

**TOWN OF ALTON  
ZONING BOARD OF ADJUSTMENT  
MINUTES  
Public Meeting  
August 5, 2010  
Approved 12/2/10**

**I. CALL TO ORDER**

Timothy Morgan, Acting Chairman, called the meeting to order at 7:00 p.m.

**II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS**

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

Mike Garrepy, Interim Planner  
Stacey Ames, Planning Assistant  
John Dever, Building Inspector and Code Enforcement Officer  
Lou LaCourse, Clerk  
Steve Miller, Member  
E. Loring Carr, Representative from the Board of Selectmen

Paul Monziona, Chairman, and Timothy Kinnon, Member, were not present at this meeting.

**III. APPOINTMENT OF ALTERNATES**

There are just three members of the Board present, and no alternates to appoint. Three members constitutes a quorum, but what he wants to make clear to all of the applicants here this evening is that if for example they are applying for a variance; in order for a variance to pass when there are only three members present, each member must vote unanimously in favor of each and every one of the criteria. To make that as clear as possible, if any member votes against any aspect of an application with only three members present it will fail. He is making that announcement up front to give every applicant an opportunity if they wish to request a continuance. The rules of the zoning board normally limit the number of continuances available to any applicant. Because of the situation, on an evening like tonight, they would waive that continuance and not count it against the applicant so they would still retain their right to an initial presentation and two continued presentations without having to re-file. Before going further with the agenda, T. Morgan asked the applicants in the audience if any of them would like to come forward and identify themselves and ask for a continuance. There were no applicants interested in this option.

**IV. STATEMENT OF APPEAL PROCESS**

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

**V. APPROVAL OF THE AGENDA**

The agenda for this evening has three continued cases and one new application. Case Z10-17, Alton Bay Campmeeting Association, application for variances and a special exception, has been rescheduled to August 12, 2010.

**L. LaCourse made a motion to accept the agenda as amended. Steve Miller seconded the motion, which passed without opposition.**

**VI. CONTINUANCES**

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| <p><b>Case #Z10-04 and 05<br/>Laurie Shea, Scott Mertens and<br/>Susan Dolan</b></p> | <p><b>Map 36 Lot 51<br/>(Formerly 0-3)</b></p> | <p><b>Variance and Special Exceptions<br/>128 and 130 Mount Major<br/>Highway</b></p> |
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*Application submitted by Tom Varney on behalf of applicants Laurie Shea, Scott Mertens, and Susan Dolan to request a Variance from Article 300, Section 327 Setbacks to allow the take down and rebuild of two (2) cottages within the 50 foot Shoreland setback as well as the 10 foot side setback. Additionally, applicants request a Special Exception from Article 300, Section 320 (B) to raise the ridge line of the larger white cottage to make the building more structurally sound. This parcel is located in the Residential Commercial zone. Final Continuance 5/6/2010.*

S. Ames read this case into the record. T. Morgan asked if anyone was present to represent the applicants in this case. No one came forward. T. Morgan observed, without checking the record, that they have exhausted their allowable continuances. S. Ames agreed. T. Morgan stated that the most appropriate action would be to take a vote on requiring them to submit a new application. S. Ames answered that the required action would be to vote to not grant the requested variance and a special exception, and they will have to resubmit.

**S. Miller made a motion not to grant. L. LaCourse seconded the motion which passed without opposition.**

The motion carried; request was not granted, and they will need to reapply.

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| <p><b>Case #Z10-15<br/>Debbie Glazier</b></p> | <p><b>Map 6 Lot 17-1</b></p> | <p><b>Variance<br/>640 Suncook Valley Road</b></p> |
|-----------------------------------------------|------------------------------|----------------------------------------------------|

*Application submitted by Randy Couch on behalf of applicant Debbie Glazier to request a variance from Article 400 Section 450 Table of Uses to allow a dog grooming and boarding facility with an apartment. This parcel is located in the Rural zone.*

S. Ames read the case into the record. T. Morgan asked if there was anyone here representing this applicant. Randy Couch, Debbie Glazier, Kerry Fox, and Steve Beranger came forward to present this application. T. Morgan stated that the application has already been accepted so they could go ahead and proceed.

Randy Couch stated that they had been at the last meeting; they were told to go away and come back with more information. What they did while they were out was to downscale the operation to what the leech field could handle, in regards to the state regulations for a kennel. They have turned it into more of a doggie daycare than a boarding facility. There are three pens for boarding; that is down from 26 they had last time. It is now more of a doggie daycare facility with three pens for boarding overnight dogs for emergency purposes.

Kerry Fox asked if the ZBA members had been given a copy of the septic design plan; they have. He stated that they have an approved state septic design for 600 gallons per day loading. What they are proposing to do is to limit themselves to a three bedroom home which would be 450 gallons per day loading, with the other 150 gallons going to the actual kennels, with each of the three kennels requiring 50 gallons per day. They will max out at the 600 gallons per day that they already have the approval for.

Mr. Couch stated that the plans to renovate the building are very minimal; there is an in-law apartment on one side that would be the doggie daycare side. The other side is a three bedroom house that the family will live in. The downstairs will have the pens in the basement to eliminate any noise from going outside from overnight dogs. The backyard will be fenced in and have three play areas for the dogs. There is also some driveway work to be done; they realize the driveway is too steep for people to get in and out off Route 28. There is a plan to reconstruct the driveway to a much friendlier access. It is really very minimal work to the building; it is an existing building. They're going to put fire rock in the basement and do it up right. It is going to be a very nice facility.

Mr. Fox spoke about the driveway. He has met with a couple of representatives from the Gilford Office of the DOT not long after the last meeting; they have gone over a plan of what is being proposed there and that has been given to the ZBA. They were quite impressed with what is being proposed there. They are shifting the location of the driveway; currently the driveway just goes straight down a fairly steep slope which is fairly difficult. What they are proposing is to change the location and come in alongside of the slope to break the grade there. They have an approval from DOT; he did bring that with him. S. Ames made a copy for the file. That approval is for a driveway that is 20 feet in width with a 40 foot entrance at the roadway.

T. Morgan asked if that driveway is depicted on any of the plans that have been submitted in the past, but if it is on the plans submitted tonight. Mr. Fox answered that it is.

Steve Miller asked if the waste would be dumped once per week irrespective of the number of dogs in the facility. Mr. Beranger answered that the waste would be picked up as needed and placed in a sealed container. At the end of each day, that container is bagged and emptied into a dumpster. Waste Management will come once a week to empty the dumpster. Currently, they are proposing a 6 yard dumpster, which may be a little too big for what is needed, they will start with that and if they have to, they can adjust. They (Waste Management) do not have an issue with any kind of pet waste. The dumpster will be in a fenced in area with a lid on it for odor control. Nothing will be thrown around on the ground.

Steve Miller asked, with the downsized operation, how many dogs they would anticipate on a best case scenario would be there, and how much waste that would generate over the course of a week. Mr. Beranger answered that the best case scenario would be 25 dogs, generating 1 ½ 30 gallon trash bags full. Steve Miller asked if they have determined that there is a decibel standard from the American Kennel Association or any trade organization. They have not found any information listed for decibel standards. Internally, there are sound cancelling machines available that could help with internal noise; external noise is not going to be permitted because the dogs will be walked individually and they will not be outside for an extended period of time. If there is an excessive amount of noise, they are walked individually or asked not to return.

Steve Miller stated that based on 25 dogs per day, they are looking at 50 trips; they would be looking at 25 turn-ins and 25 turn outs every day. Mr. Beranger stated that there are people with multiple dogs, so you could have one person with 3 or more dogs.

Lou LaCourse asked about odor control with the lid on the waste container. Mr. Beranger explained that the waste would be in a sealed bag placed in a dumpster with a lid. It would be fenced in for aesthetic purposes as well as for whatever odor that could control. It is not going to be just left out in the open. Lou LaCourse asked if the base of the runs was going to be an impervious surface. Mr. Beranger answered that one of the runs would be impervious and the other would be natural grass/ground. Lou LaCourse asked about waste running into the ground in the natural grass area. Mr. Fox answered that the area that is impervious is a covered structure; there would be no rainwater making contact with the waste and causing it to flood down the asphalt. Also, all of the waste, including on the grass surfaces of the outdoor pens, will be picked up.

Lou LaCourse asked about the distance between this facility and the nearest neighbor. Mr. Fox answered that the closest building on the same side of the road, going back toward the Alton Circle, is probably 250 – 300 feet away. There is also a pretty good woodland buffer between the dwellings.

Steve Miller asked if there would be a time in the future when they would see accepting other animals such as horses, cats, or any other. Ms. Glazier answered that there would not be horses or other large animals, just cats and dogs. Lou LaCourse asked if there would be any breeding in this facility. Ms. Glazier answered that there would not.

Tim Morgan asked Mr. Fox about the septic loading. Mr. Fox had spoken about the 450 gallon requirement for the residence and the 50 gallons per day for each of the residential kennels; there is no allowance for the other day

boarding. Mr. Fox answered that, listening to the waste management plan, he does not think it is even relevant. None of the kennels will have an underground drain system where the waste would be pushed or flushed into some kind of a containment system. He does not think the waste that would be deposited from any of the animals in this facility would ever actually end up in the field. He does not think it is relevant.

Tim Morgan pointed out that one of the important criteria set forth in the statute that this Board is required to consider is hardship. In the application that is not addressed; that part of the application is not filled out. He asked if one of them could explain that to the Board. Mr. Couch asked Tim Morgan to explain hardship. T. Morgan explained that the hardship has to do with the statutory interpretation of the request for the variance. To put it in simple terms, the hardship would be that there is something unique about this property and that applying the zoning ordinance as it is currently written is a hardship on the owner of that property because of the uniqueness of that particular piece of property. Mr. Couch explained that the uniqueness is that this is not in any zoning regulation; a dog kennel is not addressed anywhere in the statute. That is the reason for a ZBA approval. Tim Morgan acknowledged that to be the reason for the request; the Alton Zoning Ordinance is known as an inclusionary ordinance in that if something is not within the ordinance, if it is not drafted in as a Special Exception or an allowable use, then it is not allowed. That's the meaning of inclusionary. In order to request that this particular piece of property be granted a variance, they also need to demonstrate that there is a hardship in the way the ordinance is applied to this piece of property because it has some unique feature that creates a hardship because of the application of the ordinance as it is written. Mr. Couch asked how they could write about the hardship if there is no ordinance written about it. Tim Morgan answered that it is an inclusionary ordinance; if the ordinance doesn't say that it is allowable, and doesn't address it at all, it's not allowed. The fact that it is not allowed to them is also that it is not allowed to anyone else either; what they need to demonstrate why there is something unique about their application that means that it is a hardship to them to have it applied as it is applied to everyone else.

Ms. Glazier stated that the structure of this building is incredible; it was built to be a boarding facility. The entire basement is all cement; no noise will be coming out of the basement at all with the dogs. The property has a great buffer around it for noise also, and it's very convenient for dog owners on their way to work to be dropping off their pets. It definitely suits a boarding facility much more than a home. Tim Morgan asked her to elaborate on that; he asked if it had been used as a boarding facility in the past, and whether it had been built as a dedicated boarding facility. Mr. Beranger noted that he thought it had been built as a gun shop. There are 6 inch thick concrete walls, and divider walls in the basement. It's not a long building, but it is taller. The bottom floor is broken up into two big rooms, one upstairs and one downstairs, so you're not really breaking up a lot of little rooms and crawl spaces. There is a slope back; the cellar is all underground except for the entrance where the dogs will get in and out. The slope is downward, and it is buffered by a complete row of trees. You can't even see the neighbors now, and in the winter time you can barely see them. It's a good natural cure for any kind of noise. Also, the way the building is designed provides a good living facility where a single parent can raise her children and start a business to generate some income without having to travel and leave kids and pets unattended, and give the community a useful kind of service.

Mr. Couch added that would be the hardship of it; this is her business and where she raises her family. This is why she wants to run the business there; it's an excellent location for it. The hardship is that is her business. That's what she does.

Steve Miller stated that looking at the plan and reading the narrative of the business plan, he does not notice any signage being addressed, and it is a business. Mr. Couch answered that he has not put signage there as of yet. Steve Miller added that part of being in a rural and a residential area is why he would like to hear what they are going to have for signage, assuming that they are going to have a sign. Mr. Couch confirmed that there will be a sign; it will be on the roof section of the house, and there should be something up on the road to get people in and out of the driveway properly. He doesn't see anything up by the road. Steve Miller asked if there would be anything backlit or anything like that. Ms. Glazier answered that there would not be anything like that. Mr. Couch added that if they get through this evening, they still have to go to the Planning Board and have to meet everything in site plan review. What he is asking about is some of the criteria there. Some of these things they have not put a

whole lot of thought into because they don't know how far they are going to progress. They would like to think they would come out of tonight with an approval. Mr. Beranger added that there would not be a Vegas-style sign out there, or anything gaudy. A lot of the advertising for this kind of business is word of mouth; most of the advertising is word of mouth or newspaper. There isn't that much need for a sign because generally you are not going to be turning over dogs; you will get a clientele dog base that will be continual without a lot of newcomers coming in.

John Dever pointed out, as Mr. Couch had mentioned that in the planning process they would have a conceptual of the sign on the building and, if there is one, of the sign at the road. They are allowed under the ordinance to do this, and there are specific limitations on size and lighting and other visual things. It would pass through them, and part of his job is to issue sign permits, so he has to make sure they are adhering to what the Planning Board requires and what the sign ordinance requires. This is addressed a number of ways.

There were no further questions from the Board members.

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

Mr. Mark Morrill, Department of Transportation District 3, came forward; he wasn't sure what the variance was for tonight or what their interest was. He stated that they did get these folks their driveway permit. His only concern was that he wanted to know if there was going to be a change in location of the driveway. The plan that was submitted with the driveway application was not clear on that. Mr. Couch answered that they were not changing the location. Mr. Morrill added that his only other comment is that they don't like to have signs in the right of way because it does prohibit the site distance of the travelling public; when people are coming in and out of a driveway. He certainly supports the sign that is outside the right of way or on the building. If there is no change in location, he doesn't have a problem and will leave the complete driveway application with the Board. Tim Morgan said that he know that with some driveway permits for businesses they sometimes put a cap on the number of trips per day and asked if that was applicable to this particular property. Mr. Morrill answered that the particular driveway permit had been gone through and what they proposed there was adequate for the trips that are going to be generated. Tim Morgan asked if he recalled how many trips per day that is. Mr. Morrill did not.

There was no further public input in favor of the application.

Tim Morgan invited public input for those in opposition to the application.

Shirley Lane, a resident living on Suncook Valley Road across the street from this location, came forward. She stated that the driveway permit was not on file today; she was in the Planning Office today to look over some of the data and that was not on file for her to see, and she could not hear what (Mr. Morrill) had said about the amount of entryway during the peak hours of the heaviest traffic on Route 28, which is in the morning with workers going in and in the evening when they return. She does feel that she can not believe that the DOT has not looked into that hazard at that time of day – how much it's going to impact that road at both times of day, in the morning and in the evening. They already have a great number of accidents between Hamwoods Road and Stockbridge Corner Road; it is a very hazardous area during the ice peak time of the winter. If they looked they would see how many accidents there are there. As far as she knows, that was built for a home and not for any other purposes. She does feel a concern about the dumpster being emptied only once a week; she understood the last time they were here that it was going to be taken out at the end of each day. She noted that had changed. Also, the amount of dogs she would be taking in is 25 and she has to emphasize the fact that it is only a two acre lot and on that two acre lot, how many dogs do they have in there, plus the 25 they're going to take in, plus the cats, and a horse and a donkey on two acres of land. That should be looked at also and taken into consideration.

Robin Lane lives exactly across the street. She asked if this gets approved, and there is a problem, what protection she has to secure peace and quiet. Tim Morgan answered that if it is a question of noise, there is a noise ordinance in the town that would be applicable. If there is a problem with noise from the dogs she could pursue prosecution

through the town noise ordinance. Ms. Lane commented that she does not know what the rules are and what is considered a nuisance. She works at home during the day, so the noise would be an issue. Tim Morgan answered that she would have to look up the town ordinance; he does not know it off the top of his head. Usually ordinances like that speak to reasonableness and don't particularly have standards; it is a subjective measure that decides whether what is going on can be considered reasonable or not.

There were no other comments during Public Input. Public Input was closed.

Tim Morgan gave the applicant an opportunity to make any final remarks to rebut anything that was said during the Public Input.

Mr. Beranger explained that 25 dogs would be on a good day, if the facility was full. A business does not always run at 100% capacity. Traffic-wise, sometimes going through town near Dunkin Donuts on a Saturday or Sunday morning is more of a hazard than turning on or off of Route 28. There still has to be a little bit of respect on the part of the driver and their ability to operate their vehicle. As far as noise and out of control noise, Debbie would not live with it in her own house and not control it and would not let it go uncontrolled. If it's bothering the neighbors, it will drive her nuts and she does not want that. The noise is going to be taken seriously because she has to live there; she has to live with the neighbors and with the town and it's not a nice thing to have enemies across the street and around you. She is going to do her part to keep the noise down and she has controls to make that happen.

Tim Morgan asked what the speed limit is at that point on Route 28; it is 50 miles per hour.

Mr. Couch explained that the aerial photo that was turned in with this packet shows that there is a great buffer zone all the way around this house. She's serious about keeping her dogs quiet and respecting the neighbors; with that buffer zone and the overnight pens in the basement, and the dogs being out in back of the house and not on the front side, the Lanes should have no problem with this.

Mike Garrepy, the interim planner, added that a lot of questions have been raised by the ZBA members and by the abutters. He thinks Kerry (Fox) accurately stated that if this is going to be voted on in the affirmative and the request for the variance is granted, the Planning Board is going to scrutinize this application for the site plan review process. There will be a whole other public notice and another series of meetings with the Planning Board where the abutters will again be allowed to provide testimony. The Planning Board will be sure to look at those concerns of buffering, and noise, and waste, and aesthetics and all of those things that they may have. This is the first part of the process and he just wanted to remind the Board that what they are really here tonight to do is to vote on the use; to either allow the use or not allow the use. All the other things are really planning matters. There is a little bit of cross-pollination there between the Boards and what their roles and responsibilities are, but the use is really what they are looking at today.

He is not sure of the makeup of the Board in 2007, but in November, 2007, a variance was granted for essentially this very same use. It was probably 1/2 mile down the road, toward Alton center. It might behoove both the applicant and the Board to review that application and determine whether or not the applicant may want to use some of that case's arguments to support their position and the Board may want to take some time to look at that approval of the previous Board and take that into consideration when they are considering this project. There is a meeting scheduled for August 12; he is not sure where the Board is leaning as far as this application goes, but it may not hurt to have another week or so to consider it, hear the case again with a full Board perhaps at the next meeting, and go from there.

Steve Miller did not feel there was an additional need for another meeting. The applicant saw that there was a limited Board and they made a business decision to present their case and take whatever risk there is toward a positive adjudication on their own behalf. He would be prepared to vote today on this application.

Tim Morgan felt that Mike Garrepy’s point is well taken with regard to there having been some past precedent set by this Board. He would be interested to see that; he asked if it would be possible to get that record on such short notice if they were in fact to reschedule to give the Board a chance to consider. Stacey Ames answered that she could get it for them right now, if they want to just take a few minutes to review it. Tim Morgan asked the applicant if they would like the Board to look at the precedent from the previous case now and debate or would they rather come back on the 12<sup>th</sup>. Mr. Couch answered that she (Debbie Glazier) is ready to go today.

A short break was taken while Stacey Ames made copies of the prior case and gave them to the members and the applicant.

After the break, Mr. Couch asked about the drawings that had been associated with the prior application; he is not sure if they are part of it. Stacey Ames explained that she had them but had not made copies of everything; she had copied the application and the Notice of Decision. Mr. Couch recalled that it (the previous application) showed a much larger boarding facility than what is being requested here, and that it was on a smaller property. He asked if they could get the extra week for the Board to look this over then come back. Tim Morgan agreed that would be a good idea; he also encouraged the applicant in the interim to think about the criteria of hardship that is part of the statute that needs to be addressed by the applicant. He clarified that he is simply expressing his own personal opinion and not speaking officially on behalf of the Board.

This case was continued to the Special Meeting of the ZBA to be held on Thursday, August 12, 2010, at 7:00 p.m. That will give the applicant time to review the previous application and see how they fit the precedent previously established by this Board.

**VIII. NEW APPLICATIONS**

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| <p><b>Case #Z10-19</b><br/> <b>Thomas Pricone and William Kannan</b></p> | <p><b>Map 33 Lot 24</b></p> | <p><b>Appeal and Variance</b><br/> <b>56 East Side Drive</b></p> |
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*Application submitted by Bianco Professional Association on behalf of applicants Thomas Pricone and William Kannan to request an Appeal from Administrative Decision on a Cease and Desist issued on May 14, 2010 from Article 400 Section 401 Table of Uses to allow the continued construction of a pre-existing non-conforming use where building permits were issued. In the event the appeal is denied, they request a Variance from Article 400 Section 401 and 410 to allow the continued construction of a single family home shared by two families which reduced the non-conformity from a four bedroom structure to a two bedroom structure that appropriate building permits were obtained to construct. This parcel is located in the Lakeshore Residential Zone.*

Tim Morgan read the case into the record.

Attorney Robert Best of Bianco Professional Association, Thomas Pricone, and William Kannan came to the table to present this application. Attorney Best asked if all materials provided had been given to the members; Tim Morgan answered that they have the materials and explained that normally at this time the process would be to go through those materials and consider whether the application is complete and ready to be accepted. Tim stated that he wanted to ask a question about what he viewed to be the elephant in the room right now, and ask them to address it before they consider the application. That is, as it strikes him from a cursory review, that there may be a question of municipal estoppels here. Attorney Best stated that they believe that there may, and as has been introduced and as they will walk the Board through some of the materials, this building was within days or weeks of being complete, with site plans, with permits issued, and then the cease and desist order came along, and that’s what brings them here. They are here to satisfy whatever those inquiries are, but they believe that the permits and the site plan have all along disclosed the nature of what this project was very clearly and that the applicants had a right to rely on that. That is one of the issues, but any remedy or possible resolution, whether it be the appeal or whether it be the variance, they’re happy with it. They aren’t necessarily relying on any single avenue of relief; whatever brings them to a happy ending is satisfactory to them.

Tim Morgan explained that his concern is that if there is an issue of municipal estoppels, there is not an opinion (in the packet) from town counsel. Hypothetically, where they to proceed this evening and hypothetically deny the relief they have asked for, they might be subjecting the town to some liability of which they are not currently apprised. He asked Attorney Best if he would agree with that. Attorney Best answered that he is not there to impose upon the town some threat of liability, but absolutely they do believe there is a claim of municipal estoppels that would allow this project to go forward in reliance on the permits that have been issued for two years and the inspections that have gone on with town officials on site looking at insulation and all the various aspects of the project. He does not know how to help with the idea of getting advice from counsel for the town. Perhaps they could proceed on the other two issues and see how they goes; if they need to continue to a future date in order to get that advice because for whatever reason the appeal or the variance aren't successful they could continue and get the advice on the estoppels and go from there. It is always a difficult thing to manage from a Board standpoint when you get the input from the attorneys, and how long that takes. Tim Morgan asked if Attorney Sessler had looked at this. John Dever answered that he had.

Tim Morgan asked if they had an opinion from Attorney Sessler. John Dever answered that they are trying to rectify a wrong. The permit was issued by the previous Building Inspector; it was issued as a single family home. When he did his inspection and looked at the plans that were submitted by Mr. Pricone and Mr. Kannan, it was for a two-family dwelling. He based that opinion on the definition of a dwelling unit which says that it has a kitchen, bedroom, bathroom and living facilities, which this does. The plan is in front of them. They had discussed it at length, and he was comfortable with taking the avenue they have taken now. The estoppels argument has been in the forefront of this from the very beginning. He was comfortable with proceeding with this in this manner.

Tim Morgan stated that what they should do is consider the application for its completeness and subject to its acceptance then they can listen to the applicant. Mike Garrepy added that he had talked to Attorney Sessler as well about this application and he did suggest that this should proceed as an Administrative Appeal matter not a variance matter, and was comfortable with it proceeding in that fashion.

Steve Miller asked, as a layperson, if someone could explain the elements of municipal estoppels. Tim Morgan, to put it on its simplest terms, said that it would appear on the face of it that somebody with authority on behalf of the town has given approval to these gentlemen to go forward with the project that they went forward with. Another official of the town coming up behind and checking on that has said that this does not accord with the zoning ordinance so they must stop what they are doing. The applicant had already relied on the previous approvals given under cloak of authority. It is arguable that the town at this point can not turn around and say no. Steve Miller asked if there are exceptions to the use of municipal estoppels or a cease and desist order. Tim Morgan responded that that was kind of the nut.

Tim Morgan suggested that they go through the application to see if they have what they need to approve it. Attorney Best asked if they are just taking an inventory of what is there, or if the Board would like him to go through the explanation of what each item is there for or what it is there to show. Tim Morgan responded that if he would like to do that, it would be fine, but just for the sake of the acceptance rather to state his case.

Attorney Best explained that they had filled out the application to do both the appeal and the variance. They have described the reasons for what is going on there. Without going into the details of making the case and some of the things he would show them later with the plan, what they have is a property that has had three dwelling units on it. Two of them were interconnected and one free-standing. They were all pre-existing non-conforming uses. The two that were connected were a two bedroom and a four bedroom; what his clients have attempted to do was to refurbish/redevelop some buildings that were deteriorating and coming up with a way to do that. He thinks that in consultation with the previous Code Enforcement Officer, they looked at the ways to do that and they came up with the plan that ultimately was put into play. It had permits; the permits are included and will show that there are specific indications about two ranges, two washers, two dryers – all of the indicia that would indicate that this is a home shared by two families. There is a little bit of uniqueness in the definitions in the Zoning Ordinance because they have a definition of something called a duplex which has an undivided wall from basement to roof; this does



not have that – there are penetrations. This isn't a duplex, but it is more than one family living under the roof. They have multi-family which is three or more, so the definitions are a little difficult to apply here.

In the Appeal for Administrative Decision, the Cease and Desist order was due to this notion that there are two families living under one roof. They believe that has always been disclosed as a part of the project. That is why they think it is unfair to come in now with a Cease and Desist order on top of that. When it comes into the application for a Variance, they describe how they met the five criteria in the statute; he will go into those details a little better when they are talking about the case. They have provided a response to each one of those criteria that they have to find in order to grant the variance. They have provided the Cease and Desist Notice so the Board could see what the three criteria were that were listed; essentially they all relate to various restatements of the notion that there are two families living under one roof. There is a letter stating that he represents the applicants and a written narrative describing the project and why they think they are entitled to relief. They have included the permit for plumbing which was submitted in May, 2008; it has all the indications of what is going to be in the home and it's signed by the building official. There is also an electrical permit which shows two ranges, two washers, two dryers and signed in June, 2008 by the building official, showing exactly what is going into the house. They included the real estate tax bill because one element of the variance deals with the values in the neighborhood and things like that. He wanted to present evidence about the value of the house and the tax bill is part of that. It also shows that this is a property that has always been owned by two individuals. They also provided a collection of photographs; there are nine photos showing different angles of the property as it was before any of this was done and the last photo is of the new structure as it sits today. That is what they have provided in their application along with the abutters list and all the proper envelopes and all the paraphernalia to do all the notifications.

Tim Morgan asked if the Planning Department believes that the survey is properly stamped. Mike Garrepy pointed out that the plan submitted with the application is not a survey plan but a septic design plan. Tim Morgan pointed out that they have two different legal issues; if they go forward with the first, the Administrative Review, what sort of survey is required for such a thing. Stacey Ames answered none; the more information the applicant provides the easier it is for the Board to decide. Tim Morgan stated that he is just concerned about what criteria they need to deal with in accepting the first part of the application. Mike Garrepy said that essentially they are looking for whether the Board feels they have enough information to begin deliberation over the application. Tim Morgan answered that he had just been wondering if there were specific requirements, and he does not know the answer to that off the top of his head. Mike Garrepy added that for an Appeal of Administrative Decision he does not believe there are.

Steve Miller read the stamp and stated that it read "Tom Pricone" but the owners are two joint owners. He wondered if that was the way the stamp should read. Stacey Ames pointed out that Tom Varney stamped it. Steve Miller had been looking at the title of the plan.

**Steve Miller made a motion to accept the application as delivered. Lou LaCourse seconded the motion which passed with all three votes in favor.**

Tim Morgan asked if the arguments for both of the alternatives would be the same. Attorney Best answered that they would be overlapping. Tim Morgan asked if, rather than have the members interrupt him, why didn't he just give his presentation, then they can consider the two different alternatives separately afterwards. Attorney Best agreed and asked if they are holding off review or consideration of the notion of estoppels and just considering the appeal and the variance. Tim Morgan felt they should do that.

Attorney Best stated that the first thing he wanted to go over with everybody is the plan they have been discussing. The members have smaller copies; he had a larger one he held up for everybody so he could point out some things.

What the plan is showing is the layout of the entire property. He pointed out an existing 2 bedroom cottage that sits right up on the road by 28A, but within the setbacks. What was there previously was a larger structure which was a two bedroom home connected in the middle to a four bedroom home. All of that is the pr-existing state of what

was on the property. The additional 2 bedroom home does encroach on the end of the property and the setbacks; practically all of the other buildings on the entire view also encroach, so it is a very crowded neighborhood.

One of the things that is unique here is that overlaying the existing two bedroom house is the footprint for the new structure; you can see that as a rectangle that is drawn around the other side with a little dashed line around it and a deck on the front with a slash going through it. He wanted to point out that it is right on the plan what the footprint of the new structure was to be. The approval of the septic system is over here (indicated on plan). One of the interesting parts, and the reason he points this out here in the middle is that as built this new structure sits completely within the setbacks and within the height restrictions. It is practically the only building in the neighborhood that actually is sitting properly on its lot as this new one is built, now that it is disconnected from the part over here (indicated on plan).

What was the two bedroom house is proposed to become a shed. The plumbing has been removed from it; there's a question of what else to remove from it just to have these guys be able to use it for a little workshop or hobby shop. Not a business, but just to be able to do repairs on the house and have a few tools in there. They both do that kind of work for a living so that is something that would be interested in having available to them. They can discuss how that goes. Plumbing has been removed from that so it will no longer be a dwelling unit. The connector between the two has been removed and what has been rebuilt is right there (indicated on a plan). The other thing he wanted to point out before he moves on from the plan is right along the top edge. What they have across the top is a side by side comparison of the old existing structure which is a two bedroom house connected to the four bedroom. Right here (indicated on a plan), you have the overlay of what is going to be built. The new footprint disconnected and the two bedroom which is going to become a shed drawn right there to it. You can see how the footprint is a little bit different but overall one of the things you can see is that the proposed footprint is about 2,900 square feet and the proposed footprint is a little over 3,000 square feet. That is one of the ways, when they talk about variances and bringing this more into conformity, they have reduced the footprint on this very crowded lot and they've also made the main dwelling completely within the setbacks. That is what he had wanted to show specifically with the plan although they are going to look at it more at specific points.

Attorney Best stated that the next thing he wanted to show and talk about were the building permits that were issued. The first one he has is the permit for the plumbing; the application was made in May, 2008. It's signed by the code official, although it does not have a date when that occurred. What you will see going down the list is that you've got the water closets, tubs and showers, and it is really difficult to tell what is going on with that. You certainly see two dishwashers, two washing machines, two sinks (for kitchens); going back to 2008 you've got something that has all the indicia of having two kitchens.

On the same day there is an application for an electrical permit, which right in the middle of it has two ranges, two washers, two dryers, and two dishwashers. That is signed by the building official on June 12, 2008. These are at least two of whatever makes up a complete set of permits that are two years old, well before this construction really got any shape to it at all, where you have a clear indication of what they are talking about in terms of how the home is going to be used. One of the things that is also interesting in that regard is that, on the plan, he had indicated a two bedroom structure connected to a four bedroom structure – that is essentially what they have now but with far fewer bedrooms. They have one building, two separate dwelling units, two kitchens, but different numbers of bedrooms on each side, but you had one structure with two dwelling units in it. That's all they have today; they have not changed that. It is not a change in use; it was a pre-existing non-conforming use. They are bringing it down in size, at least in terms of the footprint so that it is less non-conforming than it used to be. The number of bedrooms is something they will discuss in a little bit. In the new bedroom there are two bedrooms; there are some other rooms in there and everybody wants to talk about what those are, but they have designed them to be a den and an office, and he is sure there are people who want to talk about what those will be.

These two gentlemen (indicating Mr. Pricone and Mr. Kannan) are planning to retire in a few years. They want to live there, each with their wife. They're not looking at a family living in the house; those are not bedrooms and are truly intended to be a den and an office. Specifically with respect to the DES septic permit, DES actually defines

bedrooms. The town ordinance does not define bedrooms, but theirs does. It says it is something that is designed for sleeping and is furnished with a bed and intended for sleeping. These clearly are not that. They are hear putting that on the record for the Board, and he thinks they know what the affect is when someone comes and puts something on the record for them and asks for their vote, they are committed to that. It becomes enforceable. It becomes something that the Board could come behind them and check on and enforce if there was any issue with that going forward. This new structure, although there are going to be a lot of questions about that, is two bedrooms; there is one bedroom on each side with kitchens, bathrooms, and all of that.

The next item in his packet is the tax bill from the Town of Alton for the 2010 tax year with a due date of July 1, 2010. The assessed value of the property right now is a little over \$1,000,000. His clients purchased the property in 2004 for \$450,000, so there has been a great upswing in the value of their property. The standard is what it has done to the neighborhood, not what it has done to their own property values. Everybody can fix up their own property. He would submit for their consideration that to bring a unit that has a lot of non-compliance, a deteriorating home, and double the value of it, you are helping the neighborhood. You have improved the neighborhood, and there are several neighbors here who are ready, willing, and able to say that they are pleased with the project and that they think it is a benefit to the neighborhood. They will have an opportunity to speak during the Public Hearing section.

The next thing he brought up was the photographs. The first page has two photographs on it; they are pictures taken from 28A. The white structure on the right is the home that was torn down. Lower down and to the left of each photo is the two bedroom cottage that is down by the road, and then the upper picture, the building that lies between them is the two bedroom that was connected to the four bedroom and is going to be converted to a shed. They are two slightly different views of the same thing, but it can show what the layout was of the existing property. The next picture is showing it straight on from the road and in both pictures between the white structure and the one that looks like it is closer in the foreground to the left, you see what had been the connector between the two bedroom and the four bedroom houses. That connector has been taken out. That is part of why the footprint for the overall building is smaller. The third page of pictures consists of pictures from the rear; they offer these to give a rough idea of what the condition of the home was. It was in a deteriorating condition and had been built a long time ago – 1925 for the main house – there are odd roof lines and odd landscape and configuration of the ground. It was a difficult house to manage and a difficult house to heat. That is the view of what the cottages behind the home would have had to look at in the pre-existing home. The next set of pictures is the back again, but at an angle which gives a sense of what the deterioration looked like. The next set of pictures is showing the connected two bedroom home that is going to be used as a shed. It is the building that is the main focus of the top picture with the deck in front of it. It is the center of the bottom picture with the view of the connector between the two. That is the building they want to use as a workshop and for storage. It will no longer be used as a dwelling, but previously it was a pre-existing non-conforming use as a two bedroom. The last picture is from the road, of the new structure. What you see is a brand new, modern, clean design with good siding, in good shape and good condition. It is a benefit to the neighborhood. It is an improvement over the deteriorating building that was there on the side.

That is all he has in his application that he wants to show them for the facts. What he has left to do is to talk about the argument and why they feel they are entitled to that. A couple of peripheral issues that have been discussed and they have hopefully been able to supply the information Mr. Dever was looking for, was the height of the building. They have had a contractor go out and measure it and it is below the 35' height limit from the average finished grade to the height of the roof. Hopefully that has been satisfied. There has been some question as to what to do with the shed in terms of the interior walls – the plumbing has been removed and they are on the record saying that it will not be used as a residence. They would like to not do any more destruction to it because they would like to use it as a workshop and it has some cabinets and benches that might be work benches. There is really no point in tearing them out; they are affirming to the Board that it is not going to be used as a residence. It doesn't have plumbing; hopefully that is enough to satisfactorily address any issues with the shed.

Another issue that has come up and has hopefully been resolved is that some work had been begun on the concrete pads to set the air conditioners in. They have stopped that; they should not have gotten started with that when they were in the middle of this. Mea culpa for that. They will not deal with that until they go forward, but just so everyone is clear because there may have been some confusion as to what that was; it was for air conditioners and perhaps, in the future, a generator. No structures, no roof, no walls, and not an addition to the house.

He had spoken a while ago in regard to the ordinance about what this is; they have the definition of a duplex, which according to the ordinance is units totally separated from each other by an un-pierced wall extending from ground to roof. They do not have that; they are not a duplex. These two are interconnected internally; there are openings and piercings through the wall. There are definitions of a single family and a multi-family dwelling; single family is one and multi-family, in the Alton ordinance, is three. They are kind of two; that makes them a pre-existing non-conforming use. It always was what it is now, which is two dwellings under one roof. He thinks the ability to bring that more into conformance is something that merits consideration especially because they could have continued the use as it was indefinitely. This is hopefully an improvement on that.

The actual cease and desist order itself cites three different grounds as the reason for that. The first one says that a two family four bedroom dwelling duplex has been constructed in violation of the Town of Alton Zoning Ordinance stating that there are no multi-family dwellings allowed in the lakeshore residential zone. They have brought to the Board's attention that it is a pre-existing non-conforming two family; they have gone from four bedrooms to two bedrooms and they have established that by the definition it is not a duplex. That was their reasoning as to why they would appeal the Cease and Desist order and find that it was not appropriate for the property as it is configured.

The second reason is a two family, four bedroom dwelling has been constructed in violation of the issued permit 7867 which specified a single family four bedroom home. He is not sure exactly what the plan was that was permitted and referenced in this one, but he thinks they have shown and established that what they are talking about here is a two family dwelling, pre-existing and non-conforming, not a duplex, not four bedrooms but two bedrooms, and he believes that would be consistent with what the permit called for.

The third item is that a four bedroom two family dwelling has been constructed in violation of a NH-DES approved septic plan approval which specified that the demolition structure be rebuilt as a two bedroom home. As he mentioned before, DES defines bedrooms; they only have two according to DES's definition, which are the rooms that are intended to be and furnished for a bedroom. He thinks in addition to that- he does not know whether the Board has considered that such an issue would be addressed by DES or is a zoning board issue – typically he would see an issue related to a DES approved septic plan be brought to them for their review and enforcement. He does not know if this is the type of issue they typically enforce or not. Either way, they satisfy it because they are a two bedroom structure.

In a nutshell, their argument in regard to appealing the Cease and Desist order is that they are not doing the things they are alleged to have done in the Cease and Desist. If that appeal is unsuccessful, they are also here to ask for a variance. They all know what the criteria are that they have to meet; he heard it in the discussion with the previous applicant. The first criteria in the statute, RSA 674:33 is that it is not against the public interest. He thinks, in his experience, whenever you are bringing something closer to conformity with the zoning ordinance, making it less non-conforming, that's by definition in the public interest. The whole purpose of the zoning statute when it comes to pre-existing non-conforming uses is to encourage them to become more conforming. The public interest is clearly met where you are reducing the footprint, reducing the number of bedrooms by a huge number because previously four and two in that double structure was six bedrooms, and they are only doing two, which is much less. That is why they believe it is not against the public interest. They will also hear from members of the public that agree with that.

The spirit of the ordinance is observed. That is a similar argument that when you are bringing something from non-conforming to conforming that you are meeting the spirit of the ordinance. The ordinance, because it has to allow

pre-existing non-conforming uses, would have allowed the existing structures to exist forever. Bringing them closer to conformance is closer to the spirit of the ordinance.

That substantial justice is done is one that is really important to talk about here. He does not want to get into the municipal estoppels argument but these folks have destroyed a pre-existing non-conforming use that they were absolutely entitled to continue. They've spent a lot of money, a lot of time to get where they are. Clearly, substantial justice is on their side, allowing them to finish this up and move on. The justice of this is that, literally, this home was days or weeks away from being completed and applying for the Certificate of Occupancy. Stopping it now, reversing the tracks now is absolutely, in their view, something that is unfair and hopefully, the Board will agree with that.

The values of the surrounding properties are not diminished. He has talked earlier about the tax value and what this property has gone up. They will hear from some of the neighbors, but clearly going from a deteriorating structure that is two houses joined together and crowding the lot to fewer bedrooms, less of a footprint, and a brand new structure is helping the property values in the neighborhood.

The last of the criteria that are in the statute is that literal enforcement would result in an unnecessary hardship. If they were back in time to the day when this project had not broken ground yet, literal enforcement of this ordinance would tell the applicants they would rather force them to keep the six bedroom, two house non-conforming structure and not let them bring it any closer to conformity. That sounds like a hardship to him; telling an applicant they would rather have them stay way out there on the limb and not come back to the center. He thinks this property was uniquely set up with the three homes, three dwelling units in two structures, when they bought it. That was the structure they were given; they certainly could have kept it for a long time. They didn't choose to do that. They wanted to improve the neighborhood. It certainly would have been a hardship at the beginning to tell them no, that they had to keep an old, deteriorating house and try to rehab or patch it together with band-aids and not update it to a modern one.

Today, looking at the way that it stands, the unnecessary hardship is obvious. If they aren't allowed by either appeal or variance or by municipal estoppels to continue this, they have a structure that is never going to have a CO. The reason why that is not the primary argument regarding hardship is because it gets into some of the municipal estoppels stuff. In essence, certainly everyone can see the hardship that would be imposed at this late date to look at this project which the applicants have, in good faith throughout, disclosed what they are about, had the inspectors come out and inspect the stuff, write the permits for stuff, write down on their permit two ranges, two stoves, two sinks... Certainly they were not hiding the ball; they were absolutely disclosing it. That's how that reflects the hardship.

Section 530 of the ordinance mirrors those same criteria with a little bit of difference. In the first criteria, the Town's ordinance talks about the zoning interfering with the reasonable use. Certainly, if you are talking about keeping somebody from bringing their property into conformity, that would be interfering with a reasonable use. That there is no fair and substantial relationship existing between the purpose of the ordinance and the specific restriction, in this case, because they are dealing a lot with pre-existing non-conforming uses, the ordinance that prohibited two dwellings under one roof couldn't touch this property as it stood. It really, had they left the structures alone or known that there was going to be some difficulty down the road which is the choice they would have made, this ordinance never would have had any application at all to this property. It really ought not to have any substantial relationship to the property as it stands today. Really, what this is all about is continuing their pre-existing non-conforming use and bringing it closer into conformity.

The other criterion Alton has that is a little bit different than what is in the statute is that it is the minimum necessary variance to provide the relief. Obviously, because the thing is practically complete, allowing it to continue without going any further than it is now is obviously the minimum necessary to allow this project to go forward. That is how they see the project addressing the ordinance.

They are prepared to answer all the questions that the Board might have with respect to the property. They have some friends in the audience who will speak positively about it; he has a feeling there may be one or two people who might disagree with everything he has told the Board; they will have their chance in a little bit. If the Board has any questions at this point, he would be glad to provide those answers.

Steve Miller stated that there have been a myriad of professionals looking at all the documents, plans, architectural renderings, etc., right from the beginning of the inception. Why didn't anyone from their side catch the question of whether this would create any additional living units or additional uses? He pointed out the two dishwashers, two ranges, etc. It looked like it was a one family when in fact it was a two family. Nobody caught that; obviously nobody caught it, from either side.

Attorney Best explained that he could not speak for the town; from their viewpoint, they always know what it was. They know what the previous existing structure was, and that was the discussion. What did they have to give up or trade off, and that is why the trade off. Remember, this structure was a two bedroom complete home with a kitchen connected to a four bedroom complete home with a kitchen, all under one roof. Now what they have is a one bedroom home with a kitchen, and a one bedroom home with a kitchen. It isn't a different use; it is exactly the same use. It is compacting it onto a smaller footprint, with fewer bedrooms, but it is not a different use. From their viewpoint, that is the trade off they thought they were making in order to bring this thing more into conformity. When they look at the statute it certainly talks about expanding pre-existing non-conforming uses, and it has all sorts of limitations on that. Their view was that they were not expanding it. They are reducing the footprint and the number of bedrooms; they're removing the connection; they're getting the entire main living structure within the setbacks and within the height limit and all of the requirements of the property. From their side, it is never something they were unaware of; they just did not think it was a hot topic. Obviously, it is a hot topic today. He can't speak for the Town – he assumes that the people from the town know when they were inspecting it. He does not know how the permit forms get filled out – whether they filled them out or whether the enforcement officer did them. You give them a form with two ranges on it, they assumed it was known that meant two ranges. He just does not think everybody recognized it to be the issue of the day, particularly because it always was two dwelling units under one roof.

Steve Miller asked the applicants if either of the permits were made out in their handwriting. The applicants looked at the permit applications; Mr. Pricone filled out the applications and dropped them off to the town. He got a call weeks later that they were approved and he came and picked them up. Attorney Best clarified that they (the applicants) were filling them out; all except the signature of the code enforcement officer was filled out by them. They were providing that disclosure, exactly what is in the house, very clearly. Two dishwashers, two washing machines, two sinks, etc. On the next one, two washers, two dryers, two dishwashers, etc. They are doing all that disclosure and dropping them off, and weeks later getting the call that the permits were ready. You go get them, and you get to work. Steve Miller stated that everything but the signature was made out by the applicant. Mr. Pricone detailed how he had gone to the Town Hall to get all the papers; he had filled out every one of them as required and taken them back to the Town Hall. He was told that they would call him and when he got the call he was to go get the papers and give them a check. He did everything he was told to do by the Town.

Attorney Best stated that by the nature of the question he can tell there is kind of a two edged sword there. If Mr. Boyer had been the one to write the number 2 down, clearly you would know that he was recognizing that there were two of whatever it was. Instead, they did it, and in their view that's clearly an honest and open disclosure of exactly what is going on in there. It wasn't the kind of thing that was reviewed very quickly; you can see on one of them that there is a two week period between Mr. Pricone's signature and Mr. Boyers' signature where it was available to ponder all the details.

Attorney Best brought up the point that, in addition, these are also getting on-site visual inspections of the various aspects. Even if you overlook something on a piece of paper, it is hard to overlook it when you go to the site and see two kitchens. It has never been a secret.

Steve Miller asked the applicants if they had physically seen Brian Boyer physically inspect. Mr. Pricone answered that he had foundation inspections... He is a plumbing contractor and has been for over 25 years. They do everything by the book. He does not want to miss one step as he is going along. Every time they had an inspection, he personally came up here and met with the inspector to make sure that the inspection was done. The last thing he wanted was for something to happen because he wasn't there and the inspector didn't make it. Every inspection was done, from the foundation, to the rough inspection, to the insulation inspection. His final inspection after that insulation inspection was going to be for their OP; they had all of their inspections up to the insulation inspection. As far as he was concerned, he was hoping to be in there July 4<sup>th</sup>; they had everything lined up and all of a sudden they get a Cease and Desist order. That was after getting probably four or five inspections out there. They had electrical, plumbing, foundation, insulation, framing... There were things that Brian (Boyers) wanted done and he had to get another inspection because Brian wanted to come back and see that it was done. They missed some clips on some electrical wires; they got them done and Brian went back and re-inspected it. All of his inspections were done; that is why this is a shock to him now.

Attorney Best also made note that the dates on the permits start in 2008, and the Cease and Desist order is in 2010. They are looking at a process that occurred over two years, obviously at great expense to his clients. It wasn't like this thing popped into existence one day and surprised everybody. There were multiple inspections, plans, site plans showing what the footprint was going to be, what the description was going to be, what's going to be torn down and what is going to be changed. There were electrical and plumbing (permits) and all of that stuff. He doesn't want to be cornered into the estoppels, but all of those issues would be part of the estoppels argument. It is just not fair and not right after they have relied on all of this stuff, but he knows that is not what is before them tonight. Substantial justice is; that is one of the elements for the appeal as well as for the variance. Specifically with the appeal though, the nub of that is that each one of those elements talks about a four bedroom home being built and it just is not a four bedroom home. It is two bedrooms. It has two kitchens, two bathrooms and all that, it has two families living in it, and again it does not fit the definition of a duplex or a single family or a multi-family. Pre-existing non-conforming is all he can call it.

Tim Morgan recalled that Attorney Best had, during his presentation, referred to a tax appraisal which was not in the packet. He was presuming that he referred to that solely to talk about the value of the property for the criteria in the variance. Attorney Best answered that he had used that for two purposes; the value of the property and the fact that Mr. Pricone and Mr. Kannan are both listed as owners on the tax bill. He offered extra copies if they are not in the packets; in essence what he has offered orally is what he would have them look at and that is that they are both listed as the owner and that the value of the property is more than double what he offered to the Board as the purchase price in 2004. Even in this economy with what it has done to home values, doubling the value of a home right there on the lake is obviously good for the neighborhood as is tearing down the old decrepit one.

Tim Morgan brought out the one piece of documentation before them this evening that does not seem to conform to the others is the Alteration Plan 7867 which is referenced elsewhere; this talks to replacing with a single family house. This is the one document that does reference a single family dwelling. Attorney Best answered that he does not know if that is a result of the confusion of this not fitting into any of the definitions of a duplex, a single family, or a multi-family and sort of calling it what you think it ought to be because it isn't a duplex. He regrets that is the language that is on there; it certainly was never the intent of anyone to suggest that it wasn't a home that was shared by the two owners that were in there and that it always was two people living under one roof. He can not answer for why that one document has that language in there. It certainly was not the intent to suggest that it was anything other than what it was always intended to be. These two folks have been partners in their plumbing business for 25 years; they bought the property together and they work on it together. They plan on retiring there. There is no question at all that it has always been their intent to have it built the way that it is.

Tim Morgan said that he has been thinking about something for a bit and would like to ask Attorney Best for his advice. They are taking a couple of different approaches tonight that he thinks may have different implications for his clients' property rights. Which of these forms of relief, if they were to grant one, would have the greatest value to his clients in terms of securing property rights? Attorney Best answered that probably the variance would

because that changes what was previously a pre-existing non-conforming use, which is sort of flying in the face of the ordinance to one that has been granted permission to exist by this Board. That is a little bit of a better right, but any relief that they have available to them that lets them complete the project is absolutely satisfactory.

There were no further questions from the Board. Tim Morgan invited public input in favor of the application.

Diane Hall came forward to speak. She lives at 60 East Side Drive, to the north side of this property being talked about. She and her husband bought their property at just about the same time as Bill and Tom. From their standpoint, nothing is really changing. From day one when they bought their property and she and her husband bought theirs, they knew they were two partners living in the house with two kitchens, six bedrooms – nothing there had changed. When they bought their property it was a little cottage similar to the applicants' bigger cottage that they had to the side of them. What they found in theirs was that it was unhealthy. It had mold and mildew in the walls and, while it wasn't their original intention to tear it down, but to renovate, it wasn't possible. They were able to build a new home on their same plan and they were thrilled when Tom and Bill decided to do the same thing. At the time, they were not aware that there would be a decrease in bedrooms but they already know there were two kitchens and all those bedrooms and they were fine with that. They have done nothing different than what they said from day one, and they have truly improved the community and the core of the tourist area in Alton Bay and what it brings to the town. Her husband is in the audience, and from their standpoint as being immediate abutters, they are thrilled with what has been done in the community. They should have a variance; they have followed the rules. They see them all the time meeting with various officials and trying to do what they should in order to bring this to the neighborhood and to the community. They would like to make their standpoint known that variance should be given, or whatever it is they are asking for. They could have left the other building and still had those two kitchens and everything the same way. They really have brought more to the community and certainly to what they look at in Alton Bay.

Dominic DeFumeri, a year round resident just three doors down. He reiterated what Diane Hall had said; these two guys work their butts off and they just want to come up here and enjoy it. They want to have a place ready for July 4<sup>th</sup>, which now they can't. They build a showpiece here and the Town of Alton should be pleased to have something like this. He thinks they should be allowed to continue and embrace them – they will not regret it.

Tom Hall said that he had been present at a couple of the inspections; Tom and Bill have been very nice right next door to them. They are exact abutters; there are roads and other abutters but their property adjoins. They have walked him through the property many times and he was there a couple of times when Brian was there saying that everything was going smoothly and everything was wonderful. He and Tom would talk afterwards and he would be pretty excited about continuing. He also wanted to reiterate what his wife said – if he had seen both their property and the applicant property prior to them building, they were unhealthy. The children were getting sick from the mold and mildew. The old houses down there were built right on the ground and there was mold and mildew; they had mold in the walls that literally exploded and they had to have people come in and wrap it. They (the applicants) have done a great job. Their families are intertwined; they were high school friends and partners. When you see their wives and children and you go down to the house, the intertwining of their families is something to behold and admired. He would like to see them get a variance.

Anthony Dapolito has been there for 9 years and he was glad to see those two houses come down. He lives at 62 East Side Drive. He has some nice neighbors now; Diane, and Bill and Tom. He thinks the Board should go through with it. He is a former building inspector from Everett, MA and a code inspector, and he is surprised a verdict has not been put through hours ago.

Maureen Harris thinks she is perceived to be there to speak against, but she is not. She is in a cottage behind where Bill and Tom have built, so her view has been obstructed and that is why she believes she is perceived as not a good person to have in the room. She did bring several things to the attention of Brian Boyer. She reverted back to 2008; she went to Brian Boyer in 2008 to ask questions. The property had been demolished and she was curious what it was they were going to build. She came down to talk to Brian, and in looking at the plans, her assessment



was that it was a duplex, which is part of the reason they are here. She asked Brian to call her back; he did not. She sent him a detailed e-mail in July just asking the questions they had; she did not receive anything back. She sent a letter to the Board of Selectmen and did not receive anything back. She came and met with Russ Bailey and he confirmed that the letter had been received and that Brian said that none of her concerns were valid and that the Selectmen probably would not respond. Away she went, only to now get this letter from this Board saying that there is a Cease and Desist she did not know was even in affect. She has questions and she does not know who can best address her questions; she has even more questions after hearing Attorney Best speak.

When the Halls went for a variance they were allowed to go and speak and she came and asked questions and she understood what was going on. With this, she has questions but she is not sure if this is the appropriate venue to ask those questions in or not. Tim Morgan explained that if she has questions, now is probably the time to ask them because there would probably be a decision of some sort by the end of the evening. Mrs. Harris asked about the foot print and whether it includes patios, porches, and stairs, because it appears that it includes everything. John Dever explained that a footprint has different definitions to different people; normally the footprint is the living structure, or the foundation. Mrs. Harris asked if, if this is the old print of the property and it has just been squared off, that's considered the footprint. Mr. Boyer answered not normally. Her next question was about setbacks and to clarify that this property really does meet the setback.

The other thing just in listening to Attorney Best speak as she has concerns about the septic and the whole design and two families and what happens with basically a one bedroom plus a one bedroom. What happens if there is an issue with the septic with two washer dryers and two kitchens and that type of thing in terms of over-flow? She is really concerned about the septic design; it has been changed a couple of times. Tim Morgan explained that procedurally she can ask these questions of the applicant, as she is doing, and then at the end of the public input they will have an opportunity to address them. She does agree that it has improved the neighborhood; it is beautiful, unless you're behind it. It is actually beautiful from the road.

Steve Harris, an abutter came forward to reiterate what his wife had said. They are actually here to bolster this case; if you think about it, the concern was whether there was a clear understanding of what was being built. They are saying that the town was clearly made aware of what was being built because they brought it to the town's attention. They did it in person and they did it in writing. It was unambiguous and you can see the communication. The tow certainly knows it, and he feels sorry for Bill and Tom to be put at the last minute to be stopped. It is what it is, and they're moving forward. He thinks it is disingenuous to say that everyone is benefitting from this building because that is not true. There is an abutter right behind them, and if you look at the picture of the front, there was an abutter right behind them that had a view over their deck. Now they don't have that view and they are actually looking straight at the back of the new building. It did impact them; they lost a sale because of that. As far as saying they meet all the setback requirements, that is not true either. There is a road behind the property. It is on the deed marked as a road, the town calls it a road and you need to have a 25 foot setback from the road, and they are not within that. They do not meet that, but overall he does understand that it is there. He feels sorry for them and if this was the beginning, they would have had an opportunity to make changes to the design so it would be less disastrous to the people that are behind them.

Colleen McAdam came forward. She is at lot 26A. The property is excellent and you could not ask for better people or a better structure or anything. She asked about Attorney Best's statement that it is not a multi-family or a duplex because there are openings; the center wall between the two units is open? Attorney Best confirmed that the center wall between the two units is open in the living room area. Mrs. McAdam confirmed that there is a pass-through which makes it not a duplex. Attorney Best stated that the definition of a duplex is a building containing two single family dwelling units totally separated from each other by an un-pierced wall extending from ground to roof, and there shall be separate entrances for each unit. This does not have that un-pierced wall extending from ground to roof. It has penetrations in the living area. Mrs. McAdam said there had been a statement made about the previous owners; he had said it was held by two people. Attorney Best said that if he had spoken about the previous owners he misspoke because he doesn't know anything about them. It has always, as far as his clients go, been owned by the two of them together. She said she had known the previous owners and they were all related

and used it as a single. The cottages in the front and the back were used for rentals or long term rentals. She asked about the configuration of bedrooms. The two bedroom cottage at the road will continue to exist and has been completely remodeled. The two bedroom behind that will no longer exist as a cottage; it will be a shed with no plumbing and no bedrooms. She asked if that could ever convert back to a dwelling;

Attorney Best answered that it could not without the approval of some Board. She asked about the floor plan on the second floor; the original plans showed four bedrooms. They have been relabeled as dens; is he saying that because they are retiring they are only going to need one bedroom? They have children; where are they going to sleep. Attorney Best explained that they each have adult children; they also each have a minor child. They're talking about retiring here at some point five or ten years away, and in the meantime using it as a summer place. The adults are on their own; when they come to visit they can stay in the cottage or something. They are never more than guests. Mrs. McAdam asked if he was saying that they were not going to sleep. Attorney Best answered that they would sleep as guests anywhere you might normally put a guest. It would not be in those rooms because those rooms are not going to be furnished as bedrooms and they are here promising to this board that they are not bedrooms.

As far as the one minor child each of them has, there is plenty of room in this house for somebody on the weekend when they are coming up. All this is until they get to retirement age is a weekend and summer vacation home where the 8 year old and the 16 year old crash on the couch. There may be weekends when one family is there and one is not, or they can use the cottage. As far as a residence, there is no intention to have anything but the permanent residence when they retire here. In the meantime, they have owned it for 5 years or so, and some of their adult children haven't been out that long so they probably were part of the nuclear family back then. Now they're grown up and fend for themselves.

Mrs. McAdam sent on to say that she thinks they deserve the variance. They have complied with everything; the town is in error.

Tim Morgan invited further input in favor of granting the application; there was nothing further.

Tim Morgan invited public input in opposition to granting the application; there was none. Public Input was closed.

Tim Morgan invited comments from the Planning Department. John Dever stated that he is the official who issued the Cease and Desist. He did the insulation inspection and as he was reviewing the Zoning Ordinance after that, being new to the area and reviewing the ordinance; the ordinance is very specific that there are no two family dwellings allowed in the Lakeshore residential district. As he reviewed the file, he saw that the building permit had been issued for a single family home. Looking at the plans he had in the file at the time it showed two 2-bedroom units which called into question what it was. Also, the septic plan he had showed that the main house was two bedrooms and the cottage down front was two bedrooms connected to a system built to accommodate four bedrooms. He had a disparity in the plans he had in front of him; he also had a disparity in his permit. At that point he felt it was appropriate to address the issue of the two family dwelling in the Lakeshore residential district, which is not allowed. The only option at that point was to issue the Cease and Desist. Also having said that, Mr. Pricone and Mr. Kannan have done everything they said they were going to do. It is very clear from the plans submitted, the electrical and plumbing permits that they have from day one made no secret that this is going to be a two family dwelling. The disparity in his plans was that there was an amended set of plans that showed only two bedrooms in the structure that was submitted that at the time in order to match up with what the septic plan said. That was admitted later in 2008. Several weeks ago he met with Mr. Pricone and Mr. Bianco their Attorney who gave you those plans are for and he indicated that he had provided them previously to the building inspector. He does not have them; they are not available. Now they're down to two bedrooms, the septic plans match; they have done what they said. He has walked through the house with Mr. Pricone and they have repeatedly done exactly what they said they were going to do. They were completely aboveboard about it. He has discussed the septic plan with DES and it is perfectly acceptable with them. As a matter of fact, he was sitting this morning with Rob Tardiff who

is the head of the subsurface bureau. They look at these plans, they looked at the septic plan and they are perfectly comfortable with it as built. That was his position; that was his interpretation of the zoning ordinance, and he felt that was appropriate. They have done everything they say they have; they had been very open with him. That is why he took the action that he did.

Mike Garrepy reviewed the plan as if the existing conditions shown on the plan that was presented earlier were the current existing condition in relationship to the request which would have been to build new. What he determined, after his review is that they comply with the ordinance. He agrees with the applicant's position on the non conforming matters and the redevelopment and relocation of those structures on the site. He thinks they meet the intent of the ordinance and he believes that they meet the nonconforming section of the ordinance by the spirit and intent of that ordinance and by the actual word of the ordinance. Yes, they have expanded the footprint of that previous four bedroom dwelling but they have also removed a part of that existing structure; they have brought the site into more conformance to the ordinance. Even if you were to look at those other rooms in the house, the proposed den and office, and consider them as bedrooms and take the most intense use contemplated and say they are all bedrooms that would still be an equal number of bedrooms to what had existed in the previous structure. Before, it was a two bedroom and a four bedroom in one dwelling structure. Taking the most extreme view and saying that they are all bedrooms, it would still be the same number of bedrooms. Obviously, the applicant has stated that there are only two bedrooms in that main dwelling unit. He and John have looked at this application quite a bit, recognizing that the town because of the changes in building inspectors has created a need to catch up with a history. He looked at it as if they were issuing the permit today and he believes that it could be issued. He would agree with Attorney Sessler's opinion that is really shouldn't be considered as a variance but as an appeal of administrative decision.

Tim Morgan asked if this board were inclined to grant relief does he suggest that relief should be an appeal from an administrative decision. Mr. Garrepy answered that he would.

Tim Morgan addressed Atty. Best and invited him to answer the questions that were asked earlier. Atty. Best said that for the benefit of the people who were there, there had been a question about how a footprint was defined. He agrees with what they heard from the planning staff and that is that it is defined differently by different people. He has a lot of involvement with the stuff in his town of Merrimack; every time someone comes across they have something different. The key feature of this is that it has never been a secret that the footprint is changing. It was proposed on the very first piece of paper that was supplied which was the septic plan. They gave up some space, they gained some space; the net reduction in space is about 100 square feet. That has always been what was proposed; that's what has been built. He does not know whether that helps to answer the question whether footprints include porches or not but it has been disclosed throughout, and there is an engineer's signature that says it is 100 square feet less.

As far as the setbacks though, the building as it has been built as it was proposed is actually the only structure in the general area that is within its setbacks. It has a requirement to be 25 feet from Route 28 A, and it is. It's got 10 foot side setbacks and a 10 foot rear setback. The property line is actually a little unusual because it goes across that dirt access way which is probably a class six roadway. The entire roadway and some of the property on the other side including some of the property that some of these abutting cottages are on just a little bit is all included in the property. It is very difficult when you go out there to say that you can tell when the property line is; it's really unusual. The building is completely within the setbacks as it needs to be. He is not speaking for the shed which is the former structure that was a former dwelling; that is completely within the setback and the two bedroom cottage at the front is within the front setback. They are not touching those or asking the board to make any decisions; those had nothing to do with the order. The building they are here to discuss is completely within the setbacks.

Miss Harris also expressed concern about the septic with two structures and two bedrooms and washers and dryers and all that. He is not a septic or subsurface scientist but he presumes that DES provides that level of review, and he thinks that the engineers that drew up a plan provided that level of review. He knows that is driven by the number of bedrooms and the amount of flow you anticipate per bedroom; and he does not know that the number of

washers and dryers would affect that calculation. He has faith in the people at DES to do their job, and in the engineers who designed this to give us a septic plan that is suitable. If anything were to happen to the septic system they would have the obligation to fix it. He does not know that that really affects what is before the board here tonight.

He thinks that the questions by Mrs. Hill and Mr. Harris were answered on the fly; if there is something that stands out that the board thinks was not properly addressed he would be glad to do that. With that, he hopes they will look at it favorably, whether it is the appeal of the administrative decision or the variance it makes no difference to them. They are happy to never face the question of municipal estoppels because frankly that is the kind of thing that makes lawyers rich; it is a fight forever. No one wants to go there if they can avoid it. If we can make the decision based on other grounds it would be happy to have it and happy to go home tonight if they look at this favorably with a positive decision.

Attorney Best thanked the board for their time.

John Dever addressed the issue of who fills out the building permit. He explained that the top copy of the building permit itself is retained by the town for their records; it was not a stamped signature. It was a handwritten signature of the building official at that time. He would have been the one to fill that out. As far as the septic issue, if it fails, it is the town's responsibility to initiate action to make sure it is repaired by the owner.

Steve Miller asked who had spoken to Attorney Sessler. Mike Garrepy answered that both he and John Dever had spoken to him. Steve Miller asked if, for the record, John could tell him what (Attorney Sessler's) position was as close as he could recollect. John Dever answered that Attorney Sessler's position was that his actions to have this on record were appropriate; they addressed estoppels. The building is built. For the town to take the position that it has to come down would serve no use and would probably be unproductive.

Mike Garrepy said that in his discussion with Attorney Sessler they reviewed the non-conforming matters with respect to the application, as he had been reviewing it as if it had not been permitted and built. Attorney Sessler agreed with his synopsis that what was being asked for and granted was appropriate under the ordinance.

Lou LaCourse recalled that they had talked earlier about granting either a variance or an appeal. He asked if they had made the decision to go with the appeal. Tim Morgan answered that he believed that was the recommendation; they have not made a final decision, but that is definitely the recommendation of the Planning Department and the Town Attorney. Lou LaCourse asked if going with the variance would set a precedent; would going with an appeal not set a precedent. Tim Morgan answered that there is definitely less legal precedence with the appeal from administrative decision rather than any other form of relief. Lou LaCourse went on to say that his concern is that how they make this decision could affect what other people in the area could decide to do.

Mike Garrepy stated, and asked for input from Attorney Best, that one decision from this Board was not going to set precedent; if they continue to make the same decision over and over again, i.e. granting the same variance request over and over again, they are perhaps going to be looked at as setting precedent. This one particular case, with its uniqueness, no matter which approach they take is unlikely to set a precedent for future applications. He believes that the applicant has requested appeal from administrative decision; in the event the Board was not to vote in favor of that, would then be requesting the variance. That is how the applicant presented the application to the Board. That is the appropriate order of the decision making tonight; they should vote yes or no on the administrative decision appeal. Should that not be successful, then they should consider the variance.

Steve Miller asked if the decision was to go the route of the variance, would they still have to dispose of the Cease and Desist by an official vote. Do they have to address both because the Cease and Desist is in existence until it is adjudicated one way or the other? John Dever explained that at that point, if the variance was issued, that would be lifted; it would be a part of the process. Steve Miller clarified that if the variance were to be granted, the Cease and Desist would be automatically lifted and would not have to be addressed separately.

Tim Morgan asked for further input. His inclination would be to go ahead with the Appeal from Administrative Decision; that is the easiest and cleanest thing to do. He requested a motion.

**Lou LaCourse made a motion to go forward with the appeal. Steve Miller seconded the motion which passed with all sitting members voting in favor. All members voted in favor of granting the request for appeal.**

#### **IX. APPROVAL OF MINUTES**

Due to the late hour, approval of all outstanding meeting minutes was moved to the August 12, 2010 Special Meeting. The Board will meet at 6:30 p.m. on August 12, 2010 to do minutes.

#### **X. OTHER BUSINESS**

David and Marilyn Slade have requested a rehearing; this was in the members' packets. After speaking with Attorney Sessler, this is ongoing litigation which has been settled in court, and makes this obsolete so there is nothing for them to appeal. Attorney Sessler recommended that the Board deny the request for rehearing. Mike added that there is a request for rehearing of their ZBA decision, which was settled in court. The rehearing request by the cell tower company was denied; this is a request of a rehearing by one of the abutters based on the decision of the town to agree to a settlement with the applicant on this particular case. Attorney Sessler is suggesting to the staff that there is no need for a rehearing; the petitioner also agrees with that in .25 on the final page. The documents are being submitted in the event the town or anybody else feels that procedural step is required. There really isn't anything to rehear. Tim Morgan asked if this is the basis to a court appeal. Mike Garrepy answered that basically it is; they're going through the steps to get to the appeal process. Without getting into all the legal steps, they are trying to take the necessary steps to seek the result they are looking for. The advice of staff is that they deny the request for the rehearing because there isn't anything to rehear. They have already heard the application, and they have already denied the request of the original applicant, as well as their request for rehearing. The case has been settled in Federal Court by an agreement between the town and the applicant.

**Lou LaCourse made a motion to deny the request for rehearing by David and Marilyn Slade. Steve Miller seconded the motion which passed with all three votes in favor of denial.**

#### **X. ADJOURNMENT**

**S. Miller made a motion to adjourn. L. LaCourse seconded the motion which passed without opposition.**

The meeting adjourned at 9:27 p.m.

There is a Special Meeting of the Zoning Board of Adjustment scheduled for August 12, 2010 at 6:30 p.m. The next regular meeting will be September 2, 2010.

Respectfully submitted,

Mary L. Tetreau  
Recorder, Public Session