TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING MINUTES - APPROVED
May 3, 2018, 6:00 P.M., Alton Town Hall

CALL TO ORDER

Paul LaRochelle called the meeting to order at 6:02 P.M.

Board Members Present:

Paul LaRochelle, Vice-Chairman
Lou LaCourse, Clerk
Andrew Levasseur, Member
Paul Monzione, Member
Tim Morgan, Member
Steve Miller, Alternate
Frank Rich, Alternate

Others Present:

John Dever, III, Code Official

APPOINTMENT OF ALTERNATES

Paul Monzione moved that the Board appoint Steve Miller as a full-voting member to serve at tonight's hearing for Case #Z18-01, Colchester Properties, LLC.
Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).

STATEMENT OF THE APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Zoning 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 have been or will be met.

APPROVAL OF AGENDA

Paul Monzione noted that John Dever, III, suggested amending the agenda in order to hear Case #Z18-10 prior to hearing Case #Z18-09.

Paul Monzione moved to accept the agenda as amended.
Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).

DISCUSSION:

Paul LaRochelle explained that the Board wanted to recess for e to 10 minutes with their attorney, Shawn Tanguay, Esq., to discuss procedural matters in regards to Case #Z18-01, Colchester Properties, LLC.

CONTINUED FROM APRIL 5, 2018

Case #Z18-01 **Francis X. Bruton, III, Esq.,** **Bruton & Berube, PLLC, Agent** **for Colchester Properties, LLC**	**21 Silver Cascade Way** **Map 39 Lot 11**	**Administrative Appeal** **Lakeshore Residential (LR)**

The vice-chairman read the public notice for the record.

Present were Francis X. Bruton, III, Esq., agent for the applicant; Henry H. Boyd, Jr., LLS, surveyor; James J. Sessler, Esq., Counsel for the Board of Selectmen; Shawn Tanguay, Esq., Counsel for the ZBA, and Tom Sargent, Alton Town Assessor.

Paul LaRochelle gave both parties five (5) minutes each to briefly explain their side of the case, since it had been continued for several months. James J. Sessler, Esq., explained that this was an appeal from the Board of Selectmen on a request to unmerge five (5) lots on Lake Winnipesaukee. The Board of Selectmen decided not to unmerge the lots because the information they had showed that the prior owners voluntarily merged the lots due to their actions, their deeds, the maintenance of the property, and the use of a waterfront estate on the five (5) lots in question. The five (5) lots are part of a larger development, which was called Cascade Terrace. Cascade Terrace was made up of three (3) separate plans, North, South, and Center section. The lots that are in question are in the center section. Most of the lots in the entire development were defined on the three (3) plans by definitive solid lot lines with distances, measurements, steel stakes were set on the corners, and they were numbered. The lots in question were designated on the plan by dashed lines, which evidence from the Planner and Assessor indicated to the Selectmen that the lot lines were abandoned. The interior lot lines for the five (5) lots in question in the center section did not have, interior distances, dimensions, or courses listed, the interior corners were not set with steel stakes, and were specifically excluded from the plan, contrary to the other lots in the North, South, and the remainder of the lots in the Center section. If you looked at the plan, you would see indications of an "ss", which signified steel stakes. The distance along Route 28A, along lots 111, 110, and 10, were given as a total distance of 260', and did not indicate individual lot distances, contrary to all the rest of the lots in the development. The waterfront measurement was 350', which would be from the southwest corner of lot 12 to the intersection with Cascade Brook; therefore, the lots did not have individual dimensions. The Board of Selectmen looked at the deed from the developer, Cochecho, to the original owner, and it described the five (5) lots as one outside boundary perimeter. The lots were not individually defined, which would be the norm.

The Board of Selectmen also looked at how the property was developed. The original plan of the Center section clearly showed that the buildings, and how they were configured and utilized up to this day, were developed as one waterfront estate. It originally had a waterfront cottage on it back in 1972, which was destroyed sometime after that. The existing dwelling noted on the developer's original plan was called a boathouse that had living facilities in it, which serviced the cottage. The property also had a garage that serviced the boathouse and the cottage; furthermore, there was a retaining wall that was similar in construction to the structures. There were also upper sheds off the driveway off Route 28A, which sat on lot 111 and 110, and then the driveway led down to the lower garage. He thought it could be a shared

driveway, but shared driveways were usually located on a boundary line and would not circle around the way this driveway did. There was a walkway that lead from the driveway down the steep hill down to the garage and went down even further to the steps leading to the cottage. He noted that the only access to the boathouse, which was now indicated as a dwelling, was from a walkway that went along the water where the cottage was. There was no other stairway leading to the boathouse; therefore, the buildings were combined. He also noted that there were telephone poles installed down the middle of the lot, and they would not be installed like that if they were separate lots. He also talked about the wetlands permit that was acquired back in May of 1995. The applicant's permit was denied, and one of the reasons for denial was that the applicant had not complied with plan requirements per Rule WT404-04. The applicant submitted plans, which James J. Sessler, Esq., submitted to the Board in his packet, included their approval as of October 1995. The plans that were submitted showed the lots integrated as one large lot with frontage on the road, frontage on the lake, as indicated. If an applicant presents plans for a permit, once approved, the applicant must adhere to any representations that were on the plan.

Francis X. Bruton, III, Esq., wanted the Board to take a closer look at the properties, and passed around the tax map to each member. He outlined lot 11 and stated that the Town put six (6) lots together. He stated that he had gone before the Board of Selectmen and they agreed that out of the six (6) lots, one of them should be separated because the metes and bounds were indicated on the plan. He stated that by looking at the tax map, you could see that it referred to the property as lot 11. All of the lots numbered in lot 11 were carried from the 1961 plan, which was a plan of record prior to the subdivision regulations. The Board of Selectmen had before them statements from the Town Administrator indicating that the plan was on record prior to the subdivision regulations. He stated that common sense showed that the size of the lots were significantly large, approximately .40 or ½ an acre. He stated that the previous owners provided a plan to the registry with the current lot numbers. What happened after that, the owners conveyed lot 112, which the Board of Selectmen found should be separated from the other five (5) lots in question, and they then conveyed the balance of the lots in a perimeter description. The focus before the Board of Selectmen was the Assessor saying that he looked at the deed and the owners conveyed it as a tract. Francis X. Bruton, III, Esq., stated that his response to the Board of Selectmen was that it was okay and referred to the Roberts v. Windham case, which stated that was not going to cause the properties to be merged, the conveyance of the parcels with a perimeter description was not intent of a voluntary merger. He stated that it happened quite a bit, and the evidence provided from Attorney Stiles showed that this procedure was typical when you had a pending sale, which they did at the time, with respect to lot 112. The balance of the lots would be surveyed at a different point, but would be considered separate lots. He also opined that the lots were determinable lots and they were lots of record. He stated that he also provided evidence from Henry Boyd, LLS, who stated that this procedure was typical and he had seen it before. He stated that the intent of placing lot numbers on lots was that you would have separate lots. He stated that another thing that Roberts v. Windham dealt with was an issue that was raised before; this was a waterfront estate. He noted that within one of the lots, a garage was put two (2) inches away from the boundary of another lot, facing completely towards the other lot, this was not the case this the lots in question. The case also talked about accessory structures, and the accessory structure in that case was a bunkhouse, which the court determined that the bunkhouse had to be related to a primary structure because it only had room for beds and it did not fully function and stand on its own. In regards to the boathouse on the lots in question, it had two (2) bathrooms and bedrooms and a kitchen facility, which functioned on its own; therefore, it was not a bunkhouse in terms of the concept that was enumerated in that case. He pointed out that all of those previous court cases dealt with a subdivision that occurred and then someone taking that land, and when they considered voluntary merger changed the land doing something to it like building a structure over the line. The focus of this current case was that the structures currently existed on the property prior to the subdivision. He thought that it was clear that there was an attempt to subdivide and keep the structures separate. The structures were depicted on the plan

when they created the lots. He stated that was not what happened during a typical voluntary merger case where nothing is on the land and after the subdivision, they start building structures on the land, treating the lots as separate lots. He stated that there was a reference to the DES application. He stated that the applications were not dependent upon the land itself, which was a perimeter description to be used in front of the DES and had nothing to do with how the relief or permission that was sought could be affected. There was no requirement in the relief that was requested for anyone to look at any particular lot size. The Supreme Court found that if there were two (2) lots and someone was trying to obtain a building permit, and due to the setbacks, the applicant used the two lots, which would be a case of voluntary merger. He stated that was entirely different from what happened in this case. The application was not dependent upon the size of any lot, any setbacks, or anything of that nature. In his opinion, it had no effect, and in fact, it was closer to the rule that was recognized by the Supreme Court that said when an applicant used a perimeter description to describe their land, it was not regarded as a merger of those lots. In summation, the applicant's position was that the lots were created and recognized by the Town up to today from 1960. They were lots that were created with all of the structures that were shown on the plan and they clearly indicated that there was an intent to subdivide the structures having them on separate lots, and in fact, they were on separate lots. Francis X. Bruton, III, Esq., wanted Henry Boyd, LLS, to speak. According to Paul Monzione and Paul LaRochelle, both parties were only given a certain amount of time to speak, and even though James J. Sessler, Esq., over spoke his five (5) minutes, if the Board let Henry Boyd, LLS, speak, the applicant would way be over their time limit. James J. Sessler, Esq., pointed out that he agreed with what Francis X. Bruton, III, Esq., stated and that he did not need to hear further testimony from Henry Boyd, LLS. Francis X. Bruton, III, Esq., noted that there was an abutter, Alan Doherty, who had approached the applicant to say that he did not have a problem with using two (2) of the lots up top towards the street, but he wanted them to limit their development. He stated that the applicant was working with that abutter to look at the lots and most likely restrict three (3) of them so they were not even buildable. He stated that the applicant came out of the Board of Selectmen's meeting with two (2) lots and were working with the abutter. He felt that the evidence suggested that they had met their burden of proof. He pointed out that the burden of proof was on the Town to show voluntary merger, and it was not on the applicant. He thought that the case law and the evidence clearly supported the applicant.

Paul LaRochelle opened public input.

Steve Miller asked if public input was required for this type of case. Paul Monzione stated that on an Appeal of an Administrative Decision, the request for public input was within the purview of the Board; however, this case was a de novo determination by the Board; therefore, it would be within the Board's discretion whether to entertain additional evidence that the Board of Selectmen may not have had at the time they made their decision. Francis X. Bruton, III, Esq., stated that it was the Board's discretion if they wanted to take additional information and it was the Board's discretion to decide any way they wish to process deliberation.

Paul LaRochelle again asked for public input. No public input in favor or opposition of the applicant's case. Paul LaRochelle closed public input. He then opened up the floor for the Board's discussion.

James J. Sessler, Esq., stated that he had another hearing that he had to attend and needed to dismiss himself from the proceedings. He apologized to the Board and did not want to show any disrespect to the Board.

Paul LaRochelle asked John Dever, III, if he had a worksheet for the Board to use while they deliberated. Tim Morgan stated no, that at this time, it was up to the Board members to take a vote. He thought that each voting member should express a reason why the Board had reached the conclusion that they did

would be necessary. Steve Miller suggested that there be a motion for or against the appeal, and then the Board would have their discussion and a vote. Paul Monzione stated that because the Board was a sort of quasi-judicial Board, he thought that if the Board wanted to deliberate openly first, and then after deliberation, as they did on other applications, take their vote, then the motion would take place and any further discussion would take place at that time.

Lou LaCourse wanted to ask Tom Sargent a few questions before deliberations began. Paul LaRochelle stated that public input was closed.

Tim Morgan stated that as the appellant pointed out, there had not been an overt act performed or a magic point in time that could be pointed to. First, the Board would have to assume that registered subdivided lots existed, the lots that indicated dashed lines, if it was recorded at the Registry of Deeds, the Board would have to assume that it was created. The question then was whether they were merged. He did not think that there was one single thing the Board could point to that stated that this act of building on the line, or within the setback, or some other magic point in time existed. He did think that there were factors provided that showed the property intended to be one lot. The applicant acquired the property under a deed, which described the entire lot; he treated it as one, and represented to a government agency that it was one lot by making an application to DES. He made a representation to the Town that it was one lot because he was being taxed excessively. He thought that over time, the previous owner treated the property as one lot; therefore, it created a merger.

Paul Monzione stated that the number of points that the appellant made, including the surveyor who spoke at the original meeting, made the point that these were several lots to begin with regardless of the dotted boundary lines. If there were not several lots at some point in time, then the hearing would not be taking place. He noted that making the argument successfully that there were several lots at some point was important, but it only set the groundwork for why the Board was talking about merger in the first place. He did not see it as a helpful fact being established other than the fact that it gave the Board the reason why there was an issue of merger. He noted that the appellant shared that case law stated that not one thing in and of itself constituted an act of merger. He agreed, but when you put them all together, the deed describing the area as one lot had no pins, stakes, or boundaries indicated on the 1961 recorded plan. In 1995, a document submitted to DES represented the property as one lot, and in 2005, an appeal for lower taxes was submitted indicating it was one lot, and the tax map indicated one lot. The common driveway showed a cohesiveness of use because it serviced all of the lots, and the accessibility of the dwelling, the various paths that led to the boathouse, the garage, and the sheds all indicated a cohesiveness of use. He also mentioned that the 911 emergency address was one address. There was common control of the lake frontage that implied cohesive use; if they were separate lots common control would go away. In his opinion, he thought that there was a cohesiveness of use with this property, regardless of the structures preexisting the subdivision plan, which might by why they indicated the lots with dotted lines instead of solid lines. He did not think that the preexisting structures established in any way argues against the voluntary merger at some point in time in the chain of title by the owner.

Paul LaRochelle stated that he did not want to repeat what Tim Morgan and Paul Monzione just stated, but wanted to note that he felt the same way that there was an intent with showing divisions with dotted lines at one point to subdivide, but the deed described metes and bounds and measurements referred to it as being one lot. He believed that this was one lot.

Frank Rich asked how Tim Morgan, Paul Monzione, and Paul LaRochelle based their arguments on the Board of Selectmen because there was six (6) lots, and the Board of Selectmen had approved one of the lots. He wanted to know how they got to their argument that the other lines did not exist; therefore, the

other line should not exist either. Paul Monzione stated that he noted that the Board of Selectmen allowed lot 112 to be separated probably should not have been allowed. He thought that the Board of Selectmen separating lot 112 was probably not correct. Tim Morgan stated that James J. Sessler, Esq., stated in his presentation that since that time, the Board of Selectmen had realized that they might have erred because they had found additional information since their vote and probably should not have allowed the separation. Frank Rich asked if the Board of Selectmen made a precedent. Paul Monzione stated that the only thing before the Board by the applicant was the issue of whether the remaining lots had been voluntarily merged, and it did not include lot 112. He stated that the Board could take all of the information under consideration, but the Board was not determining whether or not the Board of Selectmen correctly determined that lot 112 was to be unmerged or not. Frank Rich asked about the lot numbers indicated on the plan and inquired about lot 11. Francis X. Bruton, III, Esq., stated that he could not ask questions because public input was closed.

Lou LaCourse agreed with a lot of the information that was presented. The things that stuck out the most were that the deed described the land using the exterior dimensions, the cottage near the lake could have been a guesthouse, it shared a common driveway, the lot was taxed as a single lot instead of individually, and all the other lots had solid lines while the lots in question had dotted lines. This indicated to him that someone was thinking about a future subdivision, but never recorded it. He agreed with his colleagues.

Steve Miller was under the impression that the Board had to determine whether this property had several lots or if it was a single lot. One element that the preponderance of evidence presented by the Town showed was that there was in fact a voluntary merger, and the second element was that the physical characteristics, to a reasonable person, was in fact one lot versus many. His position was that the Board of Selectmen were correct in deciding that this was in fact one lot and was a waterfront estate. He stated that he had many reasons that convinced him this was a voluntary merger when you looked at the deeds and actions. He believed that the dashed lines meant that the lot lines were being abandoned. The lot lacked interior markings and to him, it constituted one lot. He stated that he had the opportunity to perform a site walk with some of the other Board members, and what he saw was one large waterfront lot and not a number of individual lots, and there were a number of factors that led him to believe that. The dwelling listed may have been construed as a boathouse, and he had no doubt, that anyone else that lived in New Hampshire would think that was anything else but a boathouse. The upper sheds had a driveway that circled instead of being in direct service for individual lots. The wetlands plan showed that the lots were integrated into one lot. A number of years went by before the one lot was challenged as an actual subdivision. He also saw gated pillars that looked to him like a wall, he also saw walls crossing boundaries from one of the supposed lots to another lot, which made it look like one individual lot. There were concrete pathways that crossed boundaries and if they were individual lots, you would not want a concrete pathway going from one person's house to another person's lot and so on, if they were going to be sold individually; they would not be set up like that. For a considerable amount of time, the lot had been taxed as an individual lot and it only had one 911 address. He believed that the physical characteristics stated to a reasonable person that this was one big waterfront estate even though it was in the middle of other individual lots to the left and to the right, but that was not unique to Lake Winnipesaukee. He believed that the Town should prevail.

Steve Miller moved to uphold the Board of Selectmen's decision that this lot was not subdivided and was in fact, one lot.

Paul Monzione revised the motion to include that the lot was voluntarily merged.

DISCUSSION:

Francis X. Bruton, III, Esq., made a point of order and wanted the Board to include the five (5) lots in the motion. Paul LaRochelle stated not at this time. Francis X. Bruton, III, Esq., thought it was an appropriate point of order to understand what the motion referred to.

Paul Monzione clarified the motion based on comments from Counsel for the applicant. He made the motion based on the lots presented in the application. The record would have confirmed that, but for the sake of clarity, he amended the motion to say that the Board upheld the Board of Selectmen's determination with regard to the five (5) subject lots and that the Board found that the five (5) subject lots have indeed been voluntarily merged. Lou LaCourse seconded.

Paul Monzione pointed out that on the advice of Counsel for the Board he amended the motion to include that there was a determination that the five (5) lots were voluntarily merged, that the Board of Selectmen's decision was correct, and that the Town met its burden of proving that the lots indeed were voluntarily merged.
Tim Morgan seconded. Motion PASSED with a unanimous vote. (Tim Morgan-yes; Paul Monzione-yes; Paul LaRochelle-yes; Lou LaCourse-yes; Steve Miller-yes).

DISCUSSION:

Paul LaRochelle stated that as a Board, in regards to Case # Z18-01, they agreed with the Board of Selectmen's decision on the merger.

Francis X. Bruton, III, Esq., stated that pursuant to RSA 676:3, he would like the Board to provide a written reason for the denial. Paul LaRochelle agreed.

Paul LaRochelle asked for ZBA Counsel, Shawn Tanguay, Esq., to be the one to write up the Notice of Decision. Shawn Tanguay, Esq., stated that a draft would be provided to the Board to comment on.

DISCUSSION:

Paul LaRochelle informed the public that after 10:00 pm, the Board did not hear any new cases, but if they were in the middle of a case at 10:00 pm, they would finish that case. If anyone wanted to continue their case tonight, it would not be held against them.

NEW APPLICATIONS

Case # Z18-08 **Joanne Coppinger/Beckwith Builders, Inc., Agent for Armand Circharo, Jr. & Monique J. Ricker, Owners**	**13 Nelsons Pine Point** **Map 50 Lot 5-1**	**Special Exception** **Lakeshore Residential (LR)**

The vice-chairman read the public notice for the record.

A Special Exception was requested to **Article 300, Section 320 B.5.,** of the Zoning Ordinance to permit the replacement of a non-conforming structure that was voluntarily removed where there was no increase

in the number of bedrooms and no increase in any non-conforming aspect of the structure. The replacement structure did not create any new, non-conforming aspect to the structure, and non-conforming aspects of the structure were being reduced.

Paul Monzione stated that he had a personal and professional relationship with Beckwith Builders, Inc., but did not have any knowledge of or any familiarity of the applicants. He asked if anybody had any objections to him sitting on this case, if so, he would recuse himself; there were no objections.

Present were Joanne Coppinger and Jason Beckwith, agents, and Armand & Monique Circharo, owners.

Tim Morgan moved to accept the application for Case #Z18-08 as complete. Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).

Joanne Coppinger stated that the application was for a Special Exception for an existing non-conforming structure that was going to be voluntarily removed and replaced with another structure. She stated that there was no increase in the number of bedrooms and there was no increase in the non-conforming aspect of the structure, which was noted on the plan. She shared the replacement structure had expanded, but was within the building envelope. She stated that she had shown a proposed well location on the plan, and this evening, she handed the septic system design to John Dever, III, for his review, which would subsequently be submitted to the State for their approval. She stated that she also submitted a shoreland application packet to the State, which she had received feedback on, in regards to landscaping and the areas to be replanted.

Paul Monzione noted that the proposed structure would substantially exceed the present structure in terms of square footage and in footprint on the lot; Joanne Coppinger stated, yes. Paul Monzione asked what the difference in square footage was compared to the current and proposed structure. Joanne Coppinger stated that she did not have that information in front of her. Paul Monzione asked if she knew what the square footage of each structure was individually. The existing structure footprint area including decks and porches was 2,410 s.f., and the proposed structure including decks and porches was 7,050 s.f. He noted with the substantial increase in square footage of the footprint and the living space, which would be an increase of about 5,000 s.f. on the lot, she had proposed to move the structure back away from the lake; therefore, it would be less non-conforming to the waterfront setback. He asked if it was still going to be in the waterfront setback. Joanne Coppinger stated the proposed structure encroached further into the waterfront setback than the existing structure. Total encroachment was going to be 929 s.f., down from 1,227 s.f. The remainder of the structure would be built according to the other setback requirements. The new structure would be within the building envelope. Joanne Coppinger stated that even though she was still waiting for her shoreland permit from the State, they had no comments about the encroachment.

Tim Morgan stated that an elevation was provided for the proposed structure, but he could not find the elevation of the existing structure, which made him concerned that it could block the view of any abutters. Joanne Coppinger did not know off hand; however, the house would be located on the other side of a knoll, and currently the abutters did not have a view of the lake. Paul Monzione asked Joanne Coppinger if the height of the proposed structure complied with the height restrictions listed in the Zoning Ordinance. She stated yes, that the house was 34’ 9” in height. Paul Monzione asked if the chimneys were figured into the total height of the structure. Joanne Coppinger stated that their engineer was under the impression that they were allowed. Paul Monzione stated that they were allowed by Special Exception.

Frank Rich stated that the North elevation showed the structure at 34’ 9” in height, and the chimneys

appeared to be higher in elevation. He wanted to know if that was in fact what was being proposed, and if they were going to come back for a Special Exception for the chimneys. Joanne Coppinger stated that she would talk to her architect and the owners to see how they wanted to handle this situation.

Paul LaRochelle opened public input. No public input. Paul LaRochelle closed public input.

Paul LaRochelle moved the Board onto the worksheet.

Tim Morgan stated that a plat **has been** submitted in accordance with the appropriate criteria in Article 500, Section 520B.
All Board Members agreed.

Lou LaCourse stated that the specific site **is** an appropriate location for the use. He stated that the lakeshore area had many homes of this nature and was the perfect place to have a home of this size. Tim Morgan thought that the site was appropriate for the location and the use was not changing.
All Board Members agreed.

Andrew Levasseur stated that factual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. He thought that the applicants were building a great looking house and thought that the abutter's property values would be just fine.
All Board Members agreed.

Paul Monzione stated there **is no** valid objection from abutters based on demonstrable fact. He stated that no abutters came to the meeting or provided any evidence through written form that would show any validity to any objection.
All Board Members agreed.

Paul LaRochelle 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. Tim Morgan stated that there would be no changes to any traffic patterns. Paul Monzione agreed and thought that nothing about this proposed structure would affect any pedestrian, vehicular traffic, or parking.
All Board Members agreed.

Lou LaCourse stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of the proposed use or structure as stipulated. Paul LaRochelle stated that a new proposal for the septic system was submitted and a new proposed well was indicated on the plan.
All Board Members agreed.

Andrew Levasseur stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that according to the plan, everything appeared to be in order. Tim Morgan stated that there were no changes in the number of bedrooms.
All Board Members agreed.

Tim Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance, and the intent of the Master Plan. He stated that this section of the Zoning Ordinance was intended for such a situation to allow the razing of a non-conforming structure and to rebuild a structure that was less non-conforming.
All Board Members agreed.

Paul Monzione MOVED to GRANT the Special Exception for Case #Z18-08 with specific conditions that the applicant obtain all necessary State permits and approvals including anything pending from DES, and that the issue of the overall height including the height of the chimneys or other ancillary items be in full compliance with the Zoning Ordinance, or that the applicant otherwise obtain the necessary relief.
Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).

Case # Z18-10 **James M. Callahan, Esq. and Michael Black, Agents for Continuum Health Services, Inc., Applicant**	**142 & 144 Hopewell Road** **Map 21 Lots 5-3, 5-4, and 5-5**	**Administrative Appeal** **Lakeshore Residential (LR)**

This request was an Appeal of an Administrative Decision from 1. Town Planner determining that a Variance was necessary; and 2. Town Code Officer's determination that proposed use was not allowed under Alton Zoning Ordinance.

The vice-chairman read the public notice for the record.

Present were James M. Callahan, Esq., agent; Michael Black, representative of Continuum Health Services, Inc.; and Wayne Morrill, LLS, Jones & Beach Engineering.

James M. Callahan, Esq., stated that the property layout was grandeur in scope and there was 72,000 s.f. of living space spread out among several buildings. He stated that his client, Continuum Health Services, Inc., was an owner/operator of assisted living facilities and continuing care retirement facilities throughout the State of Maine and were spreading out in the State of New Hampshire. When the applicant came across this piece of property, they thought it would be a great area for such a facility, but after looking at zoning and construction, they found that such a facility would not fit in. He thought that repurposing the existing buildings would be a better option. He stated that he and the applicant came to meet with the Town Planner, Nic Strong, about five (5) weeks ago and were told that they needed a variance.

James M. Callahan, Esq., noted that in Section 329 of the Zoning Ordinance there was a provision that addressed condominium conversion. He stated that one of the reasons for denial from John Dever, III, Code Official, was that multi-families were not allowed in the Lakeshore Residential District. James M. Callahan, Esq., interpreted Section 329, which stated, "Condominium ownership or property when permitted by this ordinance shall conform to the following procedures and standards: A. Conversions: Condominium Conversions of existing structures and uses as regulated under RSA 356-B: 5, as amended, is permitted in any district and requires subdivision approval by the Planning Board." He thought the perception of a condominium conversion would take place in some old garden apartment that someone wanted to turn into condos, but when he read RSA 356-B: 3, IX, " "Conversion condominium" means a condominium containing structures which before the recording of the declaration were wholly or partially occupied by someone other than the declarant or those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers." He further noted that under the condominium RSA, "Declaration" meant when someone decided to create a condominium they would declare the property as a condominium under RSA 356-B and the documents would outline what type of condominium it was, whether it was phased or not phased, and there was usually corporate governance documents attached to it in the form of By-Laws and/or Rules and Regulations. Once the declaration was recorded, the condominium was created, and it changed the form of ownership. The declarant was the person who would file the declaration. When he read RSA 356-B: 3, he believed that

his client met that definition; they would be the declarant of the property and not the Bahre family. Somebody else previously occupied the properties. He thought that the use was allowed.

Paul Monzione noted that John Dever, III's, position was, what the applicant was trying to do with the property was a condominium conversion governed by the Town's Zoning Ordinances Section 329A. Paul Monzione then asked James M. Callahan, Esq., if his position was that John Dever, III, was wrong in saying that Section 329A. Conversions applied to what his client was seeking to do. James M. Callahan, Esq., stated that he was converting existing structures. Paul Monzione thought that his client might not have any standing to apply because he did not own the property, unless his client was appearing on the behalf of the owner. James M. Callahan, Esq., stated that the owners had signed the application and signed an authorization letter. Paul Monzione clarified that James M. Callahan, Esq., had submitted this application based on the interpretation of the zoning ordinance. Paul Monzione stated that he understood that the Town Planner, Nic Strong, had taken the position that she made no interpretation and made no ultimate decision. Paul Monzione pointed out that James M. Callahan, Esq., was arguing that John Dever, III's, interpretation of the ordinance was wrong and was told that he needed a variance to proceed with a conversion. James M. Callahan, Esq., stated no. Paul Monzione then thought that what they were appealing was that John Dever, III, determined that the applicant was not permitted to do a conversion without a variance. James M. Callahan, Esq., stated no. Tim Morgan thought that the Board needed to hear what the Town's position was in order to properly make a ruling on the case. James M. Callahan, Esq., stated that his appeal was outlined in Exhibit 2 in his application, which was an email from John Dever, III, and Michael Black.

John Dever, III, stated that the applicants had approached Nic Strong and had a discussion with her about what they were proposing. Nic Strong's position was that she made no decision that a variance was required and there was nothing in writing stating that; therefore, her position was that they were appealing a decision that she never made. The second half of the appeal had to do with John Dever, III's, decision. John Dever, III, stated that after the applicants approached Nic Strong, they approached James Sessler, Esq., Town Counsel, and then John Dever, III, received an email from one of the gentlemen involved in the process to discuss something. John Dever, III, stated that since he knew what was transpiring after talking to the Nic Strong and James Sessler, Esq., he wrote his decision by addressing what he knew of. John Dever, III's, proposal had two parts: 1. To merge the three lots together; and 2. To take the two existing family homes and convert them into three multi-family structures, leave the barn apartment as it was, and to take a tea room and turn it into a residence. This would have left two single-family homes and two multi-family homes on one lot, which was not allowed under the ordinance, nor was it allowed in the Lakeshore Residential District. He stated that he did not specify that the applicant needed to apply for a variance; he stated that it was not allowed. Paul Monzione pointed out that the only misunderstanding that he had was when he stated that the applicant was appealing John Dever, III's, determination was that the applicant was told to obtain a variance, which they were not told, and in fact the applicant was appealing John Dever, III's, determination that it was not allowed. Paul Monzione stated that there was no argument that the zoning ordinance, in the Lakeshore Residential District, prohibited multi-family dwelling units on one lot. He stated it was clear that one could not have multiple dwelling units on a single lot in the Lakeshore Residential District. James M. Callahan, Esq., stated Section 329 of the Zoning Ordinance allowed for condominium conversions in any district. Paul Monzione stated that he was appealing the Town's interpretation of Section 329A and the premise to that was when permitted by this ordinance. He thought that was the crux of the dispute. James M. Callahan, Esq., stated that this interpretation was that if you read more of the ordinance, it stated that it was permitted in any district; therefore, he thought it was contradictory because there were two different provisions in the same ordinance. Paul Monzione pointed out that the issue before the Board was whether John Dever, III, in reconciling the two provisions, did so in a reasonable manner.

John Dever, III, stated that in his letter to the Board, he addressed a number of items that were brought up in the appeal. He stated that in his interpretation, the first line of Section 329 stated, "when permitted by this ordinance shall conform to the following procedures and standards." He thought that what he was looking at was multi-family structures, which were not allowed in the district. He stated that if they were pre-existing, non-conforming multi-family structures, like an apartment building that was grandfathered, there would be no question because it would be a simple change of ownership, but in this case, conversion condominium referred to dwelling units that existed and were occupied. One of the conditions in the law was that residence in a structure that was going to be converted had to have first right of refusal on purchasing the condominium from their apartments. In his opinion, the property did not have individual dwelling units that were occupied by other people. There were two single-family homes and a structure that was not even occupied. He stated that he was not going to address the barn because it was on a lot of its own. What he was looking at was the conversion of single-family homes into multi-family structures. This proposal was to divide the structures into three separate dwelling units, but they did not exist now; therefore, the applicant was trying to convert something that did not exist.

Paul LaRochelle used the pavilion in the Bay as an example to explain that the building used to be a skating rink, then a restaurant, and then it was turned into seven condominium units. John Dever, III, stated that the structure was located in a zone that multi-family units were allowed and it went through the Zoning and Planning process and were given approvals to have condominium units. John Dever, III, stated that property was in the Residential Commercial zone, where condominiums were allowed. James M. Callahan, Esq., stated that there were misconceptions when it came to condominium conversions. When he read Section 356B, it had nothing in there that stated it had to be a 1:1 correlation. In addition, there was a statute that stated tenants were allowed to have first dibs if a dwelling unit was being turned into a condominium. He stated that he referenced a couple of court cases in his appeal application and they happened to be three cases of non-conforming uses, but he did not think that the law required it to be a non-conforming use. He stated that there was an ordinance that had some contradictory language within it, so when John Dever, III, stated when permitted by this ordinance, he understood why he relied upon that, but if you continued on throughout the ordinance, it was permitted in any district, and if you coupled that with the statutory definition of what a conversion condominium was, he thought they met the criteria.

Frank Rich noted that when reading the ordinance where it stated "in any district", that maybe it meant in any district that it was allowed in. James M. Callahan, Esq., stated that it did not state that. Frank Rich stated that even though it did not state that, but it stated, "the ordinance". James M. Callahan, Esq., stated that when he looked at the first clause, he referred to things like dimensional requirements and density requirements. Frank Rich asked why the proposal was to turn the lots into one lot. James M. Callahan, Esq., stated that part of that was due to when he met with Nic Strong because she recommended it. He thought that if he were successful with the ZBA, they would move onto the Planning Board to start getting into the details of what they were proposing. He noted that there was a lot of open space on the property, which would be considered common land and was an attractive feature. Frank Rich still did not understand why they wanted to make it into a larger lot because he thought that Continuum Health Services, Inc., was interested in utilizing the property for different purposes in the future. James M. Callahan, Esq., stated that he was just trying to keep things consistent and compliant with the condominium statute without making it too complex. Frank Rich stated that the abutters had bought their properties thinking that they were buying single-family homes. He asked if James M. Callahan, Esq., reached out to any of their abutters. He stated that he had not yet. Frank Rich asked if James M. Callahan, Esq., thought that this proposal was within the spirit of the ordinance. James M. Callahan, Esq., thought that according to Section 356:B, 5, nothing was going to look different on the outside, but there would be changes on the inside. Paul LaRochelle stated that there was still going to be an impact on

people and vehicles. James M. Callahan, Esq., stated that he could get a traffic study done. He thought that people looking at this piece of property would use it seasonally and that there was not going to be any people flying helicopters.

Paul Monzione redirected the Board back to the issue of the Appeal. He suggested that the concept of conversion may be permitted in any district, but asked James M. Callahan, Esq., if he agreed that if the conversion required some structural changes that would cause that structure to go into a side or lake setback, that the conversion would also require the applicant to present for a Variance; he agreed. Paul Monzione stated that the Board needed to single out the idea of a conversion versus the necessity of a Variance. He asked what difference it made what John Dever, III's, interpretation of the ordinance was because no matter what, the applicant was still making multi-family structures in a district where they were not allowed. Paul Monzione thought that the applicant still needed a Variance regardless of whether they had the legal right to do the legal conversion act, and even if they did proceed with the Variance, the applicant still needed to deal with the logistics of doing it in a district where it was not permitted. Tim Morgan agreed with Paul Monzione. Tim Morgan stated that condominiums were simply a form of ownership, and there were several forms of ownership. He noted that lakeside property could be owned by several forms of ownership and did not mean that someone could merge properties or have multiple dwellings. Whether or not John Dever, III, was correct about whether the structures could be condominiumized, the applicant could condominiumize, but could not make any changes without a Variance. John Dever, III, stated that James M. Callahan, Esq., cited 356:B., 5, but that addressed that the Town could not prohibit condominiums because it was a change of ownership, and that was not the case here. John Dever, III, stated that if a physically identical development, like a multi-family, was not allowed in the zone, then neither could the condominium use. He had done some of his own research and found that throughout all of the documentation that he found, implied that condominium conversion was for existing dwelling units, in a number, in a structure, or individually.

James M. Callahan, Esq., thought that Paul Monzione's analogy of setbacks did not apply to this application. He pointed out the language again that stated conversion condominiums were permitted in any district. John Dever, III, pointed out that there were covenants attached to this subdivision, but it was not up to the Town to enforce them. He did want to make known that there was a 50' setback from the right-of-way, and previously he was approached by another resident of the subdivision who wanted to build a garage 25' from the right-of-way. At that time, John Dever, III, was unaware of the covenants, but was made aware of them shortly after; therefore, that resident had to move their garage back an additional 25'. Paragraph 4 in the covenants stated, "No lot shall be further subdivided except that the foregoing is not intended to prevent the relocation or revision of any lot line." He stated that conversion condominiums fell under subdivisions through the Town and the State, and it was up to the Board to take that into consideration.

Paul LaRochelle opened public input.

Roger Murray, Esq., came to the table. He stated that he was here this evening representing Norman and Elizabeth Ahn, abutters who owned Lots 8 & 9. He stated that John Dever, III's, email comments were correct. He stated that there was no conflict when you read the middle part of the first line of the ordinance in Section 329, "when permitted by this ordinance", which meant that it needed to be a permitted use, or legally existing non-conforming use. He stated that the units did not currently exist. He noted that what was proposed was not permitted under any other form of ownership or condominium ownership. The cases cited all involved non-conforming uses, unlike the application presented, which was a conforming use. He stated that in one of the cited cases, the court stated that if the conversion would have an effect on land use, it might have constituted a change or an expansion of use. In that case,

preventing conversion would not conflict with the doctrine of non-conforming use and would not violate RSA 356:B., 5. Paul Monzione wanted to clarify if he was speaking in favor of upholding John Dever, III's, decision; Roger Murray, Esq., stated, yes.

James M. Callahan, Esq., stated that the cases that were cited were non-conforming uses and were cottages and apartments that were being converted, and there was no provision in those cases or the Statute that stated it had to be a 1:1 correlation. He stated that his reading of the Zoning Ordinance and the Statute allowed it.

Paul LaRochelle closed public input.

Paul Monzione thought that the Town was faced with the reconciliation of the language that stated that "condominium ownership of property when permitted by this ordinance", and "condominium conversions of existing structures, as amended, was permitted in any district". He thought that a reasonable interpretation of that language was to say that conversion was permitted as a legal act, but it had to be permitted by the ordinance, could only refer to those things that the ordinance allowed in the district. Frank Rich stated that if this was allowed, then any large home on the lake could convert to a condominium without changing. Paul Monzione thought that if someone had a large home on the lake and they did not want to keep it as a regular residential home, and instead wanted to convert it into a condominium, and everything about it was permitted in the district, they could come in and the ZBA could not stop them, but this district did not allow them. Frank Rich stated that if the Board made a decision, the Board would be opening up a "Pandora's box" to anyone that had a hard time selling their large home and wanted to convert it into a condominium. Lou LaCourse stated that when he looked at the ordinance just because Section A stated it was permitted in any district, did not mean it stood on its own; it was subjugate to the main statement.

James M. Callahan, Esq., asked if the Board could just go forward with hearing the Variance because he was starting to see where the Board was coming from. Paul Monzione stated that James M. Callahan, Esq., would have to let the Board know they wanted to withdraw their Appeal application in order to do that; therefore, there would be no ruling.

James M. Callahan, Esq., informed the Board that he wanted to withdraw their Appeal of an Administrative Decision application, Case # Z18-10, for Continuum Health Services, Inc.

Case # Z18-09 **James M. Callahan, Esq. and Michael Black, Agents for Continuum Health Services, Inc., Applicant**	**142 & 144 Hopewell Road** **Map 21 Lots 5-3, 5-4, and 5-5**	**Variance** **Lakeshore Residential (LR)**

A Variance was requested to **Article 400, Section 401-A. Residential Uses #4**, of the Zoning Ordinance to permit eight (8) condominium units on one (1) lot (three (3) existing lots to be merged).

The vice-chairman read the public notice for the record.

Present were James M. Callahan, Esq., agent; Michael Black, representative of Continuum Health Services, Inc.; and Wayne Morrill, LLS, Jones & Beach Engineering.

Paul Monzione MOVED to ACCEPT the application for Case #Z18-09 as complete. Lou LaCourse seconded. Motion PASSED by a vote of (5-0-0).

James M. Callahan, Esq., mentioned that the Appeal of an Administrative Decision was withdrawn and there were a number of background representations made regarding the property, the intent, and the history, and asked the Board if it was okay to say that he wanted to reiterate for this case the facts already presented. Paul Monzione stated that the Board could interpret by reference those statements; the Board agreed.

James M. Callahan, Esq., thought that the granting of this Variance would not be contrary to public interests because what he was proposing, which was to repurpose existing structures and change the form of ownership, was not going to be any more intense that what currently existed. Any construction that occurred to facilitate the conversion would be minor. He looked at the Town's Master Plan, Zoning Ordinance, and Subdivision Regulations, along with NH Law and noted that in the Master Plan, it encouraged the preservation of open spaces, and under the Zoning Ordinance, the minimum lot size in the Lakeshore Residential District was 30,000 s.f. This property had over 700,000 s.f. of property. He further noted that if a traditional subdivision was conducted on the site allowing for topography, setbacks, and dimensional requirements, subtracting for the road, there could be a 20-lot subdivision. He shared that it was contrary to the intent of the Master Plan and the Zoning Ordinance. He thought this was a reasonable proposal and would not make much more of a difference compared to what was currently happening on the property.

James M. Callahan, Esq., stated that if the Variance was granted, the spirit of the ordinance would be observed. He noted Article 100, Section 110, of the Zoning Ordinance, which referred to ordinances being designed to lessen congestion in the streets; to prevent overcrowding of land; and to avoid undue concentration of population. He pointed out that this was put in place to minimize the impact of intense lakefront development. He maintained his opinion that the conversion of the existing structures would not increase street congestion, would prevent overcrowding of the land, and would not unduly concentrate population. He mentioned the significant amount of open space on the property and the various different scenarios that could occur on such a large piece of land, but his client was not interested in doing any of them; therefore, if it became condominiums, the open space would become common land and would not be able to be built upon.

Wayne Morrill, LLS, reached out to a traffic engineer and asked what would happen in the condominiums were allowed. He stated that the engineer noted that there would be an increase of 18 cars per day with the changeover. He then looked at the lots themselves for lot load and capacity; each building had their own septic system and each lot had a significant amount of open space. The larger house had a loading capacity of 12,692 gallons per day; the smaller house had a loading capacity of 6,163 gallons per day; and the barn had a loading capacity of 2,410 gallons per day. There were no land alterations proposed; therefore, no change in topography or surface runoff for this development.

James M. Callahan, Esq., noted that by allowing this conversion, this would not create an injustice because nothing new was being added.

James M. Callahan, Esq., stated that he could prove that Variance would not have an adverse impact on the values of surrounding properties by sharing a letter with the Board that he had received from a licensed real estate broker in New Hampshire, who handled some of the more prominent property sales throughout the state. She concluded that this proposal would not have an adverse impact on this property.

James M. Callahan, Esq., explained hardship. He stated that if the Board referred to RSA 356:B., 5a, the special conditions of the property distinguished it from other properties in the area and denial of the Variance would result in unnecessary hardship, because no fair and substantial relationship existed between the general public purposes of the ordinance and the specific application to this property. He stated that it was a unique piece of property not only in this town and state, but also in New England. When you looked at the purposes of this ordinance and the Master Plan, they prevented overcrowding of the lakeshore. This proposed conversion was not adding to what was already there and he thought that his clients met the standards. He thought that the proposed use was a reasonable one because it was a less intense use than what could be allowed in the district.

Paul Monzione had a question about the loading capacity and asked what the capacity would be with the several condominium units. James M. Callahan, Esq., stated that there was no proposed additional bedrooms with the condominium conversion. Frank Rich referred to the letter from the licenses real estate broker, which showed the neighboring properties and assessed values, but the broker did not go into what the condominiums may be worth. Kristin Claire came to the table to speak. She stated that there was a large range in value, $2 – 5 million, with the size of the proposed units. Frank Rich asked if 13,628 gallons would range in the $5 million range. He asked if she thought about how much the condominium fees would cost. She stated that she had not gotten that far yet. James M. Callahan, Esq., stated that under the condominium statute, there were a number of docks and boathouses that were associated with this property and it would have an impact on the value. Paul Monzione noted that Continuum Health Services, Inc., was on the application. James M. Callahan, Esq., stated that there was a contract signed by Continuum Health Services, Inc., who was a development company, so at some point this project may be assigned to them. Paul Monzione asked if the proposed use of the condominiums would end up being assisted living accommodations; James M. Callahan, Esq., stated, no. Paul Monzione stated that the proposed use of the condominiums would be exactly the same as what the use was currently, which was single-family residential units. Frank Rich asked that if the Bahre's were the declarants of the covenants, were they also in charge of controlling or vacating them. James M. Callahan, Esq., thought they were not, because once someone bought a lot, they would be protected by those covenants. He noted that after talking to Michael Black, the Bahre's have been paying for the upkeep of the roads.

Paul LaRochelle opened public input.

Mark Sargent, LLS, came to the table to speak. He stated that he attended on behalf of the Bahre family, whom he had known for a long time. He had presented the original subdivision in 1995. He was responsible for laying out the roadway and was involved in the construction of both houses, the barn, and the teahouse, as well as preparing the septic designs for all the buildings. The Bahre's were in full support of this proposal and had the property on the market for several years. The three properties were unique, they sat on oversized lots, the square footage of the buildings exceeded anything in the area, and based on the shoreline frontage alone (1,594 feet), there would be enough land to subdivide into 20 lots. The loading capacity of the septic systems that he calculated was 17,377 gallons per day, which equated to 28 four-bedroom homes. Frank Rich asked how he got to 20 lots. Mark Sargent, LLS, stated it was based on the lot area. Frank Rich pointed out that if they subdivided, the current buildings would have to be torn down. Mark Sargent, LLS, stated that the Bahre family was potentially considering it.

Roger Murray, Esq., came to the table. He stated that he was here this evening representing Norman and Elizabeth Ahn, abutters who own Lots 8 & 9. He noted that the square footage of the buildings were shown on the plan filed with the Board did not seem to match the square footage mentioned in the application, and was not sure if that was essential to the Board's consideration. Paul George stated that

some of the square footage was measured inside wall-to-wall and the other measurements were configured using outside wall to outside wall; therefore, when combining all of the buildings together, there would be a discrepancy. Roger Murray, Esq., stated he wanted to address the criteria for the Variance, and by granting this Variance, it would be contrary to the public interest as outlined in John Dever, III's, April 12, 2018, email. The property at 144 Hopewell Road, which was permitted for a single-family home had two (2) apartments in it that were in violation of the Zoning Ordinance; therefore, the cottage would be a second dwelling on that lot, which was not permitted. The property at 142 Hopewell Road was permitted for a single-family home and no permitted accessory apartment. The red barn, which was on Lot 5-3, had an apartment; therefore, there were two (2) houses and a barn with an apartment, and the proposed use was to take the two (2) single-family dwellings and convert them to multi-family dwellings with six (6) units, and possibly add on to the teahouse. This would increase the intensity of the property, bringing it up to eight (8) units. He thought that the Bahre's would not seriously consider tearing down the properties, there were restrictions in the covenants that restricted any further subdivisions, and there were no provisions in the declaration to amend the covenants. He believed that granting this Variance would not be in the public's interest.

Roger Murray, Esq., further noted that the request was not in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, or the character of the district within which it was proposed. This district consisted of single-family houses on individual lots. He stated that the first thing the applicants wanted to do was merge the three (3) lots, 5-3, 5-4, and 5-5, which was not permitted, they wanted to convert the buildings into multi-family dwellings, which were also not permitted. The proposal was changing the use, it would be a more intense use, and it could not be further subdivided because there were structures currently on the property and because of the restrictive covenants.

Roger Murray, Esq., stated that by granting the Variance, substantial justice would not be done. The existing structures were permitted and constructed as single-family dwellings, each on their own lot. The subdivision was of substantial single-family homes. If multi-family homes were placed in the development, it would be a substantial injustice to the other homeowners.

Roger Murray, Esq., stated that the request would diminish the values of surrounding properties. It was a subdivision of substantial single-family dwellings, and an expansion to six (6) multi-family dwellings intensified the use and would affect their values.

Roger Murray, Esq., stated that literal enforcement of the provision of the ordinance would not result in unnecessary hardship; there were no special conditions of the property that distinguished it from other properties in the area. It was an area of substantial single-family dwellings. One of the buildings may be significant in size, but there were other large houses on the lake. There was a fair and substantial relationship that existed between general public purposes of the ordinance provision and the specific application to the provisions of the property. The purpose was to prevent overcrowding and intensification development and the impact on the lake. He stated that repurposing or converting existing facilities, which was how this was categorized, was not the case. What was proposed was a change in use. The proposed use was not reasonable and not necessary to merge the lots, but a Variance was needed for the multi-family dwellings. The property could be reasonably used in strict conformance with the ordinance as it was now; therefore, a Variance was not necessary to enable any reasonable use.

Roger Murray, Esq., stated that since the applicant had not met the criteria for the granting of a Variance, he respectfully requested the Board to deny the Variance.

Laurie Latchaw came to the table to speak. She owned one of the first houses in the subdivision. She

stated that she and her husband started building their house shortly after their next-door neighbor built their house. She stated that her house was the next largest house in the subdivision and she believed that her and her husband bought that property with the understanding that it was for single-family homes, and not multi-family, condominiums, mini-hotels, or for assisted living facilities. She thought it would completely destroy the value of her home and just recently, the value of her home was coming back up. She thought this proposed project was of great distress to her. She mentioned that she placed her home on the market at the same time the Bahre's put their property on the market and her house did not sell either. She stressed that the sale of her house had to do with the market. She pointed out that there were covenants that all the lot owners had to abide by, and they could not be amended before 99 years had passed by.

Norman and Betty Ahn came to the table to speak. He stated as Roger Murray, Esq., had stated, that they had two (2) lots with one home. He and his wife had been living there for the past 15 years, they were full, year-round, residents, and mentioned that he agreed with Laurie Latchaw. The Ahn's saw no need or reason why the adjustment to lakeshore residents should change. There were 12 lots in the subdivision and four (4) owners. He stated that both he and his wife had lived there since the beginning of the subdivision. He mentioned that it was a very quiet pleasant area to live and they did not know what the future might hold given this proposed project.

Paul LaRochelle closed public input.

James M. Callahan, Esq., stated that he could respect their perspective. He suggested that they had established the criteria, but thought it was important to consider the abutters opinions and concerns. He wanted the abutters to know that he would make sure that they would be informed of the process through the Planning Board. He thought that it was a reasonable proposal and did not think the intensity would be greater.

Lou LaCourse wondered how many lots could be divided off without the condominiums because it sounded like the barn was on its own lot and the second house was on its own lot. Tim Morgan thought it was a difficult application and one of the things that concerned him was that this Town had always been very careful in protecting the Lakeshore Residential District all the way from the way setbacks were configured down to the difference in signage that was allowed. Lou LaCourse thought the Board would be setting a precedence.

Paul LaRochelle moved the Board onto the worksheet.

Andrew Levasseur stated that the variance **will** be contrary to the public interest. He stated that the abutters made their point that they were not interested in this application being granted. Tim Morgan stated that this was a change of use and was an intensity of use and it impacted the Lakeshore Residential District, which was an area of the town that was protected. Paul Monzione like the idea of condominiums and the use of the property, but he also thought that creating multiple units on one lot in the Lakeshore Residential District was something that was very difficult to achieve. Lou LaCourse thought that the area was designated for single-family homes and the area should stay rural. He was also concerned about setting a precedence.
All Board Members agreed.

Tim Morgan stated that the request **is not** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, and with the convenience, health, safety, and character of the district within which it is proposed. He stated that the Zoning Ordinance had very strict requirements and constraints on the

Lakeshore Residential District and with the Master Plan's recent reiteration, the public had been very careful to express their interest in protecting the district.
All Board Members agreed.

Paul Monzione stated that by granting the Variance, substantial justice **will not** be done. He thought that strict application of the Zoning Ordinance in this situation would not result in a detrimental effect on the property owner. The property owner had a large house that was having a difficult time being marketed.
All Board Members agreed.

Paul LaRochelle stated that the request **will** diminish the value of the surrounding properties. He stated that the Board had heard from abutters that were concerned and were under the impression that it was a single-family residential area and wished to remain that way. The abutters thought it would affect the sale of their properties. Lou LaCourse disagreed because there was no factual evidence showing otherwise. Andrew Levasseur agreed with Paul LaRochelle. Tim Morgan agreed with Lou LaCourse because he did not think there was sufficient enough evidence presented one way or the other to make a determination with respect to those particular criteria. Paul Monzione thought that the abutters had the ability to testify and talk about the value of their own properties. In their opinion, having multi-residential units in what was always a single-family residential subdivision diminished the value of surrounding properties.
Paul LaRochelle, Paul Monzione and Andrew Levasseur agreed. Lou LaCourse and Tim Morgan disagreed.

Lou LaCourse stated that for purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) **No** fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
(ii) The proposed use **is** a reasonable one.

He stated that there were a number of large homes and lots on the lake; therefore, he did not see where there was any specific issues with the lot or the size of the home. He thought the proposed use was a reasonable one, but it did not meet the criteria. Andrew Levasseur agreed with Lou LaCourse. Tim Morgan agreed that special conditions of this property did not create an unnecessary hardship. Paul Monzione stated that it was not because the property could not be sold; it was because it was having a hard time being sold. Paul LaRochelle agreed with Paul Monzione.
All Board Members agreed.

Paul LaRochelle stated that after all the criteria were looked at, the Board determined that the Variance was denied.

Paul Monzione MOVED that the application for the Variance in Case #Z18-09 be DENIED for the reasons as set forth in the five (5) criteria items above.
Andrew Levasseur seconded. Motion was DENIED by a vote of (5-0-0).

Case # Z18-11 **Thomas W. Varney, P.E., Agent for 5 Lakerim Realty, LLC, Owners**	**2 Grammy's Way #5** **Map 38 Lot 55-1-5**	**Special Exception** **Lakeshore Residential (LR)**

A Special Exception was requested to **Article 300, Section 320 B.5.,** of the Zoning Ordinance to permit the replacement of a non-conforming structure that was voluntarily removed where there was no increase

in the number of bedrooms and no increase in any non-conforming aspect of the structure.

The vice-chairman read the public notice for the record.

Present were Thomas W. Varney, P.E., agent.

Tim Morgan MOVED to ACCEPT the application for Case #Z18-11 as complete. Paul Monzione seconded. Motion PASSED by a vote of (5-0-0).

Thomas W. Varney, P.E., stated that this application pertained to a condominium, Unit #5, located beyond Sandy Point. The condominium was created in 2008, but the cottage was built in 1946 and was now an obsolete structure. The plan was to demolish the building and replace it with a new one in the same footprint. The deck and stairs would remain the same dimensions; the foundation would change from a four (4) foot crawl space to a full foundation; an extra story would be added for more space; no increase in the number of bedrooms; the increased height would be below the 35' maximum height allowed; the septic system and water supply was State approved and in place; and Stormwater management would be implemented through the NH DES Shoreland Permit.

Thomas W. Varney, P.E., stated that the site was appropriate for the use because it was a developed piece of property with Planning Board approval. Factual evidence was not found that the property values in the district would be reduced due to incompatible uses because the use remained the same. There was no valid objection from abutters based on demonstrable fact because the building location, footprint, landscaping, and utilities all remained the same. There was no undue nuisance or serious hazards to pedestrians or vehicular traffic including the location and design of access ways and off street parking because the building was away from the highway and adequate parking was available. Adequate and appropriate facilities and utilities would be provided to ensure the proper operation of the proposed use or structure because the septic system and community well were State approved and were existing. There was adequate area for safe and sanitary sewage disposal and water supply because the septic system was State approved along with the community well. The proposed use or structure was consistent with the spirit of this ordinance and the intent of the Master Plan because the cottage was an existing residential use and was allowed in the zone.

Paul LaRochelle asked if the cottage was a one-bedroom; Thomas W. Varney, P.E., stated, yes. John Dever, III, stated it was actually a two-bedroom. Paul LaRochelle stated that the plan indicated that it was a one-bedroom. Thomas W. Varney, P.E., confirmed that it was supposed to be a one-bedroom and it was going to remain a one-bedroom.

Tim Morgan asked that when adding the height to Unit 5, would it detract from the view in Unit 4. Thomas W. Varney, P.E., did not believe it would because Unit 4 stepped down and sloped away bit and Unit 4's view was blocked already. Lou LaCourse asked about the people on the other side of Mount Major and asked if it was a hill that they were located on. Thomas W. Varney, P.E., stated that the land fell flat, and it could have an impact on them, but he stated that he drove by there often and he could see that it would look differently. Paul LaRochelle asked what the approximate height of the new structure would be. Thomas W. Varney, P.E., stated it was going up an additional 17.2'. Paul LaRochelle looked at the average ground level and it was 34.6' to the ridge. John Dever, III, stated that when you were standing at the road, you would see the roofline of the cottage now. Lou LaCourse asked if the current structure was non-conforming in any way. John Dever, III, stated that it was located within two (2) setbacks.

Frank Rich had to leave the meeting for personal reasons at 9:30 p.m.

Lou LaCourse asked if this application fell under Section 320A., 7. John Dever, III, stated that A. was non-conforming uses.

Paul LaRochelle opened public input. No public input. Paul LaRochelle closed public input.

Paul LaRochelle moved the Board onto the worksheet.

Lou LaCourse stated that a plat **has been** submitted in accordance with the appropriate criteria in Article 500, Section 520B.
All Board Members agreed.

Paul LaRochelle stated that the specific site **is** an appropriate location for the use. He stated that this was an existing use and the proposed use was the same.
All Board Members agreed.

Paul Monzione stated that factual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. He stated that there was no incompatible land use and it was going to stay the same residential use. There was an issue about the expansion upward of a second story, but there was no evidence that it would reduce values.
All Board Members agreed.

Tim Morgan stated there **is no** valid objection from abutters based on demonstrable fact. He stated that there was no input from abutters.
All Board Members agreed.

Andrew Levasseur 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. He stated that everything seemed to be staying the same, it was located off the street, and did not think anything would be affected.
All Board Members agreed.

Lou LaCourse stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of the proposed use or structure as stipulated. He stated that all the utilities were currently in place and there was no increase in bedrooms.
All Board Members agreed.

Paul LaRochelle stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that the septic system and well were existing and nothing was changing.
All Board Members agreed.

Paul Monzione stated that the proposed use or structure **is** consistent with the spirit of the ordinance, and the intent of the Master Plan. He stated that everything about this proposed project was in compliance with the ordinance under which it was being applied for. Tim Morgan stated that it fit squarely within the contemplation of the ordinance.
All Board Members agreed.

Lou LaCourse MOVED to GRANT the Special Exception for Case #Z18-11.
Andrew Levasseur seconded. Motion PASSED by a vote of (5-0-0).

OTHER BUSINESS

1. **Previous Business:** Election of Officers of the Board

A vote was taken amongst Board members on who the new Officers of the Board would be:

Lou LaCourse MOVED to NOMINATE Paul LaRochelle as Chairman.
Tim Morgan seconded. Motion was PASSED by a vote of (4-0-0).

Tim Morgan MOVED to NOMINATE Lou LaCourse as Vice-Chairman.
Paul Monzione seconded. Motion was PASSED by a vote of (4-0-0).

Lou LaCourse MOVED to NOMINATE Paul Monzione as Clerk.
Tim Morgan seconded. Motion was PASSED by a vote of (4-0-0).

Paul LaRochelle stepped down as Vice-Chairman and assumed the role of Chairman.

2. New Business: None.

3. Approval of Meeting Minutes: February 2, 2018; March 1, 2018; and April 5, 2018

   Tim Morgan proposed one change, which was located on page 7 of 14, first paragraph, 10th line down, it stated "relayed Lot 112"; it should state "conveyed Lot 112".

   Lou LaCourse MOVED to APPROVE the minutes of February 2, 2018, as amended.
   Tim Morgan seconded. Motion PASSED by a vote of (4-0-0) with Andrew Levasseur abstaining.

   Tim Morgan MOVED to APPROVE the minutes of March 1, 2018, as presented.
   Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0) with Andrew Levasseur abstaining.

   Paul Monzione MOVED to APPROVE the minutes of April 5, 2018, as presented.
   Andrew Levasseur seconded. Motion PASSED by a vote of (3-0-0) with Tim Morgan and Lou LaCourse abstaining.

4. Correspondence: None.

ADJOURNMENT

At 9:45 P.M., Paul Monzione MOVED to ADJOURN.
Tim Morgan seconded. Motion PASSED by a vote of (5-0-0).

Respectfully submitted,

Jessica A. Call
Recording Secretary

Minutes approved as amended: July 5, 2018