TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
June 2, 2011
Approved as amended 7/7/11

I. CALL TO ORDER

Tim Morgan, Chairman, called the meeting to order at 7:05 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Timothy Morgan, Chair, introduced himself, the Planning Department Representative, and the members of the Zoning Board of Adjustment:

Ken McWilliams, Town of Alton Planner
John Dever, Building Inspector and Code Enforcement Officer
Timothy Kinnon, Member
Paul Monzione, Member
Lou LaCourse, Clerk

III. APPOINTMENT OF ALTERNATES

Alternate Paul Larochelle was appointed as a member for this hearing.

IV. STATEMENT OF THE APPEAL PROCESS

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

V. APPROVAL OF THE AGENDA

T. Morgan explained to applicants and the members of the public in attendance that it is the habit of this Board to not begin any cases after 10:00 p.m.; if there are cases on the agenda that the Board has not heard as of 10:00 p.m. those cases will be continued to the next meeting.

J. Dever suggested moving the Motion for Rehearing in Case Z11-05, Special Exception and Variance for Thomas Mitchell, to the beginning of the agenda. This is currently near the end of the agenda under Other Business, Correspondence.

P. Monzione made a motion to amend the agenda to place the Motion for Rehearing in Case #Z11-05, Special Exception and Variance for Thomas Mitchell to the beginning of the agenda. L. LaCourse seconded the motion which passed with five votes in favor and none opposed.

P. Monzione made a motion to approve the agenda as amended; P. Larochelle seconded the motion which passed with five votes in favor and none opposed.

VI. MOTION FOR REHEARING

Tom Varney of Varney Engineering, LLC, and Thomas Mitchell, the applicant in Case #Z11-05, came forward and introduced themselves. Mr. Varney explained that at the last meeting, the Board had approved their Special Exception and Variance to rebuild the applicants' cottage. During the deliberation there was an amendment to the motion that the new foundation area is not to be used for living space but for storage only. That came up without any discussion prior, and they couldn't say anything because it was in the deliberation period; they would like to come back and discuss that. It is his understanding that they would come back next month, and have to notify abutters. J. Dever confirmed that there would be separate notification. Mr. Varney asked if it would be decided tonight. T. Morgan explained that the purpose of tonight would be to decide whether the Board would grant a rehearing, but that the rehearing would have to be noticed.

Mr. Varney explained that he had submitted a letter requesting that the condition be removed from the approval based on the fact that no discussion was held concerning the use of the basement during the public discussion; there is a three bedroom septic design approved by the state; the reason this condition was placed on the approval is not clear. It popped out of nowhere and affects the applicants' use of the building because they would like to use it for other than just storage. There is no law or rule that prevents that; there is no reason for that not to be the case. They have a large lot and they have maintained it as a small cottage with a new foundation; they are not building something out of the ordinary that would cause such a condition to be made. He and the applicant do not understand the need for it, and that is what they want to discuss. Mr. Mitchell added that there would not be any commercial use.

P. Monzione stated that rather than getting into the merits of whether the use of the basement is appropriate or whether the condition is appropriate, the discussion is limited to whether or not the motion for rehearing will be granted, then the applicant can submit all reasons why that should not be a condition.

P. Monzione made a motion that the Request for Rehearing be granted and that the matter be scheduled for the regularly scheduled meeting on July 7, 2011. P. Larochelle seconded the motion which passed with four votes in favor, none opposed, and one abstention (T. Kinnon).

VII. CONTINUED APPLICATIONS

Case #Z11-04 and #Z11-11	**Variance**	**Paul Blackwood**
47 Letter S Road	**Map 30 Lot 17**	**Residential Zone**

Application submitted by Paul Blackwood for Variances to Article 300 Section 327 to allow the construction of an accessory storage structure and to construct a deck attached to the existing home, both on the same nonconforming lot.

J. Dever read the case into the record. Paul and Joan Blackwood came forward to present the case. J. Dever mentioned that the reason for the two cases is that when the Board continued this case last month, the request was made to separate the two issues so they could be dealt with each on their own merits.

Members reviewed the applications for completeness.

T. Kinnon made a motion to accept the applications for Case #Z11-04 and Case #Z11-11 as complete. L. LaCourse seconded the motion which passed with five votes in favor and none opposed.

Mr. Blackwood explained that one of the variance requests is so that they can put a small 10 X 18 shed up on their property. He would use it to store outdoor equipment; the house has a basement but there is not adequate space for this type of storage. Mrs. Blackwood is a gardener; there are 15 steps from the basement to the area of

her garden. She would use part of the shed as her gardening shed. Also, they have a small dinghy and to have to take all of the equipment (battery, seats, etc.) for the boat up and down the steps is a hardship. They really need the building to hold a lot of stuff; it would get a lot of use. They realize it is a non-conforming lot, but the shed would be a real big help to them.

Mr. Blackwood has read the statutes of Alton that talk about maintaining the rural setting; for that reason the shed would be blended in with the appearance of the house. Also, they will not cause any problems for anyone else or infringe on anyone else's rights. He has applied to the State Wetlands Board; they have approved his permit for both the shed and the deck.

P. Monzione asked if the variance they are seeking is because under regulation 327 A.1 you cannot have a structure unless you are 50 feet back from the water. Mr. Blackwood confirmed that was correct. P. Monzione asked if the lot was created prior to March of 1995. Mrs. Blackwood answered that it was created in 1860. P. Monzione asked if NH-DES has already granted a permit as they would also be in violation of the Shoreline Protection Act by placing a structure that close to the river. Mr. Blackwood answered that they have permits in place. P. Monzione asked how far the structure would be from the water; Mr. Blackwood answered that it would be 14 feet from the water and 6 feet from the road. P. Monzione asked if they also require a variance of 327.2 which requires them to be 25 feet from the right of way of the road. P. Monzione asked if the configuration and dimensions of the lot are such that there is no other way to place the shed on the property without being in violation of the right of way and shoreline setbacks. Mrs. Blackwood confirmed the accuracy of that statement.

T. Morgan opened public input in favor of this application. Richard Smith is familiar with the Blackwoods and has been to their home which is located on a property between the Merrymeeting River and Letter S Road. There is no other place on the property that a structure could be put. The structure would not cause any problems with abutters or visibility. He would suggest that the Board grant this application.

T. Morgan opened public input in opposition to this application. There was none; public input for this case was closed.

P. Monzione asked if other houses surrounding this property have sheds; Mrs. Blackwood answered that all of the surrounding properties have sheds or garages. The use of other sheds is not available to them; Mrs. Blackwood felt that this is the reason a shed was never put there before because all the property in the area was owned by one family and they used each others' sheds.

L. LaCourse stated that he does not see where the dimensions of the shed are shown on the plans. Mrs. Blackwood explained that the photos show a stringed off area and there is a map showing the location and dimensions.

VARIANCE WORKSHEET

1 – P. Larochelle stated that the variance **will not** be contrary to the public interest. T. Kinnon agreed and added that he does not see how this would adversely affect anyone and it would make the structure more conforming with the neighborhood. T. Morgan agreed. P. Monzione agreed and added that this is a reasonable use of the property. L. LaCourse also agreed.

2 – T. Kinnon 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. It will be more conforming with the character of the neighborhood; he does not see how the intent of the Master Plan relates to this. It will allow a suitable storage facility for the applicants. T. Morgan agreed and added that he also agrees that it is within the character of the district for which it is proposed. P. Monzione and L. LaCourse agreed.

3 – T. Morgan stated that by granting the variance, substantial justice **will** be done. The benefit to the applicant far outweighs any minimal detriment to the public as a whole. P. Monzione agreed and added that this is a reasonable use and given the particular lot the granting of the variance will allow substantial justice to be done. L. LaCourse, P. Larochelle, and T. Kinnon agreed.

4 – P. Monzione stated that the request **will not** diminish the value of the surrounding properties. There has been no evidence offered with regard to diminution of property values, and given the description and specifications of the structure and its use, that demonstrates that it will not diminish values of surrounding property. L. LaCourse, P. Larochelle, T. Kinnon, and T. Morgan all agreed.

5 – L. LaCourse stated that for the purpose of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; there **is no** fair and substantial relationship existing between the general public purpose of the ordinance provision and the specific application of that provision to the property, and the purpose of the proposed use **is** a reasonable one. He added that he feels that no substantial relationship exists between the general purpose of the ordinance and the application to the property. Also, there is not a lot of congestion on Letter S Road; with the size of the lot it is very reasonable to allow the shed. P. Larochelle and T. Kinnon agreed. T. Morgan agreed and added that the unnecessary hardship here it that this is a very unusually shaped lot and was carved out on a survey many years ago. For that reason there is a hardship in trying to put any structure on the lot. Also, the proposed use is a reasonable one. P. Monzione agreed; given the configuration and size of this lot and that the proposed use is a reasonable one, particularly in light of the fact that surrounding properties are using their lots in a similar manner with either sheds or garages.

Due to the favorable finding on each criteria of the variance, a vote was not needed. The variance for Case #Z11-11 was granted.

Mr. Blackwood explained that the other variance request is because they would like to build an 8 X 17 foot deck on the back of the house. Because of the limited size of the property, there is no place to have a cookout or a barbecue. Also, they have a 3 year old grandson who comes to visit and the deck would help them keep him confined while still being able to allow him to be outside without fear of the river or the road. Mrs. Blackwood added that there is no place to cookout because they have parking, a steep drop down to the water and a nine foot backyard. The only place to barbecue would be right by the road, and that would be awkward.

P. Monzione stated that in the application it says that the deck will be two feet from the shoreline. Mr. Blackwood confirmed that to be true. P. Monzione added that all of the deck would be within the setback. Mr. Blackwood explained that the whole house is within the setback; he has talked about that to DES and they have told him that because of the location and non-conforming nature of the property, the deck will not be a problem. Mr. Blackwood had a DES approval for both the deck and the shed.

T. Morgan opened the floor to public input in favor of and in opposition to this application. There was none; public input for this application was closed.

P. Monzione asked about surrounding properties and whether they have decks. Mrs. Blackwood answered that they are all one story high; the back of their home is two floors with one floor in the front of the home. The other homes would not have a deck. Mrs. Blackwood added that the deck would only be visible from across the river; they have a 3 season room that enters through their side door so the deck would come off of that and around the back of the house.

VARIANCE WORKSHEET

1 – T. Kinnon stated that the variance **will not** be contrary to the public interest. He added that again he does not see how this would affect the public at all; if anything it will enhance the property and make it safer as there is presently no area for gathering. T. Morgan, P. Monzione, L. LaCourse and P. Larochelle 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. A deck on the back of a house overlooking the river would be approved in other places but because of the lot, this applicant needs to be here for this variance. P. Monzione, L. LaCourse, P. Larochelle, and T. Kinnon all agreed.

3 – P. Monzione stated that by granting the variance, substantial justice **will** be done. The use is a reasonable one; the configuration of this lot as it was configured a long time ago prohibits reasonable use if the ordinance is strictly applied. Therefore the granting of the variance will cause substantial justice to be done. L. LaCourse, P. Larochelle, and T. Kinnon agreed. T. Morgan also agreed and added that once again he feels that the value to the applicant far outweighs any detriment to the town.

4 – L. LaCourse stated that the request **will not** diminish the value of the surrounding properties. The area of this property is a very nice area and he does not see where the addition of the deck is going to do anything but enhance the area. P. Larochelle, T. Kinnon, T. Morgan, and P. Monzione all agreed.

5 – P. Larochelle stated that for the purpose of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; there **is no** fair and substantial relationship existing between the general public purpose of the ordinance provision and the specific application of that provision to the property, and the purpose of the proposed use **is** a reasonable one. T. Kinnon agreed. T. Morgan also agreed and added that again the hardship is the shape of the property and the zoning ordinance that would normally prohibit this sort of thing creates a hardship to the owners. There is no reasonable and substantial relationship between the ordinance and its application to the property because of that hardship, and a deck is certainly a reasonable use. P. Monzione agreed for those reasons and also for the reasons he articulated in the previous application regarding the shed. The same criteria apply and are equally present here. L. LaCourse also agreed.

Due to the favorable unanimous finding on each criteria of the variance, a vote was not needed. The variance for Case #Z11-04 was granted.

Case #Z11-07 **117 New Durham Road**	**Appeal of Administrative Decision** **Map 9 Lot 53**	**Alton Bay Campmeeting Association** **Rural Residential Zone**

Application submitted by Attorney Arthur Hoover on behalf of the Alton Bay Campmeeting Association to appeal the decision of the Zoning Officer regarding the determination that a 5 unit, multi-family apartment building is an abandoned non-conforming use in the Zone.

J. Dever read the case into the record. Attorney Hoover and Mr. Richard Smith of the Alton Bay Campmeeting Association came forward to present. J. Dever explained that Ken McWilliams would be answering questions as it is his decision that is being appealed. P. Monzione stated for the record that he resides at 230 New Durham Road; he wanted to make that clear to the applicant and to the public. The decision to recuse belongs solely to him; he knows nothing about this application other that what has been submitted and reviewed, but he felt that it was important to disclose his proximity to the location of this application. He has not thought about how a decision one way or another on this appeal may affect him; for that reason he feels he can be fair and impartial and can sit for the hearing. However, even though it is his decision solely, he will leave it up to the applicant to

say whether he should recuse himself. Attorney Hoover stated that they have no problem with that and thanked P. Monzione for bringing it forward.
Board members have reviewed the application.

T. Kinnon made a motion to accept the application for Case #Z11-07 as complete. P. Monzione seconded the motion which passed with five votes in favor and none opposed.

Attorney Hoover stated that due to the length of the agenda he will not rehash all of the points made in his written narrative; he will limit his comments.

He gave some background in this case; it is a perfect case of Murphy's Law. Whatever could go wrong in this process did go wrong, and there is no one particular person or entity responsible; the most innocent of all the parties involved is his client. The Alton Bay Campmeeting Association is not an experienced land developer and is not familiar with the requirements for subdivision approval and other zoning related activity. They acquired this property in 2001 and shortly thereafter entered into an agreement named Jeff Kaleigh; he is known also as Prospect Mountain Builders. He agreed to purchase the property subject to gaining subdivision approval for multi-lots. On the property at the time was a five unit apartment house; the property consisted of 69 acres. Attorney Hoover used diagrams to show what the property looked like in 2001. When his client acquired the property, it was a five unit apartment building; at various times zoning has changed to permit 2 units, 4 units, or five units on a lot. Nobody objected to it and there was adequate acreage to support the number of units.

In May of 2007, the Alton Bay Campmeeting Association reached an agreement with Mr. Kaleigh and he began the subdivision process. The file in the office is extensive; there were several different ideas applied for. Attorney Hoover stated that his client was not involved; the project was being managed by Jones and Beech and by Mr. Kaleigh.

The subdivision plan was approved and recorded before all the conditions precedent were met. It should never have been recorded; his client did not know that it was improper to have it recorded. The plan was for 21 lots, which under the law requires AG approval under the Landfall Sales and Disclosure Act. This was never sent to the AG's office for approval; nevertheless the plan was recorded and registered at the Registry of Deeds. As a result of the plan being recorded, it created a non-conforming lot. His clients did not know that, but when this came before the Planning Board, the result was that Lot 53 which has the 5 unit structure on it, became non-conforming and the structure became non-conforming, and the use became non-conforming because it needed to be five acres. Actually, it is 1.72 acres of usable land area, which falls short even for a two unit dwelling. But, it got recorded and everyone thought it was okay.

Thinking that because it was recorded it must be alright, Attorney Hoover's client entered into a Purchase and Sale agreement with Roger Sample, who was also in attendance at this meeting. They thought they had the right to do this because they did not know differently. When it was all finished, they had a recorded, approved subdivision plan at the Registry of Deeds that should not have been recorded and approved because the conditions precedent were not met and the Attorney General's office was not informed so there was no approval from the AG's office. To further complicate things, the septic system failed. Roger Sample became aware of that so they decided to do a lot merger, so they merged lots so they would have adequate room to install a new septic system. That was also approved by the Planning Board; they had two chances to discover that this was a non-conforming lot, but they did nothing and let the application go through, furthering the idea by his client that everything was alright. Mr. Sample had a septic design approval which he submitted to the town; he requested a building permit which was denied and has led to this appeal. This is the first time his client was aware that he did not have an officially approved subdivision. When the Alton Bay Campmeeting Association consulted with him early in 2011, Attorney Hoover advised them that they probably shouldn't be selling the lot to Mr. Sample because they can't offer a lot for sale unless they have approval from the Attorney General's office.

Further complicating this case, Mr. Kaleigh was unable to complete the project due to financial reasons. As a result, Jones and Beech did not get paid; they placed a lien on the property, so Attorney Hoover's clients were unable to do anything with the property. Earlier this year they were able to work out of that situation. Also, the property suffered an arson fire in 2010.

Attorney Hoover explained that the position they are looking at now is that when the Planning Board approved this subdivision and had it recorded, they basically created the non-conforming lot. His argument in equity is that they are estopped from raising an issue that it is non-conforming because they made it possible. It was conforming prior to the subdivision; all they had to do was to make this Lot 1 five acres and that would have been the end of it, and there still would have been room for another 20 lots. For some reason, that did not happen; the responsibility for that is probably shared between Jeff Kaleigh, Jones and Beech, the Planning Department, and the Planning Board because someone should have picked it up, and they had two shots at it. If you take the position that the town is estopped from raising this issue now because they created the problem, then it is not a non-conforming use and is implicitly a permitted use.

Attorney Hoover continued. If you take the position that this was a non-conforming use as the Code Officer has stated because he contends that the non-conforming use was abandoned in 2008 when the septic system failed, there is a provision in the law (Article 300 Section 320.A.2) that says that if you can demonstrate proven intent within 18 months of the abandonment, the operation can continue. What constitutes proven intent is not defined, nor is what must be done to prove intent or to whom proven intent must be shown. Attorney Hoover contended that there is proven intent within 18 months of the abandonment that shows they intend to continue this use, all within 18 months of July, 2008.

First, there is the Purchase and Sale agreement by which his client agreed to sell the lot to Roger Sample; that was dated May 27, 2009, which is within 18 months of July, 2008. In that Purchase and Sale agreement it is clearly stated that the property is a multi-family property that is being sold. Attached to that agreement and bearing the same date of May 27, 2009 is a provision that says that the lot shall be used for multi-family purposes; Attorney Hoover stated that he does not think there is anyone involved in this who does not think the property was for multi-family purposes. The intent that they intended to continue that use is demonstrated by the Purchase and Sale agreement and by the covenants. In the Purchase and Sale agreement there is a recognition that the septic system has failed. As a result of that, his client and Roger Sample applied and received permission for the lot merger which created the extra area needed for the septic system; that also occurred within 18 months of July, 2008.

The septic design was submitted to the Code Enforcement Officer in 2010; it is true that it took time to do that, but that was due to the difficulty created by the attachment of the lien placed on the property. At that time, they were not aware that the subdivision plan was improperly recorded and approved. In February or March 2011, Roger Sample conducted a fire safety inspection of the property to see if it could be restored after the fire; this was done by Fisher Engineering, PC and is dated March 21, 2011. It says that the building can be restored without tearing it down.

Attorney Hoover listed the equity of what happened to this property. First the lot was conforming; it became non-conforming because of the subdivision which should not have been approved but was. The plan approval and recording occurred too soon because the conditions were not met. It was never sent to the Attorney General's office for approval; that is a condition precedent because it is a state requirement that must be met. The developer sued which resulted in the lien on the property. The lot line merger occurred which is clear evidence that they were doing this to be able to place the septic system and continue the use. The fire which destroyed the property and the purchase and sale are also pointed out because everything just went wrong. The equity is that none of this would have happened had the subdivision plan not been approved and recorded prior to all the conditions being met. If that had occurred none of this other stuff would have mattered.

Attorney Hoover continued; he stated that Richard Smith is in attendance representing the Alton Bay Campmeeting Association. They were not aware of this until Attorney Hoover brought it up to them in February or March of 2011. They are in the process of completing the application to the state, but it is sort of after the fact and they agreed as a matter of policy that it does not make a lot of sense to do more until they find out what is going to happen here because the plan on record is the lot line merger; the plan that was actually filed and approved is different than the one that is there now, but that is another issue.

If you take the position that this is non-conforming and abandoned as J Dever says, overlooking how and what happened, there is still proof of intent, which Attorney Hoover thinks he has demonstrated. He agrees that it is not very well defined in the ordinance, but within the 18 months there is a Purchase and Sales agreement which indicated very clearly that the property was to be used as a multi-family unit. That Purchase and Sales agreement also contained a covenant that said it would be used as a multi-family unit. There is even some notations in the file that everyone recognizes that it is a five unit dwelling; there is also a map on which someone wrote "excluded" across the lot. Who did this or the meaning of it is unknown. Finally, there was recognition at the time of the Purchase and Sales agreement that the septic system would have to be replaced; that resulted in the lot merger which is again a demonstration of the proven intent to continue the multi-family use. The septic design was prepared, which again demonstrates the intention to continue the multi-family use, and this most recent inspection that is saying the property can be restored into its original condition.

In summary, Attorney Hoover explained that they feel that it is questionable whether this should be construed as a non-conforming use, given the circumstances; even if it is construed as a non-conforming use, there is a proven intent to continue that use within 18 months of the abandonment.

P. Monzione asked if there is any case law referencing 320.A.2 of the Zoning Regulations while specifying proven intent on the part of the owner to continue its operation. Attorney Hoover stated that he could not find any case law either way. P. Monzione clarified through questioning that there is no case law either for or against. Attorney Hoover answered that he does not think this type of appeals are frequently before the Board. P. Monzione asked for clarification of the sequence of events – the lot merger referenced occurred prior to the fire. Attorney Hoover explained that the fire occurred in 2010 and the lot line merger occurred in 2009; incidentally, the lot line merger was done twice. It was approved and then brought back before the Planning Board a year later.

P. Monzione asked Attorney Hoover what evidence he has to prove an intent to continue after the fire and within that 18 month period. Attorney Hoover answered that there is a Purchase and Sales agreement showing intent to convey this property as a multi-family dwelling; that is clearly stated in the Purchase and Sales agreement. P. Monzione clarified that the merger does not prove intent as that is prior to the 18 month period; the only documentary evidence to prove intent to continue in the 18 month period after the fire… Attorney Hoover corrected P. Monzione; the abandonment was caused by the septic system failure, not the fire. P. Monzione voiced recognition of the fact that the period they are looking at is the 18 months following the event that caused the abandonment, in this case the septic system failure. P. Monzione asked what evidence there is of intent during that applicable 18 month period. Attorney Hoover explained that the Purchase and Sales agreement is in May of 2009, the covenant attached to the Purchase and Sales agreement is in May of 2009, the lot merger which indicated the need for the additional area for the new septic system was in June of 2009. P. Monzione clarified through questioning that the lot merger was after the abandonment event; Attorney Hoover stated that it was. The next thing that happened was the submission of the septic plan to the Code Officer in the fall of 2010. J. Dever corrected that it was in December, 2010. Attorney Hoover explained that there was a delay of a little over a year because they were straightening out the issue with the lien problem. He pointed out that the ordinance does not clarify how many acts have to be performed in order to prove intent. Their position is that the problem was being addressed within the 18 months of the abandonment.

P. Monzione asked if the evidence that the owner was trying to sell the property didn't actually show that the owner was abandoning the use; it has to be the owners' intent to continue, but the owner is attempting to sell it.

Attorney Hoover stated that he does not know that it has to be the owner's intent and questioned whether that is what the ordinance says; the owner insisted on the covenant to convey the property as a multi-family, which was part of the agreement with the buyer.
T. Kinnon asked if there is language in the Purchase and Sale that the property is to be continued as a multi-family. Attorney Hoover answered that there is, and there is language in the covenant also. T. Kinnon asked when the septic system failure occurred; it was in July, 2008. T. Kinnon clarified through questioning that the Purchase and Sale agreement and the lot line merger were both in May of 2009. Attorney Hoover explained that the Purchase and Sale agreement was in May, 2009; the lot line merger was in June 12, 2009 when they realized they needed extra land.

T. Kinnon stated that he feels this Board is setting precedent tonight with what is proven intent. He does not remember a case like this before; no others present were familiar with a similar case. T. Kinnon went on to say that they are proving intent. J. Dever stated that he has had a conversation with Attorney Sessler as to what his opinion was on intent; Attorney Sessler explained to him that commitments made via meeting minutes, actual commitments made via contracts, money dedicated to a study or design, or an application for a building permit within that 18 month period. Those are some of the thinks he had seen in the past that would demonstrate intent and an objective proof that the owner is going to continue.

T. Kinnon asked if any funds were exchanged in the Purchase and Sale agreement; Attorney Hoover answered that $500 was exchanged to bind the agreement. Attorney Hoover read from the Purchase and Sale agreement; "Lot 53 shall be used for multi-family residential purposes only." That is written into the agreement, and was before they were aware that this wasn't properly approved. They did not find out that this was non-conforming until J. Dever made his ruling.

P. Monzione asked how many units could have been there if not five; multi-family is ambiguous. Attorney Hoover answered that the use at the time was five units. P. Monzione voiced understanding and went on to say that just because there is an entry in the Purchase and Sale that says it is to be used as multi-family, that is not the same as to say to use it in the non-conforming five units. In other words, two units would qualify as multi-family. He is looking for evidence of the owner's intent to continue the exact or actual non-conforming use that is being discussed. The covenant itself is not as specific with regard to a use that is not necessarily non-conforming because a multi-family use might have been conforming even under current zoning if it were two units, one per acre. Attorney Hoover confirmed that the 2 acres is close; it depends on how uplands and usable land are calculated. He added that two units is marginal; anything above that, according to the Code Enforcement Officer, would be non-conforming as a result of the subdivision.

Attorney Hoover stated that at the time this was drawn up, the only use his clients were aware of was the five units; they were not aware they were non-conforming. When they use this language, at the time this Purchase and Sale was drawn, they were just using multi-family and everyone understood it was five units.

Mr. Smith explained that before the subdivision was created it had five units, and that was before the regulations, even at that time. When they went to the subdivision which was not supposed to be approved, they continued on until the septic failed. Had the septic not failed, they would still have tenants there. Had there not been a fire; if there had been tenants there, there would not have been a fire. At this point, the subdivision has been created, and now they have a non-conforming lot, the question is still whether the lot is conforming or non-conforming, because they were not non-conforming prior to. He does not know exactly what they have, but they have a situation where the intent of the Alton Bay Campmeeting Association to sell the property as it was, which was a five unit structure, and then they ran into Murphy's Law, as Attorney Hoover had said.

Attorney Hoover stated that for a period of one year, after the subdivision was approved, they continued to operate and function as a five unit dwelling and nobody objected to it. That didn't come up until the building permit was applied for recently.

Ken McWilliams added that he has gone through the information submitted by the applicant and looked at the history of this. He has found that there is still an eighteen month period during which there was not a continuation of that non-conforming use. To him, the applicable dates are from when the lot merger occurred on June 12, 2009, then the next thing that occurred was the submission of the septic system design to the Building Department on December 28, 2010. That is more than eighteen months, and he has heard nothing this evening that would say there is some proven intent during that time to continue the use. To him, there is still an eighteen month period during which this use was abandoned.

Attorney Hoover responded, saying that they are here on an Administrative Appeal in which the date of abandonment is established as July, 2008. The proven intent occurred in May, 2009 and in June, 2009. Those are less than 18 months from the date of abandonment. The dates that Mr. McWilliams is reciting are different than the defined date of abandonment, and he does not think the lot merger created the nonconformity; the non-conformity was created at the time of the original subdivision approval.

T. Morgan asked to go back to the estoppels argument; Attorney Hoover acknowledged that the estoppels argument is a reach. T. Morgan asked what is known about what the Planning Board was aware of at the time this was presented. He asked if there are minutes of any meeting that show that someone was aware this was a five unit dwelling. Attorney Hoover answered that there is information that there is a five unit dwelling; there is nothing in the files to indicate that there was any discussion concerning the Attorney General's registration. Ken McWilliams stated that he has gone through the Planning Board minutes and can not find any discussion there; however, there was a Planner's report at that tine that identified that there was a five unit apartment building on the property. T. Morgan asked if from that Planner's report, the Planning Board would have been able to realize what the parcel that would remain, that would contain that dwelling unit, would consist of. Did they have something before them that would have allowed them to ascertain what the end result was?

Attorney Hoover stated that he could not answer that because they did not participate in that, but the only answer he can give is that there is a Town Planner's report, there is testimony to that effect, and there is an ordinance that says one acre per unit and you're looking at a plan and you approve it. The assumption would be that they didn't know; they should have known. Again, when they came back in for the lot merger, the same situation would have cropped up. Not only did they give one lot merger, they got a second one later for reasons still not understood. That makes three times that particular issue came up, and nothing happened.

T. Morgan asked about the merger for the septic system. If there had been just a single family unit on the property, would there have been enough room to put the septic system on without the merger. Attorney Hoover answered that it might have been tight, but probably could have been done, but he is not the person to answer that. He does not know what area was affected by the failure or what they would have had to do to redesign it.

Roger Sample came forward and introduced himself as the intended buyer of the property. By law, you can replace a failed septic system in kind. Therefore, they would have been able to do that, but the land was so poor there that to make a fair design, they needed the extra land. T. Morgan asked if that would also apply if it were a single family unit. Mr. Sample answered that he can't say because they didn't look at it in that respect. The soil just wasn't there; the water table is 16 inches, so it would be 16 inches for one family or however many because there is a high water table there. T. Morgan clarified through questioning that the reason for the merger is not necessarily indicative that it was required because of the five dwelling units. Mr. Sample answered that the merger was suggested by Jones and Beech.

Mr. Sample went on to say that it is being said that the Code Officer did not see the septic plan until 2010; Jones and Beech has received many phone calls from him. They would think they were all set to go, and then something else would need to be corrected. At one point there was a question of whether enough work had been done on the property to make the subdivision continue; after you have your plan approved, you have to do so much time to develop it or it reverts. After they worked through that, it became something with the state, and then with the recession, they were extending that time because people didn't have money. Then they started

moving again, and then there were other issues. There always seemed to be something that every time they were ready to go, they had to stop and correct. Just this process here has been six months.

Attorney Hoover spoke about replacing in kind; replacing in kind is permitted if you have the land. If you are comparing that to a single family residence, there is no way of knowing that. It might have resulted in exactly the same thing.

T. Kinnon asked about the application for the merger; he questioned whether the rationale for the extra land was stated in the application. Attorney Hoover answered that it probably was not because the applicant didn't know they had a non-conforming structure at the time they were doing it; all they knew was that they needed a replacement septic system. Mr. Sample answered also, saying that the purpose of the merger was not specified in the language. Attorney Hoover added that the form does not require that. T. Kinnon stated that he thinks that would be an important question to consider; why do you want to merge the lots? Attorney Hoover explained that it was made evident looking at the septic design plan because that is where it is.

P. Monzione has heard two different scenarios concerning the date issue. Attorney Hoover has made a point that the established date of abandonment, as the appellant in this decision, that it is the responsibility of this Board to look at a specific date that the Code Enforcement Officer has determined as the date of abandonment. That date has been set as July, 2008; that is the date on which he based his decision. P. Monzione stated that the appeal which is being presented now is limited to July of 2008 and the eighteen months thereafter, and whether during the eighteen months from July, 2008, an abandonment did indeed occur. Attorney Hoover clarified that the question is whether during the eighteen months from July 2008 there was proven intent to continue. That is the only thing they got from the Code Officer; that is the basis for their appeal. P. Monzione asked if it is Attorney Hoover's position, on behalf of the applicant, that this Board is required to use the July, 2008 date as opposed to a June 12, 2009 through December 28, 2010 date range. Attorney Hoover answered yes. P. Monzione asked, if they are to look at June 12, 2009 through December 28, 2010 and say that there is no evidence of any intent to continue the operation on the part of the owner, and therefore there was abandonment, and it is a done deal, it is Attorney Hoover's position that they are looking at the wrong timeframe for purposes of this appeal. Attorney Hoover stated that to be correct.

L. LaCourse asked if at the time of the fire in July, 2010, the building was occupied. Attorney Hoover answered that there is some confusion on that; the reason the building was abandoned was because the septic system failed. That was in July of 2008. The fire occurred in 2010; this is just part of the continuation of things going haywire. L. LaCourse asked Attorney Hoover if the company that applied for the subdivision of the lots was representing his client; Attorney Hoover answered yes. They were representing his client by contract, just as he has the authority to come here and speak on behalf of the client. It is not unusual for a developer to use an engineering firm to make the presentation before the Planning Board. That was Jones and Beech; they were doing that on behalf of Jeff Kaleigh of Prospect Mountain Builders. L. LaCourse asked, as the developer, they also knew that the lot was non-confirming. Attorney Hoover answered that he does not know the answer; he would like to think that the engineer would have picked up on that, but he would also like to think the Town Planner or the Planning Board would have picked up on it. He would like to think all those things would have happened, but they didn't. The owner came to him to do the deal with Mr. Sample, and he pointed out that they could not do it because there were a lot of other problems.

T. Kinnon asked if there were tenants in the building at the time of the septic system failure. Attorney Hoover answered that there were. T. Kinnon asked if the tenants were given some kind of notification that they needed to move out of the structure. Mr. Smith explained that the system failed in May, 2008; at that point they were pumping the system on a weekly basis in order to give the tenants appropriate notice that they had to move out of the apartments. The last tenant moved out on July 10, 2008. At that point, the ABCCC Board got together to try to determine whether they were going to repair the septic in order to keep it occupied, or would they sell the units as they were. T. Kinnon asked if the tenants were given written notification that they needed to move on

or before July 1. Mr. Smith answered that he did not know if the notification was written, but they were given notice.

P. Larochelle asked how long the time was between the last tenant moving out and the fire. Mr. Smith answered that it was July, 2008 to July, 2010. J. Dever clarified that the fire occurred on February 20, 2010. Attorney Hoover again stated that they are not looking at the fire as the reason the property was abandoned; this is simply another thing in the history of this property that has gone haywire.

P. Monzione asked J. Dever if he agreed that the basis of his decision, the decision that is now being appealed, was based on the July, 2008 starting date and the applicable time period for which he found there was no evidence of intent to continue. J. Dever confirmed that July 2008 was the starting date; during the time following that up to the time he rejected the building permit, which was December, 2010, it had been abandoned. P. Monzione asked if the decision to deny this based on abandonment is due to his finding that between July of 2008 and December of 2010, there had been at least one continuous eighteen month period during which time the owner of the property demonstrated no intent to continue the operation. J. Dever answered that is the way he viewed it. P. Monzione asked J. Dever if he is able to identify an eighteen month period during which there was no evidence, as far as he could see, of intent to continue that he relied on in deciding that the permit should not be provided. J. Dever stated that by doing the research and finding the lot mergers and so on, from the lot merger in July, 2009 through receiving the permit application on December 28, 2010; he never issued the building permit, and he stopped work on the project within a week after that, then issued his notice in February, 2011. At that point, work had started prior to being issued a permit; that was the primary reason he stopped it, then he did the research to see what was allowed by zoning during those time periods.

P. Monzione asked Attorney Hoover if he would agree that any eighteen month period from July of 2008 to December 28, 2010, during which time there was no intent on the part of the owner to continue its operation would be sufficient to support the decision not to issue the permit based on abandonment. In other words, they are coming forward with evidence demonstrating that from July 2008 to the eighteen months thereafter, they have documentary evidence such as the Purchase and Sale agreement that according to their interpretation of the evidence demonstrates intent on the part of the owner to continue the operation, and they have covered that eighteen month period. But, if there was a continuous eighteen month period at any time up to December 28, 2010, starting in July 2008, in which there was no intent to continue the operation on the part of the owner, would he agree that the denial of the permit would be appropriate. Attorney Hoover asked for a copy of the ordinance, which was supplied to him. After review of the appropriate ordinance, Attorney Hoover acknowledged that he is not sure how to interpret the ordinance. He would just say that his clients are in the process of continuing to do things. Attorney Hoover and P. Monzione continued to discuss and clarify this question. Attorney Hoover stated that using the beginning date of July, 2008, the next thing that happened was the lot merger in July of 2009; after that, there would have been the design of the septic system, which is dated December, 2010.

P. Monzione asked about starting with the December 28, 2010 permit request and going backward to see if there is an eighteen month period. Attorney Hoover explained that he had not brought up the fact that there was a renewal of the Purchase and Sale agreement because the time period of the first one had run out; that was done early in 2010 by Attorney Guldbrandsen. J. Dever added that the date on the septic system plan is December 7, 2010 and that there was a revision done on December 30, 2010. Attorney Hoover stated that would indicate that his clients had made an effort to get that process started within eighteen months of the lot line merger. Incidentally, the reference to the lot line merger is for the first one; there was a second one in 2010 that was not calculated into the timeline.

T. Morgan opened the floor to public input in favor of the application.

Roger Sample stated that there is time schedule that seems to be of great question; the campground still holds his deposit of $2,500, so there has been a financial interest in this property for the entire period. Whether it is his money or their money going into it for lot mergers, he is not of the ordinances, but there is nothing specified as to the amount of money that needs to be involved. Through this whole period, there has been money and interest; the property has not been abandoned. The process has been hit by everything that could go wrong with it. His original $2,500 deposit has not been returned, so there has not been an eighteen month period when there has not been a financial interest in this property. This property has been multi-family its entire existence, and it is a great thing for the town and something the town needs. The Planning Board did allow it, and he sees no reason not to continue this.

Attorney Hoover interjected that he has received a copy of the replacement Purchase and Sale agreement which is dated November 12, 2010. It again talks about this as a multi-family apartment; it is pretty much a repetition of the first one.

T. Morgan asked for public input in opposition to the application.

Gary Treamer of 127 New Durham Road came forward. He stated that the septic went in 2008 and they are just applying for a new one in 2010. There was no intent anywhere in there, and that is his opinion on it. They haven't done anything since he has lived there, and he moved in a year ago. When they moved in the backhoe and the dump truck, he thought they were going to start tearing the place down. It's falling down on its own; he asked members if they have seen this place. The front porch is hanging and the roof is getting ready to cave in. He has no idea who engineered this thing and said that it is structurally safe to go back in and do this, but it doesn't look like it from the road.

There was no further public input; public input was closed.

Attorney Hoover stated that he has a report from Fisher Engineering attesting to the ability to rebuild the building.

P. Monzione asked if when the Code Enforcement Officer made his decision, he had the benefit of the signed November 12, 2010 Purchase and Sale agreement. Attorney Hoover said that he did not; in fact, Attorney Hoover had not been aware it existed either because he was not given a copy of it until recently.

T. Kinnon asked about the subdivision; he asked who the owner was at the time of this. Attorney Hoover answered that his clients were. T. Kinnon asked if they created the subdivision. Attorney Hoover explained that they gave the authority to Jeff Kaleigh and Jones and Beech to do the subdivision. They did not come in and do the engineering. T. Kinnon asked when the report saying the structure could be rebuilt is dated; Attorney Hoover answered that it was done in March of 2011.

T. Morgan opened deliberation among the Board members.

P. Monzione stated for the record that he does not put much weight, if any, into the estoppels argument; he thinks the applicant, not the Planning Board, is who created the non-conforming lot. He does not think they can blame the Planning Board for creating a non-conforming lot when it was the applicant's application that caused the subdivision to be obtained. All of what is being charged that the Planning Board should have known, the applicant also should have known. These are public ordinances; they are available to everybody and they were available to the applicant. When you get into estoppels arguments you have to argue how much the applicant know or should have known when he comes in and creates a non-conforming situation. The applicant has a duty as well to understand what the application means. There is no estoppels argument here; he thinks that there is a lot of blame to go around to the applicant as well as to the Board. Someone, all of them, engineers and the like, should have appreciated that a non-conforming lot was being created by virtue of the request to make a subdivision.

As far as evidence of intent to continue, this is something that is lacking in terms of specific guidance in case law. That intent can be demonstrated by any number of things; unfortunately in this situation the Code Enforcement Officer was not given the benefit of having the full information of all the activities that were taking place at the time. What he is going to be trying to decide is whether there is enough evidence here to demonstrate during the applicable time periods whether there was some activity that would demonstrate an intention to go forward with this multi-family unit.

T. Morgan agreed with that; he thinks, as Attorney Hoover acknowledged, that the estoppels argument was a reach. He thinks that agents of the applicant have some culpability in that matter. He thinks this hinges on intent; from his time on this Board, he does not know that they have ever addressed a case like this. He would be more comfortable to continue this matter and talk to Town Counsel to get advice as to what intent really means in this instance. This hinges on intent.

L. LaCourse agreed that advice of Town Counsel would be needed. He is trying to understand how intent is to be demonstrated, and to whom it is to be demonstrated.

T. Kinnon brought up aa couple of questions. He asked what the disposition of the property is now; he wondered if the other lots of the subdivision have been sold. He also asked if the Alton Bay Christian Conference Center still owns the 69 acres. He also wondered, if the lots have not been sold, if there is an alternative to the continuance of a poor process. From soup to nuts, the whole process has been poor and for this Board to continue and make a decision on a non-conforming lot when they could stop here and make the subdivision right.

P. Monzione stated that his concern there is that the appeal before the Board is a limited issue to rule on; the only thing they are being asked to rule on is whether the Code Enforcement Officer's ruling or denial of the permit based on abandonment based on what the Code Officer determined was a period of eighteen months when there was no demonstration of intent to continue, starting in July 2008, and on that basis the permit was denied; the Board is limited in this appeal to deciding whether that was the case. He is thinking that there was more evidence out there regarding intent that the Code Enforcement Officer was not given. He would agree that a continuance would benefit him with regard to getting definition of proof of intent. He sees evidence out there, but he would like some time to see how to view that evidence.

T. Kinnon agreed that there should be a meeting with Town Counsel.

P. Larochelle also agreed.

P. Monzione made a motion to continue Case #Z11-07 so that the Board can take an opportunity to consult with Town Counsel on the legal issue of quantum of proof or what kind of proof should be considered on this issue. L. LaCourse seconded the motion which passed with five votes in favor and none opposed.

The continuance of this case is being scheduled for the next regular meeting on July 7, 2011.

Ken McWilliams, Town Planner, departed the meeting at this time; the time is 8:50 p.m.

VIII. NEW APPLICATIONS

Case #Z11-08 9 Mission Path	Special Exception Map 34 Lot 33-40	George and Karen Makso Residential Zone

Application submitted by George and Karen Makso for a Special Exception to Article 300, Section 320 C.2.; to construct a full foundation under a non-conforming structure.

J. Dever read the case into the record.

Mr. George Makso came forward to present this case.
L. LaCourse made a motion to accept the application for Case #Z11-08 as complete. T. Kinnon seconded the motion which passed with five votes in favor and none opposed.

Mr. Makso stated that he resides in Woburn, Massachusetts. He has recently purchased this property, which is very dilapidated; as described in his narrative, it needs pretty much everything. He has supplied photos with his application so the members can see the condition the house is in. He is in the process also of getting approval from the state. Before purchasing the property, he called Jason Aube from Shoreline Protection; he assured Mr. Makso that if he goes through an application, there should be no reason the application should be refused. Primarily his focus was directly to DES and making sure that if he purchased the property, DES would approve the improvements. He did not really give much thought as to what would be required in the town since the applications have gone beyond that point and it sees reasonable to assume he would not have any issues.

Initially he had decided he would just do a limited improvement to the basement and get about ¾ of the floor built and the retaining wall in the back; the total area of the cottage is about 590 feet. When they began excavating, he realized that they should complete it to the end and try to rebuild it right the first time. That is why, after discussion with Mr. Dever, they decided to come to the Board and apply for a full basement and improve and rebuild everything – the walls, the roof, the floors, the plumbing – everything. The property is on the water as noted on the plans.

L. LaCourse noted that there are elevation drawings of the proposed cottage but none of the existing. Mr. Makso explained that the walls are not even full sized; they are about 6 feet on the outside and they go up to about 10' in the center of the cottage. L. LaCourse asked if this is going to be a total teardown. Mr. Makso explained that they will have a contractor come in and raise the cottage up on steel beams; they will get under it and excavate and build the footings. It will all be up to code and coordinated with J. Dever. The will put in the basement and replace the sill, which is all gone, then put the house back down. Then they will try to rebuild the walls, floors, ceilings and everything that needs to be done, including the plumbing and electrical. They want to make this a pretty structure that is pretty and pleasing like the cottages next to it that have been modified in the last ten years. One of those is shown in the photos. He would like to make the property look decent and up to that standard.

T. Morgan asked how much the roof line will be raised from the existing cottage to what is proposed. Mr. Makso explained that the peak will be 28 to 30 feet; he will go 12 to 14 feet on the height of the walls and then up to a peak that is 1:1 for a maximum height of about 28 feet. T. Morgan asked if that would affect the view of what is depicted as cottage #7; Mr. Makso answered that it would not; they are over to the southeast, so they would not have any issues. He is at the end of the road, completely out of the way. This will not affect any of the other cottages; the plan has been reviewed by the ABCCC and they have no concerns.

L. LaCourse asked if this application is for the foundation only. Mr. Makso agreed that it is; they will start with the foundation and add the walls and so on in time; everything will be done. Everything is in the description of the narrative.

J. Dever explained the staff review; the request right now is to put in the foundation and not be able to use it. The limiting factor on Mr. Makso's repair and renovation is that the septic system in that end of the Christian Conference Center has not been reviewed since it was installed in approximately 1990. As part of the project on the other end of the Campground, they did a map of the septic systems and discovered that there are several things added to the systems over the last several years that were not originally planned to be on them. As they have done previously, it would require review by the state to say that it would accommodate his expansion because he is intending to add bedrooms and expand his living space as part of the construction of the cottage.

Mr. Makso clarified that they will be adding bedrooms in the future; right now the structure will not have any additional second floor space. It will be made so that in the future, they will have a separate application for the second floor.

T. Morgan opened the floor to public input in favor of this application.

John Tabor stated that if the Board could see the cottage that the applicant has undertaken, they would have thought that it would already have slid into the lake by now; it looks like it is about to. It's kind of an overwhelming process; they know about the septic issues, and have been talking to George and Karen (the applicants) about this. They are very excited that the foundation is going to be shored up; that had been their biggest concern. That will be a huge help to the whole area. The rest of the plans – he is not sure where it will end up with the amount of work to be done. They are just very excited that somebody is taking it on and trying to save it before it goes in.

Diane Gedney has a cottage on the Conference Center; she chaired the Buildings and Grounds committee for two years and is now a member of the committee. They have worked through a lot of the plans with George; he has received approval from the Conference Center to move forward with the plans. He understands all of the things about being in compliance with all the rules. John (Dever) has helped with that as well; George is new to the community and he understands that they need to go through all the right processes with the Town of Alton and with the State. As John Tabor stated, they are very thankful to have George come along and purchase this cottage with the intent of making it better and an enhancement to the neighborhood. It will also be safer; he will bring everything up to code, and she would like to see this recommended.

T. Morgan opened the floor to public input in opposition to this application; there was none. Public Input was closed for this case.

P. Monzione clarified the Article/Section under which this variance is needed; it is actually Article 300, Section 320.B.2 (C), not 320.C.2 as stated on the agenda.

J. Dever commented that he has looked at this cottage with Mr. Makso; the first time he went in was last fall. To use the term dilapidated is somewhat of a compliment. The foundation repairs and structural repairs are definitely in the best interest of the cottage. How ever the Board wants to address further expansion is at the will of the Board.

SPECIAL EXCEPTION WORKSHEET

1 – P. Monzione stated that a plat **has** been accepted in accordance with Alton Zoning Ordinance Section 520B. L. LaCourse, P. Larochelle, T. Kinnon, and T. Morgan agreed.

2 – L. LaCourse stated that the specific site **is** an appropriate location for the use. P. Larochelle and T. Kinnon agreed. T. Morgan also agreed and added that this is a cottage within the Conference Center; the use and location are not changing. They are simply putting a foundation in. P. Monzione agreed.

3 – P. Larochelle stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. T. Kinnon agreed. T. Morgan agreed and added that there is testimony that it will help the values of property in the area. P. Monzione also agreed; it will make the building structurally safer and more sound, which will not only increase the value of this property, but also that of surrounding properties. L. LaCourse agreed.

4 – T. Kinnon stated that there **is no** valid objection from abutters based on demonstrable fact; there were no objections voiced at all. T. Morgan, P. Monzione, L. LaCourse, and P. Larochelle also 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 the access or off street parking are going to be changed, so there is no reason to find a nuisance there. P. Monzione agreed that there is no nuisance; nothing about making this building structurally sound and safer is going to in any way affect pedestrian or vehicular traffic or off street parking. L. LaCourse, P. Larochelle, and T. Kinnon agreed.

6 – P. Monzione stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure, but he says that only conditionally. He listed to the Code Enforcement Officer's comments and recommendations in his written reports that there are some septic issues in this area given the amount of use that is going on up there. He will agree but on the condition that this modification or construction of a safer foundation as described and demonstrated on the application and not extend into any living space or use until such time as other approvals have been met with regard to septic. Lou LaCourse, Paul Larochelle and T. Kinnon agreed. T. Morgan also agreed and added that the applicant has talked about putting a second floor on but not finishing out the second floor; he thinks as long as there are no bedrooms or bathrooms added that construction of walls is still appropriate.

7 – L. LaCourse stated that there **is** adequate area for safe and sanitary sewage disposal and water supply; this goes back to what they were talking about in #6. As T. Morgan was saying, there is no plan to expand another bath at this time, so it may be a moot point. P. Larochelle agreed. T. Kinnon agreed and added that he also agrees with the condition that septic in that area does need to be reviewed and does need to have some approval that it is adequate for the use. T. Morgan agreed and added that it does need to have proper approval for the septic system. P. Monzione agreed and added that there is adequate area for safe and sanitary sewage disposal and water supply provided that this alteration to the structure in no way includes facilities that would require additional septic or water supply.

8 – P. Larochelle stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. T. Kinnon agreed. T. Morgan agreed and added that it is part of the Conference Center and is in keeping with the Conference Center. P. Monzione agreed; beyond that it is a proposed use that is permitted and has been. This will also make it safer and more structurally sound, and will improve it greatly. L. LaCourse agreed.

T. Kinnon made a motion to approve the Special Exception for Case #Z11-08 with the condition that the septic must be reviewed and approved, and that there will be no expansion to the living space. P. Monzione seconded the motion which passed with five votes in favor and none opposed.

Case #Z11-09 281 Frank Gilman Hwy/Rte 140	**Special Exception Map 8 Lot 6**	**Blake Kellar Rural Zone**

Application submitted by Blake Kellar to remove and rebuild an existing enclosed porch, which is partially in the front 25' property line setback. A full foundation is to be installed and the ridgeline raised about 3' to match the attached barn.

J. Dever read the case into the record.

Blake and Amanda Kellar came forward to present this case.

P. Monzione made a motion to accept the application for Case #Z11-09 as complete. L. LaCourse seconded the motion which passed with five votes in favor and none opposed.

Mr. Kellar stated that the portion of the application that he came to the board about is the breezeway that attaches his barn to his house. It was on a floating foundation or slab, which has cracked over the years. He intends to take that portion of the porch down, remove the floating slab, and put a foundation under the barn, which is not in the setback. He would then put a full foundation back where the slab was and build the structure back to very similar size and appearance. He would also look to blend the roofline of the new structure with the roofline of the barn.

P. Monzione asked if half of the structure was in the twenty-five foot setback from the right of way on Route 140. Mr. Kellar confirmed that it was. P. Monzione asked if half of it would still be in that twenty-five foot setback upon completion. Mr. Kellar corrected that it is not actually half of the structure; it is probably a three foot deep by twenty foot stretch that lies in the twenty-five foot setback. He confirmed that he will be using the same footprint when he puts it back, so the structure will not grow into the setback any more. P. Monzione said he thought he saw something in the application saying that half of the structure lies within the setback. Mr. Kellar says he may have misquoted himself, but that is not what he meant, because the barn is back five feet and not in the setback, so he did not want to have them think that he would be adding into the setback. P. Monzione confirmed through questioning that Mr. Kellar would not make the building any more non-conforming, and that he needs permission or a special exception because the existing structure is already non-conforming and in the setback and he wants to improve upon it with the proposed changes. Mr. Kellar agreed.

L. LaCourse asked if he would be matching the pitch of the new roof with the pitch of the barn. Mr. Kellar said he would like to bring the pitch up, because the current ridge has a very shallow pitch and is sagging. He would like to bring it up so that it goes up under the barn, but still matches into the house. He said it will come up no more than three feet; he just wants it to blend in with the house and the barn so that it satisfies both spots.

P. Larochelle asked if the new roofline would be kept underneath the trim of the barn. Mr. Kellar confirmed that it would.

T. Morgan opened the floor to public input in favor of and in opposition to this application. There was none; public input for this application was closed.

There were no final questions from the members and no further comments from the applicant.

SPECIAL EXCEPTION WORKSHEET

1 – L. LaCourse stated that a plat **has** been accepted in accordance with Alton Zoning Ordinance Section 520B. P. Larochelle, T. Kinnon, T. Morgan, and P. Monzione agreed.

2 – P. Larochelle stated that the specific site **is** an appropriate location for the use. T. Kinnon agreed, and added that the use is not changing. T. Morgan agreed, adding that the use and location are not changing and continue to be appropriate. P. Monzione and L. LaCourse 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. He added that the use is not changing, and that, if anything, it will increase the value of the structure by repairing a sagging ridge and a dilapidated breezeway. T. Morgan agreed. P. Monzione agreed and added that there is no evidence to the contrary. L. LaCourse agreed. P. Larochelle agreed.

4 – T. Morgan stated that there **is no** valid objection from abutters based on demonstrable fact; there were no objections voiced at all. P. Monzione, L. LaCourse, P. Larochelle, and T. Kinnon also agreed.

5 – P. Monzione 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; this is a structure that is already in the right of way setback and that is not changing, and therefore there will be no impact from this change to access ways or off street parking. L. LaCourse, P. Larochelle, T. Kinnon, and T. Morgan agreed.

6 – L. LaCourse stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. He added that these utilities and facilities already exist and that there will be no changes to the structure that would require additional utilities or facilities. P. Larochelle, T. Kinnon, T. Morgan, and P. Monzione agreed.

7 – P. Larochelle stated that there **is** adequate area for safe and sanitary sewage disposal and water supply, as there was no change to that in the proposed structure. T. Kinnon agreed, confirming that there is no change. T. Morgan, P. Monzione, and L. LaCourse also agreed.

8 – T. Kinnon stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. He added that the use is not changing and that it is a use that is in the ordinance. T. Morgan, P. Monzione, L. LaCourse, and P. Larochelle agreed.

P. Monzione made a motion to approve the Special Exception for Case #Z11-09 as submitted. P. Larochelle seconded the motion which passed with five votes in favor and none opposed.

A short recess was taken at this time.

Case #Z11-10 Rte 28 South/Suncook Valley Rd.	Special Exception Map 8 Lot 49	Robert H. Carleton, Trustee Rural Zone

Application submitted by Tyler Phillips on behalf of the Robert H. Carlton Revocable Trust, Robert H. Carlton, Trustee, for a Special Exception to Article 300, Section 320 C.2 to allow other than a single family home on a non-conforming lot.

J. Dever read the case into the record. Tyler Phillips from Horizons Engineering is representing Mr. Carleton.

P. Monzione made a motion to accept the application for case #Z11-10 as complete. T. Kinnon seconded the motion which passed with five votes in favor and none opposed.

Tyler Phillips is a project manager at Horizons Engineering. He said that in the interests of time, he would compare the case with one the board reviewed the month before to allow a recreational camping park in the rural zone, which required a Special Exception. The difference here is that the zoning ordinance requires that this non-conforming lot does not have frontage on a town road. Because of that, Section 320.C.2 requires that with use of the non-conforming lot, a single family residence may be erected provided that all permits are obtained and the lot has adequate access to a town approved road; however, any other use must also obtain a Special Exception from the Zoning Board. He admits that he knew he was supposed to obtain a Special Exception and that if he had done so he would have been able to proceed normally, but that he made a critical mistake in saying he would return for a Special Exception and set the stage for needing to satisfy that condition of the previous Special Exception.

He says that the application is more or less the same as the application he submitted the month before. He will present the parts that he believes are slightly different. Other than that, the items are very similar to those reviewed the previous month. He added that in reviewing the conditions of approval, the condition that primary access roads be constructed to town standards to provide the proper road frontage to the property; they do intend to do that, but he wants to make the Board aware that they will ask for a waiver from the selectmen to not have to pave the road, as the parcel is for a campground and paving is not required for campgrounds. If at such time the lot is ever used for any other purpose, that waiver would not hold and they would have to pave the road. Beyond that, the application is very similar to the previous one and he does not see too much different. He is willing to take questions if he is somehow missing or misinterpreting something that the Board feels that using the property as other than a single family residence is different than them intending to use it as a campground.

P. Monzione reviewed Section 320.C.2, which permits the erection of a single family residence on a non-conforming lot provided that all necessary state and local permits can be obtained, and the lot has adequate access to a town approved road. Any other use must first obtain a Special Exception from the ZBA. He states that even though the criteria are not different between use and area variances, this has been brought before them is in the form of a use variance; it's because of the proposed use as a campground/RV site as opposed to a single family residence that the Special Exception is needed to proceed. Mr. Phillips confirmed that that is the case.

P. Monzione asked if Mr. Phillips would agree that he must still follow the last part of the ordinance and obtain all necessary state and local permits, and have adequate access to a town approved road. Mr. Phillips agreed. P. Monzione asked if it would make sense to go through the Planning Board and lay out the town approved road and demonstrate the ability to obtain state and local permits before seeking a Special Exception under 320.C.2. His question was whether or not Horizons Engineering would be able to obtain those permits and meet those criteria. Mr. Phillips answered that they are back to the Catch-22; they certainly intend to meet the criteria and he sees nothing that would prevent them from doing so. If they were unable to do so, any Special Exception granted would be rendered null and void, and that could be a condition if need be. He added that there is a significant amount of engineering work to do and they want to be sure that it can be used for the intended purpose and not just a single family residence.

J. Dever added that the decision had been made the previous month, during the pre-conceptual proposal to the Planning Board, that the trip to the Zoning Board needed to take place before they went before the Planning Board. P. Monzione pointed out that the ordinance does state that they must first obtain a Special Exception, but that the word first refers to before the use and not before the permits are obtained. This provision would allow him to obtain permits and demonstrate that he has access to a town approved road. He adds that it is his belief that it was because of the previous Special Exception that he needed a second Special Exception, because they were now proceeding with a use that was not previously permitted without the Special Exception. T. Kinnon corrected that it is the existing road front that is non-conforming. Mr. Phillips confirmed that it has always been a non-conforming lot and that they have done nothing to change that. He keeps a copy of the deed to indicate that there is a right of way through the lot that gives adequate provision for road access. He had hoped to meet with the Selectmen first to ask for the paving waiver before coming before the ZBA, but that that is merely a housekeeping issue as they administer the road standards.

P. Monzione noted that the deeded access is not the one that they intend to use as the road coming in and out of the property, and that they intend instead to merge lots and/or obtain rights of way over the other portion of road that would make a better road in and out of the campground. Mr. Phillips replied that the deeded right of way is to a right of way that is adjoining, but owned by the subject lot. For all intents and purposes, it does have access right now, but the access is not believed to be adequate by the Planning Board or the builders, so they are planning to use an access that is different than the thirty-three foot road that serves the adjoining lot.

T. Morgan opened the floor to public input in favor of the application. There was none.

T. Morgan opened the floor to public input in opposition to the application. Sandy Esposito lives at 53 Pine St. in Alton. She asked about the missing abutter from the last meeting that could not be found. She said that at the previous meeting they could not find the deed or location of one of the abutters. Mr. Phillips responded that there is a "gore", or sliver of land that they have been unable to discover the ownership of through deed research. That sliver of land is in front of the Water Industries parcel and their right of way does cross that sliver of land and the right of way still exists regardless of who owns it. It would not prevent access to that parcel, but they could not find the owner of that parcel of land.

Ms. Esposito brought up some confusion from the wording in the application. She said that at certain points the application refers to a Residential Commercial zone, and then they are talking about it being in a rural zone, and it gets confusing as to zoning because the entrance is in one zone and the actual park is in another. She said she had different documents documenting it as Residential Commercial and rural. Mr. Phillips answered that it is a bit confusing. He used a plot map to demonstrate that they would be using the fifty foot access through the rural zone to get to the Residential Commercial zone. Ms. Esposito asked if the Special Exception was for the Residential Commercial zone to have a campground. Mr. Phillips confirmed that it is so they can use the land for a purpose other than a single family home.

Ms. Esposito asked if, as far as the permits from the DOT and DES, etc., and all those stipulations that had to be fulfilled from the previous Special Exception, if it was true that those provisions had not been met yet. T. Morgan stated that that was correct. Ms. Esposito said that she found a case from 2002, Tidd vs. Alton, which was a nearly identical situation. Someone tried to open a campground and some of the abutters got together to oppose it. It went all the way to the Supreme Court and the abutters won after years and $52,000 dollars. She wants to know if the Board is aware of that case and that she shares the complaints of those abutters. T. Morgan said that he is aware of the case, but not the details. Ms. Esposito asked if she could ask the Board to look into the specifics of that case; T. Morgan suggested that she could give a copy of the case to J. Dever. P. Monzione said that the cases are decided on the specific facts of each case. Since 2002 criteria for granting variances has been codified by legislature, so the Supreme Court decisions that guided them in the past have been preempted by state statutes. There are differences in how the criteria are applied and judged since they have been codified. Thus, if the case was from 2002, there were likely different standards guiding the decision, but he is not familiar with the case.

Ms. Esposito was concerned about noise, smoke from campfires, and lighting; these are the same things brought up in the prior case (Tidd vs Alton). She looked into getting her home appraised because she believes that the value of her home will go down if the campground goes in. She called an appraiser, but he wanted four to six thousand dollars for the appraisal, which she can not afford. She had an appraisal in the fall and thought that if she got another appraisal to prove that the project lowered the value of the home, it would be one of the factors the Zoning Board would look at, that the project not lower abutters' property values or be of undue nuisance to them. She granted that she is probably the only person who would be directly affected by the project, but that others would be affected who were not paying attention. She emailed state representatives, the Conservation Commission, and Alton's Milfoil Committee, and the only person who got back to her was Representative Malone, who said he knew nothing of the project and would look into it, but never contacted her again. She felt

as if she was the only person bringing up valid arguments about why there should not be a one hundred and fifty site campground on the Merrymeeting River with five to seven hundred potential people.

Ms. Esposito said she spoke to the woman from the 2002 case, her home was up for sale when the previous proposal was underway; she was unable to sell her house after the plans for the first campground came forward. After seeing the details of that woman's case, Ms. Esposito said that they were arguing exactly what she is arguing, and that that case was not even about a campground on a river, as this one is, for conservation purposes. She hoped that everyone would look into it further before giving permits because she is concerned about her property value; her entire property is directly across from the campground.

P. Monzione asked if she had seen the written review regarding the application that was submitted by the Conservation Commission. He explained that the Code Enforcement Officer or the Planning Board or both contact the heads of the various town departments or agencies, including police, fire, conservation commission, and the code enforcement officer himself, and they provide this Board their comments in response to the application if they so choose. In this case the Conservation Commission did submit a written review to the Zoning Board for consideration as to its position about this application. He added that it is a public record and that she is entitled to see it. Ms. Esposito replied that she did not get to see it. P. Monzione stated that his reason for telling her is because of her earlier comment that she had contacted these people without response, so for her edification, they did indeed submit their input, whether it was due to her contact or not. They are strongly recommending that this request not be granted.

John Moore, a friend of Ms. Esposito, came up to speak in opposition as well. He said that the reason why the case that Ms. Esposito presented would be related to the present one is that under Section 520, Special Exceptions, it says that the Board and review of all of the applications must find that all of the conditions are met. He added that the missing abutter is an issue because they could not be contacted about the application, and through the conditions of sending an application, the applicant must notify all the abutters. He found this under Zoning Regulations, Article 500, Section 520 Special Exceptions, Part C. It says that the Board, in review of all the applications must find that all of the following conditions are met. Under C.1, it says that a plat has been submitted in accordance with the appropriate criteria. Under the same Section 520, Special Exception B, Regulation 7.2.18 – abutting property, which says names and addresses of owners of record of abutting property with map and lot number must be on the plat. He argued that if they do not know who an abutter is that it cannot be on the plat, and therefore does not follow the criteria for Special Exceptions.

Mr. Moore said that what Ms. Esposito meant about the applications is that the current zoning is Residential Commercial, but that it was changed and down at the bottom it says it was "subject to change due to current lot line adjustment applications". He added that there was no square footage in the application. He said that on the cellophane it says it is in a Residential Commercial zone, Map 8 Plot 49, and that if it is in a Residential Commercial zone, they cannot build a campground there. He did not understand how a variance could be granted if it is under Residential Commercial. He mentioned that at the Planning Board meeting they had said in their record that the campground would be put on Map 8 Plot 49 and that that is an Residential Commercial Zone. He does not believe that the application is right; he passed around a copy of what he has. J. Dever explained that the Planning Board application is separate of the Zoning Board application. Mr. Morgan asked if the campground would be under Residential Commercial or Rural zoning.

T. Morgan clarified that the application is for a campground on a rural zone. P. Monzione added that this issue had come up before and that they looked at the plan and found that there is a line in the zoning areas between the road that comes in and where all of the campsites will be. The road that goes in is in the Residential Commercial, or RC zone, and the campground is in the Rural zone. Therefore, regardless of what the Planning Boards application may say, or what the Zoning Board application may say, if the reality is that the campsites will be in the Rural zone, then when the Zoning Board reviews it they would review it under a Special Exception in the Rural zone.

Mr. Moore said under Zoning Board ordinance Section 450 concerning rural zones, Special Exceptions Section 452B, it says each lot shall have a minimum width of two hundred feet of frontage at the street or highway line. Corner lots shall have a minimum of two hundred feet of footage on each street or highway line. He recalled from the last meeting that they had thirty three feet of frontage and would get up to one hundred and fifty feet. Mr. Phillips responded that the proposal was to create two hundred feet of footage through by creating a road that would fulfill the requirement for two hundred feet of frontage. He believed that Mr. Moore was looking at the application to the Planning Board for a lot line adjustment that also lead to the confusion about the Residential Commercial zone, because the application to the Planning Board for the lot line adjustment was for the lot in the Residential Commercial zone. Mr. Phillips added that there were two separate applications to the Planning Board, one for the lot line adjustment in the Residential Commercial zone, and one for the Special Exception for the campground in the Rural zone, and that that may be the source of the confusion. Mr. Moore stated that he did not recall any discussion at the last meeting about having 200 feet of frontage; Mr. Phillips assured Mr. Moore that they would get it right.

Ms. Esposito asked if there was any more information about hooking up to the town water supply. Mr. Phillips said he would be happy to answer questions about it, but T. Morgan said it was not a matter for the Zoning Board. He explained that the Zoning Board is a land use board that enforces the provisions of the zoning ordinance, and that applicants come before them for either variances or special exceptions. The board can attach requirements to make an approval tentative, but things like a water hook-up are not under the purview of the Zoning Board, just the use of the land itself.

Mr. Moore stated that the frontage issue is a Zoning Board issue, not a Planning Board issue. Mr. Phillips responded that because they do not have adequate frontage in the rural zone – 200 feet is required - they intend to upgrade the existing road that goes back to an adjacent lot and provide the required two hundred feet of frontage. By doing so, they will make it a conforming lot and meet all zoning standards.

Mr. Moore asked if the Zoning Board could pass regulations and exceptions on intent to do something. P. Monzione explained that they can impose conditions, so if the applicant says that they intend some time in the future to reconfigure the lot to have two hundred feet of frontage, they will take into consideration when they look to see if all requirements have been met that there are not two hundred feet of footage at present. They factor that in and they might say that they will grant it on the condition that they do in fact get the two hundred feet of frontage. If the applicant then fails to get that two hundred feet of footage, the Special Exception is rendered void and does not come through.

P. Monzione said he was interested in the issue with the two hundred feet of frontage because he thought it had been addressed in the application for Special Exception for the use of a campground that was granted. He knew they had imposed a number of conditions for that Special Exception, and thought one of them was that the applicant had to obtain the two hundred feet of frontage. Mr. Phillips responded that it was not specifically addressed, but was covered adequately with the condition that a primary access road be constructed to town standards to provide the required road frontage for the property. P. Monzione believed that that fully addressed the issue of the required two hundred feet of footage, and that Mr. Phillips, depending on his actions could either end up with more footage or get waivers. P. Monzione said it was important that Mr. Phillips understand all that is required of him. Mr. Phillips said that they are in a waiting pattern until they get a Special Exception and that they have not pursued much else at this point.

T. Morgan asks Mr. Dever for a copy of the previous opinion with conditions so that everyone can review it.

Tulah Fattio from 53 Pine Street in Alton asked about the right of way for the gravel pit. She said that they already have an existing entrance but wanted to clarify that they were looking to make a new entrance and road going in. She asked if it was because Mr. Carlton could only use that right of way now for the gravel pit only. She believed that when he was granted the right of way that was part of the agreement. She said they have been talking about that right of way for an entrance but never mentioned that it is only for gravel pit use. Mr. Phillips

responded that the right of way that he is referring to is not restricted to the use of gravel. The gravel pit that is currently being used is accessed through a deeded piece of property that has frontage on Route 28. That frontage is only thirty-three feet, but that zone requires that they have seventy-five or two hundred feet depending which zone the access is actually in. The access for the gravel pit that is currently being used is not adequate so he would like to use the deeded right of way that has been in existance for fifty odd years, and connect it to an existing road and have it continue beyond the parcel to the adjoining parcel. There is no restriction on that and it is not used for the gravel pit. Ms. Fattio said that he got the right of way from someone else, and that it was written in that Mr. Carlton got the right of way for the gravel pit. She thought they were saying that they did not want to go in from the existing road, but from a different way, but that they did not mention that the right of way is for the gravel pit. She said that they keep mentioning that right of way but never say that they are not allowed to use it because it is only supposed to be for the gravel pit. Mr. Phillips responded by showing the land that Mr. Carlton owned and the road he owned that was used for gravel trucks. He said that Mr. Carlton may have made some agreement that caused him to be restricted to use the road for gravel trucks, but that it does not matter because that access is too narrow. Therefore, he intends to use a different right of way that runs across his property and an adjacent property and build the road up to meet town standards and build it up into the adjoining parcel. He would then merge the parcel to the larger one that would have a road built to town standards within it that would afford him the required two hundred feet of frontage. Mr. Carlton would rather not have to do that; he just wanted to build a road in and be done with it, but it is necessary because of the standards. He does not want to use the existing access except perhaps for emergency access and his intent is the hardest way to do things, but that is what is necessary to meet town standards. M. Fattio again made the statement that her point was that the access is only for the gravel pit and she was questioning why that had not been mentioned.

Public input was closed for this case.

Mr. Phillips added in closing that they had received the Conservation Commission's comment letter, and wanted to show that item #5 said amongst other questions they had, they stated that if this was a request for a variance they would request for it to be denied. He met with the Conservation Commission and listened to and addressed their concerns and would like to provide the preliminary results of that because he believes they can adequately address the environmental concerns. He did not feel that it will be a major issue. Furthermore, if they have concerns they will have opportunity to comment on both in the Wetlands application and the Shoreland application, which they are currently reviewing.

Mr. Phillips hoped that the zone issue has been cleared up. He understands that it is a complicated project, but feels that it has been addressed.

As for the owner of the gore, there is no parcel there and no owner to notify. It is merely a gore, as he described earlier. He believed that if anyone were paying taxes on that piece of land it was probably Mr. Carlton because it is between the sidewalk and his property. There is no owner on record and no lot number, so there is no way to research the ownership of that land; they have spent a great deal of time researching this. It is based on some wording and they believe to be beyond reproach that there is no owner. Rather than pursue a lot line adjustment as originally intended, they assumed it was a dead end so it would be better to simply upgrade the existing road to provide necessary frontage. He believes all existing abutters have been notified.

As for property values, he said that it is a matter of opinion and he asked whether it was a matter of comparing a piece of vacant land to a piece of used land and that there was no way to tell whether values will go up or down based on the use. He added that there would be a site walk open to abutters and the board on June 9, 2011, and if there were any concerns they were welcome to join. Mr. Carlton invited both the Planning Board and the Conservation Commission to the site walk. He believed that stepping on site would give perspective as to how far away other properties are and what can be seen from the property and may be an avenue to help the Board make lay person decisions on appraisals.

He was unaware of any restrictions on the parcel and suggested they review the deed, but in his review he saw nothing that restricted the use to just the gravel pit.

T. Kinnon stated that he would like to do the site walk and have an opportunity to review the decision from 2002 as it is a similar type of case. He agreed with P. Monzione that guidelines have changed both ways since that time, but was still worth review before making a decision to ensure that they did not ignore precedent.

P. Monzione said he would also like to do the site walk. He thought that even one person who testified about property values was evidence of that fact because the law recognizes that owners are experts in the value of their own property. He added that even if they did find that property values would be diminished by the use, he was not sure that it would in itself defeat the application. He said that in hearing that and the applicant's suggestion, that he considered it to be valid evidence, so he would like to go out and get a look and weigh the criteria carefully.

P. Monzione made a motion to continue the application for Case Z11-10 to July 7, 2011 pending the site walk on June 9, 2011 at 5 pm. The Board will reconvene for deliberation and decision at the July 7, 2011 regular meeting. P. Larochelle seconded the motion which passed with five votes in favor and none opposed.

Mr. Phillips stated that he would be in attendance at the July 7, 2011 meeting.

IX. OTHER BUSINESS

A. Previous Business: None

B. New Business: None

C. Minutes: April 07, 2011 and May 5, 2011

P. Monzione made a motion to continue review of the minutes to the next meeting. T. Kinnon seconded the motion which passed with five votes in favor and none opposed.

Approval of minutes was tabled to the next meeting.

X. ADJOURNMENT

T. Kinnon made a motion to adjourn. P. Monzione seconded the motion which passed five votes in favor and none opposed.

The meeting adjourned at 10:45 p.m.

The next regular ZBA meeting will be held on July 7, 2011, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session