

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

**CALL TO ORDER**

Paul LaRochelle called the meeting to order at 6:00 P.M.

**Board Members Present:**

Paul LaRochelle, Chairman  
Lou LaCourse, Vice-Chairman  
Paul Monziona, Clerk  
Tim Morgan, Member

**Others Present:**

John Dever, III, Code Official

**APPOINTMENT OF ALTERNATES**

**STATEMENT OF THE APPEAL PROCESS**

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

**APPROVAL OF AGENDA**

Tim Morgan asked John Dever, III, if there were any changes to the agenda since it was posted; John Dever, III, stated, no.

**Tim Morgan MOVED to ACCEPT the agenda as presented.  
Paul Monziona seconded. Motion PASSED by a vote of (4-0-0).**

**DISCUSSION:**

Paul Monziona thought that the Board should defer the Appointment of Alternates until later on in the hearing just in case Frank Rich attended the meeting late. Paul Monziona asked Tim Morgan if he minded that he modified his motion. Tim Morgan agreed. Paul LaRochelle stated that

**NEW APPLICATIONS**

<b>Case #Z18-18</b> <b>Francis X. Bruton, III, Esq.,</b> <b>Bruton &amp; Berube, PLLC, Agent</b> <b>for Colchester Properties, LLC</b>	<b>21 Silver Cascade Way</b> <b>Map 39 Lot 11</b>	<b>Rehearing request regarding the</b> <b>denial of an Administrative Appeal</b> <b>Lakeshore Residential (LR) Zone</b>
---	--	---

The chairman read the public notice for the record.

Present was Francis X. Bruton, III, Esq., agent for the applicant.

Paul LaRochelle stated that this case would be continued until the next scheduled meeting date on October 4, 2018, due to the fact that the abutter notices were not notified in time. Francis X. Bruton, III, Esq., asked the Board to have a special meeting; he thought that September 19<sup>th</sup> or the 20<sup>th</sup> would work well for him, or any day throughout the following week.

**Paul Monziona MOVED to CONTINUE Case #Z18-18 for the purpose of a Special Meeting, to be determined by the Board, which would enable enough time for notification letters to be sent out to abutters within the 5-day notice timeline.**

**Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).**

<b>Case #Z18-23</b> <b>Thomas W. Varney, P.E., of Varney</b> <b>Engineering, Inc., Agent for David</b> <b>A. Roberts, Executor/Estate of</b> <b>Juliette Roberts, Owner</b>	<b>198 Old Wolfeboro Road</b> <b>and</b> <b>12 Clark Road</b> <b>Map 12 Lot 53 &amp; 53-1</b>	<b>Special Exception</b> <b>Rural Residential (RR) Zone</b>
---	--	--

A Special Exception is requested from **Article 300 Section 320A. 4. and 6.**, of the Zoning Ordinance to permit the replacement of an existing structure with a new structure that is 65 s.f. larger.

The chairman read the public notice for the record.

Tim Morgan informed the Board that his wife was a noticed abutter of this piece of property, but he did not think that would influence his vote; both the Board and the applicant did not have a problem with Tim Morgan sitting in on this case.

Present were Thomas W. Varney, P.E., agent, and David & Tammy Roberts, owners.

**Lou LaCourse MOVED to ACCEPT application #Z18-23, as complete.**

**Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).**

Thomas W. Varney, P.E., shared that the mobile home had been in existence on that property for years and years. The Roberts family had lived on that property for several decades, and back in 1970, a mobile home had been placed on that property for a family member to use. Since then, that family member had passed away and the Roberts family desired to replace the mobile home with a new mobile home. The new home would be on a concrete slab, it would have a larger footprint in a different configuration to reflect new building codes and construction, and it was slightly larger. The current septic system and water supply would be utilized, and the existing landscaping and driveway would stay the same. There was enough land that if an updated septic and water supply was needed, there was room to get it done.

Tim Morgan asked if Thomas W. Varney, P.E., saw the comments from the Fire Chief. Tim Morgan stated read the Fire Chief's comments, which were that if the building was to be completely torn down, the Fire Department requested to use the building for training purposes before teardown. Paul Monzione clarified that the Special Exception was being sought under the correct ordinance, and noted that the application itself indicated the wrong ordinance as Section 320B. 1., 2., and 3. He questioned whether the abutter notices were sent out correctly; John Dever, III, stated, yes. Paul LaRochelle asked what made up the 65 s.f. Thomas W. Varney, P.E., stated that the structure was a bit longer, but was still a 2-bedroom. Paul LaRochelle asked if there was a slab there currently. David Roberts stated that there was no slab there now, but they were installing one because they were now required. Lou LaCourse asked what the existing length of the building was. Thomas W. Varney, P.E., stated on the tax card it indicated 52' x 12'. John Dever, III, stated that the proposed mobile home was 52' x 13.5'.

Thomas W. Varney, P.E., read the application for the record. Paul Monzione asked if the septic system was state approved for the number of bedrooms; Thomas W. Varney, P.E., stated, yes. Paul Monzione asked if there was a private well or town water. Thomas W. Varney, P.E., stated that it was a private well that serviced both the mobile home and the main house on the property.

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

Paul LaRochelle moved the Board onto the worksheet.

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

All Board members agreed.

Paul LaRochelle stated that the specific site **is** an appropriate location for the use. He stated that the use was not changing because it was still going to be a residential 2-bedroom home.

All Board members agreed.

Paul Monzione stated that factual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. He stated that no incompatible land use was being proposed with the application, and in fact, it was a continuation of the use and would probably improve values given that the structure was being replaced with a brand new structure.

All Board members agreed.

Tim Morgan stated there **is no** valid objection from abutters based on demonstrable fact. He stated that there was no testimony from abutter at all.

All Board members agreed.

Lou LaCourse stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. He stated that as previously mentioned, the building currently met all setback requirements and when it was replaced, it would be replaced in the same area.

All Board members agreed.

Paul LaRochelle stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of the proposed use or structure as stipulated. He stated that the structure was existing and was still in use; and the structure would be updated accordingly.

All Board members agreed.

Paul Monzione stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that he specifically asked if the septic system was approved by the State, and the well was supplying water adequately for many years to both structures.  
All Board members agreed.

Tim Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance, and the intent of the Master Plan. He stated that for this particular section, the ordinance had to do with overcrowding and overbuilding and this project did not constitute that.  
All Board members agreed.

**Lou LaCourse MOVED to GRANT the Special Exception for Case #Z18-23.  
Paul Monzione seconded. Motion PASSED by a vote of (4-0-0).**

**DISCUSSION:**

Lou LaCourse asked if the Board was going to hear Cases #Z18-24 & 25 at the same time. John Dever, III, asked the Board to hear them separately because if the Equitable Waiver of Dimensional Requirements was granted, then there was no need for the Variance.

<p><b>Cases #Z18-24 &amp; 25 Randy Walker, Esq., of Walker &amp; Varney, P.C., Agent for Robert &amp; Diane Puckhaber, Owners</b></p>	<p><b>886 Rattlesnake Island Map 76 Lot 67</b></p>	<p><b>Equitable Waiver of Dimensional Requirements; and a Variance Lakeshore Residential (LR) Zone</b></p>
---	--	--

An Equitable Waiver of Dimensional Requirements and a Variance are being requested from **Article 300 Section 327** of the Zoning Ordinance to permit the continued use and maintenance of the existing deck (constructed in 1999), which is located wholly within the boundary lines of subject lot, but arguably within the 10’ western side setback. Said deck is also arguably 0.2” from the western boundary line as per the western abutters unrecorded but stamped survey plan.

The chairman read the public notice for the record.

Present were Randy Walker, Esq., agent and Robert & Diane Puckhaber, owners.

Paul Monzione asked that on the Equitable Waiver request, did the Board need to have the information contained in the application in order to rule on that. There were two requests, and obviously, the application was in connection with the Variance, but would the materials in the application also be necessary for the Board to consider in making a decision for the Equitable Waiver request. Randy Walker, Esq., stated that the information provided in the packet went towards both cases, but as John Dever, III, mentioned, if the Equitable Waiver was granted, then they did not need the Variance. Paul Monzione stated that his question was specific because he wanted to determine whether the Board had to make a determination as the completeness of the application, or defer the application until the Board was passed the Equitable Waiver issue. Paul Monzione thought that the Board needed to determine if the application was complete.

**Tim Morgan moved to ACCEPT application #Z18-24 & 25, as complete.  
Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).**

Randy Walker, Esq., stated that Mr. & Mrs. Puckhaber owned the property since 1986, and it had come to their attention that their deck on the western side of their property lied within the 10' side setback. Randy Walker, Esq., wanted to make clear that the deck did not encroach onto someone else's property and the plan that was submitted showed an iron pin. He stated that if the iron pin was located, then they did not need an Equitable Waiver or a Variance because the building was fully compliant. His questions was whether the pin was accurately located or not. He noted that Mr. & Mrs. Puckhaber wanted the deck to stay where it was; it was built back in 1999.

Randy Walker, Esq., went over the criteria for an Equitable Waiver. He noted that #1.a. on the application asked how the violation had existed for 10 years or more with no enforcement action, including written notice, being commenced by the town. He stated that this deck was constructed back in 1999, a building permit was pulled by the Puckhaber's contractor who was another islander, and the town approved the deck and made a notation "Okay to use", on June 21, 1999, by the building inspector. Randy Walker, Esq., noted that a copy of the permit was submitted with the application packet. The deck had not changed since it was built, and there was no enforcement action or written notice by the town at any time within the last 10 years, and in fact, there was no action or notice in the last 20 years.

Randy Walker, Esq., noted that #1.b. asked to explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser and how the violation was not an outcome of ignorance of the law or bad faith, but resulted from a legitimate mistake. He stated that the nonconformity was discovered around 2005 when the neighbor, Varney, had their property surveyed, which was now owned by the Williams'. The neighbor brought the plan over to the Puckhaber's, and the Puckhaber's said that was not accurate because there was a pin that the plan showed that was 10' inboard to the Williams' property that the surveyor did not hold to and the Puckhaber's objected to the accuracy of the plan that was never recorded. Nothing went any further at that time. When the Williams' property went on the market to be sold, they raised the issue again and was the reason why they were before the Board.

Randy Walker, Esq., stated that back in 1971, the Alton Planning Board approved a subdivision of the entire island and cut it into hundreds of lots. Due to this subdivision, deeds were given and the Puckhaber's deed had a metes and bounds description as did the Williams' on the western side. The deeds, which were submitted with the application packet, were mirror images of each other, depicting the exact same dimensions and distances to a pin that was indicated on the plan, and if that is the pin in question, Randy Walker, Esq., stated that there was no violation because the Williams' surveyor at the time did not hold to the pin for some reason. Randy Walker, Esq., stated that the Puckhaber's hired a builder to build the deck and they thought that the deck was fully compliant. If you looked at the plan, the deck was more than 10' away from the pin, because for 33 years, that was where the Puckhaber's thought that the property line was. The Puckhaber's relied on the accuracy of the pin to build their deck.

Randy Walker, Esq., noted that #2. asked to explain how the nonconformity did not constitute a nuisance, nor diminish the value or interfere with future uses of other property in the area. He stated that there was no encroachment onto anyone else's property, the deck was located 100% within the confines of the Puckhaber's property, but did arguably lie with the side setback. There was no nuisance to anybody because the property was a residential use in a residential zone and it would not diminish any surrounding any property values. The neighboring property where the deck abuts sold last year for roughly the town assessed tax value. In the application packet, there were letters from abutters on both sides that they had no objection to the application. There was also a third neighbor, Lakes Region Conservation Trust who owned land out back, were not inclined to sign a letter, but they indicated that the Puckhaber's could

represent that they had no objection to this application whatsoever.

Randy Walker, Esq., noted that #3. asked to explain how the cost of correction far outweighed any public benefit to be gained. He stated that there was a simple solution to the problem, and that would be to remove the deck, but the cost to do that on an island would be astronomical. He noted that more importantly what was the benefit to have a deck that was there for 20 years that anybody going by on a boat would not even know that the deck was within the side setback or that there was a violation; therefore, there was no detriment to the public and there was no benefit to ask that the deck be removed. Most of the island was heavily wooded and well buffered, and there was a wetland area next to the property line on the Williams' property, so they would not be able to do anything in that area anyways.

Paul Monzione asked when the original building permit was issued it was indicated on the permit by the Building Inspector that the project was "Okay to go", but the deck addition was not shown on the plan submitted for that permit; he also wanted to know if they were aware of that. Randy Walker, Esq., stated that the Puckhaber's hired another islander to perform the work. The Puckhaber's did not look at the plans and were unaware of what was applied for; they believed that the application was submitted appropriately, and that the deck was built and approved by the Town. Paul Monzione stated that what Randy Walker, Esq., just stated was that it was the contractor's conduct and not any conduct on the part of the owner, and the regulations specifically referred to the conduct of an owner or owner's agent or representative. Paul Monzione thought that it was odd that the builder went forward with the application in the manner that he did. Randy Walker, Esq., reiterated again that information was based on the Williams' survey, but if you measured from the iron pin, there was no setback at all. The Puckhaber's and their builder all thought that the pin was the property line and still to this day, they believe that was still the line; therefore, there was no violation. Paul Monzione thought that Randy Walker, Esq., made a good point that maybe the builder who built the deck and submitted the application did not think that it mattered that he included a depiction of the deck because if he looked at the pin, he was probably under the impression that he was no way near the property line. Paul Monzione asked if getting a new survey would solve this issue. Randy Walker, Esq., stated it would potentially. He stated that he had a 1971 survey of the whole island and it showed the property lines from pin to pin, and if the surveyor held to that pin, his client would not be before the ZBA at tonight's meeting. Paul Monzione asked if there was another monument in addition to the pin by the surveyor that contended that was where the property line was. Randy Walker, Esq., stated no, they did not even put in their own pin or record the survey plan. He shared that there were two waterfront pins and both deeds indicated that the property lines ran from the back end of the lot that abutted the Lakes Region property, down to a pin at the lake; therefore, the Puckhaber's believed that was "the" pin. Paul Monzione stated that very well could be the case and since it had been so many years, it might even be the Puckhaber's land now anyways.

Paul LaRochelle wanted to clarify that the two pins that Randy Walker, Esq., was referring to on the waterfront were 100' 11" apart. Randy Walker, Esq., stated that was the neighbor's property. Paul LaRochelle stated that he needed clarification on the pin in question on the deck. Randy Walker, Esq., directed Paul LaRochelle to look on the plan where the deck was located and when you ran down to the lake, to the left there was an iron pin about 11' away; that was where the Puckhaber's believed the property line was. If that was the pin for the property line, then the deck was fully compliant. Randy Walker, Esq., was trying to make a point that the 101.05' that the surveyor stated the Puckhaber's had for frontage was wrong because their deed stated they had 108' of frontage. Paul LaRochelle asked what warranted the Puckhaber's to be present at the meeting after 20 years of the deck being in existence; he wanted to know when this was brought to his attention. Randy Walker, Esq., stated in 2005, when the Puckhaber's prior neighbor, Mr. Varney, did his plan, he brought it over to the Puckhaber's and the Puckhaber's stated that the plan was not accurate and that was the last they heard from Mr. Varney. Paul

Monziona asked how many years after the deck was built that this issue was brought to his attention. Randy Walker, Esq., stated it was about six (6) years. Paul Monziona thought that the criteria of 10 years did not satisfy his request. Randy Walker, Esq., stated that the 10-year rule was through the Town. Paul Monziona asked if it was 10 years from the Town or 10 years from the time of the controversy. Randy Walker, Esq., stated the regulation indicated 10 years or more with no enforcement action.

Paul Monziona pointed out that on the plan, there was a note that indicated that the deck was outside the subject lot approximately 0.2'. Randy Walker, Esq., stated that information came from the neighbor's survey and he was referring to his lot and not the Puckhaber's lot. Tim Morgan mentioned that Randy Walker, Esq., stated that the neighbor was unable to develop an area on his property and wanted clarification on that comment. Randy Walker, Esq., stated that there was only a shed on the neighboring property, and that neighbor had submitted a letter to the Board stating they had no objections to this issue. What Randy Walker, Esq., stated before was that there was some wetlands on the lower front side of the lot, which would not allow the neighbor to build in that corner, which was also near where the Puckhaber's had their deck.

Lou LaCourse thought that some responsibility was on the shoulders of the Code Enforcement Officer at the time. He thought that since a drawing of the deck was not included in the plan, why did the Code Enforcement Officer not ask for one or even go over and inspect the deck for an approval. John Dever, III, stated that the official signed off on the permit that it was okay for use, and if he was relying on someone indicating to him that the property line was at the pin in question and not where it was shown on the plan, then he would have felt it was not in the setback; therefore, there would have been no violation. Paul Monziona thought that the criteria for municipal estoppel and Equitable Waiver were very similar, but an Equitable Waiver was a more appropriate way to approach this issue.

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

Paul LaRochelle moved the Board onto the worksheet.

Paul Monziona stated that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value. He thought that the first part of these criteria were applicable, not the second half.

All Board members agreed.

Tim Morgan stated that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, **but** was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent. He stated that in this case, the owner relied upon the original Town survey and a pin that was evident on that survey. He stated it was not an outcome of ignorance.

All Board members agreed.

Lou LaCourse stated that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. He stated that the abutters were in agreeance that the deck was there and it did not constitute any kind of nuisance. Paul Monziona stated that there was no evidence that the deck created a public or private nuisance, and there was no evidence that it diminished the value of other properties in area given the history of the deck being there for so long; there was also no impact on properties that had been conveyed during that time.

All Board members agreed.

Paul LaRochelle stated that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. He felt thought that changing things now would not affect anyone else in the surrounding areas of the property. He thought there would be a definite cost factor in trying to change something if it was not actually in a real violation. Paul Monzione stated that it was more costly to do construction on an island and he did not see any public benefit to be gained by taking the deck down or trying to correct it. Tim Morgan stated he was not entirely convinced there was a violation and there could be an estoppel issue; he thought the cost of removing the deck far outweighed any benefit.

All Board members agreed.

Paul Monzione stated that in lieu of the findings required by the Board under subparagraphs 1 and 2, the owner may demonstrate to the satisfaction of the Board that the violation had existed for 10 years or more, and that no enforcement action, including written notice of violation, had been commenced against the violation during that time by the municipality or any person directly affected. He stated that in lieu of 1 and 2, which the Board did answer in the affirmative, he did not think that #5 even applied; he thought that the applicant had demonstrated that the violation had existed for 10 years or more with no enforcement action, so they met the criteria as well. Tim Morgan stated that there were no enforcement actions and felt that this should be in favor of the applicant.

All Board members agreed.

**Paul Monzione MOVED to GRANT the application for Case #Z18-24 for an Equitable Waiver of Dimensional Requirements.**

**Tim Morgan seconded. The motion PASSED by a vote of (4-0-0).**

<b>Case #Z18-26 Thomas W. Varney, P.E., of Varney Engineering, Inc., Agent for Ralph Delvecchio, Owner</b>	<b>28 Rum Point Road Map 57 Lot 11</b>	<b>Special Exception Lakeshore Residential (LR)</b>
--	--	---

A Special Exception is requested from **Article 300 Section 320 A. and B.**, of the Zoning Ordinance to permit the in-kind replacement of a non-conforming structure for expansion beyond existing dimensions, and for a change from seasonal to year-round use.

The chairman read the public notice for the record.

Present were Thomas W. Varney, P.E., agent, and Ralph Delvecchio, owner.

**Lou LaCourse moved to ACCEPT application #Z18-26, as complete.**

**Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).**

Thomas W. Varney, P.E., stated that Ralph Delvecchio bought the property in 2017, and his plan was to demolish the existing cottage and shed and replace it with a new cottage with an attached garage. The new cottage would be in the same location as the existing cottage with a slight change in configuration. An 8' x 10' deck was proposed to extend towards the lake. A small deck with stairs had to be added to the cottage. The proposed garage with a connecting "L" extended back from the lake to the building



envelope. The existing state approved septic and the well would remain as it was. A new driveway had been constructed so Mr. Delvecchio would have his own access to the property. A DES wetland permit had been approved to enlarge and relocate the dug in boat slip and to upgrade the deteriorated wharfs. To the left of the property there was a cottage, a shed, and a boat slip, and to the right there was a newer building. Thomas W. Varney, P.E., stated that he submitted some pictures with this application that were of the cottage that currently existed.

Thomas W. Varney, P.E., stated that what Mr. Delvecchio proposed to do was to keep the cottage in the same footprint because he did not want it to be closer to the lake. Mr. Delvecchio wanted to expand back into the building envelope. Thomas W. Varney, P.E., shared that the current shed was with the 30' shoreland setback. If Mr. Delvecchio got rid of the shed and placed the garage back more, the cottage would be in the same footprint except for small changes like the stairs and the deck; the "L" added to the area also.

Lou LaCourse noted that Mr. Delvecchio was going to put a new deck over an existing patio and he wanted to know if the patio was impervious. Thomas W. Varney, P.E., stated yes, it was made up of concrete. He shared that the deck needed a Variance and he would discuss that in more detail during the next case.

Paul Monzione noted that the proposed structure was going to stay within the footprint of the current cottage. Thomas W. Varney, P.E., stated that it was the same footprint but he was expanding upwards. Some stairs and a deck would be added to the right side of the cottage. Paul Monzione asked if the building was nonconforming because it was within the shoreland setback. Thomas W. Varney, P.E., stated, yes. Paul Monzione asked if it could be moved back, because one of the criteria to have a Special Exception granted was that the applicant was required if at all possible to move the proposed structure out of the setback; therefore, they could build what they wanted to and it would not be left as a nonconforming structure. Thomas W. Varney, P.E., stated that Mr. Delvecchio liked where the driveway was and the layout of the land for parking in order to get a car into the garage, which was why the cottage was proposed to stay where it was. Paul Monzione stated that the unique circumstances of the land then were such that they prohibited the structure from being moved back out of the setback in order for the garage to be accessible. He that when looking at the plan, was the newly proposed structures within the confines of the footprint of the current cottage. Thomas W. Varney, P.E., stated that some of it was in the nonconforming area, but Mr. Delvecchio was moving it back from the lake some, and after the shed was torn down, Mr. Delvecchio would be getting that area back. Paul Monzione asked what part of the proposed structure would be built where the current cottage was. He thought that the cottage had a small footprint compared to the newly proposed structure.

Paul LaRochelle asked how tall the proposed structure was going to be. Thomas W. Varney, P.E., stated it was under 35'. Paul LaRochelle noted that there was going to be a full walkout basement, and asked if it was still going to be 35' from the shoreland setback; Thomas W. Varney, P.E., stated, yes. Paul Monzione stated that since the garage was going to be attached, why could they not move the whole proposed structure back. He asked how far the current cottage was into the shoreland setback. Thomas W. Varney, P.E., stated it encroached 13.5' into the setback. Paul Monzione thought that they could move it back 13.5'; therefore, there would be no need for a Special Exception. Paul LaRochelle thought that the land did not appear to be sloped that badly where it could not be pulled back a bit. Thomas W. Varney, P.E., stated that there was a septic tank that would have to be relocated and there was an artesian well in that area, but the biggest issue was the trees. He informed the Board that when people build on the lake, the shoreland rules required trees and stormwater infiltration and from 50' – 150' DES restricts people from building a house. He stated that Mr. Delvecchio was close to that limit and he would have to

encroach into the trees in order to move the cottage back. Paul Monzione understood that there were restrictions, and mentioned that Mr. Delvecchio would probably have problems with DES allowing him to move back some.

Lou LaCourse asked what the percentage of coverage was with trees and bushes at this point. Thomas W. Varney, P.E., stated it was under 30%. Lou LaCourse mentioned that whatever trees got cut down could be replaced with bushes and other types of vegetation. Thomas W. Varney, P.E., stated that the State's regulations included natural ground cover. Lou LaCourse asked what the square footage of trees were currently. Thomas W. Varney, P.E., stated that it was supposed to be 25%, and they were at 25%. Lou LaCourse asked if the house was moved back 13.5', what would that leave. Thomas W. Varney, P.E., stated it would be about 18 – 20%, and it would make things real difficult with the State. He pointed out that he had a shoreland permit that was done for the driveway, but he had to do another one to replace the cottage.

Paul LaRochelle pointed out that he did not see any trees in the back of the cottage when he looked at the picture that was submitted with the application. Thomas W. Varney, P.E., stated that there were trees located to the left where the proposed garage was going to be built. Lou LaCourse asked if the garage could be rotated a few degrees so it would not infringe on the trees; Thomas W. Varney, P.E., stated, no.

Paul Monzione asked if any permits had been applied for or obtained from DES. Thomas W. Varney, P.E., stated that he had a shoreland permit for the driveway, which was at the back of the lot; he shared that Mr. Delvecchio needed to apply again for the building teardown. There was also a wetlands permit for the boat slip. Paul Monzione asked if the number of bedrooms would be increased; Thomas W. Varney, P.E., stated, no. Lou LaCourse asked what the 16' x 16' area was designated for between the cottage and the garage. Mr. Delvecchio stated it was a mudroom; after entering the house, there was a hallway that led to the left and went towards the garage.

Paul Monzione asked if the garage could be built by itself. Thomas W. Varney, P.E., stated that a small portion of the garage was in the 30' shoreland setback. John Dever, III, stated that the current shed encroached even more than the proposed garage, so that was a fairly large reduction to the impact of the shoreland setback. Paul LaRochelle asked if the intent above the garage was to eventually turn it into living space; Mr. Delvecchio stated, no. Paul LaRochelle asked since the garage was attached, was there any intention to install any water or plumbing of any kind; Mr. Delvecchio stated, no. Tim Morgan asked how far did the garage have to be moved to the southwest to be out of the 30' shoreland setback; Thomas W. Varney, P.E., stated, 4'. Paul LaRochelle thought that maybe if the garage was pointed forward away from the well about 5 - 6', eliminated the 12' x 20' shed-like overhang, and faced the cottage straight back, the only thing that would be affected would be the septic pump tank chamber. Mr. Delvecchio stated that if the Board could see the layout of the area, it dropped down pretty steep and there were some very large boulders in the way; therefore, he would end up not having much of a driveway. Tim Morgan noted that if the garage was moved 4' to the southwest, none of the structures would be within the setbacks; therefore, the only Special Exception that would be requested would be for the height of the structure. He asked if Mr. Delvecchio would be willing to move the structure 4' to the southwest as a requirement of an approval. Mr. Delvecchio stated that if the Board could go out and look at the layout of the property, the garage would cut the driveway area down, and that area was steep.

Paul Monzione wondered if the encroachment existed because of the boat house; Thomas W. Varney, P.E., stated, yes. Paul Monzione stated that the setback was determined by the high water line, so was the boathouse considered a high water line. John Dever, III, stated that there would be a new high water mark because changes were made to how far the water came up on the shore. Lou LaCourse asked if the boat

slip had already been expanded; Mr. Delvecchio stated, no. Mr. Delvecchio noted how the right edge of the boat slip sat out further towards the water. He shared that in order to bring in his pontoon boat, it stuck out quite a ways. Lou LaCourse asked if the Board was granting the Special Exception on what it was going to be or were they granting it based on what it was. John Dever, III, stated that what Mr. Delvecchio was asking for was relief with the new setback in place. Lou LaCourse stated that if it was the way it was now, the garage was not in a 30' setback and it would not be in a 30' setback until after the boat slip was dug.

Tim Morgan asked Thomas W. Varney, P.E., if he would consider a continuance so he could talk to the architect about what could be done with moving the garage over 4'. Paul LaRochelle thought it would be to his advantage to at least have a couple of options. Mr. Delvecchio asked if he could move the garage back about 10' to where the shed was currently, then the garage would be a conforming structure. Paul Monzione was not sure architecturally if that would be okay, but any portion of the structure that would be within all the setbacks would not be a problem. He noted that John Dever, III, stated that the shed was more nonconforming than the proposed garage; it was more in the shoreland setback. John Dever, III, stated that as the shed sat now, it was a little more nonconforming than what the proposed garage was, but by making changes to the lot, the lot now had to abide by the new set of regulations, and would now make the shed more than half into the shoreland setback. Paul LaRochelle stated that the Board could proceed with the hearing, but he stressed that the Board was only giving them suggestions to reconfigure the layout of the project. Thomas W. Varney, P.E., thought that he and Mr. Delvecchio could explore some options with the architect. Paul LaRochelle asked if Mr. Delvecchio wanted to continue the hearing to next month; Thomas W. Varney, P.E., stated, yes. Lou LaCourse mentioned that if some of the trees were removed, and Mr. Delvecchio added trees to another area, he did not think the State would have a problem with that because he would still be at 25%. Paul Monzione thought it was easier for the Board because the townspeople look up to them to enforce the criteria fairly strictly, and they were in fact good with abiding by the law. He thought the more conforming a project was, the easier it was for the Board to apply the criteria to get the applications granted. Mr. Delvecchio understood what the Board was doing for him, but the angled area that was within the shoreland setback was only a little piece of the corner of the garage, he was taking the shed out, all of the sidewalks, and the patio, and he was not too keen on having to pay his architect more money to redesign the project for just one little piece of the building. Paul Monzione stated that by having his architect reconfigure the garage and move the cottage back, it would have eliminated the issue of having a nonconforming structure. He noted that zoning ordinances were put in place to protect the lake and if the Board granted such a big expansion, they would have to meet all the criteria. If Mr. Delvecchio could move the structure and build it according to the building codes, the Board would only have to deal with the issue of expanding it upwards. Mr. Delvecchio stated he would cut back some of the structure in order to conform to the criteria. Paul LaRochelle thought that if he angled the garage a bit, that would be best; although, Mr. Delvecchio did mention that it might be difficult to make the turn in to the garage if it was angled, so he thought he could make it smaller instead. Thomas W. Varney, P.E., agreed with Mr. Delvecchio. John Dever, III, stated if the garage was squared off, it would be about 22' deep instead of 28', but he could add the s.f. to the front of the garage.

Mr. Delvecchio asked if he could build the garage within the shed envelope because it was grandfathered. John Dever, III, stated, no because he was taking it down and putting up other structures. John Dever, III, pointed out that if Mr. Delvecchio looked at the initial encroachment of the shed, where it existed now, he only had a little bit of the shed that was in the setback. John Dever, III, explained that before Mr. Delvecchio dug out the boat slip, there was not much of the shed within the setback. Paul Monzione stated that once the boat slip was dug, a lot of the shed would be within the setback because the setback was moved. Thomas W. Varney, P.E., noted that by digging out the boat slip, it would make the garage nonconforming. Paul LaRochelle stated that was correct because Mr. Delvecchio would be dredging out

the boat slip and it would bring the shoreline closer to the cottage.

Paul LaRochelle asked Mr. Delvecchio if it was okay if the Board did performed a site walk, which might help them better understand the layout of his property. Mr. Delvecchio stated that he did not want to prolong his hearing to the next month because he was trying to get this project up and running before the bad weather came. Paul LaRochelle asked what exactly did Mr. Delvecchio mean when he stated that he would cut off the back piece of the garage. Mr. Delvecchio stated the back piece that encroached the setback 4 ½', which would bring the garage right up to the setback line. Paul LaRochelle asked if he meant that he would end up with one bay being a full 28' and the inside bay would end up being less than that. Mr. Delvecchio thought that might work. Paul Monziona stated that the representation on the application would be that the proposed garage in that area would no longer encroach into the shoreland setback. Mr. Delvecchio agreed.

Tim Morgan noted that the first criteria was an acceptance of a plat, and he questioned whether the Board could accept the plat that was submitted with the application. Paul Monziona thought that the Board could as long as a statement was on the record that the plat as submitted would be modified such that the proposed garage would be modified so that it would be no longer with the shoreland setback. Paul LaRochelle asked Mr. Delvecchio if he would like to proceed under the conditions that were just discussed; he stated, yes.

Thomas W. Varney, P.E., read the application for the record.

Paul LaRochelle opened public input.

Nelson Kennedy came to the table. He stated that he was an abutter that overlooked Mr. Delvecchio's property. His comment was regarding the structure being 35' high, and it was his understanding that the proposed structure would be no higher than 35'. Mr. Delvecchio stated, yes, he would abide by whatever the rule was. Mr. Kennedy was fine with the height of the structure being 35' or less. Paul Monziona pointed out that the height was averaged from the finish grade, so if someone was standing in a low spot, it could be higher than the 35'. Mr. Kennedy asked how high the current structure was. Thomas W. Varney, P.E., stated it was less than 35' now, but it was close to it. Paul LaRochelle stated that the Board took the average slope of the land. Mr. Kennedy looked at the plans and it looked like there would be a basement and then two (2) floors. Paul LaRochelle stated he was correct. Mr. Kennedy noted that the basement would be cut into the slope. Lou LaCourse stated that on the lower side of the hill, it might be higher than 35', but in the back, it would be under 35'; therefore, the average of the two heights would be less than 35'.

Paul LaRochelle closed public input.

Paul LaRochelle moved the Board onto the worksheet.

Lou LaCourse stated that a plat **has been** submitted in accordance with the appropriate criteria in Article 500, Section 520B. Paul Monziona noted that there was a representation made during the hearing that the proposed garage would be altered so it would no longer be an encroachment into the shoreland setback. Tim Morgan agreed and mentioned that normally this criteria was easy, but with this Special Exception, the plat that was submitted to the Board did not represent what the finished structure would look like, but the garage shown as submitted would be restructured so it would not encroach into the shoreland setback. All Board members agreed.

Paul LaRochele stated that the specific site **is** an appropriate location for the use. He stated that this was a lakefront piece of property that was being reconfigured and rebuilt to be less nonconforming by setting the structure back from the lake even further, and it would be more in compliance with other properties. Paul Monziona agreed because the use was not changing and would remain a residential lakefront home. Tim Morgan thought there was a change to the use, which was it going from a seasonal to a year-round cottage, but he still thought it was still an appropriate location. Lou LaCourse agreed for all of the aforementioned reasons.

All Board members agreed.

Paul Monziona stated that factual evidence **is not** found that the property values in the district will be reduced due to incompatible land uses. He stated that there were no incompatible land uses, and this project might just increase property values because the structure was being replaced with a more valuable structure.

All Board members agreed.

Tim Morgan stated there **is no** valid objection from abutters based on demonstrable fact. He stated that Mr. Kennedy was concerned about the increase in height and he was concerned about the view from his home, but if the structure was kept under the 35' as represented by Mr. Delvecchio, then there was no valid objection.

All Board members agreed.

Lou LaCourse stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. He stated that from looking at the map, there was no change in design of access ways or off street parking, and there was nothing about this request that would increase or decrease any hazard to pedestrians or vehicular traffic.

All Board members agreed.

Paul LaRochele stated that adequate and appropriate facilities and utilities **will** be provided to ensure proper operation of the proposed use or structure as stipulated. He stated that the new structure would meet all codes and the septic system and water were already in existence.

All Board members agreed.

Paul Monziona stated there **is** adequate area for safe and sanitary sewage disposal and water supply. He stated that it was represented that there would be no increase in the number of bedrooms; therefore, the septic and water supply should be adequate.

All Board members agreed.

Tim Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance, and the intent of the Master Plan. He stated that the intent of the Master Plan was to try to reduce nonconformity, particularly around the lake. He noted that reconfiguring the structure fulfilled the intent of the Master Plan by reducing nonconformity.

All Board members agreed.

**Paul Monziona moved to GRANT the Special Exception for Case #Z18-26, with the specific condition that the plan for the construction of the proposed garage would be altered in some fashion as to make sure the proposed garage was conforming with regard to the shoreland setback.**

**Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).**

<b>Case #Z18-27</b> <b>Thomas W. Varney, P.E., of</b> <b>Varney Engineering, Inc.,</b> <b>Agent for Ralph Delvecchio,</b> <b>Owner</b>	<b>28 Rum Point Road</b> <b>Map 57 Lot 11</b>	<b>Variance</b> <b>Lakeshore Residential (LR)</b>
--	--	--

A Variance is requested from **Article 300 Section 327 A.**, of the Zoning Ordinance to permit an attached deck to a cottage to be 10' to the shoreline of the lake.

The chairman read the public notice for the record.

Present were Thomas W. Varney, P.E., agent, and Ralph Delvecchio, owner.

**Lou LaCourse moved to ACCEPT application #Z18-27, as complete.**  
**Paul Monziona seconded. Motion PASSED by a vote of (4-0-0).**

Thomas W. Varney, P.E., stated that Mr. Delvecchio wanted to add two (2) 8' x 10' decks, one on top of the other on the lakeside of the property. The lower deck would be off the main floor and the upper deck would be off the second floor, which would hang over the lower deck. The furthest point of the deck was 10' from the shoreline, which was irregular. The decks would overhang a concrete patio that was located on the ground level. The biggest issue he saw was that there was a lagoon in front of his property in the lake, which had a causeway or breakwater, so boats did not come close to Mr. Delvecchio's house. He thought those circumstances would help the setback.

Thomas W. Varney, P.E., stated that there were no decks there currently and the concrete slab was going to be removed. He noted that improvements would be made to the stormwater runoff, but it was not indicated on the plan. Paul LaRochelle noted it would end up being a permeable surface underneath the decks. Thomas W. Varney, P.E., stated yes, the rainwater that fell would fall from all three (3) sides of the decks and through the boards; the rainwater would be collected by some crushed stone. Paul LaRochelle stated that was common but as far as the State was concerned that was not acceptable for water runoff management. Lou LaCourse asked where the decks were proposed to be, was it impervious; Thomas W. Varney, P.E., stated, yes. Lou LaCourse wanted to confirm that the impervious surface (patio) was going to be removed. Thomas W. Varney, P.E., stated, yes, Mr. Delvecchio was going to make it pervious with crushed stone or porous pavers. Lou LaCourse asked John Dever, III, that the fact that the current patio was impervious, would that count as currently nonconforming. John Dever, III, stated that it could be argued that it was a permanent structure, and was not normally something that a permit would be given for, but it was part of the lot. Lou LaCourse stated that in essence, by putting the decks over the current impervious area, it would be less nonconforming once the patio was removed. John Dever, III, stated that it would be more nonconforming because patios were not considered a structure. Lou LaCourse pointed out that rainwater would go through a deck, but not through a concrete patio. Paul LaRochelle noted that he just went through this and decks were not considered permeable even though there was some separation in between, unless pavers were used that would allow water to seep in between each patio block into a surface that was treated and filled with stone to manage the water runoff. Tim Morgan stated that Thomas W. Varney, P.E., stated that Mr. Delvecchio was going to be removing patios and walkways and he wanted to know if the patio was closer to the water and wanted to know if it was going to be removed. Thomas W. Varney, P.E., stated, yes, that area was going to be grassed over. Tim Morgan noted that what was existing were two patios east of the house and wanted to know if those were the two patios what would be removed; Thomas W. Varney, P.E., stated, yes. Tim Morgan asked if the concrete walkways had been removed. Mr. Delvecchio stated that he was going to

have to leave something in place where the steps came down off the deck and led to the garage. He noted that he was going to remove the sidewalk going towards the corner of the breakwater. Tim Morgan stated that the increase in permeable surface should offset what Mr. Delvecchio was proposing.

Thomas W. Varney, P.E., read the application into the record.

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

Paul LaRochelle moved the Board onto the worksheet.

Lou LaCourse stated that the variance **will not** be contrary to the public interest. He stated that the patios that were currently in place would be removed; theoretically, decreasing the impervious surfaces that would be taken up by the decks. Tim Morgan thought that part of the public interest was in protecting the shoreland from overcrowding and overhanging decks, but at Mr. Varney pointed out, there was an unusual formation in front of the house and he thought the close decks did not have as much impact it might otherwise have had.

All Board members agreed.

Paul LaRochelle stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan, and with the convenience, health, safety, and character of the district within which it is proposed. He stated that the construction was still residential and it was a continuation of the same use. All Board members agreed.

Paul Monzione stated that by granting the Variance, substantial justice **will** be done. He thought that strict application of the zoning regulation in this case would have no public benefit and would be detrimental to the homeowner. Lou LaCourse stated that the lake area was an area where decks were commonplace. All Board members agreed.

Tim Morgan stated that the request **will** not diminish the value of the surrounding properties. He stated that the Board noted in the previous application that taking out an old cottage and putting in a new structure would enhance the values of the neighborhood. All Board members agreed.

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

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

He did not think that hardship was an issue in this case. He noted that the Board had attested to previous conditions that the addition of the decks was reasonable. Paul Monzione did not think that there was any fair and substantial relationship between the public purpose of this ordinance and the application that was being submitted and the purpose of the zoning regulation was still being upheld; therefore, installing the decks would not interfere with that purpose. Tim Morgan agreed and pointed out that the proposed use was a reasonable one and there was not fair and substantial relationship. He stated that Mr. Delvecchio was trying to make a nonconforming structure somewhat less nonconforming. He further noted that by leaving the decks within the patio’s current footprint in order to have a deck under those circumstances, Mr. Delvecchio needed to obtain this Variance. Paul Monzione also agreed that the proposed use was a reasonable one because the use was not changing.

All Board members agreed.

**Lou LaCourse moved to GRANT the Variance for Case #Z18-27.  
Paul Monziona seconded. Motion PASSED by a vote of (4-0-0).**

## **OTHER BUSINESS**

1. Previous Business:
2. New Business:
  - a. Notice of resignation for Board Member, Andrew Levasseur.

John Dever, III, informed the Board that Andrew Levasseur had resigned from both the Zoning Board and Planning Board due to family commitments that were in conflict with being on both Boards. Lou LaCourse asked what happened with the open seat. John Dever, III, stated that the Board could appoint Frank Rich as a full voting member until that seat term expired. Lou LaCourse asked if the Board could appoint someone else if Frank Rich did not want to be a full voting member. John Dever, III, stated that they could. He mentioned that Nic Strong, Town Planner, mentioned to him that Bob Reagan said something about possibly applying for the Zoning Board, but she had not heard back from him. Tim Morgan thought that the Board should ask if Steve Miller would like to come back as the full voting member. Paul LaRochelle stated that he was going to suggest Steve Miller too, and asked if someone could call Frank Rich. Paul Monziona stated that he would call Frank Rich. John Dever, III, pointed out that Frank Rich was the ZBA's representative on the Zoning Amendment Committee.

3. Approval of Minutes: August 2, 2018

**Paul Monziona MOVED to continue the approval of the August, 2, 2018, meeting minutes to the next scheduled meeting on October 4, 2018.  
Tim Morgan seconded. Motion PASSED by a vote of (4-0-0).**

4. Correspondence:
  - a. Planning and Zoning related updates from New Hampshire Office of Strategic Initiatives, Planning Division, 2018 Legislative Session

John Dever, III, noted that the fall law lecture series were being held in a couple of different locations and asked if anyone was interested to let Jessica A. Call, Planning/Zoning Secretary, or Nic Strong, Town Planner, know that they wanted to attend.

Tim Morgan asked if Jessica A. Call could provide a copy of the schedule for the law lectures.

## **DISCUSSION:**

John Dever, III, asked the Board if any of the dates that F. X. Bruton, III, Esq., mentioned were good for him, were also good for the Board. All Board members had to check their schedule to see what day was best, either September 19<sup>th</sup> or 20<sup>th</sup>, or September 24<sup>th</sup> through the 27<sup>th</sup>. Lou LaCourse stated he had to look at his schedule. Paul LaRochelle stated he would have to look at his schedule. He asked if Jessica A. Call could send out an email to everyone asking about the dates.



**ADJOURNMENT**

**At 8:45 P.M., Paul Monzione MOVED to adjourn.  
Lou LaCourse seconded. Motion PASSED by a vote of (4-0-0).**

Respectfully submitted,

Jessica A. Call  
Recording Secretary

Minutes approved as amended: November 1, 2018