation and a year-round feasibility.

T. Morgan referenced one of the handouts, which M. Guldbrandsen said she would help them to go through, and it talks about water and sewage usage.

M. Guldbrandsen answered that is pertinent to a Special Exception, but they have all the information, and if the Board would like to consider it, it is all factual information that she is happy to put into the record.

T. Morgan asked if she would help them through that handout.

M. Guldbrandsen directed the Board to the larger packet.

S. Penney stated for the record that these documents had come into their office about forty-eight hours ago; she has not looked at them, nor has the town engineer.

M. Guldbrandsen explained that these were calculations that were compiled for them by a professional engineer and they are calculations of wastewater flow. The one thing that is a little confusing is that he factored in the cottages that were there with a flow of 125 gallons per day, per unit. There are other structures at the Christian Conference Center; there is a church, a motel, the youth center and tabernacle, and the administration and chapel, which are single

structures. The calculation for the total flow of the pre-existing structures at the Conference Center is 23,905 gallons per day. The next block adds in the forty-three new units at 300 gallons per day, per unit. Then it basically does a credit and takes back out the forty-three that were calculated in at 125 gallons per day, and also adds the gymnasium. His calculation is that there is an increased flow of just of 8,000 gallons per day. You can see those totals down at the bottom; the total wastewater flow proposed is 32,030 gallons. The total wastewater flow that the site can accommodate (there is an explanation she will go over on the following page of the handout) is 47,411 per day. What this is showing is that the site itself has the capacity to deal with the septic for this number of units.

On the second page they can see the soil calculations. This is not saying what the existing septic can do; this is saying what the land can hold and she wants to be clear about that, and she knows that is going to come up as an issue with the Planning Board component of this. They're going to have to show the septic systems. What this calculation is showing is that based on the twenty-eight acres and the soil types that are there the site can accommodate 47,411 gallons per day.

The Conference Center is served by municipal water. They had an engineer from the H. L. Turner Group speak with Dick Quinley with respect to the needs for the proposed new units. These are notes from that engineering meeting with Dick Quinley and it explains the existing water lines, the water systems, and the flow information. Clearly, in terms of water flow, there is going to be some work done on behalf of the Christian Conference Center to make sure that these units will be able to tap into the water supply of the town of Alton.

What the Board can take away from this is that they have started the process with Mr. Quinley and it seems to her that he is making clear but doable requests in terms of how to get these new units hooked up to the water supply.

T. Morgan, as a follow-up to his previous question, asked if all forty-three of the proposed units would be year-round. M. Guldbrandsen stated that was correct. T. Morgan stated that they did not know how many of the destroyed units were year-round, so they don't know what the net change is. M. Guldbrandsen said that was right, and she does not know what the difference is. She invited one of the engineers to answer this question. She does not think there is a difference in septic approvals at the State level.

Jeff Green, a land surveyor working with Steve Cummings who is also working on the septic designs, spoke to this question. When you go through the State process, they don't make a difference anymore on septic; they don't recognize whether it is part-time use or full-time use. Three hundred gallons per day is the minimum; that's why you notice they were 125 gallon per day. Now they have to be built to the 300 gallon per day standard. On the septic issues, it has to be built to that standard regardless of whether it is year-round or seasonal. That's just a standard that has to be met by the State. The thing about this site is, what they had before was water lines and sewer lines on top of the ground, so when they talk about it being year-round versus seasonal, everything is going in the ground. It's going in like a normal housing development. It's improving on what was there before. The potential to be year-round is there, but the actual use is going to be up to the Campground and the individual homeowners as to whether it becomes year-round. The majority of them won't be year-round because they don't come up

here year-round; they're summer places. They have to design it like it's going to be year-round because the State is going to make them do that and all the planning is going to make them put everything underground, and it's all going to become year-round. They also have to meet codes for fire, so that is part of the reason it's going to look like it's designed more year-round; they're going to have to have the fire suppression there year-round. At the time the fire was there, they hadn't turned the water on yet. That's part of the process they are going through; it's part of the thought process.

P. Monziona asked if they would agree that, as they consider these structures they should properly consider them as year-round structures regardless of how they are used. If they are capable of being used year-round, they are year-round structures.

M. Guldbrandsen felt that was correct, as there is no deed restriction.

P. Monziona stated that whatever impact they might have in terms of health and safety, and in compliance with the spirit of the plan and so forth, they should view those as year-round structures. He asked M. Guldbrandsen if she also agreed that they should view this request for variance to have multi-family dwellings in the residential zone, which currently is not permitted in the zoning, that they should view this variance in the context of there being forty-three units there. In other words, they are not just coming in here tonight and saying they have twenty-eight acres and they want to put two nine-unit multi-family dwellings. They're saying that the Board has to look at this and consider that, if these get built, they will be part of a larger development all being constructed, when concluded, with forty-three additional units added to the Conference Center, as it exists now.

M. Guldbrandsen answered that she thought that was fair; going back to T. Kinnon's question, she thinks it is only fair for the Board to understand that this is a pre-existing Conference Center setting where they have 172 cottages initially, and forty-three burned down. They are looking to replace that forty-three, but she feels that the Board needs to have that context.

P. Monziona asked if, if the fire hadn't occurred, this would be tantamount to them coming in and saying they are going to remove some small cute cottages and put in these multi-unit buildings in their place, and since the zoning doesn't permit it, they are here for a variance to permit it. When they are finished with this, they will have all the cottages still there, new ones they will be adding in keeping with the small type cottages, and in addition to those small little cottages and the character of that, they will have these nine unit buildings sitting there among them. M. Guldbrandsen said that was right, but that the nine unit buildings are cute, too. They're not just a monstrosity.

P. Monziona asked who had done the elevations; he is wondering if they are elevations that actually depict what they are proposing. M. Guldbrandsen pointed out that the two-page handout is a depiction; the elevation for the multi unit structure is there.

P. Monziona asked if it would be correct to say that the elevation depicts a nine unit structure; M. Guldbrandsen said it did.

S. Hurst referred to the large plan up on the board; it is showing them behind a restaurant/dining room. He asked if this was Pop's. M. Guldbrandsen answered that it is. S. Hurst asked if they are fairly close to the road; M. Guldbrandsen answered yes. S. Hurst asked if the existing septic system is there now, as it's kind of a sandy parking area. Mr. Green answered that where the actual buildings are going now, there is currently a basketball court and a steep bank. All the buildings are going to be set off, almost into the wooded area and not taking up a lot of the open area. There are septic systems in there, but they don't impact any of them. An existing road goes in there now, and there is a little bit of parking and a little picnic gazebo in the area. In behind all that is wooded down to where the restaurant is.

S. Hurst asked what the distance is from the lake to the closest unit to the lake. Mr. Green pointed to the unit closest to the lake and indicated a line going through the middle of the restaurant that is 150 feet approximately; it is approximately 170 feet to the nearest corner.

P. Monziona asked if he had been demonstrating where these two multi-unit structures would be built; Mr. Green answered yes. P. Monziona asked if this conceptual plan detailed all of the units as they would be built; as they described in the first part of the application, they have got forty-three housing units, which would be seventeen single family cottages, four duplexes, and the two multi-family units. M. Guldbrandsen answered yes. P. Monziona clarified that is along with all the other ones that are currently there. M. Guldbrandsen said yes. P. Monziona asked if the plan they have depicts all of that, once constructed. Mr. Green answered that it does.

S. Hurst asked what the new DES Shoreline Protection requirement is. P. Monziona stated that, as they are doing this, all they are considering is the variance for multi-family, because no multi-family buildings are permitted right now in the zone. It is beyond their authority, but they have Planning Board issues and all kinds of stuff, but are they, just for the sake of going through the criteria, in the Shoreline Protection Act area, or is that an issue?

M. Guldbrandsen said that when they had looked at that before, there is no tree cutting for that structure. Mr. Green said that in the planning they had looked at that. Everything they are doing over on the other units is all outside of the Shoreline Protection; it's right at the foot of the hill over by the town restrooms. When they get over here (indicated on plan) one unit is going to be outside of Shoreline Protection, and one unit is going to be within the 250 foot Shoreline Protection. When you are between 150 feet and 250 feet, it's almost like a minimal impact. They want to know what's going on, but you're allowed to cut and you're allowed to do certain things. There is criteria they have to meet, so there would be an application process.

P. Monziona asked if they agreed that, at least with regard to some portion, some of the structures, at least one of which is the subject of the application for variance tonight, they are going to need to apply for and obtain approval from DES for Shoreline Protection Act Variance. M. Guldbrandsen and Mr. Green both answered yes. P. Monziona said that they were well within the town variance, although he thought they might have adopted the same thing. S. Penney said that was right; whatever is more stringent. It's the setbacks and everything; as part of their permit they will also be dealing with impervious surface increases. P. Monziona asked if they need a DES variance on the Shoreline Protection of 250 feet, if the town has adopted 250 feet don't they need a Shoreline Protection variance from the town as well, if they are going to

be within that setback. S. Penney said no; the primary setback is 50 feet, and they are going to miss that. That's where any waivers come in. The rest of it is all about impervious surfaces and runoff, and there are all kinds of calculations on it.

P. Monziona asked about a comment made during M. Guldbrandsen's presentation about the units being taxed. M. Guldbrandsen said that the structures are taxed. The land is taxed, but it is taxed differently. Each individual structure, to the individual owners, is taxed by the town. They have a separate code for the Conference Center property.

T. Morgan asked, in reference to the northernmost nine-unit structure, if some parking would be taken out. He asked if they would explain parking overall, as it looks by the single structures they are proposing to put in there is only one parking space per structure. There is some additional parking shown.

Mr. Green answered that they are not actually taking parking out. There is parking in this area (indicated on the plan) and they are cleaning up and improving the parking area. In the area where the nine-unit building is, they are looking at putting in more parking and widening the area to have that more usable than what it is. Around this grassy area in the middle they are doing the same thing. Some of this is parking now for the administration building and they are looking at adding additional parking there and where the basketball court was. That would be for these units, as well as any overflow parking they need on some of the other units. At this time, they have enough additional parking to cover the two per unit for the two nine-unit buildings as well as all the other buildings.

T. Morgan asked if he was saying that they would meet the requirements with regard to parking for all of the units. Mr. Green answered yes. T. Morgan asked what happened to parking if the gymnasium is in use or there are visitors. M. Guldbrandsen commented on the gymnasium parking issue; she is glad they can table that for now because when they had been before the Planning Board there had been a quick discussion about maybe the town wanting to put town parking on the town owned land which is just on the north side of their property between Route 11. That's just a very preliminary discussion, but there is additional area that the Conference Center could turn into parking if that doesn't work out. There is additional space where parking could go, and there is a willingness to collaborate with the town; it would be a Board of Selectmen issue if they wanted to pursue doing some parking there and having a collaborative effort on that. That's an open issue.

T. Morgan asked if with regard to the two units they are talking about now, and then the overall plan, there is sufficient parking to meet the town's requirements. M. Guldbrandsen answered that there is sufficient parking right on the plan now to meet the residential parking requirements. What they don't see on this plan is separate parking for the gymnasium.

S. Penney asked a question for clarification; the parking is not contiguous. The two units per individual, duplex, whatever, are not necessarily adjacent to the structure itself that requires it. Mr. Green said that is right, and in regards to that, what they are looking at is taking something that was not conforming and outdated and they are trying to bring it up to today's standards. It was a walk-in community before; everybody parked where he is proposing parking. They

dropped their stuff off for the weekend and went and parked their car someplace then walked back to their cabin. They are trying to keep the community small and they can come up with enough parking spaces somewhat like it was before, the only difference being that they are adding a spot next to each unit. They're trying to keep it still somewhat a walk-in community with that same aesthetic feeling they had before. They can supply the parking; the parking was there, but it was just wherever anyone wanted to park before, now they are just trying to clarify where those spots are.

P. Monziona said that they should consider this application for variance with the idea that the gymnasium will be part of this as well. He knew he had asked that question with regard to the living structures and all other buildings, but also the plan is to have the gymnasium there as well. M. Gulbrandsen answered that the concept is to have the gymnasium. In terms of the actual construction, that may not happen for three years; that would be essentially a third phase of development, the first phase being the single family structures, and the second phase of actual construction being the multi-family, the third phase being the gymnasium. It is somewhat remote, but they didn't want the town to ever feel like they were just popping things on them left and right. That is the concept, but there are issues that need to be hammered out with that, such as the parking.

P. Monziona said that when they had looked at it earlier they know they would be permitted to have that there and they've got it in their plan, so it would be safe to assume that at some point there may be a gymnasium. M. Gulbrandsen agreed.

P. Monziona asked if they had seen the concerns of the Fire Department; M. Gulbrandsen said they had not. She had just received the Planner's Report tonight, but it did not have the concerns attached to it. She knows they heard from the Assistant Chief when they had the conceptual with the Planning Board. P. Monziona said there were concerns from the Highway Department as well. S. Ames gave M. Gulbrandsen a copy of the letter of concerns from the Fire Department. After looking at the letter, M. Gulbrandsen stated that a lot of them are issues that should be addressed with the Planning Board, but one of the things that came up to the extent they can alleviate concerns about fire safety is that the multi-family structures would have sprinkler systems.

P. Monziona commented that a lot of the concerns deal with the other buildings and also deal with Planning Board issues. As they go through the criteria for the variance and since they need to consider it in the context of the other buildings and given the history of this location with regard to fire safety he thinks it is important that they take the Fire Department's concerns very seriously.

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

P. Monziona asked the applicant if there was anything further to add in their initial presentation. M. Gulbrandsen asked the other agents if they had anything to add; they did not.

P. Monziona opened the floor to public input in favor of the application being granted. Carolyn Schefner, 197 Frank C. Gilman Highway, came forward in support of the application. She stated

that she has been involved in the Conference Center and involved in the community. It is an exciting plan, and she encourages the Board to look at it as a wonderful addition to the community in Alton Bay. It is something that would really enhance the businesses with the four restaurants down there with additional use year-round would bring in more during the awful quiet times in the winter. It's a plan she would really encourage them to look at, and that there is good support in it.

Bob Bolinger, owner of a cottage on the campground, came forward in support. He wants to make sure they understand the concept about one thing that was discussed. He does think year-round water and underground utilities may make it available for use during the winter but he thinks more of that will be utilized as retreat ministry. It's not where you are going to have a lot of people with children; he knows that would be a major concern. A lot of people that come up there have places in Florida; you don't want to live in Florida during the summer. They all have a camp up here. Many like himself who brought two boys up on the campground, and he thinks what they benefit in their family is what families are looking for. He does not see it as major, where they are going to have all kinds of kids impacting the school. That's not what they're all about. The facility they are talking about, if it is built at that location, they will have a walkout down to Route 11 and the other elevation would give you a walkout right by the Tabernacle and the dining room. For a handicapped person, or an old man, like himself, that comes in real handy.

P. Monzione invited further public input in favor; there was none.

P. Monzione invited public input from anyone wishing to speak in opposition. There was none.

S. Penney asked for a point of clarification; this is neutral in her position as Planner. She is wondering if the group has any idea precisely how many people who lost their cottages are going to rebuild. There has been a lot of confusion about this forty-three number. She is concerned about density; she thinks that is the issue at hand here because this is unprecedented. On the other hand, she does hope they can come up with a really great consensus so they can do something positive for the town. She asked if there is any confirmation from owners on who does want to build and who doesn't. They do have forty-three units in the offing. M. Guldbrandsen answered that they have not made anyone any promises; as they can imagine, it is going to be a little bit of an issue figuring out who gets the section where there are single-family structures and who is in the multi-family structure. She doesn't know personally how many of the forty-three are definitely signed up for a new structure, but they have also been careful to not say sign up now because they don't want people to think that the process is done. She asked the people from the Association if they had any insights. S. Penney commented that she is just curious what they are looking at for a total for realistic density.

T. Kinnon asked how the project is going to be built; phases had been mentioned. He asked if the single-family dwellings were going to be built in one phase, and how was that going to occur. He asked if the families that owned the cottages were going to be paying for it, or was the Association going to be paying for it. M. Guldbrandsen turned to the builder to answer that.

Joe Spain answered that their intention was to phase the project. The single family dwellings will be the first to be built. All of the funding will be through the owners. T. Kinnon asked, using a random number of six who do not want to rebuild, if those cottages would not get built, or is the Association prepared to build those in the hope of filling them later. Mr. Spain answered that they would be built on a per demand basis. If the demand is not there for that cottage, it will not be built. T. Kinnon explained that his concern in asking that question is this whole project being seen as a development. Now they are getting into other issues as far as number of structures on the property, even though they were there before. Once they burned down, his understanding is that there is no grandfather clause to allow them to be automatically rebuilt. M. Gulbrandsen said there is no grandfather in the sense that they do not have the right to go back to that old foundation – she can't even say foundation, as they didn't all have foundations. They can't go back to that old footprint. The Board could have forty-three individuals in front of them making individual requests to rebuild; they are here on behalf of the Association as a representative of those owners. It's not as if the Association is doing this grand development; the Association is facilitating having one builder do all of these projects because the Association is the landowner. Each individual unit owner has to hire him to do the building. T. Kinnon stated that had been his concern because this could very easily be seen as a development; it's a very thin line. If it's seen as a development then somebody else could walk in and ask to put seventeen cottages up without going through a variance process, because it does exceed the number of allowable structures.

T. Morgan asked if, in order to buy one of these new units, you had to be one of the original forty-three owners. M. Gulbrandsen answered that you don't necessarily have to have been; there is an approval process that the Association uses because it's a religious group. The people living there are considered tenants of the Association. If you were not one of the forty-three and you wanted to buy in to one of those remaining six units in the hypothetical, you would have to be first approved by the Conference Center to be there. It's not open on the free market.

T. Kinnon asked if that hypothetical new buyer would be purchasing it from the previous owner. M. Gulbrandsen said no. It is really an interesting real estate title issue because for some of these, there are mortgages; some people had insurance on those mortgages, so those have to be essentially discharged. What the person owns, and owned, was just the structure, and the structure is gone. They don't have anything to convey or sell, so essentially it would be a new deed, almost again analogous to buying a new trailer, and there is an initial bill of sale that gets recorded and that starts the chain of title. T. Kinnon stated that brings his concern even more to light. Now you have a new deed being created; he is not sure of the legality of that. He is sure they may have thought of it, but a new deed is being created for a nonconforming structure. M. Gulbrandsen said from a title perspective, the conformity or nonconformity is not relevant to the title. T. Kinnon said he is concerned about a developer taking a look at this and asking why they have to go through the process of getting Planning Board approval and all this when they didn't. M. Gulbrandsen answered that they had gone through this discussion with the Planning Board on other pieces and projects that have been done within the Conference Center, and she really doesn't think there is any precedent setting because it is such a unique and unusual piece of the Town of Alton. There is nothing in town that is analogous to an Association owning land and individuals owning separate structures.

P. Monziona asked if this is a condominium; the greatest analogy he can find is that they have common area and people owning structures within a common area and it's more akin to a condominium association. Even in a landowner's association people own the parcel of real estate in association with several parcels and they have many homeowner associations within the town and they are an entity, and the law applies, and there are declarations and all that stuff. This seems to have none of that and it's not a condo; it's not an association, it's an animal all unto itself. It's a bit strange, frankly, and it makes it a concern or a factor that needs to be taken into consideration.

This application is for a variance to put up two multi-family dwellings where the zoning does not otherwise permit them. The assumption the applicant is asking them to make is that they will be part of a development that will have a total of however many units – forty-three more being replaced and whatever is there. All the rest of that is up to the Planning Board and all other parts of the town to determine. They are asked to make a discreet decision of two units in this; whether any of this passes legal muster in terms of its legal structure or what the Planning Board is going to do, or whatever, remains to be seen. Before the applicant can even go to them, at least with a total approval for the plan, they have things that require variances. He does not know how much more they have that require variances because, as Tim (Kinnon) points out, this is a development that otherwise would never be permitted right now. They are only coming to this Board with regard to two units, and he thinks they consider all the others just in the context of where those two units are going to be located; beyond that, the rest is up to them.

T. Kinnon stated that, if this is such a unique situation, that is fine too. His concern is a developer coming in saying they did it, why can't we do it. He has been in town for quite a while and has been aware of the situation. He is part of a loose association himself with eight structures on land in common, which is similar to what P. Monziona was just talking about. This has been brought up in discussions before; this type of situation. If it that unique that it can't be duplicated, or can't be duplicated easily, then he is fine with that. M. Guldbrandsen said that one of the differences is that when there is a transfer of the cottage structure you don't get a 1/180th interest in the underlying real estate, which does happen in a condominium situation. Here the Association is not pretending that you own any of the common area. They let you use it, but there is no undivided interest in the common area being conveyed.

P. Monziona stated that the entity that is building these buildings is the Association. M. Guldbrandsen said no; the builder is actually building and the builder would have a separate contract with each individual person to build a new house. P. Monziona asked who would apply for the building permit; it has to be the land owner. M. Guldbrandsen said she thought both of them were going to have to sign it. P. Monziona said they were applying for the variance as the landowner; her client is the land owner, who is the appropriate applicant for the variance. Then the variance is going to benefit whoever is going to buy the units. There are going to be several units within these buildings; are those units each going to be sold individually? M. Guldbrandsen said that brings back the condominium issue; the only way to do all the units is to have them be condominiumized. She is going to have to deal with that with the Planning Board. In other words, she is envisioning a condominium within this structure in order to have separate conveyances of the units. P. Monziona stated that is a question that fits into the second application of having five units within one structure, and how that even works.

S. Penney said that this is definitely uncharted water here. The premise is that each building is going to be built as needed, once it is secured by an owner with money up front. How is that going to work with this multi-family situation because it is one building; you can't just build the pieces. That is how they get into the appearances of development land. M. Guldbrandsen said that each multi-family structure is going to have to be built, at least in terms of the shell and exterior. There is going to have to be enough interest. S. Penney agreed; otherwise someone would be out a lot of money.

P. Monziona stated that raises the issue that if a variance is granted, it is granted to the property owner. Then if someone else comes along and says they would like to build that structure for which a variance has been granted, they are doing that under the permission that has been given to the property owner. What deal the property owner then makes with the person who is going to build the structure... M. Guldbrandsen said there is a contract in place between the Association and the builder that it gives the builder the exclusive right to build this project. It is not as if an individual prior homeowner would have the ability to go out and hire somebody to come in and take advantage of this variance. They have, probably more so than any other scenario in town, they as the Christian Conference Center Association are the gate keepers of what happens there. Historically, and this is an issue for the town, she does not think any cottage owner should be obtaining a building permit. If somebody comes in to do a renovation, in the past the town has been inconsistent on whether the cottage owner could come in and rebuild without the signature of the Association. In a lot of ways it is just an educational issue because people didn't necessarily completely understand the structure of this association with respect to the individual owner. Everything has to be cohesive, and on behalf of the Association, the Association wants to know, and they have requirements and rules that say they are to be notified if you want to put on a porch or do anything to modify the structure, but that wasn't always enforced in the past.

P. Monziona stated that any variance that would be granted would be granted to the applicant. The applicant is the land owner. How someone else uses that variance to construct a structure is something... M. Guldbrandsen said that she thinks the Code Enforcement Officer has to make sure that any building permit that is given is given in conjunction with... P. Monziona said he thinks it is beyond what they do here as a Zoning Board of Adjustment to try to determine how they then get to use any variance they may be entitled to. If they meet the criteria for the variance of a multi-unit dwelling on this location, given the configuration of the land and the other structures that are going to be present and that are present, that's one thing. Where it goes from there remains to be seen.

P. Monziona invited any further questions/comments. Hearing none, public input was closed.

DELIBERATION:

P. Monziona stated that, for his purposes for looking at this, they are being asked very discreetly, on a discreet issue, to determine whether a variance can be given, whether it meets the criteria for a variance to put up a multi-dwelling unit where one isn't otherwise permitted in the zoning. Where it is going to be located is depicted in the plans that have been submitted and the representations that have been made that it will be part of this overall camp or Conference

Center. As they go through the criteria, they consider it in that context to see if the variance is granted. If it is granted, where it goes or what they can do with it is up to them and the Planning Board and other authorities beyond this Board.

T. Kinnon said that it does make sense that they do need to look at the overall picture because he thinks it is extremely unique, and the uniqueness helps him come to a conclusion. If it wasn't as unique as it is, he would not want this put in and this duplicated here and there. He does not think that would be in harmony with the spirit and intent of the Master Plan, or the vision the community has for this particular area of the town. In conjunction with all this, it is something where it is so unique. He does believe the forty-three owners should have some sort of an opportunity to rebuild or have a dwelling on the property, although it does also get to the point where you need to consider density and the whole purpose of zoning was to alleviate some of this overcrowding and extreme density.

T. Morgan said that one of the things that concerns him is the kind of lynchpin argument to this whole discussion is that those forty-three people have a right to replace their homes, and he understands the equity behind the argument, but one of the things that does is force this density. If you accept that argument, it forces this density. Maybe not all of those forty-three people want to exercise their rights, and if they don't, then the density being proposed is not necessary. If only half of them want to exercise their right, then the nine unit constructions may not even be necessary, and so they are forcing a density on the property that it does not need to be subjected to.

P. Monziona stated that as he first looked at this application it says minimum variance, and this is a rather large variance. It talked about health, safety, and character and he thought it's not healthy or safe to have density like this. They've had two very serious fires and, thank God, no one was killed or badly injured. It was a very dangerous and threatening situation for the entire town. They're looking at large buildings and keeping in the character these are larger buildings; they're not the so called cute cottages with the same aesthetic. If the applicant were in front of them saying they have this massive empty spot and would like to put up a 172 unit conference center with all these administrative offices, a gymnasium and hotels and can they locate them right there across from the lake and some of them will be closer than 250 feet from the shoreline, if they were sitting there trying to make that decision, it would be a different thing. He would be saying that is not healthy, it's not safe, it's not in character, it violates the spirit of the Master Plan and everything else because it creates a dense situation that is potentially dangerous as it has been in the past with these fires. That's not what they are being asked; they are being asked to look at two structures. They're not even being asked in this first application to even consider the number of units in the two structures; just whether they could have a variance to put two multi-family structures within all of this as they have laid it out. It's important, instead of thinking of this as people coming to them asking if they can build this entire conference center up there. That's not what they are being asked; are they entitled to a variance for a multi-dwelling unit in there without consideration of the number of units, because that's what they are going to do with application number two. He thinks if they focus and limit it to that discreet question they should go through the criteria focusing only on that. That's not to say that they shouldn't put it in context, because he thinks they have to in order to decide how the criteria apply, but it is important that they focus only on those two buildings.

AREA VARIANCE WORKSHEET FOR CASE Z09-16

S. Hurst stated that the variance **will be** contrary to public interest. He has mixed emotions on it. They are dealing with Shoreline Protection Act; He thinks the people who lost their homes should have an opportunity to relocate or come back to this area. T. Kinnon agreed that it would be contrary to the public interest; his concern is the same that T. Morgan brought up as far as forcing the density onto the property, maybe needlessly. If all the owners do not want to rebuild, these multi-units may not be necessary. That is an avenue that should be pursued for the density reason and the vagueness of whether or not these units are all going to get rebuilt. He believes **it is** contrary to the public interest. T. Morgan stated that he feels this is a difficult application to think about. The piece of property is unique, both in its configuration and its relationship to the lake and also its history and the meaning to the town. He would like to see it be possible for the people who lost their cottages to relocate, but he is very concerned about forcing density with these large units onto this piece of property, so he is going to decide that **it is** contrary to public interest. P. Monziona stated that he is going to decide **it is not** contrary to the public interest because if they limit the question to an area variance for two multi-dwelling units, which in part are replacing the units that were there, so they are not increasing the density that existed prior to the fire. They have not even gotten to the issue of how many units will be in these buildings, so just on the concept of a multi-dwelling unit going in up there he would find that it would not be contrary to the public interest.

T. Kinnon stated that the request **is not** in harmony with the spirit of the zoning ordinance and the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. Because of density, and because of not knowing whether these structures will definitely need to be built, if the applicant came before them tonight with contracts or some kind of agreements with all the forty-three owners that want to rebuild, they want to have something then perhaps he could see the need for it, but right now they don't know that. He does not believe there is enough necessity for it at this point. T. Morgan agreed that it **is not** in harmony with the spirit of the ordinance; the ordinance is to keep large multi-family structures of this sort out of this area and he thinks it is out of character in the district in which it has been proposed. This has been a district of small randomly built cottages. P. Monziona stated that it **is** in harmony with the spirit of the ordinance only because at this point they are not attributing any number of units to the multi-dwelling and given that it is up there with a number of other large buildings (administration building, Tabernacle) and everything else that's up there, he thinks that just to have a multi-family building up there, or two of them, without saying the number of units would be in harmony with the spirit of the zoning ordinance. S. Hurst stated that this **is not** in harmony with the spirit of the ordinance or the Master Plan for the same reasons as stated by other Board members.

T. Morgan stated that substantial justice **will not** be done; they've always understood this to be a rather subjective criteria but where it doesn't meet the public interest or the spirit of the ordinance, he thinks to grant it would not be doing substantial justice. P. Monziona **disagreed**

for all the reasons again that he has sited and just focusing in on the discreet request. S. Hurst stated that he believes it **will not** be substantial justice. T. Kinnon stated that he also **does not** believe that granting the variance would be substantial justice.

P. Monziona stated that the request **will not** diminish the value of surrounding properties. Just for this specific request for multi-family dwelling without specifying the units; they have received a rendering of some elevations with a representation that those are the buildings. Given those elevations he does not think those buildings, the way they are depicted architecturally would have any affect on diminishing values of the surrounding properties. They have received no evidence by way of objection from the abutters or otherwise that they would. S. Hurst **agreed** that they will not diminish the value of surrounding properties. T. Kinnon also **agreed** that the request would not diminish the value of surrounding properties, mainly because the surrounding properties are owned by the same association for which these buildings are proposed. These structures would be in harmony with the other structures there. T. Morgan **agreed**.

S. Hurst stated that an area variance **is** needed to enable the applicant to propose use of the property given the special conditions. The benefit sought by the applicant can not be achieved by some other method reasonable for the applicant to pursue other than an area variance. He does not see any way around this for them other than getting a variance. T. Kinnon **disagreed**; the benefit could be achieved by other reasonably feasible methods. It is a fairly large parcel and there are other areas that perhaps, and he does not know if it was looked at, nine units could be placed elsewhere on the property to spread out the density. T. Morgan **agreed**; considering the application that is before them that a variance is needed and whether or not the benefit could be accomplished in other ways, he does not know. P. Monziona stated that he would say an area variance **is** needed to enable the applicants the proposed use of the property given the special conditions of the property and the benefit sought by the applicant cannot be achieved by the applicant reasonably feasible. The reason he says that is because he is accepting the representation that these units can not be rebuilt without this; they can not achieve the forty-three unit goal without there being two multi-dwelling units. Again, not giving consideration to how many are in there; that would have been application number two for him. In order for them to do this, they can't put up this number of individual cottages. They need to have multi-unit dwellings.

T. Kinnon stated that, based on the above analysis special conditions **do not** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. T. Morgan **agreed**. P. Monziona **disagreed** for the reasons he has stated. S. Hurst said he believes they **do not** exist.

T. Kinnon made a motion to not approve Case Z09-19 as submitted. Motion was seconded by T. Morgan and passed with three votes in favor (TK, TM, SH) and one opposed (PM).

The application was not approved on a vote of three to one.

M. Gulbrandsen orally withdrew the second application.

VII. APPROVAL OF MINUTES

The previous issue regarding the 72 square foot reference in the previous minutes of April 2, 2009 has been clarified. Those minutes had been approved conditionally; now they have the clarification.

October 1, 2009

T. Kinnon, who was not present at the meeting on October 1, 2009, has left for the evening since he was not needed for any further business this evening, including this approval.

T. Morgan made a motion to accept the minutes of October 1, 2009, as submitted. Motion was seconded by S. Hurst and passed with three votes in favor and no opposed.

VIII. NEW BUSINESS

S. Ames informed the Board that there will be a Planning Board Zoning Ordinance Workshop on Monday, November 9. They are encouraged to attend because they will be enforcing these laws. The workshop is at 6:00 p.m. in this room. S. Penney commented that there will be a series of these meetings, so there will be plenty of opportunities. This will be discussions of what is going to be changed for the March ballot this year.

IX. ADJOURNMENT

S. Hurst made a motion to adjourn; seconded by T. Morgan and passed with three votes in favor and no opposed.

Meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session