

**TOWN OF ALTON**  
**ZONING BOARD OF ADJUSTMENT**  
**Approved as recorded, January 06, 2011**  
**Public Meeting**  
**December 2, 2010**

**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:

John Dever, Department Head/Building Inspector and Code Enforcement Officer  
Lou LaCourse, Clerk  
Tim Morgan, Member  
Steve Miller, Member

Tim Kinnon, Vice Chair, was not present at this meeting.

**III. APPOINTMENT OF ALTERNATES**

There are no alternates to appoint. There are four members of the Zoning Board of Adjustment present so there is a quorum; the Board is able to proceed with all cases on the agenda.

**IV. STATEMENT OF THE 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**

Due to the lack of a quorum for Case #Z10-25, the applicant has asked for a continuance, preferably to next Thursday, December 9, 2010, if there will be enough members present. Additionally the motion for rehearing is to be moved to the beginning of the agenda so that it can be heard and finalized. The request for rehearing is on Case #Z10-26, Michael and Kathleen Currier.

P. Monzione spoke about the continuance for Case Z10-25 to December 9, 2010. T. Kinnon can arrange his schedule so that he can be present. P. Monzione is recused on that item, so he is recusing himself in the decision whether to continue. L. LaCourse acted as Chair for the decision for the continuance.

T. Morgan has checked his office calendar; he can not make a meeting on December 9. He proposed December 16, 2010. L. LaCourse asked J. Dever if he thought December 16 would work for the applicant; J. Dever is of the opinion that it would.

**T. Morgan made a motion to continue Case #Z10-25 to 7:00 p.m. on December 16, 2010. S. Miller seconded the motion which passed with all three votes in favor and none opposed.**

P. Monziona returned to his seat at the table and resumed his duty as Chair.

P. Monziona asked for a motion to move the request for rehearing of Case Z10-26 to the beginning of the agenda. Before that occurred, S. Miller stated that he has discovered that he does have a conflict on December 16, 2010; there is a JMA Budget Public Hearing that evening which he must attend.

P. Monziona recused himself. S. Miller suggested Wednesday, December 15, 2010.

**T. Morgan made a motion to continue Case #Z10-25 to December 15, 2010 at 7:00 p.m. S. Miller seconded the motion which passed with all three votes in favor and none opposed.**

P. Monziona resumed his seat as Chair.

P. Monziona returned to the issue of moving the request for rehearing of Case Z10-26 to the beginning of the agenda. The request for rehearing was submitted by Carol and Richard Locke, Cindy Balcius, and Jill Royer.

**T. Morgan made a motion to move the request for rehearing of Case #Z10-26 to first on the agenda and with that change, to approve the agenda as amended.**

**S. Miller seconded the amendment to the agenda which passed with all four votes in favor and none opposed.**

**L. LaCourse seconded the approval of the amended agenda which passed with four votes in favor and none opposed.**

## **VI. MOTION FOR REHEARING**

P. Monziona stated for the benefit of those present that the Motion for Rehearing, though conducted at a Public Meeting, is not a matter for which the Board entertains or receives any Public Input; this is something the Board members decide on their own. P. Monziona asked the Board members if they had an opportunity to review the letter submitted by Attorney Guida. He went on to state for the record that he personally resents the accusations in the request for rehearing that what the Board did with regard to the application originally smacks of favoritism. He stated for the record that he had no idea who the applicant was or whether the applicants had any connection or relationship to the Town of Alton, or whether they have ever worked in or held a position in the town. He still does not know, other than what the lawyer chose to say in his (submission), which P. Monziona still considers to be out of line. He is an attorney, a litigator, and he does not write this kind of stuff unless he has a real basis for doing so. He wanted to state for the record that nothing about what happened originally in this case had anything to do with favoritism, and it is completely out of line, unfounded, and improper to have said that. It has no bearing on the substance of this motion.

P. Monziona continued. The first issue that was raised in the request for rehearing dealt with whether the Board had the authority to waive the fees. T. Morgan stated that it was his understanding from follow-up conversations with the Code Enforcement Officer that this is now a moot point. Fees were in fact paid. J. Dever confirmed that was correct. T. Morgan continued, stating that it would appear to him that the bulk of the first section of the request is a moot point.

P. Monziona stated that the next argument that was made in the request for rehearing is that the ZBA erred when it found that the variance is not contrary to the public interest, and that the request is in harmony with the Intent of the Master Plan and the spirit of the Zoning Ordinance. The argument that was put forth in this request is that

there would be erosion, pollution, heavy water usage and “septage”, as it states in the letter. P. Monziona did not see anything like that in the application, nor was that presented by anybody. Therefore, he does not think there is a factual basis for the Board to have concluded that there would be a pollution, erosion, or “septage” problem with this. L. LaCourse agreed; there is nothing in the application that spoke of excessive erosion. S. Miller added that there was certainly no factual evidence that was offered to the Board by any qualified professional to validate that this does in fact exist. T. Morgan added that the issues cited here are actually issues that would be coming before the Planning Board as part of a Site Plan Review and more applicable at that level than at the level of the Zoning Board of Adjustment.

P. Monziona continued; the next item is that the ZBA erred when it found that the literal enforcement of the ordinance results in unnecessary hardship. This is one that gives P. Monziona the greatest concern among the arguments for the motion for rehearing. The reason for that is, and he would candidly say, that this Board has had to make some adjustments in their approach to applications since the codification of the common law standards that the Supreme Court of New Hampshire in a number of cases, including the Bochia Case, that set forth the standard by which a hardship would be determined. There was a line of cases prior to Bochia that had a different standard for finding hardship. Recent hardship cases change it, and then the New Hampshire Legislature codified it in a statute and more or less went back to the earlier standard. As a Board, they have had to adjust to that change in the law and so, it has become a long process, at least for him personally, in looking at this and getting a good handle on what the legal standard is. He would have to say that he is concerned as to whether the unnecessary hardship criterion, when the Board considered it, was done positively correctly, or perhaps there may have been an error in their determination of that standard.

P. Monziona went on to explain that a motion for rehearing is designed and specifically intended for the Board to determine if it may have committed an error, and if it thinks it may have then to have a chance to correct if there is any. So, with the arguments raised in this (request for rehearing), there could be merit in the argument that the unnecessary hardship standard may need to be looked at a second time. Those are his thoughts in deliberating on this. He requested thoughts from the other members. L. LaCourse agreed; since the last time they talked, his understanding has changed again with regard to the hardship standard. S. Miller stated that he did not hear any evidence that the hardship standard was significantly applicable; he would be willing to listen to further evidence or a rehashing or re-explanation of the evidence that was originally provided. He might have missed something, but from what he heard, he remains convinced. T. Morgan pointed out that there are a couple of cases cited by the drafter of this (request for rehearing); unfortunately both of those cases were decided under the Simplex measure of hardship, and he is not sure they are applicable to the current application. That being said, there is probably no precedent cited under the new codification of the hardship rules. However, he is not sure this Board did correctly consider the newly codified hardship, so although he does not particularly agree with the drafter’s interpretation of the law, he is not sure he agrees with the Board’s interpretation of the law on the night in question either.

P. Monziona stated that it would appear that the members have expressed some concern with regard to the third argument, whether there may have been an error in the application of the unnecessary hardship criterion. He would suggest that the Board, based on that alone and without any necessity to get into the rest of the grounds, that this might cause anyone to make a motion now that they grant the motion for rehearing, unless the members want to go through the rest of have further discussion. He is just saying that if the four of them here are expressing some concern that they might want to take a look at unnecessary hardship, he does not think they need to continue on with the rest of the arguments for rehearing, if on that basis alone anyone feels comfortable with making a motion to grant this.

**L. LaCourse made a motion to grant the rehearing for Case #Z10-26 based on the current understanding of the hardship laws. S. Miller seconded the motion for the purpose only of discussion.**

S. Miller clarified that he thinks they should get a fair hearing. P. Monziona stated that the motion for rehearing enables the ZBA to consider whether a mistake may have been made, and to have an opportunity to correct a

mistake if one has indeed happened, and given that the members all have concerns about argument #3 in the request for rehearing.

**The vote on the above request to grant the motion for rehearing passed with four votes in favor and no opposed.**

The motion to grant the request for rehearing passed unanimously and was placed on the agenda for the next regular meeting which is January 6, 2011, at 7:00 p.m.

S. Miller asked if applicable case law is available; P. Monziona answered that he will get it. There is also the option to consult with Town Counsel prior to the meeting in January; members agreed that this would be a good idea.

## VII. CONTINUANCE

<b>Case #Z10-27 Ronald and Susan Bell</b>	<b>Map 34 Lot 33/16</b>	<b>Special Exception 71 Mount Major Highway</b>
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*Application submitted by Roger Sample dba BMS on behalf of applicant Ronald and Susan Bell to request a Special Exception to jack up the cottage and install full foundation, rebuild existing screen porch and expand 2<sup>nd</sup> floor out over rebuilt porch. This parcel is located in the Residential Zone.*

P. Monziona read the case into the record.

Roger Sample came to the table to present.

The members still have the materials from the original meeting when this case was heard. The application has not been accepted as complete. J. Dever handed out the Special Exception worksheets for this case.

Mr. Sample explained the changes that have been made to the plan. The size and shape of the proposed building has been corrected and the utility pole has been depicted in the proper location. The setbacks have been located.

P. Monziona refreshed himself on the need for the Special Exception; he asked Mr. Sample if the need is because they are building onto a non-conforming structure. Mr. Sample confirmed that to be the case; they are adding on to the first floor living space both above and beyond the screen porch.

S. Miller asked if the gas tank is going to be moved. Mr. Sample explained that the gas tank they are using presently is a barbecue tank and will not be used. It is underneath the house. The propane tanks will be located on the back corner of the house. Back when the propane tank was added to 75 Mount Major Highway, Eastern walked off with the two propane tanks from this cottage. During the summer they don't use that much heat, so they hooked up a little barbecue tank, but the other tanks will be brought back and hooked up by Eastern with the proper venting and placement.

P. Monziona reminded S. Miller that the application has not been accepted as complete yet, and there may still be some questions or concerns as to whether they have a complete application.

L. LaCourse stated that he does not see the building envelope, the setback lines, or the property lines; he recalled that those are all things that were asked for at the last meeting. J. Dever explained that because of the configuration of the Christian Conference Center, it is one lot. The front property line setback is shown partially through the front of the house. The side setbacks are not available because it is nowhere near the side or rear setback for this particular lot, the lot being almost 23 acres. The Shoreland setbacks are indicated for both the two 50 foot marks and the 150' mark, which is an arrow-shaped one off to the left of the plan. The 250' mark is

not applicable to show because it goes so far out into the Conference Center itself, because of where this is in reference to Back Bay.

P. Monziona asked, in regard to whether the application is complete and whether the members can understand the information being provided, if the setback they need to be concerned about with regard to this application being complete is the right of way setback. J. Dever explained that it has been indicated and checked that the right of way line is the property line; that is the edge of Route 11 at that point. It is one and the same, and the 25' building setback is from that line.

There were no other questions in regard to the application. P. Monziona added that obviously, they have taken this in conjunction with the materials provided in the first meeting. This includes the written materials. He also asked if the building envelope is shown; J. Dever explained that the building envelope is a bit cloudy in this area. These are the existing structures, so the building envelope is essentially anything behind the 25' property line setback from the front. That part of the cottage is in what would be considered the building envelope. Were they to start over, obviously there would be more separation between the structures, but the building envelope as it stands is behind that 25' property line setback.

**L. LaCourse made a motion to accept the application as complete. T. Morgan seconded the motion which passed with four votes in favor and no opposed.**

The application was accepted as complete. P. Monziona asked Mr. Sample if there was anything he would like to add before the Board began asking questions. He also asked the applicant if he would reiterate what the construction will entail.

Mr. Sample stated that most of their measures have been done; he has checked them with J. Dever and the only thing they are unsure of is whether the proposal will need to go back for site plan review. This is a cottage belonging to Mr. Bell who had a special exception for his other place at 75 Mount Major Highway; he is still kicking himself for not having that property jacked up and putting a foundation under it because he is kind of tall and is constantly bumping his head. When he decided to do the windows and the siding, he decided he did not want to make that mistake again, so he asked if they could jack this place up and put a foundation under it, so that is what they are planning on doing. It is going to be a nine foot foundation so under the carrying timbers he still has his seven feet so he can walk without hitting his head, which would bring the cottage up two feet from the level it is now. There are no cottages behind to affect their view by elevating this cottage two feet. On the front, the porch just needs to be repaired, as it is falling off. They will repair that in the process.

Mr. Sample continued, adding that this is a very small cottage. The bedroom on the second floor has a sloped ceiling. There is a bed in there, but you have to bend over to get into it. They would like to extend that room out a little bit over the porch when they rebuild it. They are going to work with the roof to bring it into tone with the other cottages that are there; a lot of them are one level and the porch sticks out. There are some that have roofs at two levels, so they are going to try to work with the ridgeline to kind of give it the affect that it comes out and fits with the neighborhood. They are going to put the fireproof siding on it and some egress size windows, and at the request of the Fire Department, they are going to try to keep the windows from lining up with the adjacent cottages. If they can move the windows they will push everything around to try to meet everyone's needs. They are going to remove the exit from the porch; there is a three season porch there that will be totally closed in. The pictures in the application package show the storm windows there on the three season porch.

P. Monziona referred to the rendering of the proposed structure depicted on the plan; where it says "drive" there is a part of the structure with the window in it. This is part of the first floor; he asked if that was open through a doorway to the rest of the cottage. Mr. Sample explained that this is a tool room and a bathroom. P. Monziona asked what is going under that, whether it would have the poured foundation at crawl-space height. Mr. Sample answered that he had tried to have Mr. Bell agree to a crawl space there, but he wants a full foundation, so it will

be full under there as well. P. Monziona confirmed through questioning that there will be a full foundation all the way through; Mr. Sample agreed that there would be. P. Monziona indicated that the depiction of the proposed cottage on the plan should show that the foundation should be all the same dimension all the way through. The proposed foundation extends all the way through the extent of the existing footprint all the way to where the word "drive" appears. Mr. Sample agreed.

P. Monziona asked Mr. Sample if the inside height of the porch is going to remain the same, and if on top of it, the second floor of the building is going to be extended out over the porch. Mr. Sample answered that the porch ceiling will change some because right now it is a pitched roof; what is now the roof will become a floor, so there will be some elevation change. P. Monziona asked if that would be an open space; would there be a doorway from the existing room going out over the porch. Mr. Sample answered that it would be open right out to the outside wall. P. Monziona asked if there is a window on the proposed addition; Mr. Sample answered that there probably would not be one. It is only a six foot addition. Chances are the window existing might get moved to split the difference because there is a stairway that goes up through the middle there. Between trying to avoid being directly across from the windows next door and maybe splitting the room, that window could get moved either way. P. Monziona asked if these are going to be egress windows as Mr. Sample had talked about; Mr. Sample answered yes. P. Monziona asked if they are going to side the entire building with the fire resistant siding. Mr. Sample answered that they are. He added that the Fire Chief actually endorses the foundation because at the fire, the flames got under the cottages and burned up through. By putting the foundation under there, that stops it.

S. Miller asked if along with the doors and the windows, they would be adding insulation to make this a four season cottage. Mr. Sample answered that whatever walls they open up, they will be putting insulation in. It is insulated now on the first floor. S. Miller asked if the intention is to turn this from a two or three season to a four season cottage. Mr. Sample would say three season; they've got the other one next door that they would probably use in the winter if they came up. It would just be a weekend thing if they popped up to go skiing or something.

S. Miller stated that in the narrative it says that there is difficulty in burying a 250 or 100 pound tank. He asked if there was room to bury it. Mr. Sample answered that there is not. S. Miller asked how tanks are sized; what he is getting at is that at some point the barbecue tank is going to be too small, and Eastern is going to have to drop a bigger tank. Mr. Sample answered that there will be two 120 pound tanks. S. Miller asked if it was Eastern or the Fire Chief who had told him there was no room to bury the tank. Mr. Sample answered that he knows it because on 75 Mount Major Highway the ZBA wanted the tank buried, then the Building Inspector and the Fire Department determined that it couldn't be done, so they didn't need to do it. The homeowner actually wanted it buried; he didn't want to look at it. They moved it further away; basically, it has to be ten feet from a structure or spark. They were able to do that on 75 Mount Major Highway, so that tank now is in the ground. On this house, that is not possible. S. Miller asked if it would be possible to run a line from the other tank to this house. Mr. Sample explained that there is a lot of infrastructure between the two.

S. Miller explained that his concern, which is a layman's concern, is the flying missiles that took place once before when the tanks exploded because they are all outside. He would be interested if it is at all possible, if he could bury some size tank somewhere so that as each of the cottages comes before the ZBA to get most if not all of the tanks underground. J. Dever explained that there had been a conversation after the last meeting with the fire department; in that part of the campground, they would prefer smaller tanks, above ground. There is no room to bury this one; you have to have 10 feet from the structure, and the only place in this area is in the road. There is a small gravel roadway, Manchester Avenue, which is behind the property. Having them close to the house and properly vented so that the regulator is away from any window openings is actually the preference of the Fire Department in this situation. There was going to be room between the buildings at the other end, when they were doing the reconstruction, and buried tanks were better. Down here where there is so little room to move, they would prefer to see above ground tanks.

S. Miller asked if the code allows for a maximum size tank; based on the constraints mentioned, what is the maximum size tank that can be on that property? J. Dever answered that to the best of his knowledge, there is no restriction on the maximum size of the tank; what will dictate that here is space and location. Looking at this and knowing the area, his recommendation would be that the tank has to go on one side or the other. It can not go directly behind because Manchester Avenue comes very close to the back of this property. S. Miller asked if the tank would be ten feet from the nearest property. J. Dever explained that it would be well within 10 feet; down there they are just about this far apart (extended arms); there are few options in that respect.

Mr. Sample referenced S. Miller's comment about a "missile"; that is not how propane tanks go. He explained that the heat lets the valve release. There were things flying, but those were the covers to the tanks. It was not the whole tank flying. S. Miller asked if a smaller tank would fly. Mr. Sample answered that it would lose the valve on the top, and it would just shoot out. Mostly what was happening, and they were going quite a distance, was the lids. The lids blow off, and they were flying around the neighborhood. (References to the fire throughout are the Easter Sunday Fire in 2009). It's not like you see in the cartoons with the 100 pounders flying all over. Mr. Sample continued; stating that it doesn't make it any better, but he knows what S. Miller is thinking about the missiles. That could go anywhere, but it is the lids that blow off.

P. Monziona followed up on a question asked earlier by S. Miller, and regardless of who owns it or how often they will stay there, when the structure is finished, it will be furnished and equipped so that it can be occupied as a year-round home. Mr. Sample answered that it could be. P. Monziona asked if there are going to be any additional bedrooms; there are not. S. Miller asked if there would be any additional bathrooms; there will not be. They are just putting 6 feet by 15 feet on the back bedroom. L. LaCourse confirmed through questioning that they are just expanding the bedroom up over the porch; Mr. Sample agreed.

T. Morgan recalled that when the Alton Bay Christian Conference Center was before the Board before, when they were looking to replace in the upper part, they were allowing for some four season places and some that would be seasonal. There are specific numbers; T. Morgan asked if those specific numbers are applicable to the houses in this area. Mr. Sample did not know. T. Morgan asked Mr. Sample if he has showed this plan to the Christian Conference Center; Mr. Sample answered that he has. T. Morgan asked Mr. Sample if they talked to him at all about seasonality of this structure; Mr. Sample answered that they have not.

L. LaCourse asked about the intent of the cellar, in light of the fact that the owner is looking to have enough head room to move around down there. Mr. Sample answered that he will store his boat and jet skis down there rather than paying for storage. L. LaCourse asked if there is going to be an overhead door opening into the cellar; Mr. Sample answered that there would be. He added that this is not going to be living space. L. LaCourse asked if there is any intent to finish the cellar or insulate it. Mr. Sample answered that there is not. Mr. Bell would like to put basement windows in it for light.

P. Monziona asked if it would all be backfilled. Mr. Sample answered that it would; right now it is approximately between two and three feet off of ground level. They will be raising the cottage another two feet, so it will be four feet up and four feet down. P. Monziona asked about the ridgeline going up two feet. Mr. Sample answered that it is going up two feet, and they will stay below the ordinance which is 35 feet.

P. Monziona asked J. Dever for his own comments, as well as the comments of the Department Heads. J. Dever answered that the only comments regarding this were from the Fire Department. The applicant is required to use the fire resistant siding, and the window openings have to be located so they are not in line with the adjacent cottages. In some cases there is little more than ten feet between the cottages. They discussed the propane cylinder and that it will have to be located appropriately, and not at the back. Egress has already been discussed.

J. Dever has had a conversation with Mr. Sample, and he has looked at the three season porch and confirmed that it is a three season porch. It is definitely in need of repair. The septic plan finally is in review. The issue was that they could not find the construction approval for that system. It wasn't electronically available, so they

had to go into the paper archives to locate the operational approval. They have done that; Brad Jones of Jones and Beech has located the operational approval and now it is in review to see if it will accommodate expansion by their standards. This has taken close to a year. Although J. Dever has not received a copy of the approval, a Shoreland Permit has been applied for; he will need a copy of the approval before the applicant can go forward. He is also recommending that the foundation and the elevation should be certified by an engineer as to where it is so that when the cottage goes up, it comes back down in the same spot, and the Building Department knows the ending elevation.

P. Monziona noted that the rendering depicts this as a porch; he clarified that it would no longer be a porch, but a part of the house. Mr. Sample answered that it would still be a porch, and there would be a door out to it. P. Monziona acknowledged that it would still be a porch, and the only living space would be on the second floor.

L. LaCourse recalled that Mr. Sample had mentioned that he was closing egress from the porch; he asked if there are still two points of egress. Mr. Sample assured him that there are.

S. Miller asked J. Dever if in his estimation this is a four season home or not. J. Dever answered that at present it is a chilly three-season. S. Miller asked if when the doors are replaced and the windows and insulation are upgraded, it does become a four season house. J. Dever explained that it could potentially, but that is part of the restriction that was put on the Campground when the approval was given for the reconstruction. There are a maximum of 26 units campground-wide that can be converted to four season use. S. Miller asked if this would be one of the 26. J. Dever answered that this had not been discussed. Mr. Sample explained that one actually has to apply for a winter tenancy on the Campground. S. Miller stated that it could still be de facto a four season home anyway. You can't build 60 four season homes and say that only 26 of them are really going to be used. J. Dever asked if this cottage is supplied by seasonal water; Mr. Sample answered that currently, it is. J. Dever explained that the water is turned off in the winter. S. Miller asked if it is J. Dever's job as Code Enforcement to validate that there are only 26 four season homes at any one time. J. Dever answered that it is a function of the Planning Board and himself. S. Miller stated that he is comfortable with that.

S. Miller again returned to the issue of the propane tank. He asked if, seeing as the tank can't be buried, there is some kind of shed or other type of remedy to protect the next abutter where he is only 10 feet away. The only thing that comes to his mind is a concrete block structure around it. He is concerned that there is no remedy besides burying it. J. Dever answered that he is not aware of anything; one of the first things the Fire Department wants to do in a fire situation is to secure the tank and drag it away from the site. To enclose it where they might have limited access would hamper that ability. Having it in the open, where they might have better access is preferable because it can be gotten to and carried off. Mr. Sample added that it can also be cooled down because they can get to it with their fire hoses. S. Miller asked again if the tank can be buried. J. Dever answered that it can not; there is no place to bury it. S. Miller asked why they can't just bury it where the original one was sitting. J. Dever answered that the original one was sitting right next to the house; NFPA fire code requires that if the tank is going to be buried, it must be 10 feet from any structure. There might be ten feet from any structures if they go out back, but then it is in the middle of the drive, and they don't want to bury it there. S. Miller voiced understanding.

P. Monziona requested further input from J. Dever; there was none.

P. Monziona opened the floor to public input, both in favor and in opposition to the granting of the application. There was no public input at this time; public input was closed.

P. Monziona commented that in regard to the four season structures, you can build them and insulate them and put heat in them; they are four season homes at that point, as long as they are built in a way that can accommodate that, as opposed to an open cottage with no insulation. The plan approved for the Conference Center only allows for a certain number of year round houses. Yet, that number can be far exceeded by the number of buildings that are being built. It is somewhat impractical for the Town of Alton to try to police that

in any way, if John (Dever) has to go up there and knock on doors in February to see if people are in there having dinner. This was supposed to be done in a practical way. The solution that the Town came up with was two fold. The first is to impose the restriction so that anything else would be in violation and could be stopped. The second solution is the water control. Water is turned on and off by the town, so the town could monitor what number of structures would be receiving water year round. There is a specific number of year round structures that are supposed to be on that site.

In regard to the tank, P. Monziona stated that he understands the concern in light of the fires that have taken place in the history of the Conference Center, from his perspective the Board really needs to defer to the Fire Department in what they need and whether it should be accessible so it can be cooled, and where they really want it. If they get the Fire Chief telling them that keeping it outside in a certain way is what the Fire Department prefers, he thinks the Board needs to defer to their expertise on that.

T. Morgan stated that he has mixed feelings about these applications; part of the reason is because they have been hearing a lot of comments lately about expanding the use of non-conforming uses. Last night in a meeting with the Planning Board issues exactly like these were discussed where a building is propped up and a foundation is put underneath it or an addition is put onto an expanding use. This is a well conceived plan; these cottages need to be updated and the porches need to be repaired and so on, but it is getting to the point where through Special Exception the Board is routinely granting the expansion of non-conforming uses. They are creating more non-conformity than existed before. It's a tough issue for him.

P. Monziona added that when one looks at 320 B 2 (c), a structure which is non-conforming due to a violation of setbacks may not be expanded upward or beyond the existing roofline, which is happening here, or downward, which is also happening here, or below the existing sill, which is also happening, without first obtaining a Special Exception from the ZBA. All of what is being applied for is appropriate for a Special Exception. The ordinance goes on to say that the ZBA will not grant the Special Exception unless it finds that the proposed expansion will not have an adverse impact on abutters or the property owners located within 500 feet of the subject property, and that any expansion of the use, such as the number of bedrooms, will be accommodated by water supply and sewage disposal system approved by NHDES Water Supply and Pollution Control Division. Those are the guidelines; T. Morgan agreed that those are the current guidelines; he thinks that there might be a warrant article that will make those guidelines more difficult in the future. Probably as it sits tonight with this application, the applicant has an appropriate right to apply for this Special Exception.

L. LaCourse asked about the sewage disposal; it is in the works but there is no decision yet. According to the ordinance, the sewage disposal has to be approved. J. Dever answered that it has not been approved yet; he expects that given the information he received from the engineer, it will be granted. There are two cottages on it; the Rosario cottage application was conditioned on the septic being reviewed and approved as capable of accommodating the expansion. They are still waiting because they were waiting on this plan to be submitted.

P. Monziona stated that if you look at the language of subsection (c) instead of saying it has been approved, it says it will be approved. At the time of the application, it does not have to already have been approved; it can be a condition if they get to that point.

#### SPECIAL EXCEPTION WORKSHEET

1 – T. Morgan 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.

2 – P. Monziona stated that the specific site **is** an appropriate location for the use. The use is not changing in any way; it is still going to be a cottage with the same number of bedrooms and bathrooms. All members agreed.

3 – L. LaCourse stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. There is no evidence that property values in that area are going to go down based on the fact that the applicant is improving the design of the house and putting a foundation under it. S. Miller agreed; the very fact that they are turning a seasonal home into a four season home will increase rather than decrease property values. T. Morgan and P. Monziona agreed.

4 – S. Miller stated that there **is no** valid objection from abutters based on demonstrable fact. There is no evidence to the contrary. T. Morgan agreed and added that no abutters have appeared to make presentation in this case. P. Monziona and L. LaCourse agreed.

5 – T. Morgan 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. There aren't any changes to any of the vehicular or pedestrian approaches to the structure. P. Monziona agreed; he does not believe that pedestrian or vehicular traffic will be affected whatsoever by this proposal. L. LaCourse and S. Miller agreed.

6 – P. Monziona stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure; he agrees with this statement only on the proviso that if this application is granted one of the conditions is to be that the water and sewage disposal system has to be properly approved by the state. All members agreed.

7 – L. LaCourse stated that there **is** adequate area for safe and sanitary sewage disposal and water supply; he deferred to P. Monziona's statement in the last item to make sure that this is contingent on the approval of the septic and water supply. S. Miller agreed. T. Morgan agreed and suggested that the language should be that there will be adequate and safe depending on the requisite permits. P. Monziona agreed for those reasons, and that it should be changed to "there will be."

8 – S. Miller stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. Nothing has changed; it is a residential building in a residential community, and to the Board's knowledge, will only be used on a seasonal basis. T. Morgan and P. Monziona agreed. L. LaCourse also agreed but feels that it is an expansion of use and he is not sure if that is completely meeting the intent of the Master Plan.

P. Monziona invited a motion for Case #P10-27.

**S. Miller made a motion to grant the Special Exception as requested. L. LaCourse amended the motion to include a contingency based on approval of the septic and water supply in accordance with New Hampshire laws and regulations. T. Morgan seconded the amended motion.**

P. Monziona requested further amendment to add that location and placement of the propane tank be done pursuant to the specifications or requirements of the Alton Fire Department, that the septic system must be approved by the New Hampshire DES, that the Shoreland Permit approvals by the DES also must be obtained, that the foundation and elevation needs to be certified as described by the Code Enforcement Officer to ensure proper height and location, that the porch as defined on the plan is to remain a porch as represented, and that the structure comply with the requirements of the Conference Center with regard to the number of year round structures, and that the basement area would not be used or converted to living space. He asked S. Miller, as it was his motion, if he agreed with the amendments. S. Miller again returned discussion to the propane tank and asked if it could be buried out front; it can not.

**S. Miller accepted the amendments to his original motion, as written above. L. LaCourse seconded the motion as amended, and the vote was unanimous in favor of granting the Special Exception with the conditions mentioned.**

S. Miller asked if the Fire Chief actually has to sign off on the placement of the tank; P. Monziona explained that the tank has to be located at a place in accordance with the Fire Department's requirements. Whatever the Fire Department requires will be enforced by Code Enforcement.

### VIII. NEW APPLICATION

<b>Case #Z10-29 William H. Wickwire</b>	<b>Map 69 Lot 9</b>	<b>Special Exception 7 Perkins Road</b>
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*Application submitted by Paul F. Zuzgo, LLS, on behalf of applicant William H. Wickwire to request a Special Exception from Article 300 Section 320 B 2 (c) to allow the raising of the existing house and replacing the block foundation with a concrete foundation and raising the sill elevation 3 feet and to raise the holding tank. This parcel is located in the Rural Zone.*

P. Monziona read the case into the record. Paul Zuzgo and William Wickwire came to the table to present the application.

P. Monziona confirmed through questioning that the "W's" indicated on the checklist indicate waiver requests; J. Dever confirmed this.

P. Monziona asked the members if anyone had issue with the requested waivers; none did.

**S. Miller made a motion to grant the waivers as requested. T. Morgan seconded the motion which passed with all votes in favor.**

P. Monziona addressed the applicant on the issue of the completeness of the application; he asked if the proposal would change the footprint of the structure. Mr. Zuzgo answered that it would not. P. Monziona asked if on the plan, where it says "existing house," that depicts how the structure is going to be located in relation to the setbacks and placement on the lot, even when they are all finished. Mr. Zuzgo answered that it does. P. Monziona asked if the only thing that is going to change is the elevation of the house; Mr. Zuzgo answered in the affirmative.

T. Morgan asked if there is a side elevation anywhere in the packet. Mr. Zuzgo answered that there is not. T. Morgan asked what the height of the building is currently; Mr. Zuzgo answered that when it is done, it will be 29 feet.

**L. LaCourse made a motion to accept the application as complete. T. Morgan seconded the motion which passed with four votes in favor and none opposed.**

Mr. Zuzgo explained that the house has been there since 1955. Over the years, water has run off the road and into the basement; the block foundation is failing. In the spring, the water collects in the septic holding tank, so the owner is in there pumping out 1,500 gallons of water in the spring. They are proposing to raise the house, put a poured foundation in, raise the grade and divert the water around the house to keep it away from the holding tank, and when it is all done, he is going to store his boat in the basement. There is no access to the basement from the house; access is only from the outside. Everything on the first floor is going to stay the same.

P. Monziona asked if when the applicant is talking about the tank, he is talking about where the effluent ultimately goes, and then from there to the leech bed. Mr. Zuzgo explained that there is no leech bed; it is a holding tank that gets pumped. Mr. Wickwire explained that it is a regular septic tank with a pump chamber that was attached to a leech tank but, because it was not working right, he has cut that off and used the septic tank just as a holding tank. L. LaCourse asked if it spills over where he detached it; Mr. Wickwire indicated that it does not.

P. Monziona asked if this is a four season house. Mr. Wickwire explained that it is just a cottage, but listening to the case before his, he thinks it is the same situation. He couldn't even get homeowner's insurance unless there was heat there. He is an electrician by trade, so he put electric heat in all the rooms. It's like almost any other place around there; he could have it as a four season, but only if he was willing to have the road plowed. The road is not plowed by the town. Pretty much everybody up there does not use their cottages in the winter.

P. Monziona asked if there is a holding tank on this property because of the size of configuration of the lot. Mr. Wickwire explained that he owns the lot across the street as well; when he replaced the old steel tank he installed a tank with a pump chamber built into it. He was not expecting his leech tank to fail as quickly as it did. To avoid any problems, being that close to the lake, he just cut it off and he has not pursued putting in a leech field. There is no room on the lot the cottage is on; if he wanted to put in a leech field, he would have to go across the street.

P. Monziona commented that this is another one of those like the last one; this application is under 320 B 2 (c) and there are a couple of things the ZBA has to look at with this regulation. One of them is that the application will not have an adverse affect on abutters which are located within 500 feet, and the other is that the structure will be accommodated by water supply and a sewage disposal system approved by the NHDES Water Supply and Pollution Control Division. He is wondering if the system that is there now has received such an approval. Mr. Zuzgo answered that the system has been there since prior to 1976 when approvals were first required. It is just an existing system. P. Monziona acknowledged that but went on to say that when an application for Special Exception comes in, the Board has to apply the standards in Subsection C. If the applicant were not going to do a thing with it right now and just leave everything as it is, whatever the system is out there, whether it is a leech field or a pump out system, he would probably be golden. Now, when the applicant has come in to expand the nonconforming building under this section, then the Board has to look at the affect on abutters and that it will be accommodated by water and sewage disposal approved by NHDES.

Mr. Wickwire explained that he does not know how to answer that question; most of the cottages around him now have tanks that are just used as holding tanks. They have all been cut off from the existing leech fields that used to be there. P. Monziona asked the applicant if he thought that if he had to apply for an approval for the system as it exists that it would be a problem; Mr. Zuzgo answered that he does not know.

J. Dever asked the applicant if they have applied for a Shoreland Permit. Mr. Zuzgo answered that they have applied for a Shoreland Permit, and they have received it for the work they are going to be doing. P. Monziona asked if that application required a description of the septic system. Mr. Zuzgo answered that it did not.

S. Miller asked what direction the runoff would go after the completion of this project. Mr. Zuzgo answered that it will go toward the lake; it will go around a slight swale and then sheet flow 150' from the back of the house across the lot. S. Miller asked if there would be any regarding to make sure that is the direction of the flow. Mr. Zuzgo answered that there would be grading in the front. S. Miller asked if there would be zero change of it going toward an abutter; Mr. Zuzgo confirmed that was correct. S. Miller asked for confirmation that there would be no access from the house to the basement. Mr. Wickwire answered that there is no access to it from inside the house. Mr. Zuzgo added that it will be a walk-in from the back. S. Miller asked if there would be a poured cement floor; Mr. Zuzgo answered that there would.

T. Morgan asked for J. Dever's opinion. J. Dever answered that on the surface it is a very simple project. His original understanding was that they were going to try to raise the holding tank; he has not seen the final approved Shoreland Permit. He is assuming that DES said no to that concept, or they just didn't propose that. Mr. Wickwire explained that it was sort of an afterthought to pick it up and try to get it out of the water. Mr. Zuzgo explained that they are just going to raise it the same as it is now, along with the house. J. Dever asked if that is what the Shoreland Permit is allowing; usually when Shoreland looks at it, they are also dealing with sub-surface in regards to moving of a holding tank or something like that. That is not usually part of the Shoreland

Permit; if the applicant did not tell them they are raising the tank that is a concern for them. Mr. Zuzgo explained that at the time he applied for the permit, he did not know the tank was going to be raised. J. Dever advised the applicant that they are going to have to make sure Shoreland understands that, and that they will need to get an amendment to the Shoreland Permit that moving the tank is authorized; that is something they definitely will want to know. Other than that, the applicant is attempting to improve the existing condition; to protect the holding tank and to protect the house, so that is just an improvement. J. Dever definitely wants the applicant to present to DES that they intend to raise the holding tank; that it is not part of the present approval. That is an important issue, and one that the Building Department has been dealing with recently.

S. Miller asked how deep the holding tank is that they can raise it. J. Dever explained that they are raising the grade; the tank will go up the same amount. The grade will be raised when they raise the cottage; the tank will be raised with the height of the grade. The tank will still be at the same depth below the surface; the surface will be raised and the tank will come up with it. P. Monziona added that the structure is being raised too; there is a certain pitch on the pipe and that has to run into the holding tank at a certain pitch. The rise of the holding tank will depend on the rise of the house; the pitch will remain the same for proper disposal of the sewage.

P. Monziona asked if there was any input from other department heads; J. Dever said there was not. Their sheets came back and there were no concerns voiced by anyone. P. Monziona asked if there were any other concerns; there are not.

P. Monziona opened the floor to public input, both in favor of and in opposition to the granting of this application. Hearing none, public input was closed.

Before beginning the worksheet for Special Exception, P. Monziona voiced his concern with the portion of Subsection C where it says that the Board shall not grant the Special Exception unless certain things happen, including that the structure will be accommodated by a water supply and sewage disposal system approved by NHDES. There is not one now, but he thinks that if they can apply or bring it to DES's attention by seeking that approval, and as they noted in the last application, it will be, not has been. P. Monziona does not think it precludes that they do not have an approval as they sit here now. T. Morgan added that if they approve this request for a Special Exception one of the requirements would be that the applicant will make application to the DES to do what is proposed with the holding tank.

#### SPECIAL EXCEPTION WORKSHEET

1 – P. Monziona 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.

2 – L. LaCourse stated that the specific site **is** an appropriate location for the use. S. Miller added that there has been no change in the use, just improvement of the property, so he agreed. T. Morgan and P. Monziona agreed for the same reasons.

3 – S. Miller stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. What the applicant is doing is improving the value of his house and protecting the abutters, so property values will not go down. If anything, they may go up. T. Morgan agreed. P. Monziona also agreed and added that what is being proposed is a substantial improvement to this building and therefore would not have adverse affect on values. L. LaCourse agreed.

4 – T. Morgan stated that there **is no** valid objection from abutters based on demonstrable fact. There were no objections voiced, and no abutters were here. P. Monziona agreed and added that putting oneself in the place of an abutter, he does not think there would be any facts that could be objected to because this proposal is going to improve the building. L. LaCourse agreed. S. Miller also agreed and added that the water is being diverted down toward the lake.

5 – P. Monziona 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. None of what is being proposed has anything to do with vehicular or pedestrian traffic, nor will it in any way affect off-street parking. All members agreed.

6 – L. LaCourse stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. He added that there are not going to be any changes in the facilities or utilities outside of the raising of the tank as discussed. S. Miller stated that it is still going to be a seasonal cottage, so he agrees. T. Morgan agreed. P. Monziona also agreed on the proviso that the system receive appropriate approval.

7 – S. Miller stated that there **is** adequate area for safe and sanitary sewage disposal and water supply; if in fact the applicant gets approval from DES, which should be an amendment if in fact the exception is granted. T. Morgan agreed but made the change that the language should be that there will be adequate area for safe and sanitary sewage disposal, rather than that there is. P. Monziona agreed as changed; he also agreed with the need for an approval. L. LaCourse agreed also

8 – T. Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. This is a cottage that is being improved, which is very much in the spirit of the ordinance. P. Monziona agreed, as did L. LaCourse and S. Miller.

**L. LaCourse made a motion to grant the Special Exception for Case #Z10-29 with the contingency that they receive an amended approval from the DES on the septic system or the holding tank. S. Miller seconded the motion.**

P. Monziona wished to clarify the condition being imposed; it should be that it would be granted on the condition that they receive approval from the DES in regard to the septic system. L. LaCourse was of the understanding that they already had their Shoreland Permit which needs to be amended. J. Dever explained that the Shoreland Permit will have to be amended, and if Shoreland requires it to be turned over to subsurface, the applicant will have to deal with that. P. Monziona added that he is not sure what is appropriate within the Shoreland application; he is not sure septic falls into that.

**P. Monziona suggested that the condition to impose for the granting of this is that the applicant obtains whatever appropriate approvals are needed from DES with regard to the septic system. L. LaCourse agreed with the amendment to his motion. S. Miller seconded the amended motion which passed with four votes in favor and none opposed.**

## **VIII. OTHER BUSINESS**

**1 – Previous Business** – The new town planner is Ken McWilliams. He will be part time through December and will be full time beginning in January. He is presently the planner in Newbury, VT and has consulted in New Hampshire. Randy Sanborn will be the administrative support for the Planning Department; there will be no assistant planner. John Dever will still be doing the ZBA meetings, as he is the Code Officer.

S. Miller asked if the decision to grant the motion for rehearing was a Board decision or under legal advice. P. Monziona stated that it was a Board decision. Legal counsel had been involved in the timing of the decision to rehear, but beyond that, there was no specific input on that motion. However, the Board did receive general legal advice concerning the legislative definition of hardship versus the Supreme Court definition of hardship. T. Morgan suggested asking Attorney Sessler for assistance in finding case law after the legislative codification.

The members discussed the different definitions of hardship and the various codifications that have occurred and how those different definitions have changed the way hardship is decided.

S. Miller would like to know how Attorney Sessler views the case law applicable to this case. T. Morgan explained that the case law cited in the request for rehearing predates the codification, and it is all of the Simplex version of the Supreme Court's statement of what the law means.

P. Monziona spoke about how the members of this Board come in to do a job, and then are accused of favoritism; he felt strongly enough about that to speak out during the motion for rehearing. Members agreed that the accusation of favoritism was out of line.

## 2 – Minutes

P. Monziona informed the Board that he has learned that as long as there are members present at the current meeting who are able to review the minutes, there does not need to be a quorum of members who were at the meeting whose minutes are being reviewed.

### August 5, 2010 Regular Meeting –

**T. Morgan made a motion to approve the minutes of August 5, 2010, as drafted. L. LaCourse seconded the motion which passed with three votes in favor, no opposed, and one abstention (P. Monziona).**

### October 7, 2010 Regular Meeting –

On Page 1 of 20, Tim Morgan is listed as Vice Chair; this is incorrect. Tim Morgan should be listed as Member.

On Page 2 of 20, first large paragraph, in the fourth line up from the bottom, the notes read “he know of...” where they should read “he knows of...”

On Page 3 of 20, first paragraph, 6<sup>th</sup> line down from the top, the notes read “...would seem to argue in favor that...” where they should read “would seem to argue in favor **of** that...”

On Page 3 of 20, first paragraph, 2<sup>nd</sup> line up from the bottom, the notes read “...stated that he know...” where they should read “stated that he knows **that's his position**”...

On Page 7 of 20, first full, large paragraph, 6<sup>th</sup> line down from the top, the notes read “...but this Board limited...” where they should read “...but this Board **is** limited...”

On Page 8 of 20, the single sentence beginning with P. Monziona officially recused himself..., makes reference to T. Morgan as the Vice Chair. That referenced title is incorrect and should be removed.

On Page 9 of 20, there was confusion about the intent of the 5<sup>th</sup> paragraph, the 5<sup>th</sup> and 6<sup>th</sup> lines from the top. There was discussion of possible intent with T. Morgan stating that he is not certain this is going to be important now, as the applicant has gone to the Selectmen. P. Monziona made note of some ambiguity there, with the ability to go back to the tapes in the future if it becomes necessary. The vote to approve these minutes includes the notation of this ambiguity.

On Page 10 of 20, the paragraph beginning “Attorney Tilsley stated...” 5<sup>th</sup> line down from the top, reads “...Ordinance makes not provision...” where it should read “...Ordinance makes **no** provision...”

On Page 18 of 20, item 2 under the heading SPECIAL EXCEPTION WORKSHEET, 3<sup>rd</sup> line down from the top, reads “He thinks it is going to work out very well for the.” where it should read “He thinks it is going to work out very well for them.”

On page 19 of 20, the 5<sup>th</sup> paragraph, 2<sup>nd</sup> line up from the bottom reads “...he had not desire...” where it should read “...he has **no** desire...”

**L. LaCourse made a motion to approve the minutes of the October 7, 2010, Regular Meeting, as amended. T. Morgan seconded the motion which passed with four votes in favor and none opposed.**

**October 7, 2010 Workshop –**

**T. Morgan made a motion to approve the minutes of the October 7, 2010, Workshop, as presented. L. LaCourse seconded the motion which passed with three votes in favor, no opposed, and one abstention (S. Miller).**

**November 4, 2010 Regular Meeting – (These minutes were titled incorrectly as November 11, 2010)**

**T. Morgan made a motion to continue the approval of the November 4, 2010 meeting minutes to the meeting on December 15, 2010. L. LaCourse seconded the motion which passed with four votes in favor, no opposed.**

P. Monziona will not be in attendance at the December 15, 2010; T. Morgan stated that there will still be a quorum of those who were present at the November 4, 2010 meeting.

J. Dever requested that the recorder check to see if the minutes of the April 1, 2010, meeting had been approved. Recorder’s note - Those minutes were approved at the workshop held on August 12, 2010.

### **3 – New Business**

L. LaCourse noted that the last thing asked as the Board goes through the Variance Worksheet is the hardship question. It bothers him that the applicant goes through the entire application hearing yes to all the other criteria, then getting to the hardship section and hearing no. He suggested moving hardship to the beginning of the worksheet. S. Miller wondered if that would say that the Board is giving more weight to hardship over the other criterion; by taking overt action to move it to the beginning of the worksheet, it gives that criterion extraordinary weight. P. Monziona thought that L. LaCourse’s point is that if you don’t pass hardship, you don’t get your variance, which is true of all the criteria. S. Miller voiced that with a decision in the minutes to move that particular criterion to the beginning, an attorney might look at it and suggest that hardship was getting significantly more weight than the other criteria. J. Dever wondered if they would still go through the rest of the criteria, whether hardship was before or after. L. LaCourse felt that they might not; this discussion continued.

P. Monziona explained that there must be an appropriate number of votes on every criterion for the variance to be granted; three votes in favor is required on every criteria on the worksheet. If the hardship criterion is not met, that would be the end of the application right there. Even if the Board were to continue through the rest of the criteria, there is no way they could grant the variance because each of the criteria have to receive a majority vote. P. Monziona is in favor of leaving hardship at the end of the worksheet; though it does not carry any more weight, it is the most involved criteria in the analysis. Sometimes going through the other criteria helps sort out what the hardship is looking like. L. LaCourse stated that his understanding of hardship now is that if the property is reasonably being used you can’t ask for hardship; even though an additional reasonable use may be being requested, if there is already reasonable use, there is no hardship. P. Monziona added that unique characteristics of the property cause the decision for unnecessary hardship. If there are no unique characteristics of the property that would cause the literal enforcement of the ordinance to result in unnecessary hardship, you

can't find it. T. Morgan added that it does not mean that you can have any use; it means you have a reasonable use you would like to apply, which you cannot because of the uniqueness of the property. L. LaCourse stated that if you have a house on your property, you have a reasonable use. T. Morgan explained that there may be a use that is reasonable on your neighbor's property, but you can't do it on your property because of the uniqueness of it. Just having a house doesn't mean you are getting reasonable use of your property; it may be that you make application for something that would normally be a reasonable use for people, but because of your property, you can't do it.

P. Monziona used an example of an owner who wants to add a deck onto his house; the house is already a reasonable use. On the side of your house where there would be no setback issues, there is a steep embankment that will not allow for the addition of the deck. On the other side of the house, there is space for the deck, but it is a foot or two into the side setback. Because of the unique characteristics of your property, the only place you can put the deck places it in the setback. Due to the unique characteristics of the property, the literal enforcement of the ordinance, which prohibits you from building a foot or two into the setback, would result in an unnecessary hardship, i.e., your reasonable use of constructing a deck. This example is clear – they are entitled to the hardship. Using different versions and settings, this is taken on a case by case basis.

P. Monziona conveyed that any time the Board would like to have this type of discussion with Town Counsel, and that could be a private meeting with counsel and no minutes, that is available.

J. Dever asked the Board if they wish to meet with Attorney Sessler prior to the January 6, 2011, meeting. Members answered that they do. J. Dever will contact Attorney Sessler to see if he is available prior to the meeting on December 15, 2010. J. Dever will also see if the new planner, Ken MacWilliams, will be available for this meeting.

#### **4 – Correspondence**

There was none.

### **IX. ADJOURNMENT**

**T. Morgan made a motion to adjourn. L. LaCourse seconded the motion which passed without opposition.**

The meeting adjourned at 9:22 p.m.

There is a Special Meeting scheduled for December 15, 2010, at 7:00 p.m. The next regular meeting will be held on Thursday, January 6, 2010 at 7:00 p.m.

Respectfully submitted,

Approved

Mary L. Tetreau  
Recorder, Public Session

Lou Lacourse  
Secretary, ZBA

Date