TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
Public Meeting
May 6, 2010
Approved 8/12/2010

I. CALL TO ORDER

Paul Monzione, Chairman, called the meeting to order at 7:03 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND BOARD MEMBERS

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

Stacey Ames, Planning Assistant
Sharon Penney, Town Planner
Timothy Kinnon, Vice Chair
Timothy Morgan, Member
Lou LaCourse, Clerk
E. Loring Carr, Representative from the Board of Selectmen

Steve Miller, Member, was not present at this meeting.

III. APPOINTMENT OF ALTERNATES

There are no alternates to appoint.

IV. STATEMENT OF APPEAL PROCESS

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

V. APPROVAL OF THE AGENDA

The first case listed on the agenda, Case Z10-10 has a couple of clerical changes. The applicants are requesting a variance from Article 300 Section 327 and a Special Exception from Article 300 Section 320 B2(a).

New Application for Case Z10-13 is for the same applicant as Case Z10-10, Gary and Maureen Wasserman. Case Z10-13 should precede Z10-10.

T. Morgan made a motion to accept the agenda as amended. L. LaCourse seconded the motion, which passed without opposition.

VI. CONTINUANCES

Case #Z10-13 **Gary Wasserman**	**Map 63 Lot 19**	**Special Exception** **14 Peters Path**

Application submitted by Todd Bernasconi of TBR Enterprise on behalf of applicants Gary and Molly Wasserman to request a Special Exception from Article 300 Section 320 B2(c) to allow the construction of a deck above the existing porch. This parcel is located in the Lakeshore Residential zone.

The case was introduced into the record by S. Penney.

Todd Bernasconi, builder, and Gary Wasserman, the owner, came to the table and introduced themselves.

The Board reviewed the application for completeness. It was discovered that there was no survey that showed setbacks and the location of the structure in regard to the setbacks.

P. Monzione stated that what they have with the application is a rendering or sketch of the proposed construction. In addition there is a survey of land for Marilyn Pierce which shows the footprint of a structure. What Mr. Morgan pointed out is that none of what has been provided in the application for Case Z10-13 has any kind of a plan which would depict where the proposed structure is located on the lot in relation to all of the other information they need to consider, such as the setbacks. Mr. Bernasconi stated that it is the exact same footprint; they are going up above the existing front porch.

P. Monzione responded saying that Mr. Bernasconi is familiar with the building, so "above the front porch" has meaning to him. To the Board who has to consider this, they have to understand whether any of this is going to interfere or go further into a setback, or where it is going to be in relation to the setback. Mr. Bernasconi stated that it would not; it will not exceed the existing footprint of the front porch so it won't go into the setbacks any more. Paul Goodwin did an assessment of it for his letter; he does them all the time for the DES. He said it has no bearing on the impervious soils or the footprint or anything; that is the only reason they proceeded like this without the survey. Mr. Goodwin called the lady from DES and talked to her about it; that is the only reason they proceeded like this, and brought him in as an expert to do this.

P. Monzione explained that they don't need a full site plan review. He understands why they did what they did, but this is really about what the Board needs. He indicated that even if they were to take the depiction they have and accurately sketch in where the setbacks are so they have something that shows where the structure is proposed to be located in relation to those setbacks and have something definitive in the application they can base their decision on. L. LaCourse

added that it should also reflect any other items on the property that would restrict the building envelope; they are looking for where the building envelope is within the setbacks.

Mr. Wasserman stated that he could provide a picture of the exact place it (the deck) is going to go. You can see from the drawing of Mrs. Pierce's property where the distance is from the house to the water, and to the back lot and the sides. P. Monzione replied that the pictures would be helpful to them and certainly would supplement the application. Mr. Bernasconi used a drawing to show where the deck is going to be located. P. Monzione voiced his understanding of where the deck is to be located, but added that the drawing is not to scale that tells them how far the structure is from the setbacks. Mr. Bernasconi asked if, even if it is the original, they still need to see that. P. Monzione explained that the original may have been in the setback; they don't know that. He understands that they are not going to expand the footprint. Because one of the things they need to consider when they decide this is where this building is in relation to the setbacks, something in the application needs to show that. If there is some way to give them a map or drawing that shows the footprint of the building in relation to the setbacks, it would help.

Mr. Bernasconi again mentioned his conversation with Mr. Goodwin; Mr. Goodwin had indicated that because the building was already non-conforming and in the setbacks, it wouldn't matter. S. Penney stated that they are talking about two different kinds of setbacks. Mr. Goodwin was addressing the CSPA setback; it would be good to have a letter or an e-mail from DES. She has made a taped to scale version; if they could get Mike Bemis, the surveyor on the original survey, to scale in the setbacks, it tells the Board that this is in fact the measurement because it would be to a scale of 1 inch equals 10 feet.

T. Kinnon used a drawing to show the applicant what the Board is looking for. The drawing does not have to be from a certified surveyor as long as the applicant is willing to certify that the depiction is accurate. Mr. Wasserman asked to be moved to the end of the meeting so he can go out and measure the setbacks and give the Board measurements in feet and inches. Mr. Bernasconi again voiced confusion, stating that they just had a septic put in with a CSPA permit. The plan from that is to scale and shows the boundary lines; it was just done last fall. S. Penney remarked that what they are trying to say is that they (the Planning Department and/or Zoning Board) should not have to be drawing in their setbacks.

Mr. Wasserman apologized, saying that if he had been aware of this issue, it would have been taken care of prior to the application. There was further discussion between Mr. Bernasconi, Mr. Wasserman, and the Planning Department concerning what is shown on the drawings and what should be on them. T. Morgan explained that there may be a more acute need in this particular case than it perhaps would be in other cases; this is a non-conforming structure already into the setback, so it is a very important part of the issue. Mr. Wasserman explained that they did try to stay exactly in the footprint of the original house to avoid any problems. P. Monzione agreed that all of that may be the case, and when they get into the merits of the application, once it has been accepted as complete, this is something they'll have an opportunity to explain, and the Board will be very interested. Right now, until the application is accepted as complete, they can't even entertain substantive testimony or argument or presentation on the application itself. All of what they are doing now just goes to the issue of the completeness of the application.

P. Monzione stated that they have worked very hard with the Legal Counsel for the town to make sure that, when they make these decisions, they are done correctly, and that they are upheld in the event they need to be upheld. One of the ways they are able to do that best is to have a strong record that supports their analysis on a given application. A fundamental part of that process is to understand where the structure that is being proposed to receive a variance is located on the lot and in relation to the setbacks, particularly as they go through the criteria that is set forth that they have to consider. They do this process now; they are looking very carefully at all of the applications that are coming before them to make sure that they give the Board sufficient information to apply the criteria in a way that when they are done, and supposing that they grant the request, and someone who doesn't like it challenges it in court, the record will be solid because they will have based their decision on solid information from the applicant. He went on to say that they don't require anything so formal as site review, but as long as they have a depiction, even if it is drawn out by the applicant, as long as it will depict the structure and its location to the property setbacks and on the lot. If it's encroaching or into the setback, the drawing should demonstrate that accurately. Then the Board can look at that drawing and see exactly what they are dealing with.

Given the comments that have been made about the application, the Board can make a decision right now whether to accept the application as complete. If it is deemed that the application isn't complete, that would end the process and the applicant would have to resubmit and start all over. The other option would be for the applicant to take some additional time to supplement the application with a drawing or some sort of depiction that will demonstrate the location of the building in the setbacks, however they think that will be accurate. P. Monzione went on to state that he does not know if it makes sense to try to do that tonight; they could entertain that request, if it makes sense. There is a rule that no new cases are received or accepted after 10:00 p.m. That request could be considered as a Board. T. Kinnon stated that his concern would be that if they want to get to the end of the agenda, with six other cases ahead of them, he doubts very much that the Board would get to them again tonight because they will run out of time. The 10:00 p.m. rule was made a couple of years ago because after 100:00 p.m., it gets hard to make rational decisions. P. Monzione clarified that they will keep working after 10:00 p.m., but they will not start a new matter. Their gamble, if that request is made and granted, would be if they don't get back to them. In that event, they would entertain a request to put them on the agenda for the June meeting; if all the Board members agree, that would not count as one of their continuances.

Mr. Wasserman stated they would reapply in June; S. Penney explained that they would not have to reapply; they would be continued and they would be submitting a little more information. Mr. Wasserman asked, before they leave today, aside from getting setbacks drawn in if there is anything else the Board will need to help them make a decision in a complete fashion the next time it is presented. S. Penney requested that, if there is an e-mail or copy of the letter from Paul Goodwin, they could get it. It's not that they don't trust, but if it ever does have to stand up to a challenge, the Planning Department needs all the documentation. Mr. Bernasconi stated that it is actually Darlene; S. Penney asked Mr. Bernasconi to have Darlene e-mail her directly with authentication.

Mr. Wasserman asked about any complaints against this project, stating that he would like to know that in advance so they can bring information that might be helpful to the Board. He is not sure this is the forum to do that, but it would allow the Board a fuller information base to make the decision they think is appropriate. He would like to get that information in front of him, so they can respond to it properly. He wants to know if there is a problem, aside from the specifics allowed by code. P. Monzione stated that the only thing they can talk about at this stage of the process is whether the application is complete and whether it should be accepted. Until that determination is made, they are not allowed to even entertain the merits of the case or whether there are objectors. Sometimes when there are objectors, they file something or send in letters, or just show up at the hearing and speak up at that time. As of right now, with all the materials received on this application, there are no letters from abutters objecting. That would be public record and he would have access to it.

L. LaCourse asked if there are other items on the property, such as a stream or wetlands that would make the building envelope smaller. Mr. Bernasconi said there is not; there are stairs that are already over an impervious surface, and there is a privacy fence. T. Morgan suggested to the applicant that he might want to get a copy of the Planner's notes for each of his cases; this document is public record and it is available to him.

T. Kinnon made a motion to continue Cases #Z10-13 and #Z10-10 to the June 3, 2010 meeting of the Zoning Board of Adjustment. T. Morgan seconded the motion which passed by unanimous vote of the Board.

Case #Z10-10 **Gary and Maureen Wasserman**	**Map 63 Lot 19**	**Area Variance and Special Exception** **14 Peters Path**

Application submitted by Todd Bernasconi on behalf of applicants Gary and Maureen Wasserman to request a Variance from Article 300 Section 327 and a Special Exception from Article 300 Section 320 B2(a) to allow a spiral staircase on the existing deck to allow access to an upper deck to be constructed. The staircase will be an expansion of the footprint and is within the allowable Shoreland setback. This parcel is located in the Lakeshore Residential zone.

This case was continued to the June 3, 2010 meeting; see the motion and vote above.

Case #Z09-12 **Stephen and Raquel Rogers**	**Map 51 Lot 27**	**Area Variance and Special Exception** **4 Saley Way**

Application submitted by Thomas Varney of Varney Engineering on behalf of applicants Stephen and Raquel Rogers to request an Area Variance from Article 600 Section 601 to allow home to be set within the setbacks; additionally to request a Special Exception from Article 300 Section 320C to expand the existing footprint on both sides. This parcel is located in the Lakeshore Residential zone. Continued from November, 2009.

P. Monzione recused himself from this case. As Vice Chair, T. Kinnon assumed the role of chairman.

T. Kinnon stated that there are only three members of the Board present; they would need all three members to vote in favor of the application in order for it to be granted. In addition, there is a ten-day notification rule in regard to any information submitted to the Board; the information submitted two days ago can not be used tonight. Regina Nadeau, representing the applicant, stated that nothing about the application changed; what has been modified are some tree planting and some impervious area. The footprint, driveway location and septic location have not changed. All they have done is change the material in one of their driveways and add a couple of trees. They have obtained their permits; those are incorporated in their plans as a requirement. They are ancillary, but the plan itself has not changed. The plans in question were returned to the Planner by the members.

T. Kinnon asked the members if they have reviewed the application. There were no concerns with regard to the application.

T. Morgan made a motion to accept the application for Case Z09-12 as complete. L. LaCourse seconded the motion, which passed with three votes in favor.

S. Penney read the case into the record.

Tom Varney of Varney Engineering, Attorney Regina Nadeau, and Steve Rogers, the applicant, came to the table to present.

Mr. Varney led off, stating that this property is located on Route 11-D, next to the Bayside Inn. It is a lakefront property; there was a roof cave-in of the original structure, which has been demolished due to safety considerations. There is a foundation there now. They are requesting permission to build a new house located essentially over the same footprint, but a little bit larger. They are trying to meet the 50 foot setback from the lake and the 25 foot setback from the road. They do overlap the setbacks; that is why they are here.

In the process of building the new house, they have obtained permits for a septic design, the shore land permit for lot size coverage, storm water runoff and maintaining the vegetative buffer, and a wetlands permit because they upgraded the culvert that was there, which went from an 18" to a 12" to an 8", then directly into the lake. Now there is an outlet into a swale before it goes into the lake. The land is protected with a stone outlet. They have also relocated the driveway to make the entrance better, and they have created a new driveway for the neighbors on Saley Way. They have made part of the parking area permeable so it will absorb the rain. They are removing the old pavement that was within the 50 foot buffer, which is an improvement. They have removed the septic system, which was in the drainage path and under water most of the time. The new system is farther away from the lake. They have counted all the trees and dealt with adding vegetation; they have the lot size coverage under 20%; it is 16.3%. They are meeting the requirement of a new house; they are upgrading the whole property; they have the latest porous pavement so that they can have an open area for trees (there is a section without trees to which they have added one tree to reduce the storm water runoff). This is a great environmental upgrade to this property.

If you look at the plan, you can see the outline of the demolished house. The hatched in area is the new building. He showed his plan, which has these areas colored in. He explained his color scheme using the drawing on the board. The house has been moved back from where it was before; on the plan you can see the front of the old house. The back of the new house would be just past the 50 foot shore land setback.

T. Kinnon asked what the main goal was when they were deciding where to locate the structure on the lot. Attorney Regina Nadeau answered, using the plan that she has put up on the board to indicate the building envelope. The building envelope is in magenta; the two green areas on the lake side of the building envelope consist of 202 square feet of new building. The two green areas to the roadside, also outside the building envelope, are 287 square feet. That is the extent of new encroachment. The limitations they had at the time – this is a property that was developed in the 1920's. The area near the road side was fairly steep and there are a lot of drainage issues coming off from it. There is also an issue of the right of way crossing the property, which serves the two properties to the north. They also needed to redesign the septic system. They elected to try to stay within the existing footprint but within that footprint, to push back the actual living space. In doing so, they also felt that because it is a shore front property the prior structure did not have a garage. If you look at the cumulative change in the square footage, it is basically been able to effectuate locating a garage on this site.

The other thing is that, having to deal with all the overlying regulations from the State of New Hampshire, they are required under their law to set aside approximately 9,000 square feet of area that will not be disturbed. If they look at this oddly configured lot, where the house currently exists has already been disturbed; it would be hard to come up with that square footage. They elected to put the 9,000 undisturbed square feet there (indicated on the plan). When all is said and done, the requirement for the undisturbed area, the front and back setback issues, and the desire for a garage, they have come up with the least impacting design they could, under both sets of laws.

T. Morgan asked for clarification of when the roof collapsed and when the original structure was torn down. Steve Rogers answered that it had been a few years ago; he purchased the property in August of 2008; the roof collapse occurred that winter. T. Morgan asked about the square footage of the original footprint and of the proposed footprint. Mr. Rogers indicated that the original house was five bedrooms and consisted of a 1,156 square foot footprint. The proposed is 2,614, which includes the house, the deck, and the garage.

L. LaCourse asked if the proposed deck is part of the original footprint. Mr. Rogers answered that they are moving the house back about 8 – 10 feet and the deck overlaps the old foundation. Attorney Nadeau noted that some of the town's requirements are different from those of the state, and they (the Board) is trying to promote a different concern than what the state might have. She understands that there is a distinction between the two; it seems in both forums they deal with square footages a lot as they try to quantify the extent of the impact they are proposing. It seems that the real driving concern at the State level is the degree of impervious area on a lot. Primarily because in theory the purpose behind the state law and primarily the purpose behind the local law is protection of the water quality and the waterfront buffer, she thinks in addition to the square footage it should be noted here that they are only increasing the impervious area on

this property from 13% to 16%. Even though the state law does not require a storm water management plan until you reach 20%, they have done one anyway. From the perspective of trying to meet the goals that each entity is trying to promote, she thinks they have done that. They have also proposed and incorporated into the state permit, they are going to be planting 20 arbor vitae on the northerly end of the property, and a silver maple. They will have the new septic system and the impervious pavement, and they are relocating the driveway for the other folks to the north to give them privacy, and they are designating a private area. What she is asking is if the Board could look at this in conjunction with all these considerations as to how they are better protecting the resources. Whatever this increase is in square footage, it is a modest house and the thing driving it is the desire to have a garage, which seems to be a reasonable use given that it is a shorefront property.

Attorney Nadeau offered to go through the criteria for the variance and the special exception.

With regard to the criteria of whether the proposal is contrary to the public interest and conversely whether the proposal is within the spirit of the ordinance – what she had said earlier about the purpose of both the state and local ordinances is the protection of the water quality of Lake Winnipesaukee, not over-development of the shore, and maintenance or enhancement of the waterfront buffer between the dwelling and the shore. To both of those, she would say the proposal is not contrary to the public interest and it is consistent with the spirit of the ordinance. If you look at the upgraded septic system, the storm water management plan, their re-vegetation, and their only slight increase in impervious area it seems to be consistent with those two issues.

The question as to whether substantial justice would be gained if they are granted the variance for the frontage and the rear yard setback, the question is who has something greater to gain. What they are asking for is not building on the same footprint, where the living space would be closer to the water, and where they couldn't have a garage. What the Board is trying to do is protect the water; their proposal can protect what they are driving at. It is not overcrowding the lot – it is only 13% coverage. Water quality is enhanced, and they have updated everything.

As to whether this project would affect surrounding property values, she notes that what they were looking at approximately 18 months ago was a condemned building. That was because of years of lack of maintenance. They are providing screening for the northern abutter with the planting of a hedgerow replanting plan, and they have given them a separate access. All things considered, they have done everything they can to enhance the neighbors' quality of life and related value of property with this plan.

With regard to what makes this property distinguishable from others is what she was portraying when she put the plan up on the board. The pink area is the buildable area; there may be buildable area further back, which is now the access to the abutters. Again, they are really restricted from using that because they had to dedicate 9,000 square feet to a natural buffer for the state. That is the uniqueness of the property.

Under the new standard for granting a variance which went into affect on January 1, the first question is whether or not there is a reasonable basis to apply the conditions of the ordinance they are asking for a waiver from. The first question is whether there is a fair and substantial

relationship between the goal of the town and the application. She has tried to stress that they have tried to address maintaining or improving the shorefront buffer, improving water quality, and pushing living space a little bit further back from the shore, and re-vegetating and dedicating an area that will remain natural. If denying the variance prevented all those things from happening, there really wouldn't be a fair relationship for the ordinance to be applied to them.

The other question in that prong is whether or not their proposed use is reasonable. She would submit that this is a single family home; they are reducing the bedrooms from five to four and the addition of the garage is considered prima fascia a reasonable use in this district. The alternate test, if the Board does not go with that concern, that they have not met all the objectives so it is unreasonable to apply that standard, is the unreasonable hardship. Based on the limited building envelope and but for the fact that we had a foundation there, they would have to have a variance one way or the other, or build within that footprint. To be honest, she is not even sure to what degree they are protected with that footprint anymore.

That is her explanation for the request for the variance. She also understands they have a request for a Special Exception to build out sideways.

In order to be granted the Special Exception, she needs to convince the Board that this will not reduce the value of compatible land use. She just explained that she thinks they are improving the water quality for everyone, they're giving privacy and a separate access to the two properties to the north, and they're improving the drainage issue for people on the back of the hill who are draining onto this property, but they are also improving the overall aesthetics of the property.

The Board needs to know if there is a valid objection from abutters. They do not believe they would be causing any hazard or nuisance to traffic because of access ways. In fact, by separating the driveways, they are probably improving safety. They have their state permit for the re-design of the septic system and they believe, based on all of the aforementioned reasons that this proposal is in line with the intent of the Master Plan.

T. Kinnon invited John Dever, the Building Inspector, to come to the table. Mr. Dever has a couple of notes that involve this case. The parking area is closer to the property line that the town allows in its ordinance. The town allows five feet; on the side toward Route 11-D the parking area is within three feet of the property line.

It was discovered that the plan Mr. Dever is working from is the new plan; the Board can't even look at this or consider anything from it. Anything the Board considers or approves on has to be based on the older plan. Attorney Nadeau asked for clarification, which Mr. Dever showed her on the plan. Mr. Devers explained that there are other concerns of greater concern than the one he has mentioned, but he is working off the newer septic plan. T. Kinnon reiterated that if Mr. Dever's concerns are not detailed on the October 16, 2008 plan, they can not be deliberated on tonight or approved tonight. Attorney Nadeau asked Mr. Dever if he has seen the October 16 plan; he has not. She asked if the items he wants to address are on the October 16 plan; he answered that they are not. T. Kinnon stated that if there are substantial changes to this plan, they would need to continue this and hear those at the next meeting.

T. Varney asked if he could see the plan Mr. Dever has. He went on to say that he had submitted plans a month ago for the last meeting that would have been in for at least the last 30 days. S. Penney asked for clarification of the plan in question – it is two pages, and she has the smaller version. The plans S. Penney has were received February 26 – she will make more copies and try to find the larger ones. T. Morgan found his copy of the February 26 plan. Attorney Nadeau stated that it is her understanding that the only thing that has changed from the original plan to the present plan is a planting plan and conversion to an impervious area for the drive that was shown on the February plan. T. Varney stated that he had updated the culvert according to the wetland approval. Attorney Nadeau stated that if Mr. Dever has a list, it would seem that most or all of them would fall on the original. She is happy to hear what they are. T. Morgan agreed.

Mr. Dever went on with his presentation. The parking area issue mentioned above is not an issue for the applicants; they are willing to adjust that.

The other issue of concern is that the proposed plan does not meet the septic plan in that the well in the original septic plan is down about 6 feet from the edge of the water which keeps the septic tank out of the required 75 foot radius. This plan shows the well at the corner of the house, which puts the septic tank wholly within the 75 foot radius. In that regard, they do not match. This is from the septic plan he signed on April 29, 2010. Attorney Nadeau stated that, if they are given approval they would… Mr. Dever stated that they have approval of the plan that he signed; approval was given on May 3, 2010 for that septic plan. Attorney Nadeau continued; if they are granted approval for these requests, they would be happy to hear a condition that requires the final plan to have the well located back where it was. T. Kinnon said they certainly could require a condition, with the date of the approved plan delineated.

T. Kinnon asked Mr. Dever if there should also be a condition concerning the parking area. Mr. Dever said there should, otherwise they will need a variance to be within the five feet. Attorney Nadeau stated they would not need a variance; they are agreeable to a condition stating that the final plan will show the parking area no closer to five feet from the boundary.

T. Kinnon opened the floor to public input, either in favor of or against this application. Hearing none, public input was closed.

Attorney Nadeau asked if a copy of the plan has to be filed with the Registry of Deeds; T. Kinnon answered that they do not typically require that. Attorney Nadeau asked if they would want a copy to sign off on. T. Kinnon answered that they would not be the one signing off on it; it would be the Building Inspector who would review it. The only two concerns were the location of the well and septic, and the parking area. Attorney Nadeau is offering, if the Board does grant approval with those conditions, that they submit the final plan that has those three things on it for review by the Code Enforcement Officer.

WORKSHEET – SPECIAL EXCEPTION

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 – L. LaCourse stated that the specific site **is** an appropriate location for the use. T. Kinnon agreed. T. Morgan also agreed, stating that it is Lakeshore Residential and not changing the use in any way.

3 – T. Kinnon stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. That area is mainly residential and the use will fit very well. T. Morgan agreed. L. LaCourse also agreed and stated that it is his belief that it will actually enhance the property values in the district.

4 – T. Morgan stated that there **is no** valid objection from abutters based on demonstrable fact. There was no input from abutters at all. L. LaCourse and T. Kinnon both agreed.

5 – L. LaCourse 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. T. Kinnon agreed. T. Morgan also agreed and stated that the access to the cottages to the north will be improved. However, there is an issue with the off-street parking; they will make that a condition of approval, if they continue to approve this application.

6 – T. Kinnon stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. It is a residential use. A new septic design, well and all other utilities are provided in area. T. Morgan and L. LaCourse both agreed.

7 – T. Morgan stated that there **is** adequate area for safe and sanitary sewage disposal and water supply, a caveat being that they need to design it in a way that the Building Inspector shows in his approval of April 29, 2010. T. Kinnon and L. LaCourse both agreed.

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. The Master Plan addresses this sort of thing along the lake side as a desirable use along the lake shore. What is proposed is within the spirit of the ordinance. L. LaCourse agreed and stated that he thinks a lot of good faith and preparation has gone into making that happen. T. Kinnon also agreed.

T. Morgan made a motion that the Board approve the Special Exception in Case #Z09-12. L. LaCourse seconded the motion.

T. Kinnon suggested that they add the conditions at this point. T. Morgan agreed, adding that they should put the conditions in both the Special Exception and the Variance, just to be on the safe side.

T. Morgan amended his motion to include that there would be two special requirements. One would be that the well and septic design be in conformity with the plan approved by the Building Inspector on April 29, 2010 and by the state on May 3, 2010. The second requirement would be that the parking shown on the northwest corner of the property should be moved to be in conformity with the town regulations.

The vote on the above amended motion was unanimously in favor.

WORKSHEET – VARIANCE

1 – T. Kinnon stated that the variance **will not** be contrary to the public interest. A dilapidated building that was in serious disrepair needed to be taken down and the request is reasonable. Also, the garage is a significant amount of square footage, but because it is a lakeshore property, a garage is a much better alternative to house vehicles and equipment than having it lay around. T. Morgan agreed and stated that part of the interest here is the preservation of Lake Winnipesaukee and this plan takes several elements into account in accomplishing that. L. LaCourse also agreed.

2 - T. Morgan stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. This is Lakeshore Residential and the proposal is to build a nice lakeshore residence with some well thought out facilities, so it is definitely in harmony with the ordinance. L. LaCourse also agreed, stating that he believes it has been well thought out and a lot of good faith has gone into it.

3 – L. LaCourse stated that by granting the variance, substantial justice **will** be done. T. Kinnon agreed that substantial justice will be done; this is a very unique piece of property in its configuration. Justice in this case is for the owners to be allowed to build a reasonable structure, and justice for the public and for the town will be that it will have a well thought out residential home and will help preserve the quality of the lakeshore. T. Morgan also agreed.

4 – T. Kinnon stated that the request **will not** diminish the value of the surrounding properties. There has been no testimony to the contrary, and historically development and projects of this nature enhance the value of surrounding properties. T. Morgan and L. LaCourse both agreed.

5 – T. Morgan stated that there is no fear of substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. This is an unusually shaped piece of property and with the various setbacks assigned to it; it is very difficult to build on it without getting a variance from those setbacks. The proposed use is a reasonable one; the proposed use is one that is in conformity with residential housing in a Lakeshore Residential area. Based on the above analysis, special conditions **do** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. L. LaCourse and T. Kinnon both agreed.

T. Morgan made a motion that this approval be contingent on the same criteria that were established for the Special Exception. The well and septic are to be placed according to the application approved by the Building Inspector on April 29, 2010, and by the state on May 3, 2010, and that the parking area should be made to conform to the town ordinance. L. LaCourse seconded the motion, which passed with all three sitting members voting in favor.

P. Monzione rejoined the Board at this point.

Case #Z10-01 Lowell and Dorla Hall	Map 34 Lot 33-91	Special Exception 3 Verna Lane

Application submitted by Roger Sample on behalf of applicants Lowell and Dorla Hall to request a Special Exception from Article 300, Section 320 A-4, B2-A and C to allow the expansion of a non-conforming structure to include a study as well as a half-bath on the second floor. This parcel is located in the Alton Bay Christian Conference Center in the Residential zone. **This is not open to public input. For Member Miller's decision only for final vote.**

P. Monzione pointed out with regard to this case that this matter was rescheduled to come back from last month for one specific item of the criteria for the Special Exception. Member Miller recused himself on the basis that he had not sufficiently familiarized himself with the Master Plan to be able to determine whether that particular criterion had been fulfilled. Therefore, this had been rescheduled to the meeting for the one specific purpose of having Mr. Miller make that determination, having given him the opportunity to review the Master Plan in the interim. As noted at the beginning of the meeting, Mr. Miller is not present, so the Board will be unable to address Case #Z10-01. Even though it is not the next case on the agenda, he would like to bring it up now so that Mr. Sample, who is present, does not have to hang around and listen for the next application only to be told that they can not proceed.

There was discussion concerning how to proceed with this case, as S. Miller was not here to cast his vote. Several suggestions were made and discarded. The end result of all discussion is that Mr. Sample requested a continuance to the June 3, 2010 meeting. This is not to be counted as one of his continuances, as it was not a continuance of his making.

L. LaCourse made a motion to continue Case Z10-01 to the meeting on June 3, 2010. T. Morgan seconded the motion, which passed with three votes in favor. (T. Kinnon abstained)

Case #Z10-04 & #Z10-05 Laurie Shea, Scott Mertens, and Susan Dolan	Map 36 Lot 51 (Formerly 0-3)	Variance/Special Exceptions 128 and 130 Mount Major Highway

Application submitted by Tom Varney on behalf of applicants Laurie Shea, Scott Mertens, and Susan Dolan to request a Variance from Article 300, Section 327 Setbacks to allow the take down and rebuild of two (2) cottages within the 50 foot Shoreland setback as well as the 10 foot side setback. Additionally, applicants request a Special Exception from Article 300, Section 320(B) to raise the ridge line of the larger white cottage to make the building more structurally sound. This parcel is located in the Residential Commercial zone. **Final Continuance 5/6/2010.**

Mr. Tom Varney of Varney Engineering requested a continuance in this case, as there is an issue of ownership of the right of way still pending with regard to this application. There was discussion concerning notification burden. The application has not been accepted. S. Ames recommended that they be given a specific end to this continuance, be it one month or two or three.

P. Monzione commented that there is a two continuance rule for a reason. At some point this case may have to go away and when it is ready, start over again. Both members of the Planning Department have made specific recommendations as to how this could be handled.

T. Kinnon made a motion to grant a continuance for Cases #Z10-04 and #Z10-05, the date to be determined but not later than the meeting on August 5, 2010. Re-notification costs are to be paid by the applicant to the Town of Alton, and such notification to be made by the deadline date. There will be no additional application fee at this time, but this is the final continuance. T. Morgan seconded the motion, which passed without opposition.

VII. NEW APPLICATIONS

Case #Z10-11 **George Annis**	**Map 36 Lot 16**	**Equitable Waiver** **357 Mount Major Highway**

Application submitted by Michael Lacasse on behalf of applicant George Annis to request an Equitable Waiver of Dimensional Requirements from Article 300 Section 327 Setback to allow a bulkhead within the side setbacks. A building permit has been issued for this project and construction has been completed. This parcel is located in the Residential Rural zone.

S. Penney read this case into the record.

Michael Lacasse came forward to present this case. S. Penney stated that this is an Equitable Waiver, so there is no application but there is a Planner Review and a plan. This case deals strictly with the bulkhead, and is very straightforward.

P. Monzione asked for clarification on the use of Article 300 Section 327; this applies to setbacks. He went on to say that even though there is no need for a ruling as to whether the application is complete, he is going to declare that it is. Since they are only dealing with the bulkhead, he feels there is sufficient information to make a ruling.

Mr. Lacasse explained that Mr. Dever had received a call from a neighbor stating that the bulkhead was in the setback. This is the first project he has done in Alton; he is from the Nashua/Hudson area. He didn't know the bulkhead could not be on the property line; that is an error he made. He should have asked before he did it. Thee building plan he submitted back in February show the bulkhead a foot and a half more encroaching on the property line. When he put the bulkhead in, he moved it over a foot and a half closer into the property line for Mr. Annis, so it wouldn't be above the window. That is when Mr. Dever got the call from the neighbor. The neighbor just made them aware, saying that they were encroaching the pocket. That's what brings him here. The Annis' are going to be putting a fence up; it will be a 6' vinyl fence they will put 6" back from their property line. The bulkhead will not be an eyesore. He and Mr. Dever have talked about this oversight.

P. Monzione remarked that from what he is seeing on the plan, and from the Planner's memo that this is only two feet into the ten foot setback in total. They need this equitable waiver because of that, and the bulkhead is already constructed. P. Monzione made the point that they are not actually closer to the property line; the issue here is that they are into the ten foot setback.

P. Monzione asked Mr. Dever if he had anything to add. Mr. Dever stated that he had spoken to the Board about this case. When you look at the architectural drawing he was given originally, it was supposed to be a lot closer. Even after he moved it, it was still in the setback; the setback is very close as it is. The property line itself is only three feet off the edge of the house. Being pre-existing, it is where it is. He had to move the bulkhead because of expansion into the envelope of the original project. T. Kinnon remarked that this is a perfect example of why equitable waivers are out there; it's just a mistake.

P. Monzione opened the floor to public input, either in favor or in opposition. Seeing none, public input was closed.

P. Monzione stated for the record that given the totality of circumstances and the minimal impact that this is having. No abutter is coming in to object or complain, and it has been represented that the neighbor is fine with it and that fencing is going to be installed, he does not see that this is a problem.

T. Kinnon made a motion to approve the request for an Equitable Waiver in Case #Z10-11. T. Morgan seconded the motion, which passed without opposition.

A short break was taken at this time.

Case #Z10-12 **Paul Vallee**	**Map 43 Lot 39**	**Special Exception** **339 Trask Side Road**

Application submitted by Paul Vallee to request a Special Exception from Article 300 Section 320 B 2 (c) to allow the expansion of his existing home to include a second story. This parcel is located in the Lakeshore Residential zone.

S. Penney read the case into the record.

Mr. Vallee came to the table to present his case. The Board reviewed the application for completeness. There was discussion concerning the content of the application packet. L. LaCourse voiced concern that the setbacks are not shown on the plan. He cited the earlier case which had not been accepted due to the absence of setbacks indicated on the plan. P. Monzione explained that there is a septic plan which is to scale; the previous case did not have that. He realizes that he had commented earlier about the legalities and tightening up on some of the requirements, but they are able to extrapolate the location of the setbacks using the "to-scale" septic plan. Additionally, there is a drawing from the Building Inspector showing the location of the structure on the property.

T. Morgan made a motion to accept application Z10-12 as complete. T. Kinnon seconded the motion. T. Morgan, T. Kinnon, and P. Monzione voted in favor.

L. LaCourse again voiced concern about the lack of setback lines; he is thinking about voting no on this motion. T. Kinnon at this time switched his vote to a no; they just rejected a case for the

exact same reason. The applicant had pictures to show where the structure is. The setback lines need to be drawn on the plot.
P. Monzione raised a point of order. They have a motion to accept the application as complete. They have a second. Now this is open for discussion and a new vote can be done after discussion.

P. Monzione stated that he appreciates what happened with the earlier applicant. He also appreciates that all applicants should be treated the same and that they should be fair to everyone who comes before them. There is a difference between the first applicant and this. For whatever reason, they were not provided, whether it came from the Planning Department or from anyone, a to-scale plat of the proposed location and dimension of the building. What they have been given here is on a 20' scale and which depicts the 50' setback from the lake. The way this plan is drawn, they can see where the building is in relation to the setbacks.

S. Penney stated for the record that they should have the site plans, and depending on how benevolent she is feeling she does try to help. In reference to the previous case, she had been pulling teeth for documentation, and she was not going to supplement their information with any of her own. In this case, she felt that with a little augmentation on her part; in Mr. Vallee's case, it was not prejudicial, but with complete except for that. There was an approved septic to scale, and it was quick to just zap out.

P. Monzione noted for the record that the previous case that they did not accept as complete, the applicant tried to do the same thing by using the septic plan. Unfortunately, that septic plan did not have a to-scale drawing, where this one did. T. Kinnon thought it had been an original in the previous case; when the applicant pulled it out of the envelope he thought it was identical to an original septic design drawing. T. Kinnon explained that he understands that S. Penney is going to try to be as helpful as possible. S. Penney agreed, but said that she does not want to necessarily be doing their work for them, as she has enough to do. T. Kinnon went on to day that he just sees that in one night they went one way, then the other. They have an applicant that did have a drawing to-scale. Unless it was something different, it looked exactly like any septic design plan he has ever seen. P. Monzione stated that with the previous case, it was his understanding that the design had been reduced; the Board couldn't take a ruler and measure and accurately determine where the building was in relation to the setback and how far into the setback it may be. With these drawings (the ones for the current case), they are on a 20 scale and they're accurate to the point that the applicant can take a ruler and certifies and makes a ruling as to where the structure is. T. Kinnon voiced understanding and conceded that this is enough information for him to move forward. However, in the future, he will not accept any more plans without setbacks on them. This is great, and rather than burden this applicant with having to come back again; in the future he will vote no if the setbacks are not on the plan, by the applicant. They (the Board) need to start that rule so that in the future it is cut and dried.

L. LaCourse asked if there is something in the present instructions that asks for that. P. Monzione stated that is a good point; after all cases are finished tonight and they have worked to the end of the agenda, they can discuss T. Kinnon's point about a general procedure, and they can also talk about making sure the applicants are informed in advance as to what they need.

P. Monzione asked if there was any further discussion. He specifically asked L. LaCourse his feeling; now that it is clear that they have a drawing which is to scale that can be used to determine where the structure is going to be located in relation to the setbacks. L. LaCourse stated he is still uncomfortable with the plan because if you photocopy a plan, it is distorted in size. He knows it is not accurate, but for arguments sake tonight, and because he knows they are going to go on and discuss it further, he will accept it. T. Morgan stated that one reason he is more comfortable with this one is because it is clearly marked that the entire structure is in the setback. The other one had some unknown fraction in the setback; this one they know all of it is in the setback. P. Monzione agreed that is a huge point; when you have a structure that is starting out in the setback, it makes it all that much more important to have that plan.

The vote on the motion made by T. Morgan to accept the application as complete for Case #Z10-12, seconded by T. Kinnon, passed without opposition.

Mr. Vallee showed pictures of his property, indicating them as showing "the close side"; he has a rock wall that goes along the side and then curves down. There is at least 30' on that side, and that's the close side. The other side is 40', and the house is only 39' long. That photo, along with several others, was circulated to the Board members. P. Monzione stated that the point Mr. Vallee had been making with the photos is that they depict the location of the structure on the property in relation to the property line and it shows the house being so far from those property lines it becomes obvious from the picture that the structure is within the setback. Mr. Vallee questioned how far the setbacks are; they are 10' on the sides and 25' from the right of way. L. LaCourse measured the 50' setback and used that information to extrapolate a side setback of only 8'. S. Penney explained that they shore undulates, so that might not be an accurate marker. T. Kinnon remarked that this gets right back to where they started; they do not have accurate setback measurements.

John Dever, the Code Enforcement Officer, explained the location of the setbacks and of the structure in relation to the setbacks. The boundary to the left, on a 1:20 scale is 15' from the corner of the house to the left side boundary as you stand looking at it from the lake. The front right corner is a little over 35' from the side boundary line. The setbacks are 10' on the sides. The town setback in that zone would be 30' from the lake because it is an older lot; we go to a 50' setback for lots created after 3/4/1995. The 50' is the state shore land setback. He is a long way from the rear setback; it is a fair distance to the road from the structure. About 2/3 of the structure is in the 30' setback to the lake.

S. Penney explained that CSPA is there because he is expanding the building; that's why she wanted to make that notation to quantify additional impervious surfaces. T. Kinnon asked if this would require a DES permit. Mr. Dever said it would not because he is going straight up. There is a minor change with the deck which is what the proposed deck and stairs show. Those are going to be over existing impervious surface, which is what the pictures are showing. Mr. Vallee's original plan has it a little bit further out; he is going to bring it back so he will be over an existing impervious surface which does not require a permit at that point. There is a cement slab in front of the house and a four foot pad where the water comes off the house.

P. Monzione stated that they have already talked about the fact that the structure is in the 30' setback from the lake, which makes it nonconforming. He asked if where the stairs are located is going to take it further into the setback. M. Dever explained that the stairs are on the side of the house, so they will be within the setback. They are going to be in the setback. They do not encroach into the side setback.

P. Monzione asked if they are going to increase the number of bedrooms from two to four. Mr. Vallee answered that they are going to add one and taking one away downstairs. The one downstairs is going to become his office. The reason for the addition is to add a kitchen, bedroom, and living room upstairs. P. Monzione asked Mr. Vallee what is going to become of the downstairs kitchen. Mr. Vallee explained that for now they are going to leave it, but they could eventually turn it into a mudroom. P. Monzione asked the applicant if the existing kitchen is a full kitchen; Mr. Vallee stated that it is. It's not good for anything else because when you come into the house you only have 6 feet and that's the kitchen right now. He is going to put all new appliances in the new kitchen upstairs; he will take out the appliances in the present kitchen if he has to.

T. Kinnon asked Mr. Dever if there is any restriction on the number of kitchens in a home. Mr. Dever answered that technically there is not, but if there is a bedroom, bathroom, and kitchen downstairs and a bedroom, bathroom, and kitchen upstairs, that makes each of them a dwelling unit. One of them would have to be considered an accessory apartment. If one of the elements gets removed, and the easiest one to remove is usually the kitchen, then it is not an issue. Mr. Vallee stated that he does not mind pulling out the downstairs kitchen. There are several reasons why he can not have two dwelling units in the structure; P. Monzione acknowledged that the applicant is not here for two dwelling units. He only wants one. He explained that when you have those facilities described by Mr. Dever on one floor, and you have the same facilities on an upstairs floor, you technically have created two dwelling units, even if you don't use them as such.

P. Monzione asked if the new structure would stay within the 35' height requirement. Mr. Vallee answered that it will. P. Monzione asked if he is staying within the existing footprint for the living structure and other than the deck and the stairs he is using to access the second floor; Mr. Vallee answered that he is.

Mr. Vallee added that there will be no excavating or fill brought in. L. LaCourse asked if he is going to remove the roof, go to trusses over the existing walls and go up. Mr. Vallee verified that is correct. Mr. Dever pointed out the photo in the packet that shows the view from Trask Side Road looking down toward Mr. Vallee's house. You can see the garage and a small section of roof with a skylight in it, which is the house. As he goes up, the impact on anyone else is going to be virtually nil. The next house that has any kind of view is offset to the left, and they're looking at trees and the top of his garage.

S. Penney asked about the statement in Mr. Vallee's application that refers to a "modern septic system with pump and chambers." She asked if he is going to be adding a new one. Mr. Vallee explained that refers to the existing system which was installed in 1993. S. Penney asked if the capacity of that system was for two bedrooms; Mr. Vallee answered that it was. P. Monzione

noted that in the application it says that the reason for doing this is so that the applicant can use this structure for a permanent residence. Mr. Vallee stated that was correct.

There was no one present to offer public input, either in favor or in opposition. Public input was closed.

WORKSHEET – SPECIAL EXCEPTION

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 – L. LaCourse stated that the specific site **is** an appropriate location for the use. Considering the house is so low, as Mr. Dever pointed out, he does not think there is going to be any issue with any abutters losing their view. T. Kinnon agreed. P. Monzione agreed, stating that it is being used for residential, which is what it has been, and now it will be a permanent residence rather than seasonal. T. Morgan also agreed.

3 – T. Kinnon stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. The use is remaining the same and historically this type of renovation has increased property values. P. Monzione agreed with all of that and pointed out that the use is in no way incompatible. T. Morgan and L. LaCourse agreed.

4 – P. Monzione stated that there **is no** valid objection from abutters based on demonstrable fact. There was no input from abutters at all. All members 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. None of that is changing by virtue of the applicant building up on his house, so no nuisance or hazard is created. All members agreed; P. Monzione added that this construction is not in any way going to change traffic or parking.

6 – L. LaCourse stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. As long as the bedrooms remain as they are, the septic will do what it is supposed to do. T. Kinnon agreed. P. Monzione also agreed, adding that this has to be only the number of bedrooms that have been represented in this application and that he agrees on the condition that this construction does not create two dwelling units, which are not permitted. Measures would have to be taken to assure that the downstairs is no longer a dwelling unit. That would be up to the applicant which element he would like to remove, but his concern would be that if this is approved, it may not create two dwelling units. T. Morgan agreed.

7 – T. Kinnon stated that there **is** adequate area for safe and sanitary sewage disposal and water supply. The water supply is existing, and the sewage disposal system is existing and fairly new. P. Monzione agreed, but on the same basis that he agreed to the one above. T. Morgan and L. LaCourse also agreed.

8 – P. Monzione stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. This is going to improve and add a permanent full time residence on this lake. There is nothing about this construction that is in any way inconsistent with the spirit or the intent of the Master Plan. All other members agreed.

T. Morgan made a motion that the Board approves the Special Exception application for Case #Z09-12, with two additional conditions. The first is that the number of bedrooms must remain at two, unless the applicant comes before this Board and requests some sort of variance for that. The second is that something has to be done to the downstairs unit so it is not considered a habitable unit in and of itself; how that is done is to be left up to the applicant.

L. LaCourse suggested that he would feel more comfortable about the downstairs unit if the kitchen was removed. P. Monzione asked if he was requesting an amendment to the motion to require that the kitchen be removed. L. LaCourse responded saying that he has no problem with someone having an extra refrigerator, but he would like to see removal of the stove. P. Monzione asked T. Morgan if he would amend his motion to be more specific about removal of the kitchen per se.

T. Morgan amended the motion to include removal of the downstairs kitchen, so that it is not a habitable unit. The inclusion of a refrigerator on the downstairs floor would not be considered a kitchen. L. LaCourse seconded the motion, which passed by unanimous vote of the Board.

Case #Z10-09 **Lawrence Martin**	**Map 15 Lot 64**	**Request for Motion for Rehearing** **560 Old Wolfeboro Road**

Application originally submitted by Lawrence Martin to request a Variance from Article 300 Section 328 to allow the expansion of the den by adding additional living space to the existing den by going beyond the allowable 35 foot height limit. This parcel is located in the Rural zone. Request for Rehearing submitted by Attorney Arthur Hoover.

P. Monzione read the case into the record.

There is a letter from Attorney Hoover. S. Ames handed out the pertinent section of the minutes. T. Morgan noted that there are several instances in these minutes where his name is confused with Mr. Martin's.

P. Monzione suggested that they should talk about this as they go along. To him, the primary basis of Attorney Hoover's motion is set forth starting on page 4, where he references RSA 677:2, which sets forth the requirements. He is talking about comments by the Chief of Police; P. Monzione did not recall those. S. Penney commented that it is in the Planner Report; it was not appropriate. It was not relevant, and it was outside his purview. P. Monzione stated for the record that he was not aware of the Police Chief's comment, nor was it considered. S. Penney stated that in the Planner Review, in her reference, she edited it because it was totally irrelevant. He had no capacity to be speaking to issues of zoning; it was whether this would affect public

safety or not. P. Monzione voiced understanding and stated that he was more concerned about any comments that might come from the Code Enforcement Officer and/or the Fire Department when they are talking about bringing something up higher; whether it poses a safety hazard or anything like that. He did not see anything of that nature. S. Penney offered the original; P. Monzione stated for the record that the Police Chief made a comment on the hardship criteria required for a variance and expressed his opinion on that. He went on to agree that the Police Chief is not someone who should be expressing opinions on the hardship aspect. He also stated for the record that the Police Chief's comments were not taken into consideration by himself or, to his knowledge, by any member of this Board when the original decision was made. He does not feel that the Police Chief's comments played any role whatsoever as to what decision was made. Therefore, the motion for rehearing on the grounds of the Police Chief's comments is not valid.

Another grounds for the motion for rehearing is that there were only four members in attendance and the applicant should have been given an option not to go along or otherwise have been told that three are required. Again, P. Monzione expressed disagreement with that. It's not up to the Board to explain that. Three members are a quorum; when they only have three and a unanimous decision is needed, they give the applicant an option of not proceeding. When they have four members, that is more than a quorum and they can proceed without giving the applicant a choice of whether to proceed or not. He feels that is also not a valid ground for granting of a rehearing. It is his opinion that it should not be granted on either of the two grounds stated.

The fact that he was not represented by counsel and only had his son there is not, in P. Monzione's opinion, grounds for granting a rehearing. He had every opportunity to have a lawyer whether his son was sufficiently familiar or not is not grounds for rehearing.

He is concerned that on the hardship criteria there was a tie vote, and whether or not the hardship criteria was fully appreciated and understood by the members at that time. He would also state for the record that in the interim, at the Board's request, they had an opportunity to meet with Town Counsel at a private session as the attorney's client and to discuss the legalities of the hardship issue, which has recently been codified. It has been written about by a lot of legal scholars, which is not the simplest thing to understand. In light of that meeting, it may be that they have gained a greater appreciation of the hardship test, even though many of them have been applying it for quite some time and understand it quite well. It would be his view on this motion for reconsideration that the motion should be granted on the grounds that maybe the applicant should be given another chance to present the application on the hardship issue. If this motion is granted, they are not granting the variance; they are simply granting the opportunity for the applicant to come before the Board again for the purpose of rectifying or correcting things that may have been overlooked or misapprehended. Motions for rehearing generally involve that. His personal point of view is that the motion for rehearing be granted and that the applicant should be given another opportunity to present this case and that the Board can make a decision on it at that time.

T. Morgan voiced agreement with all P. Monzione had said, particularly on the narrow issue that it's merely a matter of what happened; what was set forth in paragraph two of the application.

All the other criteria except hardship carried the day, and that one was a tie vote. The purpose of a rehearing is to give this Board an opportunity to examine what it did previously to see if it did, in fact, make a mistake or would like to correct the record. That is a portion of the record that is well worth revisiting.

P. Monzione addressed T. Kinnon, who had not been present at the original hearing. T. Kinnon stated that after reading through some of the record, he would tend to go along with the rest of the Board on this and grant the rehearing. L. LaCourse also agreed; based on discussions they had earlier and more information. He is not sure he would vote any differently based on what they are looking at right here, but he is willing to give the applicant another chance.

T. Kinnon made a motion to grant the motion for rehearing for Case #Z10-09, rehearing to be set for June 3, 2010. T. Morgan seconded the motion which passed by unanimous vote.

The Planning Department will notify the applicant of this decision. S. Penney is going to double check to see if the applicant is responsible for abutter notification costs; she believes they are. P. Monzione stated for the record that whatever the usual and statutory requirements are will be met. They may be set forth in RSA 677. Notice has to go out by May 28.

VIII. APPROVAL OF MINUTES

Due to the late hour, approval of meeting minutes for March 3, 2010 and April 1, 2010 was moved to a future meeting.

IX. NEW BUSINESS

T. Morgan asked if there is anything in the application that refers to the requirement to show setbacks on plans. S. Penney is going to double-check to make sure it is very clear. It is cited under the regulations. There was discussion concerning the need to enforce these rules.

Mr. Dever informed the Board that as he is going forward, he is finding irregularities, some of which might end up before this Board. If it gets to be a large volume, they may want to look into an alternative way of dealing with some of them. Mr. Dever stated that there are some issues he is going to be telling people they have to come in. T. Morgan asked if there were enough to cause the need for a special session to deal with them; P. Monzione had been thinking the same. Mr. Dever will let the Board know. P. Monzione expressed appreciation for the heads-up Mr. Dever is giving the Board when these issues come up.

X. PREVIOUS BUSINESS

The OEP Conference is Saturday, May 8, 2010, in Nashua. Anyone going should meet at the Town Hall so the carpool can be arranged.

XI. ADJOURNMENT

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

There will be a Zoning Delineation Workshop on May 18, 2010, at 5:00 p.m. The next regular meeting of the Alton Zoning Board of Adjustment will be on June 4, 2010, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session