TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
March 3, 2011
Approved as amended 4/7/11

I. CALL TO ORDER

Paul Monzione, Chairman, called the meeting to order at 7:01 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Paul Monzione, Chair, introduced himself, the Planning Department Representative, and the members of the Zoning Board of Adjustment:

John Dever, Building Inspector and Code Enforcement Officer
Tim Kinnon, Vice Chair
Tim Morgan, Member
Steve Miller, Member
Lou LaCourse, Clerk
Loring Carr, Selectmen's Liaison

III. APPOINTMENT OF ALTERNATES

Alternate member Paul Larochelle is present and in the audience. There is no need to appoint the alternate for this hearing as all regular members are present.

IV. STATEMENT OF THE APPEAL PROCESS

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

V. APPROVAL OF THE AGENDA

S. Miller asked, for information purposes, if the alternate could be allowed to sit with the Board and ask questions, but not have voting privileges. P. Monzione answered that the alternate could certainly come and sit with the Board and ask questions; this will have value to the newly appointed alternate. Paul Larochelle was asked to come join the Board at the table; he would not be part of deliberations or voting, but would be able to ask questions.

S. Miller asked if copies of the variance worksheets could be handed out before applications are heard. P. Monzione agreed; J. Dever handed out the worksheets for both upcoming cases.

T. Morgan made a motion to approve the agenda as presented. L. LaCourse seconded the motion which passed with five votes in favor and none opposed.

VI. CONTINUANCE

Case #Z10-25 Richard and Nancy Coskren	Map 20 Lot 3	Variance 1683 Mount Major Highway

Application submitted by Attorney Catherine Broderick on behalf of applicant Richard and Nancy Coskren to request a variance from Article 400 Section 452B Required Frontage; to provide the ability to subdivide into 2 lots. This parcel is located in the Rural Zone.

The case was read into the record by Chairman Monzione. As he has done in the past for reasons previously stated on the record, P. Monzione recused himself from this case and appointed T. Kinnon as acting Chair.

Board members have reviewed the application. T. Kinnon asked about appointing the alternate to sit on this case; T. Morgan pointed out that it had been previously stated that there was a possible conflict with that. P. Larochelle confirmed that there is indeed a conflict; he is dating the sister of one of the abutters against the application. T. Kinnon stated that the Board would proceed with just the four sitting members.

P. Monzione clarified for the record that at every previous hearing this case has been stalled right at its inception due to having only three sitting members present. Therefore, the application has not been accepted as complete.

T. Kinnon asked if all members have thoroughly reviewed the application; S. Miller referenced the minutes of the meeting on February 3, 2011, where Attorney Broderick had requested that all Board members review the application and all materials submitted to prepare for this hearing. T. Kinnon asked if any members had concerns regarding the completeness of the application; none of the members voiced concern.

T. Morgan made a motion to accept the application for Case Z10-25, Richard and Nancy Coskren, requesting a variance, as complete. S. Miller seconded the motion which passed with four votes in favor and none opposed.

J. Dever read the case into the record.

Attorney Rod Dyer of Wescott, Dyer, Fitzgerald, and Nichols introduced himself and made brief opening comments. The application is seeking a variance with regard to the frontage requirement in order to add an additional single family residence on a 58 acre parcel. The plan that is in front of the Board indicates the division of the 58 acres into one 31 acre parcel and one 26.5 acre parcel. They are seeking approval from the Board so that they can proceed with subdivision approval and divide the 58 acres into two large lots. There is an existing roadway to the 31 acre lot; there is a residence on that property. The existing road would provide the access for the proposed lot.

The issue before the Board is whether it is fair and equitable to permit two single family lots on a 58 acre parcel. There are a couple of factors for the Board to keep in consideration; the first is that it is certainly not an overuse of the property. Additionally, there is no practical benefit to the town in denying the application. There is also no detriment to the town in permitting two lots on a 58 acre parcel. From his perspective, the fundamental question is what the purpose is of requiring minimum frontages for individual lots. Communities use this tool to combat overcrowding; this eliminates excessive dwelling units on any piece of property. He would submit that the rationale for minimum frontage in this particular case is not relevant; under no circumstance could it be considered that two single family lots on a 58 acre parcel represents overcrowding of the land.

His purpose in getting up was to set the overview of what they intend to prove, and also to ask the Board to consider these particular points he has made. Additionally, Richard and Nancy Coskren have agreed to restrict any further subdivision of this property beyond the two single family dwellings. This would be accomplished through a covenant registered with the Registry of Deeds which would prohibit any further subdivision.

Once the evidence is in, Attorney Dyer feels that the subdivision of this lot for two single family homes is reasonable.

Attorney Catherine Broderick of Wescott, Dyer, Fitzgerald, and Nichols introduced herself and thanked the Board for hearing this case. She refreshed the Board on the contents of the application, as it has been several months since the original submission back in September, 2010. The plan is Exhibit 1. She ascertained through questioning that all members are familiar with the Staff Review of October, 2010; questions raised in that staff review will be addressed by Randy Shuey, a Wetlands Scientist with New England Environmental, and Dean Clark, surveyor of this plan. Additionally, Lynn Bonneau is present. There is a letter dated January 12, 2011, from Frank Roche which speaks to the issue of property values; Lynn is also here to speak on that issue as well. Finally, a response to an objection by some of the abutters was filed on January 27 along with a portion of the OEP Handbook which gives guidance on variances.

This is a large lot subdivision; one of the tasks for the Board is to look at this land as compared to other proximate properties to see whether this frontage requirement that prevents overcrowding should really apply to these large lots. Also, wetlands delineation has been done on the plan at the request of the Planning Board; the entire property was not surveyed, but Mr. Shuey will speak to wetland and other areas of the property.

The test for the Board is to consider the reasonableness of the proposal, not only in terms of use but also in the thought of reasonableness under NH Case Law to consider the return on the Coskrens' investment in the land. There was an objection raised in regard to the Coskrens' financial situation; they are not claiming financial hardship as a consideration. However, consider if you owned a 50+ acre parcel what you would do with that land and whether putting it in current use is enough, or whether subdividing where appropriate may be a reasonable use and a reasonable return on the investment in that large parcel.

Frontage requirements in lakefront communities reduce density; they necessitate larger lots that conform to frontage and lot size requirements. They prevent overcrowding the land. Frontage requirements can be justified on the basis that they are a method of controlling lot size to prevent overcrowding. In this case, the unique characteristic of this land is the large lot size; the original application, in exhibit 6, the tax maps showing the adjacent properties shows that the frontage requirement might be useful to control overcrowding. When considering the size of the Coskren property, it is unnecessary to accomplish that legitimate goal. The ordinance is not unreasonable; it is unnecessary as applied to this parcel of land.

Another consideration for this Board is whether the project as proposed will have a negative or adverse impact on neighboring property values. A letter from Frank Roche states that it will not have a negative affect; in fact, it will likely enhance property values because someone buying this type of lot is likely to build a high-end home. Attorney Broderick invited Lynn Bonneau to come forward to speak to this issue.

Lynn Bonneau of Roche Realty has been a realtor for 25 years, as well as a land developer. As a broker, she stated that the rural feeling of that piece of property has always amazed her; she has walked it many times. It is going to enhance the value of this mixed neighborhood of smaller lots; Mr. Coskren already has a very nice home and she is sure he would insist that whoever built on the other lot would also have a nice home.

Attorney Broderick resumed her presentation with a comment she had included in her response on January 27, which is also included in the OEP Handbook on page II-9 which reads, "As another example, consider the question of frontage requirements. Most zoning ordinances specify a minimum frontage for building lots to prevent overcrowding. If a lot had ample width at the building line but narrowed to below the minimum requirement where it fronted a public street the variance might be considered without violating the spirit or intent of the ordinance because to do so would not result in overcrowding. There are many other variations of lot shapes and sizes that might qualify for variance. The principles remain the same. The courts have

emphasized numerous decisions that the characteristics of the particular parcel of land determine whether or not a hardship exists."
One of the issues that was raised by one of the abutters and also in the staff report was the question of using access on a different portion of the property (indicated location on the plan). There are issues with building an access there, such as the location of the Eagles' septic system and the presence of wetlands in that area and the possibility of getting a permit to fill and cross wetlands as well as some other drainage issues that might arise if a road is built there. Randy Shuey is here to talk about that and his report which was submitted to the Board on January 31, 2011.

Randall Shuey of New England Environmental out of Concord, NH came forward to speak; he is a Certified Soil Scientist, Certified Wetlands Scientist, and septic designer. He was asked to take a look at this property for wetland issues in the area coming off the right of way on the western side, and an approximately 200' wide swath coming through along the back of the existing houses. The purpose of this was to try to figure out if there are wetlands there or not. One of the difficulties is that they did this on snowshoes; it is difficult to figure out if there are wetlands. They are looking at soils and vegetation; they can dig through the snow and get to the soils to get an idea of what the soils are like there. They can look at some of the vegetation such as shrubs and trees coming up through. They also had photos taken with less snow on the ground.

There was some drainage through just where the right of way starts to widen out, and there are one or two other pockets they identified. In addition, there are some steep slopes both dropping away and rising up. Basically that would mean that if you put a road through the westerly right of way you would have to cross the wetland; additionally, the Eagles' septic system is directly in that right of way. In order to figure out if you can get a wetlands permit for an area like that, you would go through a three criteria process. The first would be avoidance – is there an alternative location through which to access this property and not impact wetlands. There is an existing driveway/road laid out that would access both properties with no wetland impact. That could be done. The second criterion is minimization – if you prove that you could not avoid the impacts, could you minimize them. Because of the topography out there and the location of the wetlands, minimizing the wetland impacts probably isn't a real option due to certain design standards they would be required to meet. If the wetlands are in proximity, they are either going to be in or out, and while you might do a small amount of minimization, you would still be impacting those wetland areas.

The bottom line is that there are wetlands out there. The alternative location has no wetland impacts and there would be less environmental impact as far as looking at the overall resource by keeping the road at the existing driveway location.

Attorney Broderick resumed her presentation. She had submitted information from the Fire Department that they find the current driveway and the proposed hammerhead adequate for emergency vehicles. They also submitted a letter from Richard Coskren; he was actually rescued by the Fire Department during a snowstorm up there in 2007, and they had no trouble accessing the house.

Attorney Broderick reviewed their submissions; they are seeking a variance from the frontage requirements to allow a two lot subdivision using the existing access. That access was approved by DOT on July 14, 2010 to allow a new single family home to connect to that driveway.

Attorney Broderick went through the variance test. First, there is no harm to the public interest; DOT has approved this access route and the fire and police departments have signed off with the exception of the fire department's wish to see better house numbering for 911 purposes, which is easily done. This proposal does not harm the health, safety, and welfare of the public, particularly because the Coskrens agree to limit further subdivision through a notation and covenant recorded in the Registry of Deeds. Second, the spirit of the ordinance is observed; the purpose of the frontage requirement is to prevent overcrowding of lots. This, as applied to those lots, does not serve that purpose. This is a reasonable use and a reasonable return of the investment in this land. Third, substantial justice will be served; the harm to the Coskrens if the variance is

denied outweighs any benefit to the public. This is a reasonable use that does not alter the character of the neighborhood or injure the rights of others. Fourth, surrounding property values will not be diminished. Both Ms. Bonneau's testimony and Mr. Roche's letter speak to that very issue. Fifth, the unnecessary hardship test; they are asking that the Board take a look at the actual physical characteristics of this lot as compared to the lots in the neighborhood. It is a large lot and they propose that no fair and substantial relationship between the general purposes of the frontage requirement that seeks to prevent overcrowding on small lots and this specific application for 26.5 and 31 acre lots applies. The proposed use is a reasonable return on the Coskrens' investment and a reasonable use – it is a single family home in this rural residential neighborhood.

For the record, along with the application, they submitted a written statement and exhibits, and those are before the Board as well.

T. Morgan asked if it is their intention that this new road will become a town road. Attorney Broderick answered that it will never become a town road; that will be a notation on the plan as well. That had been a concern of the Highway Agent; it will not be a town road, but will remain private. T. Morgan confirmed through questioning that, even if the variance is received, the applicant will still have to go before the Selectmen to permit any construction. Attorney Broderick agreed and added that they will also have to go before the Planning Board. T. Morgan asked if it is the intention that the newly created Lot 2 would be conveyed; Attorney Broderick answered that it would be. T. Morgan asked if there would be a covenant placed on that piece of property that would say that it could not be further subdivided; Attorney Broderick confirmed that there would be. T. Morgan asked if it would run with the land and be recorded. Attorney Broderick answered that it would; it could be done either with that deed that would run with the chain of title and/or with a restriction similar to a developer's agreement that says it is being divided into two lots and would not be further subdivided. That would also show up in the chain for both parcels.

T. Kinnon questioned whether both parcels would have the covenant that there would be no further subdivision. Attorney Broderick affirmed that; this 56 acre parcel would only ever be those two lots.

S. Miller asked Attorney Broderick to address the elements of the hardship issue again; he asked if he was correct in hearing her say that no hardship exists. Attorney Broderick agreed; the physical characteristics of the land as compared to other properties that are also affected by this ordinance in this neighborhood show that it is a reasonable use. The reasonable use overcomes the idea of hardship; that is her argument for hardship and is consistent with the law on that issue. The case on point is a case called Rancourt which had to do with horses in Manchester; the owners had to seek a variance to keep horses. Ultimately, the court determined that the physical layout of the land where the horses were being kept in a part of the land that was buffered from neighbors, and the configuration of the lot allowed this type of variance. A restriction on keeping horses or livestock in this particular zone did not apply because of the physical characteristics. S. Miller asked if the amount of subdivision could generate a constraint of hardship. It is only subdivided once to produce two units and there is no hardship; if it were being subdivided for 40 units, would that make it meet the test? Attorney Broderick answered that potentially you could take a lot this size and divide it into many lots. Her argument really is that subdividing it into two lots really is a reasonable use of the land because it is a reasonable return on the investment of this land. Really, the two lots is the owners' commitment to keeping this rural, which Ms. Bonneau spoke to, and keeping the character of this land and the character of the neighborhood. It is not really part of the review. S. Miller commented that the ROI is not a test of hardship; Attorney Broderick agreed that it is not. It is more of a concession or trade off, or part of a negotiation with the Board. That is what an application is – what is reasonable to do. They also believe that two lots are more reasonable in this neighborhood than 40.

There were no further questions from Board members. T. Kinnon opened the floor to public input in favor of the application. Seeing none, he opened the floor to public input in opposition to the application.

Attorney Steven Nix is representing Daniel Comeau and Barry Myers; they are abutters who own the homes on either side of the driveway leading into the property.

Numerous submittals have been made; he will go by his submittal of January 6, 2011. First, this issue before the Board is not an issue of whether it is reasonable to have two houses on 50+ acres; the issue before the Board is whether the ZBA will grant a variance for no frontage on a street. The applicant has focused on the fact that this is a very large lot and there are only going to be two houses; they have not focused on the fact of the lack of frontage. When he looks at the plan, it is somewhat vague in that it does not define what frontage there is. It does not say what frontage is on a public highway will be allocated to each lot, if there will be any. Just reading the application, it indicates that they are asking for a waiver for no frontage. There are a couple of places where there is access to the lot, but on reading the application, it is unclear what they are asking for. There is a cul-de-sac on the plan; it is not defined as to who owns it, what it is, whether it goes with one lot or the other. There is vagueness regarding the application itself.

This particular application really screams for a view by the Zoning Board. He thinks it would be very important for the ZBA to see this property and see the proposed access. It is worth all the pictures in the world to go out there and look at it. Mr. Comeau's house is within a few feet of the existing 40' right of way; within that right of way is the paved driveway. You literally step off his porch almost right into the road; there is a little piece of grass. Mr. Myers' house on the other side has a septic system that is very close if not within this area. There is a parking area; it is very congested, and it would be worth taking a look at this.

Attorney Nix continued. He has outlined in his handout the test for the variance as stated in the statute; he addressed each one individually. This variance will be contrary to the public interest; the public interest is defined in RSA 674:33 and includes issues such as negative impact on the health and safety of abutting properties. Even adding one more house to this driveway will increase the traffic and safety issues. He has included a photo in his submittal. This proposal will increase the need for first responders to use this driveway. There is a lot of discussion in the materials that were handed in as to whether this particular non-access due to no frontage is adequate. Allowing the subdivision of a lot with no frontage is going to require that there be more use of this driveway by first responders; it just has to happen because there is going to be another house there.

They do not believe that the existing driveway meets the current driveway standards. It is almost 2,000 feet long which would require 14 feet of pavement and certain other criteria such as slope. The plan does not provide enough evidence, but from what they have seen on the ground they do not believe this driveway meets even the current driveway standards.

The purpose of the frontage requirement does tie into the other criteria for an ordinance. One is whether the proposal will meet the spirit of the ordinance; the purpose of frontage being to create lots where people are not on top of each other is only one of the reasons for frontage. There are numerous reasons for frontage; if the Board looks at the Zoning Ordinance on pages 7 – 8, the definition of frontage says "it is the distance along the right of way of a Class V highway or better, lawfully existing in the town or approved by the Planning Board. The minimum frontage distance shall be contiguous. Each lot shall meet minimum frontage requirements on the street to which beneficial access is achieved."

Beneficial access is where your driveway is. One of the other reasons to have minimum frontages is so people can have their own driveway. There are issues with driveways with multiple people on them; there are traffic issues with people coming in and out. Additionally, there are maintenance issues; who is going to plow in and maintain it. Speaking from the Alton Ordinance, it says that you need your frontage for beneficial access. This particular proposal is in conflict with that because the beneficial access is not on their own frontage.

There are also issues of congestion where the houses are but also with the traffic coming in and out. In this case there are four houses that are going to be on this driveway that is about 12' wide. If you go out there today, this thing is cut down to the road. There is almost no sight distance because of the snow banks; even in the summer

there is a big cut out there. If one person is trying to get out and somebody is trying to get in, everything stops until somebody moves. This is on Route 11; he shows 4,000 trips per day on Route 11. It is very heavily travelled. This will create a situation where they are adding to a substandard situation by granting this variance with no frontage.

Attorney Nix continued. Substantial justice will not be done; again the test there is the loss to the individual and whether that would be outweighed by the gain to the public. He included a letter the applicant had sent to the Selectmen early in the process that clearly stated that the reason for the subdivision was financial concerns. When you weigh the detriment of not having beneficial access for different lots, the detriment to the two abutting property owners, the financial situation of the applicant should not outweigh the public need for the zoning ordinance in this case. The applicant purchased the property with the intent of building a home on it; they did build a home on it. It is a substantial home; they do have use of the property. According to the letter, when they purchased the property it was with the intent of building the one home.

There has been some discussion about an alternate access point. That is not one of the legal criteria that need to be discussed, but it is one of the facts in this case. There is an alternative access point. Mr. Shuey discussed the wetlands issues out there; in listening to his testimony and reading his letter, what Attorney Nix heard him say was that there are certain hoops that the applicant would have to jump through to build a new road or driveway through that area and it would certainly be easier to go this way from a wetlands standpoint, but he did not hear Mr. Shuey say that you could not do it and it would be completely denied. Of course, nobody knows that until the application itself has been submitted.

Attorney Nix stated that the values of surrounding properties will be diminished. In this particular case, and he has submitted a couple of reports that show this, any time you have increased traffic in close proximity to the house, it decreases the value. In this particular case, it is only a driveway with one more additional house, but when you read those articles, they clearly say that anytime you add more traffic to a driveway or road in close proximity, it decreases the value. You could ask 100 appraisers how much the value is being decreased – they don't know. The other issue is not just the amount of traffic; it is also that you are now adding another party to the common driveway. There is no maintenance agreement – people do not know who is going to plow it. They don't know who's going to maintain it. When somebody decides they want it to be repaved, how is that going to be handled? That does, from his experience, cause a diminution in the value of the property; a lot of people will walk away when they run into something like that, which causes the value to come down.

Mr. Roche's report was interesting; he compared this area with the development of waterfront areas. This is another reason the Board might want to go out and look at this because it is not a waterfront area. This is an area that is on Route 11, and simply building a high value home up on the hill is not going to increase the value of the properties down on the road. It is not the same fact pattern. Attorney Nix believes that because of the increased use and the other things he has talked about that it will actually decrease the value of at least his clients' pieces of property.

Attorney Nix spoke about the hardship criteria. Test #1, owing to the special conditions of the property that distinguish it from other properties in the area 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, and the proposed use is a reasonable one. First, the propose use here is to create a lot with no frontage. It is not one more building on 50 acres; the proposed variance is to create a lot with no frontage. If you analyze that and look at the provisions of the ordinance and the general purposes of the ordinance, which he had made reference to the definition of frontage requiring that beneficial access so that everyone has their own driveway, this does not meet the hardship test. Theoretically, it should not have to go any further than that, but they need to look at this particular property and its uniqueness. What is there is a 50+ acre piece of property that has limited road frontage. These pieces of property are all over town. This piece of backland is no different than any other piece of backland. If you look at it from that point of view, there is nothing different about this lot than any other lot

that has very limited access and given the arguments that are being made, that the reason this variance should be granted is because of the size of the lot, that same theory should apply to every other piece of backland in town.

If you look at the Zoning Handbook on page II-10, they talk about the Bacon v. Enfield case. That was a case where the property owner wanted to put an addition on a small house in the shorefront zone; it was a dense area. The Supreme Court said if you just look at that piece of property, maybe it's not so bad. But, if you look at the cumulative affect of everybody getting that, then it flies in the face of the ordinance. While a single addition to a house of a propane boiler may not affect the shorefront congestion or the overall value of the lake as a natural resource, the cumulative impact of many such projects may be significant. For this reason, uses that contribute to the shorefront congestion and over development would be inconsistent with the spirit of the ordinance. What we are talking about here is not the shorefront, but it is talking about frontage. We have these pieces of backland all over town that have the same fact pattern; if everybody came in wanting to subdivide in half, we might as well throw the zoning ordinance out. There is nothing about this piece of backland that is any different than any other piece of backland. In Section 320.C.2 it states that a nonconforming lot may be built on with adequate access to a town approved road. Again, that goes to the argument that one of the reasons for having frontage is to have beneficial access so everyone can have their own driveway.

Attorney Nix explained that there is a second test in the statute; if the first test fails for hardship the applicant can go to the second test. The applicant did not appear to address this directly but Attorney Nix did address it stating that unnecessary hardship will be deemed to exist if, and only if, owning to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used. Attorney Broderick did address that; in this particular case, the letter from Mr. Coskren indicates that they bought this property to build a house on it. They do have a house on it, so it is a reasonable use of the property. Open space is a reasonable use; it is recognized by the Legislature of NH as a reasonable use. There are several statutes that entice people to create open space. There is the Current Use Statute, the Conservation Easement Statute; the Legislature has recognized that open space is a very reasonable use. As a matter of fact, the IRS has recognized that having open space next to your house adds a beneficial value so when you donate a conservation easement and take the tax deduction for it, you have to take off the top of that tax deduction the benefit that is added to the remaining land. To leave this in open space has an economic benefit to everyone that is recognized by both the state and federal government.

Attorney Nix spoke about the negotiation and the offer of a restriction on future subdivision. He would say that although that is laudable on its face, when you think about it under the zoning ordinance today without a variance they can't subdivide this property. Even if it were subdivided into two lots, what is the real value of having a restriction that it can't be subdivided? There is not a lot of value there.

Attorney Nix wrapped up, saying that he believed he had covered all five elements needed for a variance. They do not believe that the application meets any one of those five.

In light of Attorney Nix's suggestion to do a site visit, T. Morgan asked if, in light of the snow piles, they are going to be able to see anything if they do go out. Attorney Nix replied that the probability that the snow piles will be there on a regular basis is pretty high; it might be worth going to look at it now.

S. Miller asked about the alternate access Attorney Nix had mentioned. Attorney Nix explained that they (the Coskren's) own a 50' strip (indicated on plan); the discussion about the septic system and wetlands revolves around that area. There was an easement granted by a previous owner of the property to the Eagle property; Attorney Nix has a copy of that easement. However, there was a caveat that stated that if the owner of the lot in question wanted to build a road through there, they retain the right to do that. On its face that may sound harsh, but if somebody wants to build a driveway through there, they could rebuild that septic system, put chambers in it and drive right over it. That is a very easy obstacle to overcome. Mr. Shuey was talking about the wetlands and the need for wetlands permits; he even said he had been unable to look at it without snow on the ground.

Until an application is actually made to the Wetlands Bureau and you go through that process, you do not know if you are going to get that permit or not.

There were no further Board member questions for Attorney Nix.

Dan Comeau, the property owner at 1685 Mount Major Highway, is an abutter to the Coskren property and has been a realtor for 20 years. When he purchased his property as an investment in 2003 he knew the small right of way to his property was shared by two other homes. It was nice knowing there would not be a lot of traffic. His home was built in the 1900's, and it is very close to that right of way. In his opinion, if the variance is granted to allow subdivision, Mr. Coskren's gain will result in his loss of value due to increased traffic that will result in a loss of privacy and safety, and also causes concern for the safety of the children who play in the area. His tenants have children; they have a basketball hoop out there and they do hopscotch, as do Mr. Myers' children. In the winter, as Attorney Nix said, with the snow and the ice, the cars cannot make it up to the Coskren property due to the steepness of the road. They park their cars in the right of way, blocking Mr. Comeau's access to his back lot; he has pictures of that. This also diminished the value of his property. If another home is built, there will probably be more cars blocking his right of way.

Even now, they have small traffic jams; the access is only 12 feet wide. If someone is trying to come out onto Route 11, and somebody is trying to get in, everything stops. This is directly across from Anniversary Hill; there are cars coming from all ways, and everything just stops. He has a boat he puts on his back lot; Mr. Myers also has a boat. When the Coskren's get their mail, they pull up and block the right of way. They walk down Route 11 to get their mail. Mr. Comeau stated that he has either had to drive by, turn around, and come back to come in, or sit there and wait if there was no traffic behind him.

In the letter presented by Frank Roche, he addresses the impacts of another home built in the area and said it would not devalue the neighborhood. He failed to address the direct impact on his home and Mr. Myers' home, which share the right of way. A new home could increase the use of the right of way by two to four or more cars; nobody knows. As Steve Nix said, according to most real estate professionals, increased traffic adversely affects the value of abutting properties; some say up to 12% due to loss of privacy, safety, and noise.

Barry Myers of 1679 Mount Major Highway is an abutter on that road. It is not the lot by itself that they are opposed to; it is the access to the lot. Between his house and Mr. Comeau's house there is about 50 feet. Between that, both of their properties butt up against that right of way/roadway. His four children and the tenant's children play there. It is a tightly congested area. If you take a view of it tomorrow, it is even tighter right now and almost dangerous. As far as traffic, that road dumps onto Route 11 which is a 35 – 40 mile an hour road. Mr. Coskren's mailbox is on Route 11; his car will stop on that right of way and anyone coming in to his property or his neighbor's property has to stop on Route 11, which creates a hazard. As a homeowner, he knows that extra traffic there is going to devalue his property. When he bought the property in 2002, Mr. Coskren's house was not built. After that he built a very nice house and a very nice property; Mr. Myers stated that the value of his property has not increased because of that.

There was no further public input in opposition to the application.

Attorney Broderick came forward in rebuttal. She pointed out a couple of facts; both Mr. Comeau and Mr. Myers spoke about the access issues. Mr. Comeau's home is tax map 65-8, which is not an adjacent property and has access on Route 11. His rental property is tax map 65-7, so when he is talking about his home, she is not sure which one he is talking about. Her understanding is that Mr. Comeau actually drives behind his home property across his rental property and uses the driveway from time to time. Her suggestion is that maybe Mr. Comeau does think it is safe to drive but it depends maybe on who is driving. She reminded the Board that DOT has approved the use of this driveway for the four homes, those being the Myers property, the Comeau rental property, the Coskren property, and the proposed property. Also, the proposed building area is here (indicated on the plan), so congestion and crowding will not be an issue for the existing properties.

Mr. Shuey's comments talked about the feasibility of getting the Wetlands Permit. Attorney Nix raised the point that you have to try to get one to find out that you can't get one. Attorney Broderick stated that typically if you have a state approved access, then the Wetlands Bureau is not going to let you impact wetlands; Mr. Shuey agreed with that statement.

Attorney Broderick readdressed the hardship issue. Going back to the OEP Handbook, page II-11, says that the restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. Only when some characteristics of the particular land in question make it different from others can unnecessary hardship be claimed. It is their position that this is a large lot; hardship per se applies when this ordinance is applied to this large lot because it does not serve its purpose in controlling the size of large lots and overcrowding. Additionally, the state of the driveway is subject to review by both the Board of Selectmen and the Planning Board. The deed to the new lot will contain the details of how the road is to be maintained. Currently all the folks who use this road have an unwritten agreement to maintain it. It is well maintained and plowed.

The Coskren's wrote a letter several years ago talking about the reasons for subdivision. No one would sell their land unless they wanted to make money or needed the money. That is not really a consideration for this Board; what she is asking this Board to consider is whether it is a reasonable return in the investment for the land. Yes, that is the Coskren's reason, but it is not a consideration under the variance criteria. This Board also has the authority to weigh the credibility of experts – whether you have live testimony, whether you have experienced local realtors speaking to the issues of land, and to weigh that evidence accordingly. She suggested that the internet is a great resource, but not always credible.

This property is different; she can not speak to other large lots in Alton because she is not familiar with them. This property was part of a common scheme of development which is part of an old plan which is included as exhibit 4 in the application. This land now sits on the Winnipesaukee Land Company proposed development that was never built. Some lots were built, but this one wasn't. What the law says is that you can not be prevented by your neighbors who control the access from developing and using your back land. That is not really an issue for this Board, but essentially that is what is happening here. They are again asking the Board to consider this reasonable request.

Dean Clark of DMC Surveyors came forward to speak to some of the technical issues. He explained that what they had done on this plan was to create a little cul-de-sac area. They surveyed the whole area out and the frontage that exists between Mr. Myers' lot and Mr. Comeau's lot is 47 feet along the frontage and then narrows down to about 45 feet. Mr. Comeau and Mr. Myers are saying that the roadway that is there, which is Mr. Coskren's driveway, was Lake Avenue at one point; Lake Avenue is on the plan as part of the original subdivision that had all the backland subdivided into little tiny lots. What he did was to show a cul-de-sac (indicated on the plan) which is accessed from Lake Avenue, then he showed 205 feet of frontage on each lot. This is the common access area (indicated on the plan) and there is a small hammerhead so that if someone drives in there and wants to turn around they can do so. There is another hammerhead at the proposed lot for fire department access.

T. Kinnon asked who officially owns the cul-de-sac or right of way. Mr. Clark indicated Lake Avenue and indicated that the cul-de-sac is going to be frontage for Mr. Coskren's lot and the proposed lot. They are going to have a maintenance agreement between lots 1 and 2 as far as how they are going to maintain that. The rest of it is maintained by all three of them that are there now, that being Mr. Myers, Mr. Comeau, and Mr. Coskren. T. Kinnon acknowledged that, but asked who has ultimate responsibility for the access; there must be some lot it is assigned to, or it is public land. Mr. Clark explained that it really isn't assigned to anyone; it is Lake Ave. so all three parcels access through there. T. Kinnon asked if there is an owner of record. Attorney Broderick answered that under the law the folks who abut a paper street (a street that was never built) own to the center line, but they can't prevent access to those who need access to develop the back. T. Kinnon confirmed by questioning that there is no actual owner of the entranceway. Attorney Broderick explained that it is one of

those issues that has come before the town in this particular case but has not been resolved. They acknowledge that where there is a paper street and two owners who own on either side of that street that was never actually built, those folks own to the center line of that paper street, as they do to the center line of other paper streets. However, ownership does not mean you can restrict access and land lock the back parcel or prevent development.

T. Kinnon asked if the Meyers' and Comeau's own the entranceway. Attorney Broderick would not confirm or deny stating that this is not a court of law to decide that question. That is undecided at this point and is not necessarily in dispute. Even if ownership lies with Meyers and Comeau to the center line, Coskren has a right of access. T. Kinnon explained that he was not concerned with access; his question is ultimately who is responsible for maintaining the road if there are any disputes between the four groups, if the subdivision is approved. Who would be the one that would oversee and make sure the road is maintained and plowed? He understands that the Coskren's want to accept responsibility. Attorney Broderick did not wish to commit Mr. Coskren; Mr. Coskren spoke up from the audience and stated that he would commit. If there is a subdivision that would be totally his responsibility to maintain it just because he wants access and he wants his other party to have access as well. He went on to say that Mr. Comeau does a very good job right now of sharing that with him; they both plow. Mr. Comeau has an excavator and other heavy equipment, and Mr. Coskren has a Jeep Cherokee with which he maintains his driveway. Were they to have a subdivision and a house there, he would have an agreement with that other owner to share the cost of maintaining it. It would be maintained by them all the way to the driveway. T. Kinnon went on to explain that in his time on the Board, he has noted that one of the major concerns of shared driveways is the maintenance of it. Right now, he does not see an agreement for that, and that has been a problem in Alton in the past. Right now everybody is saying they will share the cost of maintenance; the day could come when the present parties sell. That was the reasoning for his question about who owns that entranceway, and the cul-de-sac, too.

Attorney Broderick suggested that a condition of approval could be for Mr. Coskren and whoever ends up with the other parcel to take on the maintenance. Right now, the Board would have to bring Mr. Meyers and Mr. Comeau to the table if that was a condition of approval and obviously they have other interests. She understands the Board's concern but is not sure that is within the scope of a condition they could make at this stage. If the variance is granted and subdivision approval is granted, there would be a maintenance agreement between the new owner and Coskren to take care of it to the end of the road.

Attorney Dyer came forward and stated that this is an issue that could easily be handled with a developer's agreement. Over the years, he has done a number of them; you can simply make that a condition of approval that there be a developer's agreement that is approved by the Board and by Town Counsel that covers these issues that have been raised and where they have made representation with regard to no further subdivision of the entire property beyond the two lots and a representation that the sole responsibility for maintaining that driveway would be the sole responsibility of the Coskrens and the subsequent owner of the second lot. As a condition of approval, it would have to be the responsibility of the Coskrens up front. These agreements are relatively routine and he has had a number of them over the years in a variety of communities; he thinks that they can assure the Board by means of the written agreement that any conditions they impose will run with the land and will be recorded and to the Board's satisfaction.

Attorney Dyer commented that he shares a driveway and has done so for 25 years. They have an agreement and it works perfectly. In all candor, he does not think this is a significant problem; it can be easily solved by appropriate language placed in the declaration documents.

Mr. Clark got up to speak to the question about the cul-de-sac area at the end of Lake Avenue. That is going to be a joint access to the frontages of both lots, which would be part of that maintenance agreement that would come up with that maintenance agreement. T. Kinnon asked if the cul-de-sac would physically be owned by the two parcels; Mr. Clark confirmed that it would.

S. Miller asked if Lake Avenue is part of the Coskren's deed; Mr. Clark answered that it references the plan. S. Miller asked for clarification if they own the property. Mr. Clark answered that they do not. S. Miller referenced the Annual Report which does not list Lake Avenue as town property. Attorney Broderick explained that this issue has been raised with Attorney Sessler last year; they took the position that it was intended to be a town road and it was never abandoned by the town. They have been in an effort to find the simplest way to allow this access with the least amount of impact. They acknowledge that ownership, and there is a case in Berlin, Duchesne v. Silva; that talks about exactly the same situation. Years ago, there was a subdivision with many tiny lots; the ones bordering the public road were developed leaving smaller access to a very large back lot. The court in that case said that the two lots on either side may own to the center line of that access, but you can't prevent access through. Certainly a developer's agreement that spoke to maintenance would benefit Mr. Meyers and Mr. Comeau to that regard.

S. Miller asked if it is possible that the Coskren property is land locked. Attorney Broderick answered that it is not; there is a 47 foot access and another 60+ on the west. S. Miller stated that the deed gives the boundary markers; Attorney Broderick answered that she does not have the deed with her and that is a question that she could get back to the Board on. She also questioned the relevance of that information.

Diane Eagles of 1717 Mount Major Highway spoke; she is an abutter of the Coskren property, which location she indicated on the plan. She mentioned that Attorney Nix had brought up about the septic saying that they had installed the septic there. Actually, they never installed the septic; when they bought the property, they discovered the septic there. The property had been conveyed several times without anyone discovering it. If that right of way were developed for access, it would be 6 feet off the corner of her house. She also wanted to point out that her property value has not gone up either since she bought the house 15 years ago; she does not think the fact that Mr. Coskren built is the reason property value hasn't gone up.

Attorney Nix recalled that before becoming an attorney he had a teacher who advised never to use the Readers' Digest as a citation. Now you should say never use the internet as a citation. Attorney Broderick called him on it; he does use the internet because there is a lot of good data and information there.

The issue regarding the maintenance agreement from a global standpoint the reason for the 200' frontage goes directly to the issue that is trying to be solved through the separate agreements, and that is that there is not beneficial access to these lots. What is happening here is a negotiation to overcome the purpose of the ordinance through a private agreement for maintenance. In a perfect world, if this was a new subdivision and the developer was proposing a private road, he would say yes, you could do that. As part of the subdivision and part of the private road, you could form an association and put covenants on record that would require every lot owner to contribute. You could give the association the right to lien the properties to get the money, so if someone were to hold out and didn't want to pay, or didn't want to plow, then the other lot owners could get the money. That is not the situation here.

The applicant is proposing that the two lot owners up the hill will agree to maintain the road. In the last year, he has had two cases similar to this that ended up in lawsuits because somebody who bought the property up on the hill didn't live there in the winter and decided they were not going to plow it. The response from the other people on the road is that the deed says they have to. The response back was to sue them. Now there is a stalemate and it costs more for enforcement of this than it is worth because it is not set up properly. The only way to set this up properly is to have an association which then as part of the granting of the variance would require his clients to participate. Now there is a situation where for the complete benefit of Mr. Coskren, in order to make these private covenants work, his clients would have to give up some of their rights and participate in some type of agreement. It just doesn't work, and it flies in the face of the ordinance.

Regarding the access; there was a comment that his clients were trying to preclude Mr. Coskren from developing his property. That is not the case; his clients are simply looking at and relying upon the zoning ordinance and asking that this particular plan not be granted a variance. This might be a different story if there

were 300 feet of frontage and two lots, and they wanted to divide the frontage in half. That would be a whole different story. Now, they are talking about somewhere around 40 feet of frontage and lots without frontage at all. It's too far to one end of the continuum. His clients do not dispute that Mr. Coskren has the right to go to his property through this strip of land. They acknowledge that he has an easement to get there. The issue is that it is too narrow; the character of the land is such that a road meeting town standards cannot be built. In order to overcome that, they are asking for the variance from the frontage.

L. LaCourse asked about the maintenance agreement; at the present time there is a very loose and vague maintenance agreement. He asked if it would not benefit the Meyers' and Comeau's if there was a written agreement with the Coskrens prior to any subdivision so that the maintenance of the road would be somewhat settled for the future. Attorney Nix answered that you would have to weigh the benefit they would get from having a written agreement and on the other side having the other house and additional traffic. What comes with these private agreements that don't have the whole package is if you get one person who holds out; the agreement isn't worth the paper it is written on. L. LaCourse agreed. He asked if the markers on the drawing that show the width of the right of way are in question. Attorney Nix answered that his clients' position is that there is a 40 foot right of way and they own to the center, and that Mr. Coskren has the right to access over the right of way.

T. Kinnon commented that this is tricky due to the right of way and the access; the more questions asked and answered now, the better. Attorney Broderick spoke to the width of the right of way; there is actually more land out there than originally shown on the plan. That is why it is 47 feet. Mr. Clark spoke and confirmed that the right of way is 47 feet; that is shown on the original 1889 subdivision.

S. Miller asked if a 75 foot wide turn in is required on a major road. Mr. Clark answered no; in fact, the state has approved the existing driveway with another lot added to it. Maintenance work and additional drainage has been done out there to make that area better. Mr. Coskren explained that there used to be a telephone pole that has since been taken down; it would be easy to make that wider than it is today.

Attorney Broderick commented, concerning the possible maintenance agreement and any other agreements. This is a Board of relief, not a board of enforcement. When you impose conditions you are always concerned about enforcement. As a condition, the proposed maintenance agreement would have to meet with the approval of town counsel as to the clarity of the language and any potential issues that might arise. She asked the Board to also look at the facts of the plan and where the Meyers and Comeau homes are located; they are right on the road and it is certainly a benefit to them to have Mr. Coskren and anyone acquiring that second lot taking care of the maintenance.

T. Kinnon invited further input from the public; there was none. He asked the members if they have any further questions; T. Morgan asked for J. Dever's input. J. Dever stated that as he had mentioned in his staff review, the variance is to gain frontage; the ordinance says that you have to have 200 feet of frontage on a Class V road or better. They do not have a Class V road. They have created a cul-de-sac so that it will meet 205 feet on each lot. It has been relayed to him that they intend to create the cul-de-sac on paper, but do not intend to build it. As he understands it, the access from the road to the cul-de-sac would have to be a Class V road, but the ordinance, to have the 200 feet of frontage. It is not now and it has not been indicated to him that they intend to create it to Class V standards. He indicated that his comments also state that he and Assistant Chief Consentino visited the site last year; this visit was concerning the hammerhead at the proposed building site and had nothing to do with the variance itself. Should the variance be granted, this will still require subdivision approval from the Planning Board and the private road will require a release of liability from the Town, as it will not be a town road.

S. Miller asked if the Fire Department had given their okay based on the plans, but not based on conversations with J. Dever that this was only a paper issue. J. Dever explained that all the fire department looked at was the ability to be able to get up the road to the proposed building site and that directly adjacent to the proposed

building site there would have to be a hammerhead installed, at that level, so that they could turn around up there to come down. There was no discussion of this issue.

L. LaCourse asked if the fact that there is a hammerhead located within the proposed cul-de-sac means that there really is no cul-de-sac. J. Dever answered that the hammerhead is there now; the cul-de-sac is proposed and does not exist at the present time. The intention is not to build the cul-de-sac; it is simply on paper.

T. Kinnon closed the floor to any public input.

T. Morgan proposed taking a site walk to look at this; he is not entirely clear that he has a good visual of the project as he can't picture the slope of the land. L. LaCourse agreed that a site visit would be in order. S. Miller agreed.

T. Morgan made a motion that before going further with deliberation they should schedule a site walk on the subject property. There was no second to this motion.

J. Dever asked for input concerning scheduling of a site walk. After discussion, it was decided that a site walk would be scheduled for Saturday, March 12, 2011, at 10:00 a.m. Proper notice was discussed; the notice is via this meeting. The location of the proposed hammerhead will be staked by an associate of DMC Surveyors. There were no objections from the owners of the property.

S. Miller made a motion for a site walk on March 12, 2011 at 10:00 a.m. on the Coskren property. T. Morgan seconded the motion which passed with four votes in favor and none opposed.

T. Morgan made a motion to continue Case Z10-25 for deliberation at the next meeting on April 7, 2011. S. Miller seconded the motion which passed with four votes in favor and none opposed.

T. Kinnon stated that the next meeting will be for deliberation; public input in this case has been closed. Attorney Nix asked about submissions; T. Kinnon stated that there would be no more submissions, either written or oral.

The Board took a short break at this time.

After the break, P. Monzione resumed his seat at the table and his duties as chair.

VII. NEW APPLICATIONS

L. LaCourse recused himself from the upcoming case. The alternate, Paul Larochelle, was appointed as a member for this case. He has been sworn in by the Town Clerk.

S. Miller recalled that he had seen something showing that an alternate had to attend two meetings before he could be appointed. There was some discussion about this, the conclusion of which was that P. Larochelle has met all of the criteria and been sworn in, so he is eligible to sit on this case as a member in place of L. LaCourse.

Case #Z11-01 **Ronald B. Arsenault**	**Map 15 Lot 15-3**	**Variance** **749 East Side Drive**

Application submitted by Ronald B. Arsenault for a variance from Article 400, Section 452 A & D to permit an existing 2 bedroom apartment (896 sf) above a garage attached to an existing 4 bedroom single family home on a two acre lot creating a prohibited 2 family dwelling on less that the required 4 acres.

P. Monzione read the case into the record. He asked members if they reviewed the application; members indicated that they had.

T. Morgan made a motion to accept the application for Case Z11-01 as complete. T. Kinnon seconded the motion which passed with five votes in favor and none opposed.

Mr. Arsenault came to the table to present. In 2002 he built a garage and apartment on his property with the intent of adding the house in the future. They were approved for the four bedroom septic design in 2002, so the town knew of their intent to build onto the garage. They did all the proper permits, inspections, and applications from the beginning. In 2006 they applied for a new construction permit; they were approved and informed that in order to have two dwellings on the property they needed to be attached by a 10 X 14 mud room. Now it is 2011, and they are trying to refinance or possibly sell, and now they are finding out that the town has allowed them to build an illegal apartment, or an illegal two family home, in a rural zone. They are just trying to rectify the problem; the town has been to the property to measure and inspect at least 5 times since 2002. The tax assessment indicates that they are a two family in a rural zone. They are asking the town for a variance to be a legal single family with a legal in-law apartment. Since the apartment measures were approved by the Town and they are only off by 150 square feet. He believes that the easiest way out of this is this application for a variance.

P. Monzione asked about the permit from April, 2006, for the house; he questioned who put on the permit that the apartment was 750 square feet. Mr. Arsenault answered that it was the Building Inspector; he did not put that down. P. Monzione asked the applicant if he knew at the time that it was wrong. Mr. Arsenault answered that he did not; he knew the measurements, but did not know that there was a specific ordinance that went with it. He put 22 X 28 for the garage but did not know that there was an ordinance for 750 square feet; if he had known he would have made the garage smaller. P. Monzione rephrased his question, asking the applicant if he knew that the Code Enforcement Officer's description of 750 square feet on the permit was wrong. Mr. Arsenault answered no, that he did not realize that. Now, he realizes that the addition of the mud room was to make it a two family; he did not realize at the time that it was going to be a two family.

P. Monzione explained municipal estoppels; if the town is doing things that are wrong and the applicant goes along unknowingly, it is unfair to the applicant. However, if the applicant knows that what is being done is wrong and does nothing to stop it, the municipal estoppels argument might not apply. Mr. Arsenault explained that all he was told was that he needed the mud room and he had gone along with that because he was just a young guy trying to build a house. P. Monzione explained that if the apartment had been 750 square feet, instead of 896, that would have been within the ordinance.

P. Monzione mentioned that he thought the 2 acres per dwelling unit only went into effect for lots created after 2004. J. Dever explained that the requirement in the zoning ordinance was created in 2004; the permit for the house was issued in 2006. The requirement of 2 acres per dwelling unit was in affect when the permit for the house was issued. Mr. Arsenault asked when the 750sf requirement for the garage had gone into affect; J. Dever answered that it was at the same time the two acre requirement went into affect, which was in 2004. Mr. Arsenault asked why he was not grandfathered if the requirement wasn't in effect until 2006. P. Monzione explained that there wasn't an issue with the 896sf garage until he added a second dwelling unit on the lot, and the attached garage was more than 750sf; at that point he had two dwelling units, one of which was not an accessory apartment of 750sf or less.

T. Morgan clarified that the variance is for an apartment that is 146sf too large. J. Dever added that there is also the issue of two dwelling units on a substandard lot. Board members discussed the need for granting a variance for both issues; P. Monzione thought that they could possibly only do the variance for the size issue. After discussion, members decided to go ahead with a variance for both issues, as requested by the application.

P. Monzione asked Mr. Arsenault if there was anything he would like to add. Mr. Arsenault mentioned that he would like to get the money he paid for the application back, as none of this was his fault. T. Kinnon commented that he personally does not have a problem with waiving the application fee, as the applicant had received the required permits from the town. The fee waiver would not include the abutter notification fees.

P. Monzione asked for public input in favor of or in opposition to granting the waiver for the application fee. There was none.
T. Morgan made a motion to grant the applicant a waiver of the application fee while noting that the applicant would still be responsible for the abutter notification fees. T. Kinnon seconded the motion which passed with five votes in favor and none opposed.

The application fee will be reimbursed to the applicant; noticing fees will be retained by the town.

There was no further input by the applicant in regard to the application. Mr. Arsenault did mention that he was wondering why this is the first time this has come up; this was noticed by a real estate agent in the process of refinancing. He has refinanced before and no body ever brought this up as a problem. P. Monzione answered that this is not something the Board can actually answer, but the information is useful to them.

Mr. Arsenault stated that he has looked at the criteria and the only hardship he can see is his; he is not causing any hardship for anyone else.

P. Monzione invited public input in favor of and in opposition to the application. Hearing none, public input was closed.

P. Monzione asked J. Dever for his input; J. Dever referred to his staff review and explained that at the time he sent it out, he did not have all of the department head responses. He has heard from police, highway and conservation; none of them had any concerns. The Fire Department would like to see smoke and carbon monoxide detectors in place. Permits at the time of original buildings were granted by the building department. Permits, inspections and CO's were all obtained in good faith. The effort now is to make this legal so that there are no issues in the future.

P. Monzione stated that his only concern had been whether the applicant had any knowledge of or was a party to the information being inaccurate. He went on to say that it is clear to him from what he is saying now that he did not know about the requirement or that the application was inaccurate.

VARIANCE WORKSHEET

1 – S. Miller stated that the variance **will not** be contrary to the public interest. This was the Town's mistake. No town officials or abutters have voiced any objections to this variance. P. Larochelle, T. Kinnon, P. Monzione, and T. Morgan all agreed.

2 – P. Larochelle stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. T. Kinnon agreed. P. Monzione agreed and added that he sees this really as an application that involves about 136sf of real issue here, even though it is a two bedroom. This is well in harmony with the spirit of the ordinance and the intent of the Master Plan. T. Morgan and S. Miller agreed.

3 – T. Kinnon stated that by granting the variance, substantial justice **will** be done. The substantial justice in this case is that the citizens of Alton should be able to come to the town and reasonably expect to be provided with accurate information and knowing that the guidance they receive from town officials will be proper and fair. P. Monzione agreed for those reasons and for the reason he stated for the one above. T. Morgan agreed; he thinks the applicant has made an effort to comply all along the way. S. Miller agreed and added that he believes they are correcting an administrative error. There was no quid pro quo for the original apartment and there was no quid pro quo for the subsequent house.

4 – P. Monzione stated that the request **will not** diminish the value of the surrounding properties. There has been no information from any source that would indicate that this structure as built is having an adverse impact on any surrounding properties. T. Morgan, S. Miller, P. Larochelle, and T. Kinnon all agreed.

5 – L. LaCourse stated that for the purpose of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; there **is no** fair and substantial relationship existing between the general public purpose of the ordinance provision and the specific application of that provision to the property, and the purpose of the proposed use **is** a reasonable one. The proposed use is clearly reasonable; it is a residence in a residential area. The general public purposes of the ordinance and provision are to help in bringing compliance across the zoned property in town. In this case there is an unnecessary hardship placed on the applicant because he has relied on his compliance with that zoning ordinance and has been told that he was in compliance. This has created a hardship for him, and there is no fair and substantial relationship between the general purpose of the ordinance and what has happened to him. S. Miller agreed and added that there was no reason for the applicant not to originally comply with this ordinance. P. Larochelle agreed; the proposed use is a reasonable one. He was unaware of the problems before him. He put his trust in a town official. T. Kinnon agreed. P. Monzione also agreed. This is a 136sf issue here, coupled with the fact that the applicant innocently relied on the town granting the permit which is the unique circumstance here.

T. Morgan made a motion in Case Z11-01 to grant two variances. The first variance is from the requirement of four acres for the two-unit dwelling. The second variance would be from the requirement of 750sf or less for the second unit on the property. S. Miller seconded the motion.

P. Monzione requested of T. Morgan that he entertain an amendment to the motion to state that the dwelling units comply with all fire prevention and detection requirements with reference to smoke and carbon monoxide detectors as mentioned earlier.

T. Morgan amended the motion per P. Monzione's suggestion. S. Miller seconded the amended motion which passed with five votes in favor and none opposed.

VIII. OTHER BUSINESS

1 – Previous Business

T. Kinnon voiced concern that in the previous case the fees had been waived before the case had been deliberated. He felt that perhaps that should wait until after the case has been heard. P. Monzione explained that in this case as well as the Currier case where fees had also been waived, the question was whether it was fair to the applicant to have had to pay a fee given what the applicant had already gone through. He acknowledged the point T. Kinnon made, but felt that the return of the fees in both cases was appropriate. T. Kinnon agreed; he had no issue in either case with returning the fees, he just felt that the timing was such that an appearance of prejudice could have been present. P. Monzione agreed with the point; in the future questions of fee waivers can wait until after the case has been adjudicated.

2 – New Business – First reading of proposed ZBA By-law amendments

The Board members read the proposed changes to the ZBA By-laws with J. Dever explaining changes as they were noted.

The words "as amended" will follow all references to RSA's – if there are future changes to the RSA, the By-laws will automatically reference the amended RSA.

In Section 4 – Selectmen no longer appoint members as of 2006; members are elected pursuant to the RSA's. Where the alternates were appointed by the Selectmen, they are now appointed by the ZBA.

In Section 6 – Him/herself is changed to themselves.

In Section 7 – Meetings is changed to hearings. They will be noticed in accordance with the RSA. Other meetings (added "such as workshops) may be scheduled by the Chairman of the Board provided notice has been given to the public in accordance with the RSA. That notice is 5 days, not 48 hours.

In Section 8 – Agenda items have been rearranged and updated.

In Section 10 – The deadline for applications is changed from 14 days to 21 days before the scheduled meeting. This will align timing with the Planning Board.

In 10.1, change "date the applicant should have had reasonable knowledge" to "the date of the correspondence detailing the decision."

Change Section 420 to Section 520 to reference the section of the Zoning Ordinance dealing with Special Exceptions.

In the section on requests for rehearing, it originally said that notification to abutters and applicants were not required for a request for rehearing. That is not appropriate; once the rehearing is granted and scheduled, they have to be noticed. The letter itself does not have to be noticed; if the rehearing is granted it has to be noticed. The wording of this was discussed to clarify the intent.

In 10.6.2, the abutter definition was changed to read that the abutter is as defined in the RSA. There was discussion of taking out the 250' notification standard once the site plan regulations have been revised. J. Dever spoke about how he and K. McWilliams, Town Planner, are trying to align the definitions across all the documents and application.

In 10.9.4, the decision made by the ZBA has been clarified; all decisions have to be made at a public hearing and all discussion and decisions are made in a public hearing. New wording in this section removes reference to decisions having to be made within 31 days.

Under continuances, incomplete applications not accepted as complete by the ZBA begin the application process all over again. This includes all application fees, abutter notices, and public notice. This is an effort to have complete applications coming in.

10.10.2 addresses the number of hearings that can be scheduled. Failure to appear for a scheduled hearing counts as one of the three allowed hearings. There is a waiver clause so that the Board can do additional continuances at their discretion.

T. Morgan made a motion to include in the record that this has been the first reading of the ZBA By-law amendments, as required by statute. L. LaCourse seconded the motion which passed without opposition.

3 – Minutes of February 3, 2011

On page 3, should read "Attorney Guida stated that in the original brief he had **cited**…"

On page 6, second paragraph, beginning at the end of the third line, the minutes should read "If the Master Plan clearly **states** that…"

On page 7, the second full paragraph, second and third sentences should read "For example, in the Daniels case Attorney Guida had provided, they reiterate the Bocchia V. City of Portsmouth standard where the area variance distinction between the area and use has virtually gone away with the new statute. Under Bocchia, it was a lot easier to meet the hardship standard.
On page 11, the last line of the fourth full paragraph should read "…realtor **is** Chris Johnson of Prudential Realty."

On page 16, the last paragraph, first line should read "they must think she is very **young**…"

On page 17, the fifth paragraph, last line, should read "…and **he** did not catch them all."

On page 21, the third line up from the bottom of the last paragraph, should read "In order for the **variance** to be granted…"

T. Morgan made a motion to approve the minutes of February 3, 2011, as amended. L. LaCourse seconded the motion which passed without opposition; T. Kinnon abstained.

4 – Correspondence

There was none.

The need for detailed minutes was discussed; this will be revisited at a future meeting.

L. LaCourse mentioned that he has not been receiving the minutes via e-mail; he will supply an alternate e-mail address for future communication.

ZBA minutes are posted to the town website; there was a question as to whether they are up to date.

IX. ADJOURNMENT

T. Kinnon made a motion to adjourn. L. LaCourse seconded the motion which passed without opposition.

The meeting adjourned at 10:02 p.m.

There is a site walk of the Coskren Property scheduled for March 12, 2011, at 10:00 a.m. The next regular ZBA meeting will be held on April 7, 2011, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session