

ZONING BOARD OF ADJUSTMENT

Wednesday, April 28, 2010
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman Peter Harris; Norma Patten, Pleasant Oberhausen, Linda Couture and Marshall Ford.
Alternates Absent: Ed Hawkins (E).
Staff: Candace Daigle and Elaine Murphy.

The chairman opened the meeting at 6 p.m.

Abutters' Hearing – Raymond & Kathy Rose for Mallards Landing: Request for

- A. A Special Exception of Article 11.A.3.d of the Zoning Ordinance to replace an existing seasonal single-family dwelling closer (9.1) to Unit 515 than allowed (30') but not closer than the existing structure. ZBA # 1810Z
- B. A Special Exception of Article 11.A.3.c of the Zoning Ordinance to add useable space (second floor) within a preexisting nonconforming footprint. ZBA # 1910Z
- C. A Variance of Article 5 Table 2 of the Zoning Ordinance to replace a seasonal single-family dwelling closer (12.8') to unit 523 than allowed (30'). ZBA # 1710Z

Property is located at 21 Second Street in an "RS" Zone, Tax Lot 110-002-000-519.

At least three members have viewed the site.

Mr. Bryan Bailey presented the application. Mr. & Mrs. Rose were also present.

Mr. Bailey explained the unit is in Mallards Landing on Lake Winnisquam. The Rose's property is located on Second Street adjacent to the water, directly behind the beach area. The existing unit is a very small park model in relation to others in the neighborhood. They wish to replace the existing unit with a two story stick built building for better living space. They have gone to DES for a Shoreland Permit and have made the modifications needed to get their approval. The DES has disallowed the two car driveway area as impervious surface. The State said it is a pervious surface because of the grass. The footprint for the new home is the same footprint as the existing house but now it is a two story rectangular structure. The State includes the deck, pad, and the stairwell as part of the principle structure. The Town doesn't include the stairwell or the deck pad as part of the footprint. This proposal has been approved by the State.

The proposal is in a campground that has numerous single family site unit owners. The Roses'

are one of those unit owners. The campground predates zoning. The Roses' unit is a single family detached camp which they propose to replace with a two story structure with an equal footprint area. The proposed replacement unit is similar to others in the area. The specific site is appropriate for the use because the new dwelling is consistent with others in the park. The property values will not be reduced because the new structure's footprint is the same as the existing unit. The new structure will be utilized the same as the existing structure. Adequate and appropriate facilities will be provided. They are on municipal water and sewer.

P. Oberhausen wanted to know if Mallards Landing Association has approved this proposal. Mr. Bailey stated that they have. P. Oberhausen wanted to know what type of stove they will have. Mr. Rose stated that it will be electric base board heat and electric hot water and stove. P. Oberhausen stated that he is concerned about the 200lb propane tank at Unit 515. This proposal will cut down the distance between the propane tank and this unit. He does not want to have a fire due to over crowding like the one at the Christian camp in Alton. Mr. Bailey explained that unit 515 will be further away from the proposed unit. It will be 13.5' instead of 11.5', 9.1' instead of 6.5 and 13.6' instead of 10.9'. All the dimensions are better than the existing ones. The new unit is further away from the abutting unit so they are improving the situation. P. Oberhausen stated that the neighbor has an enormous propane tank. Mr. Bailey stated that they are moving away from it to make the situation better. They could have maintained the existing distance.

P. Harris wanted to know how old the park model is. Mrs. Rose stated that it a 1995 model. N. Patten wanted to know how long they owned it. Mrs. Rose stated 13 years. P. Harris stated that the Code Enforcement Officer requires that the setbacks and concrete slab be certified. Mr. Bailey stated that it is standard and normal procedure.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – RAYMOND & KATHY ROSE FOR MALLARDS LANDING:

- MOTION:** P. Oberhausen moved to grant a Special Exception of Article 11.A.3.d of the Zoning Ordinance to replace an existing seasonal single-family dwelling closer (9.1) to Unit 515 than allowed (30') but not closer than the existing structure as it meets all the criteria.
1. The use is allowed in the district
 2. The specific site is appropriate for the use. This is an improvement on a small lot.
 3. No factual evidence is found that property values in the district will be reduced. Property values will improve.
 4. There is no valid objection from abutters based on fact. No abutters present.
 5. No nuisance or hazard is involved.
 6. Adequate and appropriate facilities will be provided.
 7. There is adequate sewage disposal.
 8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional conditions:

1. Existing footprint certified during construction as required.
2. Comply with Shoreland Protection permit conditions.
3. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.

The motion was seconded by N. Patten and carried. (5-0)

MOTION: P. Oberhausen moved to grant a Special Exception of Article 11.A.3.c of the Zoning Ordinance to add useable space (second floor) within a preexisting nonconforming footprint as it meets all the criteria.

1. The use is allowed in the district
2. The specific site is appropriate for the use. This is an improvement on a small lot.
3. No factual evidence is found that property values in the district will be reduced. Property values will improve.
4. There is no valid objection from abutters based on fact. No abutters present.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional conditions:

1. Existing footprint certified during construction as required.
2. Comply with Shoreland Protection permit conditions.
3. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.

The motion was seconded by L. Couture and carried. (5-0)

Mr. Bailey addressed the criteria for a variance. The distance between the proposed unit 519 and unit 523 is 12.8' the current distance is 12.9'. They made the unit rectangular and pulled it forward towards the road. The units are not parallel so they could not hold the distance between them. The held the corner of the front of the unit to 16.8' to the adjacent unit.

Mr. Bailey stated that the variance will not be contrary to the public interest because it will not cause any harm or adverse impact to the neighbors. It is a safer unit for the unit owners and the neighbors. The unit is generally in the same location as the original unit without the irregular jog for the stairs and pullout section. The new camp meets building codes. It will have ½" sheetrock walls, 5/8" sheetrock ceilings and a metal roof. Substantial justice will be done because the structure is consistent

with others in neighborhood. The new unit will have a larger overall useable living space and will increase property values. The special conditions of the property are that the adjacent units 515, 521 and 523 create a confined area to be build in. The campground was created prior to zoning, the use is allowed in that zone and is the same as others in the area.

MOTION: P. Oberhausen moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to replace a seasonal single-family dwelling closer (12.8') to unit 523 than allowed (30') as it meets all the criteria.

1. The variance will not be contrary to the public interest because there will be no impact on surrounding existing units. It will be safer and better than what is currently there.
2. The spirit of the ordinance is observed because it will meet the safety standards.
3. Substantial justice will be done because it is equal to other units in the area. Will be a safer unit than existing one.
4. The variance would not diminish the value of surrounding properties because it will meet the existing standards and the surrounding area has been upgraded by almost 90%.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because this is a confined area and a small lot. The development was prior to zoning.
and
 - b. the proposed use is a reasonable one because the area was developed prior to zoning.

Additional conditions:

1. Existing footprint certified during construction as required.
2. Comply with Shoreland Protection permit conditions.
3. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.

The motion was seconded by m. Ford and carried. (5-0)

Abutters' Hearing – David and Edward Matthews: Request for a Variance of Article 5 Table 2, 11. C & 15 of the Zoning Ordinance to construct a single family dwelling on a lot without the required frontage. Property is located on Dock Road in an "R" Zone, Tax Lot 239-041, ZBA # 2410Z.

Atty. Regina Nadeau presented the application.

Atty. Nadeau explained that the Matthew's property is near Sargent Lake in a subdivision that was developed in the 1950s. The subdivision was prior to zoning and the interior roadways remain private. The roads have not been accepted by the Town as public roads but the Town does maintain them. The property fronts on two roads, Arnold Road and Dock Road. The town's zoning ordinance on road frontage mirrored the State law up to five years ago. The State changed the law to allow building if a waiver is signed. The reason for the town's frontage requirement is to prevent premature and scattered development and to make sure that the town resources and emergency vehicles can get to the property. The municipal liability waiver releases the town from liability in the event that an emergency vehicle cannot reach the property.

Atty. Nadeau stated that 48 out of 58 lots coming up Brown Hill Road to Morgan Road are completely built out. This property is surrounded by houses. If the town has to send emergency vehicles they have the obligation to get to the end house. This is a modest two story house with a garage.

The variance is not contrary to the public interest because the frontage requirement is based on preventing premature, scattered development. In this case the subdivision predates zoning and the roads were not improved but 37 out of 47 lots have been developed. Her clients are willing to sign a Waiver of Municipal Liability. The waiver would allow reasonable use of the property. Granting the variance would not diminish property values because it is consistent with the area and the house would increase property values. The spirit of the ordinance is observed because the area is almost completely developed. Allowing this house would not be creating premature development.

The property is unique because it has a large amount of road frontage even though it is not on a public roadway. All other lots in the area are built on except theirs. The development is not something new it has existed for 60 years. The use is a single family use and failure to grant the variance would result in not being able to do anything with the property. The restrictions for this lot are more stringent because of the two road setbacks. The only relief they are asking for is to be able to build on a private roadway.

P. Oberhausen wanted to know if release from the frontage requirement and an approved entrance is through the Board of Selectmen. C. Daigle stated that Belmont handles it through a variance.

N. Patten wanted to know who determines the legal address when the property has two road frontages. C. Daigle explained that the Dock Road is actually on both sides of property. Arnold Road doesn't touch the property.

L. Couture wanted to know if you sign a waiver for liability who has to pay for cost from a fire. Will an insurance company even insure it? Atty. Nadeau stated the waiver is just to insure that the applicant doesn't sue the town if in an emergency the emergency vehicle does not get there in a certain amount of time. L. Couture wanted to know if other properties have signed waivers. Atty. Nadeau stated that she has talked to the Fire Department who said they would try to get to the property. It is not that they wouldn't even attempt to get there. C. Daigle stated that all the roads on that side of Sargent Lake are emergency access lanes. Primarily it is to get access to the back lots. The roads are plowed and if

there are washouts that prohibit access the Town will fix them. The town does minimum maintenance to keep the roads passable. The Sargent Lake Association does maintain some of the roads in that area.

P. Oberhausen wanted to know if the map shows the correct location of the house. Atty. Nadeau explained that her client drew the plan and it is not to scale. When they submitted the original building permit they would have needed another variance for setbacks so he changed the location to meet the setback requirements. They will have a gravel driveway in the proposed location. They have septic approval for a two bedroom house.

P. Harris commended the applicant for his willingness to sign the waiver and build within the setbacks. C. Daigle stated that the Callas also have property in the area and needed a similar variance and they signed the waiver when they got their variance.

N. Patten stated that plan shows that this parcel is the result of two merged lot, Atty. Nadeau stated that it is correct.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – DAVID AND EDWARD MATTHEWS:

MOTION: M. Ford moved to grant a Variance of Article 5 Table 2, 11.C & 15 of the Zoning Ordinance to construct a single family dwelling on a lot without the required frontage as it meets all the criteria.

1. The variance will not be contrary to the public interest because it is similar in use, is allowed in the area and will not diminish property values.
2. The spirit of the ordinance is observed because it will provide for health and safety and doesn't compromise the general welfare.
3. Substantial justice will be done because similar applications have been granted.
4. The variance would not diminish the value of surrounding properties because this is a new home that will conform to the setbacks and not diminish property values.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the benefit sought cannot be achieved by any other method.
 - and
 - b. the proposed use is a reasonable one because there are no health or safety issues.

Additional conditions:

1. Owner to execute a standard waiver of municipal liability for recording purposes.
2. Construction to comply with all applicable setbacks.
3. Construction to comply with all Building Codes.

The motion was seconded by P. Oberhausen and carried. (5-0)

Abutters' Hearing – Dennis & Deborah Mailhot: Request for:

- A. A Variance of Article 5 Table 2, 11 C & 15 of the Zoning Ordinance to construct a single family dwelling on a lot without the required frontage. ZBA # 2110Z
 - B. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family dwelling closer (43') to the front property line than allowed (50'). ZBA # 2210Z
- Property is located on Coons Point Road in an "RS" Zone, Tax Lot 119-050.

Mr. Jon Rokeh presented the application. Mr. & Mrs. Dennis Mailhot were also present.

Mr. Rokeh explained that he prepared a Shoreland Permit and site plan for a house on an emergency access road. Coons Point Road is a similar road situation as the previous application. The road runs along Silver Lake and has 19 houses on it. The proposed lot is at the base of the hill. There has been erosion issue in the past that have ended on this lot. Those issues will be resolved as a result of constructing this house according to the Shoreland Protection Permit requirements.

Mr. Rokeh explained that a 4' x 4' landing is allowed and they are asking for a 8' x 4' porch. The proposal is not contrary to the public interest because Coons Point Road is an emergency lane maintained by the Town of Belmont. The road is used by all the residents which were not required to get a variance to build. The use is the same as other houses on Coons Point Road as few houses meet the 50' setback. The house meets the setback but the porch does not. The spirit of the ordinance is observed because even though it is not an approved private road it is an emergency lane access that is maintained by the Town of Belmont. A 4' x 4' landing is allowed and they are asking for an 8' wide porch because when you go up the stairs you need the extra width to open the door without stepping off the platform. This is a safer alternative.

Substantial justice will be done because it will improve the looks of the property. The water quality on Silver Lake will be improved because the improvements to the property will eliminate the siltation problem. The deck will allow for a safer and easier access to the house. It will not diminish surrounding property values because a lot of the properties don't meet the setbacks and this lot is more conforming. This is a single family home the same as others in the area. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application because the existing homes along Coons Point Road were allowed to build on a private road and they don't meet today setback. There is no impact to other properties because the lot is the last property on Coons Point Road that has not been built on.

They are asking for the 4' x 8' deck for safety reasons. The unnecessary hardship is if the variance to build on an emergency lane is denied to allow them to build on an emergency lane then the lot would be unbuildable. Everyone else was allowed to build before the regulations changed. If the 4' x 8' deck is not allowed then it would be unsafe because they would have to back down the steps when they open the door.

M. Ford stated that there are five steps off the porch, and he wanted to know how far the foundation is out of the ground. Mr. Rokeh stated that it is about 2' above grade. M. Ford stated that the Shoreland Protection area is 150' and he noticed all the trees are cut in that area. Mr. Rokeh stated that it was necessary to cut the trees on the front and side of the property. They have dealt with the State to complete a development waiver. By designing it this way the water wouldn't come into the house. The house is protecting the lake. M. Ford wanted to know if there was just one rain garden Mr. Rokeh stated that all the gutter water will go into the rain garden. They will regrade the area into a grass lined swale to slow the water down and give it a better path to go down.

L. Couture wanted to know when the fill will be brought in and the landscaping done. Mr. Rokeh stated the landscaping will be done when the shoreland protection measures are done. Any fill or disturbance will be contained with silt sock. Prior to construction they will install a silt sock and stockpile the fill from the house. They will pour the slab and then do the rough grading, landscaping and rain gutters.

C. Daigle explained that the variance for the 4' x 8' is needed and the additional 4' steps are not exempt. Mr. Rokeh stated the actual construction may be less. P. Harris stated that the improvements are approved through the Shoreland Permit.

Mr. Stephan Nix stated that he is representing the Jacobson Trust. They are asking the Board to place conditions on the approval. They have talked about the drainage issue and this is the lowest area of all the lots and the drainage all goes there. They would like a condition of the municipal liability waiver to include the owner maintaining or replacing the swale on the boundary so that in the future he cannot say he is not responsible for the drainage. The other issue is that there is a lot of water that goes down there and they would like Mr. Mailhot to post some kind of performance guarantee for the permanent erosion condition that affects all the neighbors.

Mr. Nix stated that the ROW is narrow and parking becomes an issue if they park in the ROW. The Jacobsons would like a condition be put on the approval that there be no parking in the ROW or the lot on the other side of it. The lots are small and parking would impede traffic getting in and out. M. Ford stated that the map shows a narrow 50' strip of land that goes with the land. Mr. Nix stated that his client has a boundary plan on file that shows that Mr. Mailhot does not own that piece of land. L. Couture stated that they can't park on the road. C. Daigle stated that it is a private road and is an issue between those who own it. P. Harris wanted to know how they would be able to enforce it. C. Daigle stated that in this case there is sufficient on site parking. Mr. Rokeh stated parking across the road is not an issue.

Mr. Rokeh stated that the maintenance of the swale is something that his client is responsible for through his Shoreland Permit. He would like to work on wording for any recorded document so his client isn't responsible for all of the water from Coons Point Road impacted by other property owners. The road is owned by other property owners too. His client would be taking on a huge responsibility if he is responsible for the entire hill. Mr. Mailhot stated that the issue of the road hasn't been because of his property but everyone else impacts it by the drainage coming down the hill. Other issues are due to the grading that impact the drainage. He is not responsible for drainage issues on other people's property. He is reluctant to take on full responsibility for everyone's drainage issues. He will maintain the swale. He has spent time at the State to make the lake better and is not going to sign off for everyone else. He will maintain the swale. M. Ford stated that if the road washes out he would not be responsible for it. Mr. Rokeh stated that the swale at the bottom of the hill is doing an off site improvement for Coons Point Road that will protect Silver Lake and Mr. Mailhot will make sure it is maintained. Mr. Nix stated that in the middle of the property there is a low spot and the design is to fill the lot and move swale to the side. People who in the future may buy the lot may not take care of the swale so he would like it is recorded in the registry. He is willing to work on the wording. A check valve needs to be in place to get the swale repaired if it fails. P. Harris stated that having it recorded is a safety valve if the developer walks away from a project. People have built on the road and someone needs to step up and take care of the road and swale. N. Patten wanted to know if there is an association there. Mr. Rokeh stated that there is no association. Mr. Nix stated that the Town grades the road. C. Daigle stated that through the Shoreland Protection Permit Mr. Mailhot is responsible for the swale. Mr. Nix stated that the property owner has a claim if something happens up slope. M. Ford stated that the maintenance of the swale is primarily taken care of by the applicant but the neighbors could help. C. Daigle stated that Mr. Mailhot is responsible for the swale through the State permit. Mr. Rokeh agreed. The compliance conditions are all part of the Shoreland Protection Permit and those approvals are recorded. C. Daigle stated that the Shoreland Protection Permit is not recorded in Registry of Deeds but our ZBA decisions are. A Title search will show the condition. N. Patten stated that Mr. Mailhot has gone through a lot of work and money to prepare it so she can't see him not maintaining the swale.

P. Harris stated in the request for the setback variance the applicant showed that most of the homes in the area don't meet setbacks criteria for today's standards but they were built prior to zoning and is preexisting nonconforming. The use for hardship is to determine if there is fair and reasonable use of the property and being allowed to construct something in the size of the lot. The lot is fairly large and the house is 50' x 30' which is a good sized home. There is a 50' setback from the highwater mark and the road. The hardship is if this is a reasonable with other homes in the area. It is similar to other and to the last application. They are being consistent and not be setting a precedent. L. Couture stated that the deck would be 43' from the front property line and a 4' x 4' is allowed and this is 4' x 8'. Mr. Rokeh stated that the 4' x 4' is a safety issue. P. Harris stated that by looking at the footprint there is plenty of room on the side to do something with and wanted to know if they considered having the stairs and deck on the side. Mr. Rokeh stated that they want the steps in the front where the door is. The wider deck is for safety reasons. P. Harris stated that the front deck and stairs could be under the roofline.

The chairman asked if anyone in the audience had any questions or comments. There being none,

he closed the public hearing.

BOARD ACTION – DENNIS & DEBORAH MAILHOT:

- MOTION:** P. Harris moved to grant a Variance of Article 5 Table 2, 11 C & 15 of the Zoning Ordinance to construct a single family dwelling on a lot without the required frontage as it meets all the criteria.
1. The variance will not be contrary to the public interest because it is an allowed use and similar to others in the area.
 2. The spirit of the ordinance is observed because the town maintains the road to allow emergency vehicles access to the lot.
 3. Substantial justice will be done because the lot size is similar to others in the area.
 4. The variance would not diminish the value of surrounding properties because it is similar in nature and style to others in the neighborhood and meet shoreland setbacks.
 5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because it is a reasonable request. Similar in size to surrounding homes. The ordinance was to prevent over crowding of the roads and this similar size home will not create over crowding.
and
 - b. the proposed use is a reasonable one.

Additional conditions:

1. All property bounds certified during construction as required.
2. Compliance with all Shoreland Permit conditions.
3. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.
4. Owner to execute a standard waiver of municipal liability for recording purposes.
5. Shall remain a single-family dwelling.

The motion was seconded by P. Oberhausen and carried. (5-0)

- MOTION:** P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family dwelling closer (43') to the front property line than allowed (50') as it meets all the criteria.
1. The variance will not be contrary to the public interest because it is an allowed use and similar to others in the area.

2. The spirit of the ordinance is observed because the town maintains the road to allow emergency vehicles access to the lot.
3. Substantial justice will be done because the lot size is similar to others in the area.
4. The variance would not diminish the value of surrounding properties because it is similar in nature and style to others in the neighborhood and meet shoreland setbacks.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because it is a reasonable request. Similar in size to surrounding homes. The ordinance was to prevent over crowding of the roads and this similar size home will not create over crowding.
and
 - b. the proposed use is a reasonable one.

Additional conditions:

1. All property bounds certified during construction as required.
2. Compliance with all Shoreland Permit conditions.
3. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.
4. Owner to execute a standard waiver of municipal liability for recording purposes.
5. Shall remain a single-family dwelling.

The motion was seconded by P. Oberhausen and carried. (5-0)

Abutters' Hearing – Sun Lake Village Owners Association: Request for a Variance of Article 6 Table 3 of the Zoning Ordinance to construct a mailbox and bus stop shelter closer (2.76') to the side property line than allowed (25'). Property is located on Sun Lake Drive in a "C" Zone, Tax Lot 101-001, ZBA # 2310Z.

Atty. Phil Brouillard presented the application.

Atty. Brouillard explained that he was before the Board before to get approval to expand and change a pre-existing nonconforming use to a cluster subdivision. He received both Zoning and Planning Board approval for that subdivision. He has since built and sold a couple of houses. Part of the Planning Board approval was that he has to have a school bus shelter. Since that approval he has done a boundary line adjustment with the abutter to square off the abutter's lot. He thought there was enough room for the bus shelter but as a result of the boundary line adjustment there is not enough room. The situation is unique because Sun Lake Village has an easement on Clark's property for the road. The Clark's house is 100' away across the brook and their garage meets the 25' setback requirement. The bus stop can meet

the side and rear setbacks but cannot meet the front setback. The school bus and mailbox shelter has to be close to the road. The 8' x 16' structure has an area for residents to pull off the road to access the mailboxes. It is advantageous to have it close to the road for safety reasons. It will be in full view of Route 3 with a nice flat parking area for easy in and out. It is actually 25' from the pavement.

Atty. Brouillard stated that it is not contrary to the public interest because it will enhance surrounding property values. It is an upgrade to the subdivision. It would provide a safe shelter from the elements for the children waiting for the bus and a convenient area for residents to pick up their mail. Substantial justice will be done because the accessory building is allowed in the commercial zone. The shelter needs to be near Rte 3 because that is where the bus stops. It is a convenient pull off for residents to get their mail. All setbacks are met except the front due to the easement. There is no adverse impact to abutters because their lot is far away from the shelter. Special conditions of the property are that there is an easement for Sun Lake Drive that separates the shelter from the abutting structure. This type of structure needs to be near the side of the road and close to Rte 3. The use is reasonable because the subdivision needs a mailbox and bus stop shelter.

M. Ford wanted to know if the entire Sun Lake Drive has a permanent easement over the Clark's property. Atty. Brouillard stated that the easement is for the road.

L. Couture wanted to know where the shelter was proposed on the original plan. Atty. Brouillard used a plan to show where the boundary line adjustment was and where the original shelter was proposed.

P. Harris wanted to know if the bus company had seen the plan and if it will work for them. M. Ford stated that the bus will stop on Rte 3. Atty. Brouillard stated that is why the shelter needs to be close to the road.

L. Couture wanted to know if it will be lighted at night. Atty. Brouillard stated that it will not be lighted.

Mr. Youssef, an abutter, wanted to know if it is easier for the bus to go to the students or the students to go to the bus. Mrs. Youssef wanted to know if the bus is going to stop in front of their property. P. Oberhausen stated that there is a bus stop by Shooter's Tavern. The children have to walk from their house to Rte 3. Atty. Brouillard stated that the shelter is primarily used as a mailbox shelter. P. Harris stated that the shelter is 45' from the Youssef's property. Atty. Brouillard stated that it is a large entrance to the subdivision and the bus could stop there and not in front of the Youssef's property so it will not interfere with their driveway.

M. Ford stated that there are two houses in the subdivision and wanted to know if the town picks up the garbage. Atty. Brouillard stated that they have private curbside pickup through Waste Management.

Mr. Youssef wanted to know how many lots there are in the subdivision. Atty. Brouillard stated

that there are twenty four lots. Mr. Youssef stated that if every house had one child that would be twenty four children running down the road towards the highway. Could the shelter be higher up on the road? P. Harris stated that the bus will not go up a private road. Mr. Youssef stated that the risk factors have to be considered. P. Harris stated that these are high end homes that may be summer homes making the child count lower.

Mr. Youssef stated that it is 17.99' to his property line. P. Harris stated that this won't affect Mr. Youssef's ability to build on his property.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – SUN LAKE VILLAGE OWNERS ASSOCIATION:

MOTION: N. Patten moved to grant a Variance of Article 6 Table 3 of the Zoning Ordinance to construct a mailbox and bus stop shelter closer (2.76') to the side property line than allowed (25') as it meets the criteria.

1. The variance will not be contrary to the public interest because it is an upgrade to the area. Provides shelter for mailboxes and children at the bus stop.
2. The spirit of the ordinance is observed because it is an accessory building and is a requirement of Planning Board's site plan approval.
3. Substantial justice will be done.
4. The variance would not diminish the value of surrounding properties because it is a safe and orderly hut.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because Sun Lake has an easement for the site.
and
 - b. the proposed use is a reasonable one because it provides a safe area for children waiting for the bus and a safe area for parking for access to mailboxes.

Additional conditions:

1. All property bounds certified during construction as required.
2. No structures or additions that do not meet setback, except as approved are allowed.

The motion was seconded by P. Oberhausen and carried. (5-0)

Abutters' Hearing – Belmont Firearms and Range LLC: Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance for a Recreational Facility, outdoor shooting range and training house. Property is located at 140 Laconia Road in a “C” Zone, Tax Lot 210-005, ZBA # 2010Z.

At least three members have viewed the site.

Mr. John Rokeh and Mr. Bob Gillespie presented the application.

At least three members have viewed the site.

Mr. Rokeh explained that this an expansion of an indoor shooting range to include an outside shooting range. This is considered an outdoor recreational use. The object is for safe and reliable sport shooting for law enforcement and the public. It will provide a training facility for law enforcement. Mr. Gillespie has run the indoor shooting range for 6.5 years. There have been no complaints or injuries. He has made numerous upgrades to the facility. He will have a full time certified range master on staff in charge of the outside shooting area. Mr. Gillespie has been working in this field for 12 years wit no issues.

Mr. Rokeh stated that this is an appropriate location. The shooting will be in a relatively remote area of the site. The area around the shooting area has a storage area to the south and is undeveloped on the other sides. The nearest residence is .5 mile away. The use is consistent with commercial uses on Rte 106. The surrounding property is undeveloped and there does not appear to be any proposed uses. The side issues are eliminated by having the hut because they cannot shoot off to the side. The front to back issue is eliminated by the angle the projectile leaves the hut. Adequate utilities will be provided through the existing building. They have the driveway, parking spaces and septic. Everything is set up for guns and a gun range. The septic and bathroom are in place. There is adequate area for safe and sanitary sewage disposal. The wetland area will be delineated. If there is a setback problem to the wetlands the hut can be moved. They don't anticipate getting approval tonight but want to present the Board with information and come back with more information at another meeting.

The shoot house is laid out so that you have to access from the parking lot to the inside then through a door to access the hut. It is an extremely controlled area. It is not an open platform. They stand behind a divider wall that has a 5 yard containment area. The hut has soundproof walls on three sides like the ones used in inside ranges. It is like a soundproof tunnel. Mr. Rokeh explained that R. Ball put together a map for them showing the uses on the surrounding properties in a two miles area.

The line of fire from the deck has the projectile going into the ground where there is a rubberized product over a concrete base. If they do not hit the target then the projectile will either go into the rubberized product or in the sand line area. The bullets cannot go over the top of the hill due to the earth berm. The roof on the hut is so that the shots are angled down so that they cannot go over the berm if they miss the target.

Mr. Rokeh addressed the concern about contamination of lead and stray bullets. He explained that the view from the shoot house is like looking through a tunnel and the particles from the bullets will be contained in the rubberized product lining the line of fire area. No lead rounds will be allowed.

Historically outdoor ranges shot into sand or ballistics steel. The bullets stay whole. Mr. Gillespie's environmental engineer stated that they have a chemical treatment that is applied to the rubberized product that is used by the military and outdoor ranges. It is a chemical stabilizer put on the rubber that converts the chemicals from the bullets into a crystal form. There is no contamination of the land. The projectiles on the rubber are collected after 100,000 rounds per lane. The separation booth made of ballistic steel is a precaut for accidental shooting. Even though gun powder can be used in gardens as fertilizer they will not allow black powder.

Mr. Rokeh addressed the noise concerns. Each shooter has a soundproof booth and a wall next to them that extends to the end of the lane. The soundproofing will dissipate the noise and act as a noise buffer. There will be no echoing. The area in the hut that the bullets have to pass through will be soundproofed. P. Harris wanted to know what the decibels will be at the property line. Mr. Rokeh stated that the sound proof walls will act as a silencer. The sound will be 50% less than what you would hear out in the woods during hunting season.

M. Ford stated that there are trees in the back that would have to be cut to make the 40'-50' bowl. Mr. Rokeh stated that the object is not to clear cut the area of trees.

M. Ford wanted to know the caliber of guns they would be shooting. Mr. Rokeh stated that the largest would be .30-8 and .30-6. No black powder or lead balls. M. Ford wanted to know the height of the shooting platform and what happens if someone walks in front of it. Mr. Gillespie stated that no one can walk in front of the platform. They will only be in front of the hut when they have to maintain the berm. A certified range master will be in the hut any time anyone is in the hut. M. Ford stated that he is concerned that curious people will walk onto the range when they hear the noise. Mr. Gillespie stated that they will post warning signs along the property lines. They will fence in the site if it is required. Mr. Rokeh stated that the shoot house would be 15' above the ground. If anyone walks in front of the shoot house they would be lower than the house.

M. Ford stated that inside the shoot house there will be corridors and each will lead to a shooting lane. People crossing the lanes could be problem. Mr. Rokeh stated that there will be a range master in the hut any time there is someone in the hut. They will video the hut the same as the indoor range. There will be no prone shooting only up right shooting.

P. Oberhausen stated that they are only renting the property. What prevents them from going bankrupt? Mr. Gillespie stated that he is bound by law to clean up the site if he leaves. P. Oberhausen wanted to know how many people there will be in the shooting house. Mr. Gillespie stated that could be seven to ten people. P. Oberhausen wanted to know if the hut will be angled. Mr. Gillespie stated that it will be in a direct line with the berm not at an angle.

N. Patten wanted to know what the hours of operation would be. Mr. Gillespie state that it would be 10 am to an hour before dusk.

P. Oberhausen wanted to know if the applicant is aware of the Conservation Commission's

comments about reducing property values. Mr. Rokeh stated that there is not enough information to make that determination. M. Ford stated that he would like the entire range fenced in. Mr. Gillespie stated they will fence it in if that is required. P. Oberhausen stated that this is a small area for a shooting range as the average shooting range is 100 acres. P. Oberhausen wanted to know what happens if stray bullet leaves the site and the lots behind it are developed. Mr. Gillespie stated that they are taking every safety precaution including the rubber berm.

P. Harris opened the public hearing.

Mr. Mark Mooney stated that he owns real-estate close by and a rifle range is not compatible with residential housing. He manages 240 units and they were not given notice on this public hearing. The residents of Belmont should have an opportunity to voice their opinions. The only notice was the front page article in the newspaper on April 27th. P. Harris stated that there was a public hearing notice posted in the paper as per regulations. Mr. Mooney stated that there are other residential units, Granite Ridge, that are closer to this site. It is a 28 unit retirement community. People bought there for the quiet country atmosphere. The HUD development is also in that area. That makes almost 400 units that will be affected by the noise from the firing range. The noise from firing a .30-6 will go back to all those units and detract from property values. This is not the neighborhood for a shooting range. It is not compatible with family housing.

P. Harris was concerned that this proposal will have a regional impact. Mr. Mooney stated that the noise from a rifle range will penetrate into Laconia. If you take rifles out and do testing the sound of high power rifle will echo from the hills and ruin everyone's weekend in the summer and fall when everyone is outside.

Mr. Mark Mastenbrook stated that noise is the issue. He wanted to know what the cost would be to build one hut to do sound testing. Mr. Gillespie stated that he could demonstrate the same thing with a suppressor. Mr. Mastenbrook stated that if they build one hut and target then they public would be able to understand the amount of sound generated from the shooting range. Mr. Gillespie stated he can do that and explained that with the sound proofed wall when the projectile leaves the weapons the gases leave at different times which reduces the sound level. The sound dissipates in steps as it goes out. This is a short range and has the rubber barricade so the sound can't be heard in Laconia. The sound of weapons being fired can now be heard on weekends in the area and they are just trying to bring it under control in a controlled environment.

P. Harris stated that it is a good presentation and he suggested that the application be tabled to the June meeting to address additional issues. Mr. Rokeh stated that they anticipated being tabled. Mr. Gillespie wanted to know if they could be heard at the May meeting. C. Daigle explained that the closing date is May 5th and she didn't think that would be enough time for them to get additional information. Mr. Gillespie agreed to the June meeting. P. Oberhausen wanted to know if they should have a joint public hearing with Zoning and Planning Boards to gather more information and public input at one time instead of them having to make two different presentations. C. Daigle stated that this is a public hearing and the applicant is not prepared for site plan review. She suggested separate public hearings unless the

applicant also wants to apply for site plan.

Mr. Mooney stated that he would like them to have a demonstration that shows the amount of noise the neighborhood would be subject to. Mr. Rokeh stated that they could make a prototype. P. Harris stated that Belmont does have a noise ordinance.

C. Daigle stated that the national shooting standards state that you never design or shoot over water or wetlands. Mr. Gillespie stated that there are four ranges that he knows about with similar designs to his. The shooters shoot down before the berm. The design does not allow shooting to go down to the wetlands. C. Daigle wanted to know about the sand catchments for stray bullets. Mr. Gillespie stated that the only way it goes into the sand catchments is if they don't hit the target with the projectile. The sand buffer is to catch anything that gets out. The ammunition is factory tested for quality control for factory defect. M. Ford suggested turning the range around so they shoot across the lot instead of towards the wetlands.

Mr. Gillespie stated that he will conduct the noise test and address other issues that have been brought up tonight.

N. Patten asked that they define dusk better. Mr. Rokeh stated that in the early spring to late fall they can adjust the time monthly.

The chairman asked if anyone in the audience had any questions or comments. There were no further comments.

BOARD ACTION – BELMONT FIREARMS AND RANGE LLC :

MOTION: P. Harris moved to Table the Public Hearing for a Special Exception of Article 5 Table 1 of the Zoning Ordinance for a Recreational Facility, outdoor shooting range and training house to June 23, 2010 at 7 PM.

The motion was seconded by N. Patten and carried. (5-0)

Abutters' Hearing – Theresa Corriveau: Continuation of Public Hearing with new proposal submitted for:

A. A Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single-family dwelling, 2-story with full basement, closer (33.3') to the front property line than allowed (50'); not closer than the existing dwelling but exceeding the 40% expansion permitted by Special Exception.

ZBA

1010Z

B. A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single story addition to an existing accessory structure (garage) closer (31') to the front property line than allowed (50'); not closer than the existing structure permitted by Special Exception. ZBA # 1110Z

Property is located at 135 Jefferson Road in an "RS" Zone, Tax Lot 111-017.

Mr. Jim Bolduc presented the application. Mrs. Sharon Mercuri was also present.

The chairman asked L. Couture and N. Patten if they are comfortable with going forward with this application. They agreed.

Mr. Bolduc presented the amended plan. He explained that there is an existing resident with a garage on the property now and they want to remove the existing house and put an addition on the garage. They have made significant design changes based on the last public hearing. Those changes involve moving the house back from Jefferson Road so that is closer to the existing house. The deck that was facing the lake has been shifted to the side and the addition to the garage has been shifted to the other side of the garage. The house has been shifted closer to the garage, shifting the house closer to lake. These changes lowered the elevation 2'. The roof line is the same height but is shifted 2' lower. They addressed the abutter's concern about obstructed view by shifting the house and making design changes. Mr. Brian Mercuri stated that he revised the elevation. Mr. Bolduc explained that they are not closer to the road than the existing house. They took the deck off the front and put it on the side and moved the house forward so that it still meets the State requirements and is further from the road. This improves the view corridor over the right side of the house and puts the highest point of the house closer to the garage. This allows a view over the roof line and allows a view from the second floor of the abutter's home across the street.

Ms. Sharon Mercuri stated that she talked with DES and sent copies of the minutes from last month's meeting and asked them what they could do to be allowed to build the house. DES said they have no flexibility unless the property has significant hardships such as the slope of the land. She explained that they don't have other hardships except those they presented. Mr. Bolduc stated that Ms. Mercuri has shared the minutes and the Board's concern with the State but they are not giving any further leeway. They have a Shoreland Protection Permit.

Atty. Morgan Hollis stated that the new variance criteria changed January 1st and the hardship criteria have changed. He explained that the proposal is not contrary to the public interest because they are replacing an older structure with a new structure that will be up to code. They are keeping the structure out of the 50' highwater mark setback and have a Shoreland Protection Permit. There is an existing house and garage within the 50' setback and there is public concern about moving the house closer to the road. The Zoning Ordinance and Master Plan deal with what exists out there. There are a number of houses closer than 50' from their front property lines. Atty. Hollis handed out a copy of the tax map identifying those neighbors closer than 50'. The ordinance requiring the 50' front setback is for safety and eliminating congestion in the case of road widening. The proposal is no greater than others in that zone. The Board cannot enforce differently than what is there. His client is not coming closer than the existing building.

Atty. Hollis stated that they meet the spirit of the ordinance because the spirit tries to prevent overcrowding. There is a house already there and they are not replacing the house with a giant house. Currently the house is 850 square feet and they are increasing it to 1085 square feet. That is only a 235

square foot increase. Atty. Hollis submitted real-estate listings comparing the square footage of other houses in the area. 115 Jefferson Road has 2,240 above ground square footage, 125 Jefferson Road has 888 above ground square footage, 137 Jefferson Road has 1,600 above ground square footage, 25 Wakeman Road has 1,272 above ground square footage, 27 Wakeman Road has 990 above ground square footage, 112 Jefferson Road has 1,987 above ground square footage and off Jefferson Road E. Wakeman Road has 1,518 above ground square footage.

Atty. Hollis stated that the proposal meets the spirit of the ordinance because it doesn't increase the density and maintains the size. This is one of the larger lots in the area. Substantial justice outweighs the public interest because it will increase the property values of surrounding properties. The lot is not being maxed out because they could go up 45' and build out to the property setbacks with just a building permit. There are some lots around the lake that are 2, 2 ½ and 3 stories high. This project is an upgrade to the property. They asked Ms. Cindy Attardo from NH Realty Group to review the plans to determine if the proposed changes would diminish property values. In her personal opinion the proposed changes will not diminish surrounding property values but would increase property values.

The hardship owing to the special conditions of the property that distinguish it from other properties is that the building encroachment is due to the shape of the lot and that it is on the inside of a cove making for curved property lines. Most lots are rectangular in shape with 50' to 55' frontage. The subject lot has 103' & 195' of frontage but is a unique shape with the curves of the shoreline and the curves of Jefferson Road. This is a unusual situation because of the roadway and frontage, if you follow the pavement and not the property line then there would not be an issue.

They need relief because if they build in the area of the existing house they would have to deal with the State. The house is not in good shape and if they comply with all the regulations without any encroachments they would have 30' of useable house. They have tried to maintain the house inside the setback area and put the deck on the side to maintain the abutter's view. The shed will be removed and the house will be one level. They feel this is a reasonable approach.

P. Oberhausen stated that it is a nice improvement by shifting the house to the right. P. Harris stated that the new application shows concerns for the abutter. This is a reasonable use of a pre-existing property. They have owned the property for some time. It is not like they purchased the lot just to tear down the existing house and replace it with a larger one. Atty. Hollis agreed that the proposal is nothing out of the ordinary. P. Harris stated that there is no reasonable use without having a second story encroaching in the setback. The facts are the size of the lot is one of the larger lots in the subdivision and the use is allowed. If denied it could affect property values. P. Harris stated that staff has talked to the State and they will not waive on building in the setback. By the applicant moving the structure back it is a big plus to any future road improvements.

Atty. Hollis stated that if they grant the variance they can condition it that it cannot exceed the plan submitted and that no sides are built on the deck. This would protect the neighbors for future development.

C. Daigle stated that the Board received a letter from the abutters who stated that the request is for a special exception and they still have objections to the proposal. She clarified that it is variance and not a special exception because the expansion exceeds the 40% allowed by special exception.

Ms. Gwendolyn LaPlante, an abutter, stated that she believes they are just flipping the design of the house and it will still take their view away.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – THERESA CORRIVEAU:

MOTION: M. Ford moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single-family dwelling, 2-story with full basement, closer (33.3') to the front property line than allowed (50'); not closer than the existing dwelling but exceeding the 40% expansion permitted by Special Exception as it meets all the criteria.

1. The variance will not be contrary to the public interest because it is a replacement of an existing use and will not diminish property values.
2. The spirit of the ordinance is observed because it is not contrary to the ordinance.
3. Substantial justice will be done because it is similar to others in the neighborhood and they addressed the encroachment issues.
4. The variance would not diminish the value of surrounding properties because it conforms with others in the area and abutters have not shown it would diminish values.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because there is no other method to achieve relief.
and
 - b. the proposed use is a reasonable one because there are no safety or health issues involved.

Additional conditions:

1. All property bounds certified during construction as required.
2. All conditions of NH DES Shoreland permit to be complied with.
3. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.
4. It is understood that the approved redevelopment plan replaces all other plans submitted.

The motion was seconded by N. Patten and carried. (4-0-1) P. Harris abstained.

MOTION: M. Ford moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single story addition to an existing accessory structure (garage) closer (31') to the front property line than allowed (50'); not closer than the existing structure permitted by Special Exception as it meets all the criteria.

1. The variance will not be contrary to the public interest because it is a replacement of an existing use and will not diminish property values.
2. The spirit of the ordinance is observed because it is not contrary to the ordinance.
3. Substantial justice will be done because it is similar to others in the neighborhood and they addressed the encroachment issues.
4. The variance would not diminish the value of surrounding properties because it conforms with others in the area and abutters have not shown it would diminish values.
5. Owing to special conditions of the property, that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because there is no other method to achieve relief.
 - and
 - b. the proposed use is a reasonable one because there are no safety or health issues involved.

Additional conditions:

1. All property bounds certified during construction as required.
2. All conditions of NH DES Shoreland permit to be complied with.
3. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.
4. It is understood that the approved redevelopment plan replaces all other plans submitted.

The motion was seconded by N. Patten and carried. (4-0-1) P. Harris abstained.

Abutters' Hearing –Frederick & Claudette Brezinski: Continuation of Public Hearing for:

- A. A Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (33.04') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 3409Z.
- B. A Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (23.24') to the northside property line than allowed (25') but not closer to than

the existing structure. ZBA # 3709Z.

- C. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (12.43') to the south side property line than allowed (25') but not closer than the existing structure. ZBA # 3309Z.
- D. A Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (33.10') to the front property line than allowed (50') but not closer than the existing structure. ZBA # 3809Z.

Property is located at 28 Morgan Road in an "R" Zone, Tax Lot 239-068.

At least three members have viewed the site.

Mr. Frederick Brezinski presented the application.

Mr. Brezinski stated that he has submitted his correspondence to the State. He has no response in writing to his letter but he has talked to Mr. Dick DeSeve from the State who stated that he couldn't find anything to do with why they did not permit the well. He will need to get a waiver from the State to release the restriction that has been placed on his septic approval. He will go to the State tomorrow to get the paper work to start the process of getting that waiver.

C. Daigle stated that Mr. DeSeve called today and stated that Mr. Brezinski needed to get an amended approval for his septic approval and that has to be recorded in the Registry of Deeds. She stated that Mr. Brezinski needs to file to amend his approval and for a waiver for the well. The Board can act on the applications before them and condition the approval on Mr. Brezinski resolving the issues with DES.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – FREDERICK & CLAUDETTE BREZINSKI :

MOTION: P. Oberhausen moved to grant a Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (33.04') to the front property line than allowed (50') but not closer than the existing structure as it meets the criteria.

1. The use is allowed in the district
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional conditions:

1. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.
2. All construction shall comply with all applicable building codes.
3. Although not a septic loading issue, this is an expansion of the property and DES approval for the on-site water well and dry well is required. Time line for compliance is short term or well and drywell removed.

The motion was seconded by L. Couture and carried. (5-0)

MOTION: P. Oberhausen moved to grant a Special Exception of Article 10.A.3.c of the Zoning Ordinance to allow a deck and stairs (northside) closer (23.24') to the northside property line than allowed (25') but not closer to than the existing structure as it meet the criteria.

1. The use is allowed in the district
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional conditions:

1. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.
2. All construction shall comply with all applicable building codes.
3. Although not a septic loading issue, this is an expansion of the property and DES approval for the on-site water well and dry well is required. Time line for compliance is short term or well and drywell removed.

The motion was seconded by N. Patten and carried. (5-0)

MOTION: P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (12.43') to the south side property line than allowed (25') but not closer than the existing structure as it meets all the criteria.

1. A Variance will not decrease surrounding property values because it is similar in nature to others in the neighborhood and is on a pre-existing non conforming lot.
2. A Variance is not contrary to the public interest because it is an allowed use and provides safe access to the structure.

3. Denial would result in unnecessary hardship to the owner because:
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because the property is small in nature.
and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because it is a small lot and there is not enough area to build the ramp and deck.
4. A Variance will result in substantial justice being done because it provides safe egress.
5. A Variance will observe the spirit and intent of the ordinance because it is a small preexisting nonconforming lot.

Additional conditions:

1. No structures or additions (incl. decks, porches, landings, etc.) that do not meet setback, except as approved are allowed.
2. All construction shall comply with all applicable building codes.

The motion was seconded by N. Patten and carried. (4-0-1) P. Oberhausen abstained.

MOTION: P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to allow a deck with ramp (southside) closer (33.10') to the front property line than allowed (50') but not closer than the existing structure as it meets the criteria

1. A Variance will not decrease surrounding property values because it is similar in nature to others in the neighborhood and is on a pre-existing non conforming lot.
2. A Variance is not contrary to the public interest because it is an allowed use and provides safe access to the structure.
3. Denial would result in unnecessary hardship to the owner because:
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property because the property is small in nature.
and
 - B. the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because it is a small lot and there is not enough area to build the ramp and deck.
4. A Variance will result in substantial justice being done because it provides safe egress.
5. A Variance will observe the spirit and intent of the ordinance because it is a small preexisting nonconforming lot.

Additional conditions:

1. No structures or additions (incl. decks, porches, landings, etc.) that do not meet

- setback, except as approved are allowed.
2. All construction shall comply with all applicable building codes.

The motion was seconded by N. Patten and carried. (4-0-1) P. Oberhausen abstained

Abutters' Hearing – Sylvie Breton & Jean F. Carbonneau: Continuation of Public Hearing for a Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single family dwelling closer (31.1') to the front property line than allowed (50'). Property is located 443 Jamestown Road in an "RS" Zone, Tax Lot 117-003, ZBA # 1610Z. REQUEST TO WITHDRAW

MOTION: N. Patten moved to deny without prejudice a Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single family dwelling closer (31.1') to the front property line than allowed (50') as the applicant has withdrawn his plan and this will close the case.

The motion was seconded by L. Couture and carried. (5-0)

OTHER BUSINESS:

Dana Belletete Request for Rehearing: Board's consideration of a request for a rehearing on Board's 3/24/10 action to deny 4 Variances for Tax Lot 111-052, ZBA # 1210Z, 1310Z, 1410Z & 1510Z.

C. Daigle distributed to the Board evidence from Mr. Belletete on his request for a rehearing. They have to answer his request within 30 days. Mr. Belletete has to request a rehearing before he can go to court to overturn their decision.

C. Daigle stated that not all of the members that originally heard the application are here tonight and wanted to know if the Board would like to schedule a special meeting so that the all the original members could be present. The Board agreed to schedule a special meeting to allow them time to review the information submitted and to have all original members present before making a decision.

C. Daigle explained to the Board that they can't take any additional evidence from the public but have to base their decision for a rehearing on the merits of what has been submitted. They can deny the request based on the fact there is no new evidence or any error in law. They can grant the rehearing if they feel there is new evidence or that there was an error in their decision or for a compelling reason.

M. Ford stated that he is comfortable with their decision. There is no precedent against them,

MOTION: P. Oberhausen moved to schedule a meeting for the Board to consider a request for a rehearing on the Board's 3/24/10 action to deny 4 Variances to a time that all original members are available.

The motion was seconded by P. Harris and carried. (3-0-2) L. Couture and abstain N. Patten abstained.

C. Daigle will contact all members to schedule the meeting which will be posted as a public meeting but not public hearing.

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of March 24, 2010. P. Harris seconded. Carried (3-0-2) L. Couture and N. Patten abstained.

ALTERNATE MEMBER:

Mr. Mark Mastenbrook stated that he would like to be an alternate on the Zoning Board of Adjustment because he wants to be part of the community and give back to it by donating his time. He has been before the Zoning Board in the past and has knowledge of the building trades.

MOTION: P. Oberhausen moved to appoint Mr. Mark Mastenbrook as an alternate to the Zoning Board of Adjustment for a three year term.

The motion was seconded by M.

Ford and carried. (5-0)

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 10:23 PM.

Respectfully submitted,

Elaine M. Murphy