

Members Present; Keith Chamberlain; Lyndon Avery and Alternate-Timothy Kinnon and Selectman's Representative, Pat Fuller.

Members Absent: Vice-Chairman, Marcella Perry

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

**Call to order:** Acting Chairman K. Chamberlain called the meeting to order at 7:00 p.m. He spoke about the absence of the Chairman and the Vice-Chairman that the By-Laws require the next senior member to chair the meeting.

**Motion made by L. Avery, seconded by T. Kinnon to have K. Chamberlain act as Chairman, motion carried with all in favor.**

**Appointment of Alternates:** K. Chamberlain appointed T. Kinnon to sit in the place of Vice-Chairman, M. Perry.

**Approval of Agenda:**

K. Menici explained the changes to the agenda as Case#ZO5-31, Case#ZO5-32 and Case#ZO5-27 have asked to be continued until the November 3, 2005 meeting. She explained that Case#ZO5-33 and Case# ZO5-34 had abutter notification problems and have to be re-noticed and will be heard at the November 3, 2005 meeting.

**Motion made by K. Chamberlain, seconded by T. Kinnon to continue Case#ZO5-31, Case#ZO5-32, and Case#ZO5-27, until the November 3, 2005 meeting and to not hear Cases ZO5-33, ZO5-34 because they have to be re-noticed and approve the agenda as amended, motion carried with all in favor.**

K. Chamberlain introduced the Board members and staff and read in to the record the purpose and proceedings of the public hearing.

**NEW APPLICATIONS:**

K. Menici read into the record the following case:

<b>Case#ZO5-26</b>	<b>Map 69, Lot 16</b>	<b>Area Variance</b>
<b>Clara Werner, Locus Street Nominee Trust</b>		<b>27 Perkins Drive</b>

Application submitted by Clara Werner for an Area Variance from Article 200, Section 227.A.1, Setback Requirements. Applicant proposes to construct a second story deck within the required 30' setback from Sunset Lake. The property is located at 27 Perkins Drive in the Rural Zone and the NHDES Shoreland Protection Overlay District.

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

K. Chamberlain advised the applicant of the rules and procedures of having a 3 member Board and the applicant understands the rules and decided to continue with a 3 member Board.

Eric Johnson and Clare Werner, representing the application, gave their presentation to the Board. E. Johnson explained the property is located on Sunset Lake and the cottage was built in 1938. They are proposing to add a second floor deck to the lakeside of the cottage. He does not believe the addition would hinder any abutter's properties and it would improve the appearance and function of the cottage. He said C. Werner would be able to enjoy the lake without going downstairs as she has difficulty going down stairs.

K. Chamberlain asked about the hardship of the land and the tree line in relation to the house and they discussed the tree line is about 5' from the house and the existing stairs will be replaced with the deck. They would have to remove the tree line to put on a deck that would meet the setbacks and they would rather not disturb the tree line.

T. Kinnon spoke about the deck proposed on the lakeside making the most sense and asked if they looked at other areas to put the deck. The applicant said the terrain and the location of the trees limit where they can put the deck and the proposed location would best fit their needs. They said that there are a number of existing structures that are closer than the 30' setback in the neighborhood.

Discussion about the location of the entrance from the inside of the house to the deck and discussion about the size of the deck and the location of the stairs. The size of the deck will be 51/2' width and 20 1/2' long as proposed in the building permit application.

K. Chamberlain asked if anyone would like to speak in favor of the application, being none, he closed that portion.

K. Chamberlain opened up the hearing for anyone to speak in opposition of the application, 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:** K. Chamberlain said that the deck is small and fits well into the neighborhood and with other houses with decks close to the water and it would not interfere with neighbor's decks so it would not be contrary to the public interest. T. Kinnon and L. Avery 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:** K. Chamberlain said the Master Plan allows this type of application and it is within the spirit of the Zoning Ordinance for people to have decks on waterfront property, the harmony of the Master Plan and the health, safety and character of the neighborhood and district within which it is proposed. T. Kinnon it is in harmony with the Master Plan and spirit of the Zoning Ordinance because of the character and make up of the cottage around the Lake have porches and decks and this deck will enhance the character of this property. L. Avery agrees.

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

**Reason:** K. Chamberlain said substantial justice will be done because the location works out well for enjoyment of the property based on the topography and the close proximity of the property lines to the structure. T. Kinnon said substantial justice will be done because it keeps the cottage in harmony with the neighborhood and the cottages that have decks and it would be an injustice to not grant the variance. L. Avery agreed.

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

**Reason:** K. Chamberlain, T. Kinnon and L. Avery all agree it will enhance the value of the property and not diminish the value of the surrounding property.

Hardship Boccia: Area Variance



Melissa Guldbrandsen, attorney representing the applicant, Lee Maserian, Mike Saba, applicants and Daryl Breed Hoitt, the owner were in attendance to represent the application.

M. Guldbrandsen said that the applicants have been working to meet the needs of the Town of Alton and the best needs of the property because it is so unique and she said they have met with the Building Inspector and the Town Attorney for assistance. She said the building is over 11,000SF and that there are 3 units included in the entire complex and under condominium ownership. She spoke about the entire 3 units having one septic system and the applicants have a proposal that meets the existing septic system. She said it is currently used as a rental hall and it has approval in the past has had an approval for a restaurant. She spoke about the importance of keeping the building in its current look and enhancements instead of tearing it down.

L. Avery asked about the 7 residences and commercial/retail space of 2 units and how much space will be there for the retail uses.

Lee Maserian, applicant, spoke and said there is about 650SF. He spoke about the residential and commercial space and mixing the uses.

L. Avery has concerns about people living there with so much commercial uses they discussed that is why the residences are planned for the backside of the building.

Discussion about the front entrance being the main entrance to the residences and the commercial spaces.

T. Kinnon spoke about the parking issue and he knows the applicant is trying to keep the look of the building but he asked if they considered making more parking spaces instead of the retail space.

L. Maserian said that they want to keep the charm of the building and they want to use as much of the original structure as they could. He spoke about the red roof remaining on the building.

Daryl Breed Hoitt, owner, spoke about the residential uses and the current business used to be residential units and the mixed uses have been established in the Bay for a long time.

Discussion about the construction process and the use of the basement and the original structure was a 2-story building and they would like to keep it that way. L. Maserian said they want to insulate the structure to make it year round and they are repairing and replacing as much as they can for the foundation. He said the lower level would remain a storage facility for each unit. He spoke about the storage units being used as a second egress and the decks will be separated for each unit.

L. Avery asked about retail space and the applicants spoke about antique and candle or gift and novelty type shops and the applicants would approve all business that want to locate there.

Discussion about the wall space in the commercial areas will provide much of the display area, they spoke of the possibility of other stores having satellite stores there and it would fit well in the building.

L. Avery spoke about the proposed uses being more than the buildings support piers can handle.

L. Maserian said they would bring it up to code with all the structural loading requirements.

He also spoke about leaving the building looking as much as they can to the original structure.

L. Avery has concerns about the exposed piers and the weathering and bugs that could deteriorate the support system. L. Maserian said the building would have an overhaul of the foundation and the building to address that.

K. Chamberlain asked about the ownership and who would maintain the property.

M. Guldbrandsen said the condominium documents and association will dictate the upkeep and the association membership pays the association fees in order to obtain ownership and the documents are recorded. She said that there are covenants that prevent people from not keeping the property clean and neat, including the maintenance of the outside of the building.

L. Maserian explained the river rock that will be used along the foundation and they will use the cedar shingles for the body and the roofing will be red metal roof as exists and modify it for the shed dormers and the cupola would be made of copper. He said they would not raise the ridgeline of the structure.

K. Chamberlain asked about the parking situation and what or how will they determine the parking for the dwelling units and the 14 spaces that exist on site.

L. Maserian said they are proposing parking signs for the front of the building.

Discussion about the existing parking areas and who owns what section between the Town of Alton, the NHDOT and the applicants and the applicants say they have enough room on site to have overnight parking.

They discussed the Town of Alton giving the owners permission to park cars on Town of Alton parking spaces. K. Menici said the Town approval is for transient parking not for residential parking.

Discussion about the septic system and it was installed in 1999 and the system is located under Town property and the previous owner received permission to locate the system where it is and they maintain it and repair the parking areas and roads if needed.

They discussed the water supply and it is year round town water with a 4" main and the entire building will be sprinkled and the Fire Chief will assist them with the building being alarmed. They discussed the request from the Fire Chief about the fire lane and the applicants said they do not know where they would put it. They discussed the painted lanes directing traffic and when they are kept up, it helps with the traffic flow.

K. Chamberlain discussed the fire lane issue and thought it was not necessary.

T. Kinnon asked about lighting for the site and he is looking for aesthetically pleasing lighting and the applicants have shown decorative lighting and acknowledge the current lighting is very bright.

T. Kinnon asked about docking and the applicants said they would keep what exists and the pavilion has about 211' of frontage and each owner would have about 30' of dockage.

Discussion about the building's historic value and the applicants said it is about the oldest building in Town and has had a lot of uses and they have brought it up to code as much as they can.

K. Chamberlain asked about other uses the applicant could propose.

D. Hoitt spoke about the other uses that have not worked for this building in the past and this proposal has year round stability for the tax base and the dividing the ownership with the condominium helps with overall maintenance.

M. Guldbrandsen spoke about the request to have 7 units instead of the 4 that are allowed in the zone. **She is presenting Case#ZO5-29 as a Use Variance not as an Area Variance and presented Case#ZO5-29 first.**

1) Denial of the variance would result in an unnecessary hardship- She spoke about the size of the building being a part of the hardship for the owner. She spoke about a recent court case that allowed a large historic home to obtain a variance to change from one large single family home into a multi-family home. She said the same argument can be made here for the pavilion because denial would be an unnecessary hardship to the owner because of the size and historic value of the building could nor be used to its best potential.

Simplex Use Variance Criteria:

a) The zoning restriction interferes with the applicant's reasonable use of the property considering its unique setting in the environment- She spoke about using 4 units doesn't make

sense because the size of the building the units would be 3000SF and that the economic value of the 7 units is more viable than the 4 units. She said the 7 units also provides a visually pleasing building for the community

- The proposed use is reasonable and the uniqueness of the property and in a unique setting- She said based on the configuration and recent court case, the Board may consider economic factors and the proposed use is the most viable way to utilize the existing 11,500SF. It would be more economically successful to grant the proposed use versus the complying use, as it would not be as economically successful for the owner. She said based on the facts that the building was built in 1921 and rebuilt in 1929 the proposed use would maintain the uniqueness of the building and the site in the Bay. She said the hardship is a direct result of the large size of the building and permitting greater density than what is allowed would accommodate the physical features of the property.
- Compatibility of surroundings properties- She said the Bay now has a lot of different uses and the renovation to the pavilion will fit with the other buildings and commercial uses that exist.

b) No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction-She said based on the size of the building there is not a fair and substantial relationship between the general purpose of the Ordinance and the specific restriction. She said the units would have ample space to accommodate the additional units within the existing building.

c) The variance would not injure the public or private rights of others- She said the public or private rights of others would not be injured and it would provide public access to the building and increase the tax base.

2) The request represents the minimum variance that will grant reasonable relief to the owner and is necessary for such reasonable use- She said the applicant is keeping the building open to the public and the proposed use is reasonable as they are only asking for 3 more additional units than what is allowed and it can accommodate the sewer and parking requirements.

3) The variance is consistent with the spirit of the ordinance-She said the structure already exists to provide orderly development and reasonable use of personal property. She said the variance will allow the pavilion to remain as a local landmark, beneficial to the Town of Alton and without the variance the property would continue to deteriorate.

4) Granting the variance will do substantial justice- She said granting the variance will allow the applicant complete and reasonable use of the property without interfering with other property rights of abutting properties and the property would be used in a reasonable and beneficial way.

5) Granting the variance is not contrary to the public interest- She said the public interest will be served by the protection and renovation of the building with continued public access and owners with a vested interest in the maintenance and well being of the property.

6) The proposed use will not diminish the values of the surrounding properties. She said the property values will increase in the area and the overall aesthetics of the building will enhance the surrounding properties

D. Hoitt spoke about the values of the other buildings increasing because of the upgrades they have made.

**M. Guldbrandsen gave her presentation for Case#ZO5-28:**

- 1) Denial of the variance would result in unnecessary hardship-

- a) The dimensional variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. She said the proposed use is just a reconfiguration of an existing condominium and the special conditions are the size and historic value of the building. Because of the large size of the building the applicant requires a dimensional variance in order to use the building for the residential units.
  - b) The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than dimensional variance- She said there is no new use that could be proposed without receiving relief from the dimensional requirements. She spoke about the building already having unsuccessful attempts to operate as a restaurant and large retail space. Without the variance the property is likely to deteriorate further.
  - c) The variance would not injure the public or private rights of others- She said by granting the variance the public will have access to the building and it will increase the tax revenue for the Town.
- 2) The request represents the minimum variance that will grant reasonable relief to the owner and is necessary for such reasonable use- She said by granting the variance from lot size requirements it will allow the owner reasonable use since the property is already part a 3 unit condominium in an area that has commercial and residential uses established and the proposed use is a reasonable use for the property.
  - 3) The variance is consistent with the spirit of the ordinance- She said the proposal is consistent because of the orderly development the applicant is requesting and it will allow the Pavilion to remain a local landmark.
  - 4) Granting the variance will do substantial justice- She said granting the variance will allow the owner reasonable and complete use of the building without impacting others.
  - 5) Granting the variance is not contrary to the public interest- She said since the building is already a condominium, reconfiguring it into 7 units will serve the public by allowing continued public access
  - 6) The proposed use will not diminish the surrounding property values- She said the property values will increase and the external shell of the building will enhance the surrounding properties.

**M. Gulbrandsen gave her presentation Case#ZO5-30 as follows**

- 1) Denial of the variance would 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 of the property in its environment such that: She said the owner already has permission from the Selectman to utilize public parking to accommodate the current use as a restaurant/function hall. The proposal to allow retail space will enhance the economic development of the area and maintain public access to the historic structure. The special conditions of the property include the size of the building, the size of the lot, and its location in the Bay.
  - b) That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property because: The general purposes of the zoning ordinance is to provide reasonable parking spaces for patrons of the retail/commercial businesses. Here there already exists sufficient, off-street parking in the Town owned lot next to the property. Applying the parking requirements to this proposed use would prohibit public access to the structure

c) The variance would not injure the public or private rights of others- She said the proposed reconfiguration of the existing condominium will not injure the public or private rights of others because access to parking may always be an issue in the densely used commercial area, the current parking arrangement, including town parking spaces, are sufficient to meet the needs of the limited retail use.

Others will benefit from the “draw” of additional commercial space in the area.

2) The specific request represents the minimum variance that will grant reasonable relief to the owner and is necessary for such reasonable use because- the applicant’s request is reasonable for relief. The proposed retail space is relatively small and specifically designed to minimize the need for numerous variances. She said by granting the variance it will provide the minimum variance that will grant reasonable relief to the owner and the variance is necessary for such reasonable use.

3) The request is in harmony with the spirit of the Zoning Ordinance, the intent of the Mater Plan and with the convenience, health, safety, and character of the district within which it is proposed because- She said the ordinance is intended to provide for orderly development and reasonable use of personal property. Here, the variance will allow the Pavilion to remain a local landmark, beneficial to the Town of Alton, and consistent with orderly development and reasonable land use. Without the variance the building could continue to deteriorate.

4) The request is not contrary to public interest because: She said granting the variance the public interest will be served by the protection and renovation of the building with continued public access and the owners with a vested interest in the property’s well being.

5) Substantial justice will be done because: granting the variance will allow the applicant a complete and reasonable use of the property without interfering with or impacting existing property rights of others. The variance will allow the owner to use the land in a reasonable and beneficial way.

6) The request will not diminish the surrounding property values- She said the property values will increase and the external shell of the building enhance the surrounding properties.

M. Guldbrandsen finished her presentation to the Board.

T. Kinnon asked about the public access and D. Hoitt spoke about allowing the public in, is in the spirit of the project and L. Maserian said that it was important from the beginning to include public access with the retail space and he said it will be aesthetically pleasing.

T. Kinnon said he has concerns about the parking issue.

L. Maserian spoke about the type of traffic that comes through the Bay that does not use the parking spaces.

They discussed the retail spaces being well utilized as the buffer to the residential units and the proposed uses will fit in well with the existing business

K. Chamberlain asked if anyone would like to speak in favor of the applications.

Richard Saulnier- owner of another unit in the Pavilion said he is in full support of the proposal.

June Maserian- abutter-lives in the Conference center and she is in support of the proposal

K. Chamberlain opened up the hearing for anyone to speak in opposition of the application.

Dave Hussey- is not against the application- but he wants to know how much land they own in front of the building.

They discussed the distance from the front of the building to the property line and they said they have plenty of room to the right about 20’ and about 15’ to the left of the building.

They discussed parking and the spaces that are designated for that building and shown on the

plan submitted and the handicap parking requirements. It was determined that existing parking spaces could be changed into handicap spaces.

D. Hussey asked about setbacks from the property lines and if the site meets the requirements.

K. Menici said that there is no setback from structure to structure and there are no boundary lines within the condominium land.

Discussion about the structures being built before zoning setbacks and setbacks would not apply. Discussion about the parking and the sign requirements and K. Chamberlain said they could put signs up and restrict parking if they want.

D. Hussey asked about the fire lane issue brought up from the Fire Chief. K. Chamberlain said the Fire Chief raised the issue and he was not specific to what he wanted. He said the Board has to use common sense when deciding these cases and spoke about the Fire Chief did not provide specifics to what he was looking for. He said he could park his vehicles on Route 11, by the restaurant or the real estate office.

D. Hussey said he thinks the questions he asked need to be answered before a determination can be made.

D. Hoitt spoke about the handicap parking spaces and that may be something the Town could address.

Joel McCone, Alton Bay Diner- asked about snow removal. L. Maserian said the Town does it now and M. Gulbrandsen said the condominium association would have to be responsible for removal.

L. Maserian thanked the Board for their time.

K. Chamberlain called for a break at 9:40pm

K. Chamberlain called the meeting back to order at 9:50pm

The Board went into deliberations for Case#ZO5-28 as follows.

**Board Discussion:**

*Public Interest:*

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

**Reason:** K. Chamberlain said it is a reconfiguration of the existing condominium and the use is keeping with the public interest. T. Kinnon agreed it is in the public interest and it will enhance the area with the residential and commercial use. L. Avery agrees and the applicant is doing their best to keep the building and it will be maintained and kept up by the owners.

*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:** K. Chamberlain spoke about the use is within the spirit and it will be up to code for safety reasons and fits in within the district. T. Kinnon said it is within the spirit of the ordinance and intent of the Master Plan and the convenience, health, safety, character of the district within which it is proposed. He said the use would be less intense then what was previously there. L. Avery agrees.

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

**Reason:** K. Chamberlain said it was built prior to zoning and because of the size of the building and the size and location of the lot this would be the best use and substantial justice will be done. T. Kinnon said to deny the variance would be harmful to the building and the community and substantial justice will be done for the property owners. L. Avery agrees and feels substantial justice will be done and is glad to see a use that would be successful after others have failed.

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

**Reason:** K. Chamberlain said the values of the surrounding properties will not be diminished and the surrounding properties will be enhanced by the improvements proposed by the applicant. T. Kinnon and L. Avery agree that the improvements proposed will enhance the value of surrounding properties.

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:** K. Chamberlain said because the lot and building were created before zoning and that the area variance will be the best use for the property and they are keeping the original structure and making improvements to it and not expanding the building any further. T. Kinnon agrees and said it is unreasonable to allow the building to remain for sale and to remove it and put a smaller structure in its place in order to meet zoning. He said there is adequate septic, parking and fire safety systems and it is the best use. L. Avery agrees.

**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.

K. Chamberlain said the oversized building on a small lot is related to the failure rate of the previous uses and the proposed use fits in with the present day uses.

**Motion made by L. Avery, seconded by T. Kinnon to approve Case#Z05-28, Area Variance, in light of the findings of fact being met as discussed, motion carried with all in favor**

The Board went into deliberations as follows for Case#ZO5-29 as a Use Variance.

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

**Reason-** K. Chamberlain said the residential use and commercial units are not contrary to the public interest or to the zone they are located in and the surrounding neighborhood. T. Kinnon and L. Avery 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 character of the district within which it is proposed.*

**Reason-** K. Chamberlain said the proposed uses are allowed in the zone, the convenience and safety issues of parking, sewer and water supply have been addressed and they are not changing the structure and it will remain as part of the character of the district. T. Kinnon said with the remodeling proposed for the structure it will remain as part of the character of the district and L. Avery agrees.

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

**Reason-** K. Chamberlain said this is the least amount of relief the applicant can ask for and they are making reasonable proposals to keep the structure as part of the Bay area and not tear it down or expand. T. Kinnon believes the applicant and the Town of Alton will benefit from this project. L. Avery agrees.

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

*properties.*

**Reason-K.** Chamberlain said the property values will be enhanced and only improve in the area. T. Kinnon and L. Avery agreed.

*Harship-Simplex-Use-*

*(1) 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.*

**Reason- K.** Chamberlain said the building was built prior to zoning and has restrictions due to the size of the building, other buildings surrounding it and constraints due to the waterfront and to hold the applicant to the zoning restriction of 2 dwelling units would interfere with the reasonable use of the property. T. Kinnon said the zoning restriction as applied does interfere with the reasonable use of the property because the building is very unique in a unique setting. L. Avery said the restriction of the zoning ordinance leaves the owner the only option, to request a variance and because of how close the buildings are to each other in the Bay.

*(2) There **is not** a fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restrictions on the property*

**Reason-K.** Chamberlain said the building was built before zoning and the zoning ordinance applied today unfairly restricts the property owner. T. Kinnon agreed and said the owner does not want to expand outside of the footprint and he believes it is a reasonable use for what exists. L. Avery said to impose the zoning ordinance strictly, unfairly restricts the owner and restricts the potential for the building.

*(3) The variance **will not** injure the public or private rights of others*

**Reason-K.** Chamberlain said all issues discussed about parking, septic, parking, water, condominium documents, maintenance of the structure, the proposed uses, the exterior appearance will not injure the public or private rights of others. T. Kinnon and L. Avery agreed.

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

Based on the above analysis, special conditions **do** not exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship.

**Motion made by T. Kinnon, seconded by L. Avery to approve Case#ZO5-29 as submitted and as the findings of fact have been met, motion carried with all in favor.**

The Board went into deliberations as follows on Case#ZO5-30.

**Board Discussion:**

*Public Interest:*

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

**Reason:** K. Chamberlain said that the Selectman and the Planning Board had approved this property which could sustain a 500-seat restaurant and the Selectman approved public parking to be used for the parking requirements. He said there is adequate parking in the Bay for transient uses and the dwelling units have adequate parking spaces as the ordinance requires. T. Kinnon and L. Avery 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:** K. Chamberlain said the request is in harmony with the spirit of the ordinance, the intent of the Master Plan and with the convenience, health, safety, character of the district within which it is proposed because parking is adequate for the dwelling units and the applicant will take up the issue with the Selectman about handicap parking on site. T. Kinnon agrees 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 because of the unique setting where the structure is located and the intention of the Master Plan to revitalize the Bay area. L. Avery agrees and this project fits the intent of the Master Plan to promote revitalization in the Bay area and within the Town and also within spirit of the zoning ordinance to promote orderly development of the district within which it is proposed.

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

**Reason:** K. Chamberlain said substantial justice will be done because the applicant meets the parking requirements for the dwelling units and the Selectman gave written approval for the town parking to be used for this property. T. Kinnon said the businesses in the Bay are dependent on public parking because of the nature of the Bay and the Town of Alton recognizes that and this project will help the businesses in the area. L. Avery said without the variance they could have the condominiums as requested and they would have to forego the retail area in the front. He said because of the nature of the Bay it is better for the Town and the Bay to maintain the appearance of a contiguous line of businesses throughout the Bay.

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

**Reason:** K. Chamberlain said the proposed appearance of the building and the reuse of the property will enhance the property values and provide tax base for the Town of Alton. T. Kinnon agrees and said they only need 4 parking spaces for the retail use. He said people using the retail shops may not be driving to the stores, they may be traveling by foot or by boat to the area and if they are driving; they have the ability to park in the public parking area and said the parking variance will not harm the area L. Avery 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:** K. Chamberlain said they have parking for the dwelling units and they need parking for the retail uses and the Selectman approved the property to use public parking spaces and the proposed use is less intensive than the previously approved uses for which the public parking spaces were granted. He spoke to the nature of the land and said it is not possible to put parking anywhere else on site. T. Kinnon and L. Avery 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 made by T. Kinnon, seconded by L. Avery to approve Case#Z05-30, with the condition that the permission from the Selectman is put on file for the use of the public**

parking spots.

**Discussion on the motion:** K. Chamberlain opposed the motion because there is adequate parking in the Bay and the Selectman should not have to write 2 letters.

L. Avery said that T. Kinnon was clarifying that the existing letter be placed on file and not that the applicant's obtain a new letter. K. Chamberlain said he is not sure whether that document is for commercial/retail even though it was approved when there was a restaurant there. He does not want the applicant to go back to the Selectman and he thinks this is splitting hairs and he said parking is parking. T. Kinnon said if the Selectman allowed parking for a 99-seat restaurant it would be unreasonable to deny parking for 4 spaces. T. Kinnon clarified he is not asking the applicant to obtain new permission he is asking that the existing letter from the Selectman be submitted as part of the approval for this application.

**Amended motion:**

**Motion made by T. Kinnon, seconded by L. Avery to approve Case#ZO5-30 with the condition that the applicant submits to the Planning Department, to be placed in their file, any existing documentation that supports the Selectman's decision to allow the use of Town parking for any retail establishment that was approved in the past. K. Chamberlain opposes the use of the word "retail". T. Kinnon said any "commercial establishment". K. Chamberlain said whatever document the applicant has, to produce it to the Planning Department to be on file. T. Kinnon said that is what his original motion was.**

**Amended motion:**

**Motion made by T. Kinnon, seconded by K. Chamberlain to approve Case#ZO5-30 with the condition the applicant place any documentation supporting the use of public parking granted by the Selectmen of the Town of Alton to be placed in the applicant's file for this case, motion carried with all in favor.**

#### **OTHER BUSINESS:**

##### **Approval of Minutes:**

**Motion made by K. Chamberlain, seconded by T. Kinnon to continue the approval of the minutes from June 7, 2005, August 4, 2005, and September 1, 2005 until November 3, 2005, motion carried with all in favor.**

New Business:

K. Menici spoke about the motion for a re-hearing submitted by Robert Gayner and she informed the Board, they need to vote to decide when to have a meeting to discuss whether or not they want to grant the motion for the Gayner re-hearing.

T. Kinnon expressed concerns about having 3 members remaining that are available for the re-hearing and K. Menici said she would speak to the Town Attorney and verified it would still be a quorum. She said the important issue when a motion for a rehearing is submitted, the Board has to take action within 30 days of receipt and the action can be defined as making a determination of whether or not the motion will be granted. She asked the Board to set a date for the meeting for when they will make that determination and the meeting will be noticed.

She informed the Board that the Board of Selectman filed a motion for re-hearing for Bahre Administrative Appeal and Variance approval from the September 1, 2005 ZBA meeting. T. Kinnon asked why the Board did not receive any paperwork or notice of the motion for re-hearing meeting. K. Menici said they have not put the packets together yet and they just filed last week. She said all she is asking the Board for is to decide when to have the meeting.

Discussion about the ZBA will set a meeting that will comply with posting requirements the

Board members asked when the Gayner motion was submitted and K. Menici said September 23 and T. Kinnon asked why the Board was just hearing about it now and K. Menici said this is the first time the ZBA has met since then. T. Kinnon said the Board should have been notified much sooner because now they do not have a lot of time to meet. He asked when the Selectman's motion was filed and K. Menici said September 28<sup>th</sup> or 29<sup>th</sup>.

**The Board decided that the meeting will be on October 19, 2005 8am to discuss the motions for re-hearings for the Gayner and the Bahre cases.**

**Motion made by T. Kinnon, seconded by K. Chamberlain to adjourn at 10:50pm, motion carried with all in favor.**

Respectfully submitted,

Stephanie Verdile,  
Planning Department Secretary