

Members Present: Chairman, Richard Quindley; Keith Chamberlain; Marcella Perry Charles Westen; Lyndon Avery and Alternate-Timothy Kinnon,

Members Absent: Selectman's Representative, Pat Fuller.

Others Present: Planner, Kathy Menici; Secretary, Stephanie Verdile and others as identified below.

**Call to order:** Chairman R. Quindley called the meeting to order at 7:00 p.m. He introduced the members of the Board, Town Planner and Recording Secretary.

R. Quindley read into the record the purpose of the hearings and stated the rules of procedure.

**Appointment of Alternates:** None at this time

**Approval of Agenda:**

**NEW APPLICATIONS:**

K. Menici read into the record the following case:

**Case#ZO5-21 Map 11, Lot 25**

**Peter & Tracy Long**

**Use Variance**

**Spring Street & Lakewood Drive**

Application submitted by Bryan Bailey, Turning Point Land Surveyors & Land Planners, on behalf of the property owners Peter & Tracy Long for an Use Variance from Article 500, Definitions (Frontage, Street) from the Alton Zoning Ordinance. Access to one of the proposed lots would be in a location other than the required 150' of frontage. The property is located in the Rural Residential Zone.

She spoke about the waiver requests: Section.7.2.11 – Certification; Section 7.2.14 – Building Lines; Section 7.2.19 – Location; Section 7.2.24 – Soils; Section 7.2.30 – Flood Plain Data; Section 7.2.31 – Descriptions; Section 7.2.32 – Reserved Areas; Section 7.2.33 – Wetlands; Section 7.2.34 – Zoning District Boundaries; Section 9.14 – Parcel Size Ratio.

**Motion made by C. Westen, seconded by M. Perry to grant the waiver requests and accept the application as complete, motion carried with all in favor.**

Bryan Bailey, agent representing the applicant, gave his presentation to the Board as follows. He said Mr. & Mrs. Long own a 30 acre tract of land and is the remainder lot of the Lakewood Subdivision and they are looking to subdivide the lot into 2-lots. He spoke about some of the smaller sized lots that were created in the 1988 subdivision and he said there was a condition that there could be no further subdivision of the lot because of ROW discrepancies with Spring St and some of the boundaries with the smaller lots. He said in 1999 they determined the boundaries of the lots and the ROW of Spring Street and the subject lot has remained in the same configuration since the original approval. He said the hardship is the land area that has the required frontage for the lot on Spring Street, which is 274', is extremely steep and inaccessible. He said that the interior of the lot is very buildable. He said the lot also has frontage on Lakewood Drive with 255' frontage. He said at the time the lot was created, there was no prohibition in the ordinance that would prevent them from accessing the last subdivision of the lot. He said there is an existing logging road within the site off of Lakewood Rd. and that is where the applicants plan to

access the lot. He said he is asking the ZBA to allow them to access a lot that does not have enough road frontage for access as the zoning ordinance now requires.

He presented the variance criteria as follows:

- 1) He said the denial of the variance **would** result in an unnecessary hardship to the owners because- to require access to the property from Spring St where the 150' of frontage on a Class V highway is available would result in an unsafe driveway.
- 2) That **is not** a fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restrictions of the property- because safe access is available from Lakewood Dr. by a common driveway access.
- 3) The variance **would not** injure the public or private rights of others- since there would be no interference would result to either public or private properties or rights.
- 4) The specific request **is** the minimum variance that will grant reasonable relief to the property owner and is necessary for such reasonable use of the property-because the section of land with the frontage along Spring St. is physically too steep to provide access to the building site on the proposed lot.
- 5) The request **is** in harmony with the spirit of the Zoning Ordinance and the intent of the Master Plan and with the convenience, health, safety, and character of the district within which it is proposed-because the request is necessary to meet safe access to the proposed lot and the use that meets the spirit of the Zoning Ordinance which far exceeds the minimum lot size requirement of 1 acre per dwelling.
- 6) The request **is not** contrary to the Public Interest- because the public will suffer no adverse consequences by the granting of this variance.
- 7) By granting the variance substantial justice **will** be done-because the property will be used in a manner that it was intended when it was originally created by the subdivision approval in 1988 and in 1999, which are both prior to the recent changes in the zoning definition of frontage as of March 2004.
- 8) The request **will not** diminish the value of surrounding properties- because the use proposed, 2-single family dwellings on 30-acres of land is consistent with permitted uses in the zone and abutting properties will not be affected by the creation of the 2, larger new lots.

B. Bailey finished his presentation to the Board.

K. Chamberlain asked if there was a deed restriction on the lot limiting the further subdivision of that lot. B. Bailey read from the 1999 approved subdivision plan that stated, "No further subdivision of lot 11-25 except for one additional lot with required frontage to be provided created along Lakewood Road (Drive)".

Discussion about the reason the 1988 plan would not allow the further subdivision and that issue has been clarified because the boundaries of the lots and Spring Street were surveyed and were delineated and that is why the subdivision was allowed to come back in 1999 for the final subdivision approval. K. Chamberlain asked what the frontage requirement was in 1999 for that zone and B. Bailey said it was 150'.

K. Menici clarified that both proposed lots would have their access off of Lakewood Drive and that is the basis for the variance request.

M. Perry asked about the access way to Route 11.

B. Bailey said it was about 17' wide footpath and it is very steep.

C. Westen asked about the 1988 approval and if there was a stipulation about shared driveways.  
B. Bailey said no the 1988 approval spoke about the no further subdivision until the boundary survey and the Spring St. ROW issues were resolved.

C. Westen asked if the other lots that were approved in 1988 with shared driveways.  
B. Bailey said that he believes that the previously approved lots have their own driveways.  
C. Westen said if that would be the case here and if there was a stipulation then the shared driveway could not be done.

K. Chamberlain asked if the owners could subdivide further and what would preclude them from putting in a Town Road and further subdivide.  
B. Bailey said it would not be in the best interest of the applicants to do because of the physical obstacles within the property and that it would not be in the best interest of the property owner, but theoretically they could.

K. Menici clarified that the owners would not be able to further subdivide because the 1999 subdivision approval. No further subdivision of 11-25 except for one more buildable lot, which is what the applicant is currently proposing.  
She read into the record the 1999 condition again that states, "No further subdivision of lot 11-25 except for one additional lot with required frontage to be provided create along on Lakewood Road (Drive)".

L. Avery asked if each lot would have its own driveway off of Lakewood.  
B. Bailey said right now they are planning to construct one driveway off of Lakewood. He said the building site for the lot that has frontage off of Spring St would peel off of the main driveway that will be 1000 feet long to the building site. He said at this time the driveway for the 2 lots will be one access point from Lakewood and then split into 2 driveways for each lot.

L. Avery spoke about the subject lot having 105' of frontage could have its own driveway entrance as opposed to having a shared driveway at all.  
B. Bailey said they could and the owners are not adverse to that but he said to build 2 driveways will be expensive for the owner and cause more damage to the environment.  
L. Avery spoke about concerns regarding previous approvals with shared driveways.  
R. Quindley said the shared driveway access is a Planning Board issue and they are only being asked to allow the lot to be created without the required frontage.

K. Chamberlain asked about the proposed house locations and their elevations.  
B. Bailey discussed the terrain and the proposed building sites. He told the Board that the elevations on Spring St are about 550' and increase to 650'-700' and the other elevations are about the same. He said the proposed building sites are almost on the top of the property but the sites are much flatter for building. They discussed that by accessing the lots from Lakewood the grade would be much less of a change and B. Bailey said the existing logging road would be the proposed access and it is a gentle grade with no steep slopes and that access would be better suited for emergency access.  
R. Quindley said that section of Spring St is not Class V. B. Bailey said the applicants own that section of Spring St.

K. Menici said the Fire Chief has no comments at this time and will comment when the application comes before the Planning Board.

R. Quindley asked if anyone was in favor of the application to come forward.

Tracy Long, property owner, spoke in favor of the application and she said they have no interest in further subdividing and they want to maintain the rural character of the neighborhood.

R. Quindley asked if anyone was against the application to come forward.

Charles Collins- abutter only had a question and was not opposed. He asked how many houses would be allowed. B. Bailey said there would be 2 homes and the homes would be 600-700 feet back from Lakewood.

Harold Holtsberg-abutter- asked if it would be a road to the new houses. B. Bailey said there would not be a road it would be a driveway.

R. Quindley said that the applicants are asking for a variance to use 105' of frontage for their principal access off of Lakewood instead of Spring Street.

Seeing no further public input, R. Quindley closed that portion of the hearing and the Board went into deliberations.

**Board Discussion:**

R. Quindley said he would read the following statement (*will/will not*) and ask each Board member to comment.

*Public Interest- The Variance **will not** be contrary to the public interest*

**Reason- C. Westen said will not be contrary because it is only 45' difference from the ordinance requirements and it is needed for safety reasons because the slope is too steep.**

**L. Avery agrees it will not for the reasons discussed. M. Perry said it will not be contrary because the shared access will provide one driveway cut not 2 cuts. K. Chamberlain said it will not be contrary because the zoning does not serve any purposeful result in this case and for the owners to access the property through an unsafe access point is not reasonable and the proposed access is more reasonable. R. Quindley agreed with the reasons discussed.**

R. Quindley read the following statement into the record.

*Spirit of the Ordinance- The request is/is not in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the character of the district within which it is proposed.*

**Reason- C. Westen said it is within harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the character of the district within which it is proposed even though it is slightly less than what the ordinance requires.**

**L. Avery said it is within harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the character of the district within which it is proposed.**

**M. Perry said it is within harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the character of the district within which it is proposed because of safety access will be easier for emergency vehicles. K. Chamberlain said it is within**

harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the character of the district within which it is proposed because there is a definite hardship inherent within the property and the required access point is unsafe. R. Quindley agrees with the reasons stated that it is within harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the character of the district within which it is proposed.

*Substantial Justice- By granting the variance substantial justice will/will not be done.*

Reason-C. Westen said by granting the variance substantial justice will be done based on all the previous reasons the Board has discussed. L. Avery agreed and said to not grant the variance would be an injustice. M. Perry said by granting the variance substantial justice will be done based on all the previous reasons the Board has discussed. K. Chamberlain and R. Quindley agreed based on the reasons the Board previously discussed

*Value of surrounding properties-The request will/will not diminish the value of the surrounding properties.*

Reason- C. Westen said it will not diminish the value of the surrounding properties, he said it will enhance the properties because there will not be another driveway cut off of Spring Street and the driveway will be off an existing road that have existing driveways. L. Avery said the request will not diminish the value of the surrounding properties because the homes will be located far away from the road and will not be visible. M. Perry said the request will not diminish the value of the surrounding properties. K. Chamberlain agreed that the request will not diminish the value of the surrounding properties and said the owner has the right to put their home on the lot to gain the best view and safe access. R. Quindley agreed.

*Hardship-Simplex-Use- R. Quindley read the following statements into the record*

- (1) The zoning restriction as applied does/does not interfere with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.*
- (2) There is/is not a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property*
- (3) The variance will/ will not injure the public or private rights of others*

Reason-C. Westen said the zoning restriction as applied does interfere with the landowners reasonable use of the property, there is not a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property and it will not injure the public or private rights of others. L. Avery agrees and said to force the Spring St access would not be good for the applicant. M. Perry said the zoning restriction as applied does interfere with a landowner's reasonable use of the property, considering the unique setting of the property in its environment, there is not a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property, and the variance will not injure the public or private rights of others. K. Chamberlain said the zoning restriction as applied does interfere with a landowner's reasonable use of the property, considering the unique setting of the property in its environment, there is not a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property, and the variance will not injure the public or private rights of others.

The Board clarified that there is not a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property when voting in favor of the applicant in this case.

R. Quindley read into the record the following statement:

Based on the above analysis, special conditions do exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship

**Motion made by K. Chamberlain, seconded by M. Perry to approve Case#ZO5-21, in light of the findings of fact as the Board discussed, motion carried with all in favor.**

T. Kinnon recused himself from the next application.

K. Menici read into the record the following case:

**Case#ZO5-22**

**Map 33, Lot 23**

**Special Exception**

**Diane Hall**

**60 East Side Drive (Route 28A)**

Application submitted by David Whitcher on behalf of the property owners to request a Special Exception from Article 200, Section 220B.2. (c), Expansion of a building beyond existing boundaries. The property is located at 60 East Side Drive and in the Lakeshore Residential Zone, Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection Overlay District.

K. Menici stated that this was an expansion of a nonconforming use, which needs a special exception. She said the applicant proposes to demolish an existing dwelling to be replaced with a new dwelling. The existing dwelling extends into the side setback; the proposed dwelling will also extend into the side setback, but to a lesser degree making the proposed dwelling less non-conforming than the existing structure. The proposed building will be approximately 3.5' higher than what presently exists; therefore, the applicant is requesting the Special Exception as required by the Town's Zoning Ordinance.

K. Menici spoke about the waiver requests as follows: Waiver Requests: Section 7.2.20 – Details on Abutting Properties; Section 7.2.24 – Soils. She said that the applicant provided a new septic plan that does show the soil information.

K. Chamberlain asked what the "Details on Abutting Properties" mean and K. Menici said the driveway locations existing wells proposed wells, septic locations, etc.

**Motion made by C. Westen, seconded by L. Avery to grant the waiver requests and accept the application as complete, M. Perry opposed to granting the waivers, motion carried with the vote of 4-1.**

David Whitcher, agent representing the applicant, gave his presentation to the Board. He said that the septic plans do show the soils. He said they are proposing to build a 2-story structure that is non-conforming but the new structure will be less non-conforming than the original building. He said the Special Exception Request is for the proposed full foundation and have the second floor be equal in size to the first floor. He said the footprint for the new building is 138 SF larger than the existing building and most of that is conforming and the section that is in the non-conforming area is smaller than what is existing, meaning it will be less non-conforming. He said that Tom Varney is applying for a variance from the septic setback requirements to the

Board of Selectman and they have a septic application submitted to the NHDES Subsurface Division

D. Whitcher presented the Special Exception Criteria to the Board as follows:

- 1) They have submitted a plot plan in accordance with the Site Plan Checklist
- 2) There is no proposed change in use.
- 3) The building will be similar to other properties in the neighborhood.
- 4) The proposed change is an improvement to the property.
- 5) The existing road and driveway will remain the same.
- 6) The water supply is an existing community water supply, the existing septic will be removed and the new system away from the lake.
- 7) New septic system design will be submitted to NHDES and the water supply has off street water lines.
- 8) The property will remain residential with improvements made.

D. Whitcher finished his presentation to the Board.

C. Westen asked about the 3 full baths and it looks like there would be potential to have 6-8 bedrooms based on the floor plans and why the bathroom on the lower level. D. Whitcher said the owners wanted a bathroom on the lower level to wash off from the beach.

C. Westen asked why they need another full bathroom on the second level when the bedrooms with a full bath are on the third level.

He said that is what the owners asked him to draw and he said informed the owners that the septic approvals are based on the number of bedrooms and they only have a septic system design for 3 bedrooms. He said they asked for more bathrooms because the law is based on the number of bedrooms and he said if they wanted to put more bedrooms in they would have to come back for additional approvals. He said the lot will not handle the additional bedrooms and they would be willing to have that as a condition of approval.

K. Chamberlain asked if it would be a year round use and if the water supply is year round. R Quindley said it is year round town water.

Discussion about the existing porch being used as part of the footprint and it would be at least used as a 3- season porch.

Discussion about the condition of the cottage and what type of erosion control will they use during construction. D. Whitcher said they will put in perimeter drains around house and the soil is sandy and absorbent and they are looking to retain the water before it leaves the site. He said the existing house is 3'6" lower then the existing house.

K. Chamberlain asked why don't they build it to be conforming.

D. Whitcher said that the owners did not want to loose space across the front of the house and they could handle 38' in width and if they made the house completely conforming it would be about 31' across.

K. Chamberlain wanted to know if they could drop the house further down and change the roof pitch lower.

D. Whitcher said it would not look aesthetically pleasing and it would be very narrow.

M. Perry asked where the location of the house is right behind the subject house and D. Whitcher presented the septic plan showing the distance and location from the new house.

C. Westen asked about the overall height of the house from the street

Discussion about the exiting house and the height is 3'6" lower than the proposed house and the average height of the ridge is 31'

C. Westen asked Brian Boyers about the bathrooms and B. Boyers said the NHDES will allow as many bathrooms as you like, septic design is based on number of bedrooms

L. Avery asked what it would look like and D. Whitcher said it will fit in well with the neighborhood and it will have double hung windows to help with the look of the new house to fit into the neighborhood.

D. Whitcher said the homes behind them are up higher on a cliff and L. Avery has concerns about the cottage behind the new house and the new house would interfere with their view.

Discussion about the surrounding cottages and their height.

K. Chamberlain spoke about the back boundary line and asked about the trees being left during the installation of the new septic system and D. Whitcher said the trees will be left and the trees are deciduous and they block views now.

R. Quindley asked if anyone would like speak either for or against the application, there being none, he closed that portion of the hearing.

Maureen Harris abutter- asked the year round status of the home and asked about the change in use and D. Whitcher said that their would be no change in the residential use not commercial.

R. Quindley read into the record a letter from an abutter (Carlene Mcadam, Vincent Mcadam) addressed to zoning board chairmen. Have concerns and questions. Is there a recorded survey of the property line on file? Existing building is two story, nonconforming, proposed building height increase makes building more nonconforming. *We know that.* Could excavation for new foundation be lower thus eliminating height increase? *Believe we have answered that.* Will new building remain in existing footprint number of bedrooms, bathrooms remain the same? *Number of bedroom remain the same and number of bathrooms will change.* Change of use, seasonal to year round, owner occupied or rental? Any change will have great affect on parking.

K. Chamberlain asked B. Boyers before a building permit would be issued they would have to have an NHDES approved septic system. B. Boyers confirmed this. So we don't need to make this a condition.

The Board went into deliberations.

R. Quindley read all the criteria into the record as follows:

1. A plat has been accepted by the Planner in accordance with Alton Zoning Ordinance Section 420 b. and a recommendation has been made.

**Reason- All in agreement that this has been done.**

2. The specific site is/is not an appropriate location for the use.

**Reason- C. Westen existing use and use will not change. L. Avery agrees no change in use M. Perry K. Chamberlain agrees**

3. Factual evidence is/is not found that the property values in the district will be reduced due to incompatible uses. **Reason. C. Westen values would be enhanced but there is a concern over height and width among other similar structures to what is proposed K. Chamberlain enhanced values in the neighborhood**



4. There is/ is not valid objection from abutters based on demonstrable fact.

**Reason-C. Westen abutters asked questions and they were answered and M. Perry the letter from the abutter was not an objection it was questions K. Chamberlain and L. Avery agrees.**

5. There is/is not undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking.

**Reason- C. Westen said there is available parking and an existing garage LA no nuisance because the single family status will not change and KC said the use will not change waiver DQ agrees**

6. Adequate and appropriate facilities and utilities will/will not be provided to insure proper operation of the proposed use or structure.

**Reason- CW new septic system is being installed. K. Chamberlain because it will torn down everything will be brought up to safety codes R. Quindley agrees**

7. There is/ is not adequate area for safe and sanitary sewage disposal and water supply.

**Reason- C. Westen said adequate water and there is a new septic system proposed and L. Avery Agrees M. Perry as long as they receive a NHDES approved septic system R. Quindley agrees**

8. The proposed use or structure is/ is not consistent with the spirit of this ordinance and the intent of the Master Plan.

**Reason- All agreed even though it is nonconforming it is in the spirit of the plan, K. Chamberlain, M. Perry it is nonconforming, but less nonconforming so it is consistent R. Quindley agrees**

**Motion made by K. Chamberlain, to approve Case #ZO5-22 with the all the criteria of the Special Exception being met as well as the condition that the applicant install NHSDS approved septic system prior to tearing the house down and before a permit is issued.**

**Discussion on motion: B Boyers will not issue a building permit without a NDHES approved septic system.**

**Amended motion by K. Chamberlain that prior to CO all state and local permits, including septic be approved, seconded by R. Quindley, motion carried with all in favor.**

R. Quindley called for a break at 8:35 pm

R. Quindley called the meeting back to order at 8:40 pm

K. Menici read into the record the following case:

**Case#ZO5-23            Map 21, Lot 5-6**

**Administrative Appeal**

**Robert & Sandra Bahre**

**Hopewell Rd**

Application submitted by Mark Sargent of Richard Bartlett & Associates on behalf of the property owners Robert & Sandra Bahre for an Administrative Appeal from a decision made by the Code Officer to deny a building permit. The property is located on Hopewell Road and in the Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the

State of New Hampshire's Shoreland Protection Overlay District.

Mark Sargent, Richard Bartlett & Associates, spoke on behalf of Robert Bahre, stating that the site they were speaking of is located at the end of Hopewell Road and it currently sits at 2.87 acres and the lot is vacant at this time.

The proposal (see the plan up on the easel) before the board is a two-story building with a walkout basement in the rear for the display and keeping of Mr. Bahre's automobile collection and I have a rendering I will flip over for you. The building is proposed to have a first floor which will be for the displaying of the automobile. The second floor is an apartment for a caretaker. We are appealing a decision made by the building inspector that the use is not permitted within this zone. We beg to differ, we feel that this falls under the recreational uses not for profit category, which is permitted by right in the Lakeshore Residential Zone. Mr. Bahre is here to explain further how he plans to use the building.

Bob Bahre stated it is actually his hobby, some people fish, some people ski, some people do other things, this is what I do. I know Kathy thought it was a warehouse then she thought it was a storage building, and she couldn't think of anything else, so then we thought we would come and see you people. It really is a hobby.

Mark Sargent stated that is the jist of our argument that the use is a recreational use, I guess I want to say a residential recreational use, sort of accessory to Mr. Bahre's house which is right next door and will be for his use only and if you have any further questions, I will be happy to answer them.

M. Perry stated that it is beautiful, but it looks like a museum. Unfortunately it is in this zone.

Bob Bahre stated that it is in for a hobby you can have it in this zone. If you look on the sheet there.

K. Chamberlain stated category number 33 in the table of uses.

M. Perry stated and along with that it says the primary use of the structure in the zone is usual and customary such as two-car garages.

Keith stated that it does not say that in the zoning ordinance, that specific language does not state how many garages, so I would strike that.

M. Perry asked if could you read the actual zoning regulation.

K. Menici stated that if we read the actual regulation, I am reading from the table of uses page 37, article 300 section 301.

K. Menici stated We have single family dwelling, pre-site built housing, and open space uses, agricultural conservation, forestry, in addition to the permitted uses, there are uses that are permitted by special exception, that would be seasonal cabins, logging house, or guest house, bed and breakfast, oh, I am sorry I missed that the first time recreational uses not for profit would be

a permitted use. Also water extraction site and facility as a special exception. Would it help if I went through and gave the board the numbers.

K. Chamberlain said what would be helpful if the town planner could give us a definition of what recreational uses not for profit entails.

K. Menici stated that that was one of the things when Mr. Bahre brought the application in and discussed it as a recreational use, the first thing I did was to go through the zoning ordinance and there is not a definition, so this is a gray area in the ordinance.

K. Chamberlain stated that he found no definition in the zoning section of definitions for recreational uses not for profit. I looked under garages to see if there was a definition for limitations of garages and I found none, I know that sometimes as a town planner you work with different manuals that might describe and have a definition for these tables of uses.

K. Menici stated that typically with a permitted use it assumes in addition to the permitted uses that there would be usual and customary accessory uses on the parcel and the usual and customary residential garage would typically be a two or three car garage that is part of the lot that the residence is located with the residence being the primary use on the lot.

C. Westen stated Mr. Chairman since there is no definition and since I myself have dealt with antique cars and had a small collection myself and two of my neighbors and a former state, we had a similar situation when you have not for profit, where you do not operate something where you are going to sell something, it is a hobby, I would like to be able to afford the hobby to the level that Bob has, but I had on a smaller level, right now all I think is I am collecting coins.

M. Sargent stated the one thing that I could add is that the architectural look of the building will be similar to Bob's house that is currently there, so it may look for boating right now just on a piece of paper, but it will look very similar to what is there currently.

K. Chamberlain asked for clarification on # of floors.

B. Bahre, stated that what we are going to have on the lake level there would be some cars in there too. We would have some on the top as well. The apartment would go on one end more or less. We have taken have it so you can drive around the back and bring the cars away that way.

K. Chamberlain asked if he owned the surrounding land, I know you own the house, your personal residence, how close is you're nearest abutter that you don't own the property.

B. Bahre stated that he would guess it was probably 250 or 300 feet would be the next lot and there is nothing on it, Mr. Ahn has his home in the next lot, he has two lots over there. He is the closest abutter.

K. Chamberlain asked if he thought his personal enjoyment of this structure would for your car collection would interfere with his reasonable use of the property? I guess if he is here he can speak to that. Would you be driving cars in and out frequently?

B. Bahre stated we don't drive them very much at all we have a guy that takes care of them every

once in a while might take one out. We don't go running them around.

K. Chamberlain said of course the garage would stand on its own lot, with a residence in it would like to address the building inspector is there any problem of this having residence? Would that be reasonable if Mr. Bahre was your typical American with a two-car garage on a 1500 sq. ft. house could he just build and have separate garage on the lot  
Similar to this situation, could you pull a permit for that.

Building Inspector Brian Boyers stated you could.

K. Chamberlain stated he did some math and correct me if I am wrong, but what was the footprint of the house or the structure.

B. Bahre stated 223' x 80', 19,000 s.f.

K. Chamberlain stated he did some math on the 2.87 acres and I figured you have 120,000 s.f. on that lot, so basically you might be covering 1/4 to 1/5 of the lot, so to me doesn't seem it is overcrowding the lot at all, you are meeting all your setbacks requirements is that correct.

M. Sargeant stated that was correct and we would also be meeting the lot coverage ratio.

M. Perry stated that she has concerns about the definition of recreational use and not for profit and we really don't have a good explanation of that and I would like to seek counsel to get some clarification because maybe this is what they intend, but it will continue on later with the people that own the property after this I would like to at least get clarification first.

K. Chamberlain stated that his opinion in front of this board I look at Mr. Bahre as an individual and he certainly stands alone from everybody else in this area.

M. Perry it is not a personal thing at all and it shouldn't be. We are just dealing with this project right now. No disrespect for him intended.

R. Quindley agreed that K. Chamberlain was making it personal. His own view and again you can ask 6 lawyers to define recreational use and you get 6 different answers or maybe 10, but anyway, in my own mind recreational not-for profit, I do not see where this wouldn't be called recreational. I mean if you were going to build a tennis club, a yacht club would that be recreation. That is my own opinion.

C. Westen stated that currently there is nothing that defines recreational use.

M. Perry stated that is right and that is why I would like to get from clarification from the Town's attorney.

C. Westen stated he was torn between wanting to find out whether or not there was some decision, but Kathy is saying there is no definition, I am torn between saying we probably should have a better definition, but if we don't, I think we have to act on what is in front of us and I don't see that it is a problem as far as the use is concerned. Brian do you find that there is a specific use that this building is going to be put to that would cause us to need a legal decision.

B. Boyers stated it was a decision that he had to make because he did not know which way to turn. I am looking at this building here, it is a garage, it is a house. That is why I am depending on your people for this.

C. Westen asked Brian, if somebody built a house and they had the next lot to them and they decided to put the garage on the next lot and they decided to put sleeping quarters in that garage is that permitted.

B. Boyers stated that as long as they had an approved septic system and it is on a separate lot, yes.

C. Westen stated basically what we are describing is the size of it then? I have got a real problem with saying so long as we are saying that if it is two cars and an apartment and it has an approved septic system and it is on a private lot and if that is an approved use, then I don't think as much as I want to, I don't think we need a legal definition based on what you are telling me because you are the one that talks to the attorney about these things and you are saying that this is legal?

B. Bahre said Charlie excuse me she went to the town attorney twice and that is why we are here. She went to the town attorney and of course he didn't give her the answer she liked so she tried to throw us out so of course she went back again and he told her to bring it to you people.

K. Menici stated that is not really the way it happened Mr. Bahre. Brian and I were looking at the zoning ordinance, we couldn't determine which of the use categories was the best description for this particular structure for the reasons that Brian discussed and so we tried to get clarification from the town attorney and he said it has to go to ZBA because they need to make a clarification, and that is why we are here.

M. Perry stated she doesn't want to vote against or for until she is comfortable. I don't want to vote against this. I want clarification.

Board had much discussion over the definition of Recreational Not-for-Profit and what that meant. There is not a clear definition written anywhere. Could be interpreted many different ways.

K. Menici stated that she had one discussion with the town attorney.

B. Bahre, you talked to him on the phone and you had a meeting with him at 1:00 one day, you told me. Because you told me to call at 3:00 to see what had happened remember that day.

K. Menici stated, yes that was it.

B. Bahre said and you talked to him on the phone to find out.

K. Menici stated and he said that Brian had to make a determination and Brian and I together sat down and were unable to.

R Quindley asked if we had discussed it enough. I know you haven't Marcella.

M. Perry stated that she just didn't feel comfortable voting on it this way.

K. Chamberlain stated that we don't need to open this up to the public because it is an administrative appeal. Right now we are in deliberations and we have closed the testimony.

K. Chamberlain stated that I guess we have closed the deliberations as well.

**Motion made by K. Chamberlain, seconded by C. Westen to overturn the decision of the Building Inspect and allow the issuance of a building permit Case #Z05-23, Map 21 Lot 5-6, Administrative Appeal Motion carried with all in favor and M. Perry against.**

K. Menici read into the record the following case:

**Case# ZO5-24            Map 21, Lot 5-6**

**Area Variance**

**Robert & Sandra Bahre**

**Hopewell Road**

Application submitted by Mark Sargent of Richard Bartlett & Associates on behalf of the property owners Robert & Sandra Bahre for an Area Variance request from Article 200, Section 228B, Height Restrictions. The applicant proposes to construct a building with an average roofline of 45.5' in height and the maximum the ordinance allows is 35' in height. The property is located on Hopewell Road and in the Lakeshore Residential Zone, the Town of Alton Shoreland Protection Overlay District and the State of New Hampshire's Shoreland Protection District.

Mark Sargent spoke stating that the site is located at the end of Hopewell Road and is currently a vacant lot. The proposal on the site is for a two-story building with a walk-out basement where Bob would like to keep and display his automobile collection and as Kathy stated before the building has an average height of 45.5 feet. I would like to point out that the front of the building facing Hopewell road the height is 35 feet. For all variances there are specific criteria that we must address and I would like to review those now for you.

The first is denial of the variance will result in unnecessary hardship to the owner because a) the zoning restriction as applied to the property interferes with the reasonable use of the property considering the unique setting of the property in its environment such that:

**Response: The subject premises slopes away from the roadway to the lake making the site conducive to a walk-out basement but creating a situation where the building gets progressively taller as we get towards the lakeside. The building also is unique in its architectural appearance in that it will match the existing building next door. Be that no fair and substantial relationship exists between the general purposes of the zoning ordinances and the specific restriction of the property because: we believe the purpose of the ordinance is to prevent obstructions to a neighboring view sheds. In this instance the area abutting the site is owned by the applicant and therefore will have no negative impact. Also the building height as it faces the street does not exceed the maximum height allowed.**

The other purpose of the ordinance is our belief that for life safety, health and fire protection. The proposed building will have a fire suppression system and an interior fire-rated stairwell that will access each floor and will have direct access to the exterior of the building.

The third criteria under hardship c) the exterior would not injure the public or private rights as others since **as stated above the abutting properties are owned by the applicant and the building height is measured from the roadside will not exceed the maximum allowed and the building is located at the end of a private road.**

The specific request is the minimum variance that will grant reasonable relief to the owner and is necessary for such reasonable use because **The proposed building does not exceed the maximum building height along the front facing Hopewell Road as measured to the roof peak. When taking into account all sides of the building the average building height is 45.5 feet exceeding the maximum by only 10 feet. Relief from the height requirement is needed to provide proper care and display of the automobiles in the building as well as providing the residence for the caretaker facility.**

The request is in harmony with the spirit of the ordinance, the intent of the master plan, and with the convenience, self, safety and character within the district for which it is proposed because: **The proposed building will be situated on a site which is located at the end of Hopewell Road, the proposed location will not impact the views of others or the applicants as viewed from Hopewell Road. The building will sit a considerable distance from the lake and be effectively screened by an existing vegetative buffer along the shoreline. The building will be environmental controlled including a fire suppression system a fire-rated stairwell with direct access to the exterior of the building, the driveway that will surround the entire building and is within the architectural character of the area.**

The request is not contrary to the public interest because: **the building will be located at the end of a private road which has little public traffic, a fire suppression system will be provided as well as security and the views from the lake will be screened by existing vegetation, therefore the building will have little to no impact on public service and not adversely impact the public interest of others.**

Substantial Justice will be done because: **Relief of the maximum height restrictions will permit the owners to construct a building suitable for housing their unique car collection in close proximity to their primary residence.**

The request will not diminish the value of surrounding properties because: **the proposed building will only enhance abutting property values and will be constructed with similar architectural features, and materials as abutting structures.**

M. Sargent stated he would answer any other questions.

B. Bahre stated the only reason we do have the height in the back is because the way it goes and with the walk-out, so when you look at it from the street it is fine and when you look at it from the water, if they can see any of it we are going to have pillars that you can see and it is going to look like a southern colonial from the back and it is going to look pretty darn nice.

There was much discussion as to architecture of property, it will be similar in style to the rest of the compound, stone faced, etc. There will be complete access around building, as well as buffers from lake side.

K. Chamberlain asked why this size. Is there any way you could build something that would conform with zoning.

B. Bahre stated that if you did it would be so squished from the front that it would look like hell, I mean you have to have the walk out because that is the way the lot is. And if you didn't it would just look like something you would have seen in Florida before the hurricane.

K. Menici asked if the board would like to see the site plan from the previous application so that they can see the topography? It is kind of hard to see the topography at that distance.

Board reviewed site plan.

B. Bahre stated that the only reason for the height is so that it will look nice in the front because we brought it just to 35 feet on the back.

R. Quindley asked if anyone would like speak either for or against the application, there being none, he closed that portion of the hearing.

Norman Ahn spoke in favor. Stated that his wife Betty and I own the property at 147 Hopewell Road. As previously stated we have two lots on the other side of the road from the Bahre's property. We are unanimously in favor of the project and of the structure. We have no objection whatever. Frankly I think it's a plus for the neighborhood and I feel that it won't cause any additional use on the road or activity on the road. It won't be like other families will be moving in there. It is very peaceful and very private and this is not going to affect that in any way. We too have a structure on our property, we consider it a barn for storage. It is a separate structure, it is closer to the road than our house is and as we talked earlier accept for size, it is much the same. It is an accessory building and I view Mr. Bahre's property as one contiguous property and he has an additional structure on his property. So we are totally in favor of the project.

L. Avery asked are you lots 5-8 and 5-7.

N. Ahn pointed out his lots on the map.

L. Avery stated that the Bahre's own the other lots.

R. Quindley asked if anyone would like to speak opposing the application. With no replies, he closed this portion of the hearing.

**Board Discussion:**

Public Interest:

The variance for height **will not** be contrary to the public interest.

**Reason: K. Chamberlain stated that Mr. Bahre clearly owns the property around it and the**



**abutter doesn't feel it is a concern to him. Feel the tree line won't be affected on the lakeside which will affect the general boating public. L. Avery stated that maybe the conservation committee would like to look at the trees to decide which would be the best ones. R. Quindley. M. Perry, agree**

Spirit of the Ordinance:

The request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed.

**Reason: M. Perry stated that because it has a fire suppression system and accessibility to all areas it is in harmony. K. Chamberlain stated it is an allowed use and the spirit of the ordinance. The spirit of the ordinance states that you can have a home or a garage in a lakeshore residential is an allowed use and I don't care what the size is and Mr. Bahre is doing nothing wrong other than enjoying his car collection. L. Avery agrees C. Westen stated he is taking all precautions for the public safety, I think it is very important and I think that any emergency people and equipment would have readily access to the facility both with people living there as well as to the collection itself.**

Substantial Justice: By granting the variance substantial justice **will** be done.

**Reason: K. Chamberlain agrees substantial justice will be done. C. Westen I agree as it is well in harmony with existing buildings that are on the abutting property owned by Mr. Bahre; L. Avery agrees R. Quindley agrees**

Value of Surrounding Properties – The request **will not** diminish the value of surrounding properties.

**Reason: M. Perry the size of the building will not diminish, K. Chamberlain said it is in keeping with whatever is on the surrounding lots, I think it is an attractive design. C. Westen said it will not diminish and it is already designed so that if is not be used as a garage facility it can be used as a regular house and fit all normal categories. L. Avery agrees, R. Quindley agrees.**

Hardship Boccia: Area Variance

1) An area variance **is** needed to enable applicant's full use of the property given the special conditions of the property.

2) The benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

**Reason: An area variance is needed in order for the applicant to use the property as he chooses, and the benefit sought by the applicant because of the volume of vehicles in there, it has to be used in this way to achieve what his purpose is. K. Chamberlain stated that an area variance is needed and the benefit cannot be sought by some other method. The nature of the structure architecturally, the size of it, the footprint of it, it needs to be taller than most and on the road side I feel that it is meeting our requirements of 35 feet and where I think it would be most important, on the lakeside I feel that the tree buffer there are some conifers there that line the shoreline, there are a few deciduous trees, but I think all in all with the aesthetics and the elevation of the lakeside building that it won't harm anything.. L. Avery said a variance and it cannot be done because of the nature of what the**

hobby is that requires the internal height to have the structure slightly higher than normal and I think that meeting the spirit of the 35 foot level from the roadside which most people would see should they drive down that road. C. Westen stated that the area variance is needed and it cannot be achieved any other way because we heard testimony that if they tried to shrink it to make it fit within the 35 feet it would look stunted and it would be aesthetically displeasing RQ agree

Based on above analysis special conditions **do** exist such that literal and enforcement of the zoning ordinance is an unnecessary hardship.

**Motion made by K. Chamberlain, seconded by C. Westen to approve Case#Z05-24, Area Variance, in light of the findings of fact, motion carried with all in favor.**

K. Menici read into the record the following case:

**Case#ZO5-25 Map 15, Lot 85**

**Area Variance**

**Peter & Jeannie Ferber**

**226 Gilman's Corner Rd**

Application submitted by Peter Ferber for an Area Variance request from Article 200, Section 227.A.2 of the Alton Zoning Ordinance. Applicant proposes to construct a porch within the required 25' front setback. The property is located at 266 Gilman's Corner Rd and in the Rural Zone.

K. Menici clarified that no waivers are required because it is a variance application.

Peter Ferber, property owner, noted that the address is wrong.

The Board discussed whether they could hear the application or not.

K. Menici stated it was noticed improperly. Being that small neighborhood, there is 6 abutters. K. Menici asked for 5 minutes to look at sequencing of street numbers to make sure there would not be another 266 Gilmans Corner Road. This was verified.

K. Chamberlain made a motion to correct the 266 to 226 to Gilman's' Corner Road on the agenda and the abutter's were noticed, C. Westen seconded, motion carried with all in favor

P. Ferber said they want to construct a porch on their antique house and he said the porch would start 14' into the required setback. He said the logical position of the porch is in the area he is proposing would keep with the continuity of the neighborhood and aesthetically pleasing with the character of the neighborhood.

K. Chamberlain spoke about the recreation use of the porch and if it was possibly to locate it on the other side of the house as to where it would conform. P. Ferber said that the other side of the house would interfere with their entrance and with the morning light and enjoyment. He also said it would fit better in the neighborhood for views, personal enjoyment and visiting with neighbors

R. Quindley asked if anyone would like to speak in favor of the application.

David Lawrence- abutter, he is the abutter on the side of the house for where the porch would be located. He and his wife support the construction of the porch in the location for which it is proposed. He said it would be in harmony and character of the neighborhood.

R. Quindley opened up the hearing for anyone to speak in opposition of the application, there being none he closed that portion of the hearing.

The Board went into deliberations as follows.

**Board Discussion:**

Public Interest:

The variance **will not** be contrary to the public interest.

**Reason: C. Westen said the variance will not be contrary to the public interest because the abutter that will be most affected by the porch, spoke in favor of the application, all agreed.**

Spirit of the Ordinance:

The request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed.

**Reason: C. Westen said the request is within harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed, based on the pictures submitted and the location is appropriate for the porch to be located. L. Avery agreed and said the location is appropriate because if it were located on the roadside it could crowd the road and affect future road improvements. M. Perry said it is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed. Because of the style of the home and fits in with the district and neighborhood it is located. K. Chamberlain agrees it is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed, because of the character of the district within which it is proposed, all the houses all encroach in the setbacks and it will fit well in the neighborhood. R. Quindley agreed.**

Substantial Justice: By granting the variance substantial justice **will** be done.

**Reason: C. Westen said by granting the variance substantial justice will be done for all the previous reasons the Board discussed. L. Avery agreed. K. Chamberlain agreed and said it will allow the applicant recreational enjoyment of his property. M. Perry and R. Quindley agreed.**

Value of Surrounding Properties – The request **will not** diminish the value of surrounding properties.

**Reason: L. Avery said the request will not diminish the value of surrounding properties. C. Westen agreed and said it will enhance the value of the surrounding properties. M. Perry agreed. K. Chamberlain agreed because the porch is not proposed to be very large and it will fit in well and it is located on the side of the house. R. Quindley agreed.**

Hardship Boccia: Area Variance

- 1) An area variance **is/is not** needed to enable applicant's full use of the property given

the special conditions of the property.

2) The benefit sought by the applicant **cannot** be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

**Reason:** C. Westen said an area variance is needed to enable applicant's full use of the property given the special conditions of the property and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because of the interior structure of the house because of the location of the kitchen. L. Avery agrees, because another other location would be in the driveway and too close to the road. M. Perry agrees because of the location of the porch in relation to the setback and the house. K. Chamberlain agrees and said the applicant stated the layout of the home it is appropriate for the porch to be located and for his personal enjoyment. R. Quindley agreed.

**Board Discussion and Reasons:** (No vote needed)

Based on above analysis special conditions **do** exist such that literal and enforcement of the zoning ordinance is an unnecessary hardship.

**Motion by M. Perry seconded by C. Westen to approve Case#ZO5-25 based on the findings of fact for an Area Variance, motion carried with all in favor.**

**OTHER BUSINESS:**

**Approval of Minutes:**

**Motion made by R. Quindley, seconded by M. Perry to continue the approval of the minutes from June 7, and August 4, 2005, until October 6, 2005 motion carried with all in favor.**

**Motion made by L. Avery, seconded by C. Westen to adjourn at 10:15pm, motion carried with all in favor.**

Adjournment

Respectfully submitted,

Stephanie Verdile,  
Planning Department Secretary