

**TOWN OF ALTON  
ZONING BOARD OF ADJUSTMENT  
MINUTES  
Public Hearing  
April 4, 2013  
Approved 5/2/13**

**I. CALL TO ORDER**

Tim Morgan, Vice Chair, called the meeting to order at 7:00 p.m. Chairman Tim Kinnon was unable to attend this meeting.

**II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS**

Tim Morgan, Vice Chair, introduced himself, the Planning Department Representative, and the members of the Zoning Board of Adjustment:

John Dever, Building Inspector and Code Enforcement Officer  
Paul Monziona, Member  
Steve Miller, Member  
Lou LaCourse, Member  
Paul Larochele, Alternate

**III. ELECTION OF OFFICERS**

**P. Monziona made a motion to move this item to the end of the agenda. S. Miller seconded the motion which passed without opposition.**

**IV. APPOINTMENT OF ALTERNATES**

**P. Monziona made a motion to appoint P. Larochele as a member for this meeting. S. Miller seconded the motion which passed without opposition.**

**V. 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.

**VI. APPROVAL OF THE AGENDA**

The only change to the agenda was the election of officers, which was moved to the end.

**P. Monziona made a motion to approve the agenda as amended. L. LaCourse seconded the motion which passed without opposition.**

**VII. CONTINUED APPLICATIONS**

<b>Case #Z13-1 New Durham Road</b>	<b>Variance Map 9 Lot 57</b>	<b>T &amp; M Fitzgerald Family Rev. Trust Residential Rural District</b>
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*Thomas and Maureen Fitzgerald propose to construct a restaurant with drive-thru and associated parking and drives with access from other than a Class I, II, III or IIIa highway (New Durham Road).*

J. Dever read the case into the record.

Citing the fact that he lives on New Durham Road and that he had done so in the past, P. Monziona recused himself from hearing this case.

Brad Jones of Jones and Beach Engineers is representing the Fitzgeralds on this 3.05 acre property located at the intersection of Rt. 11 and New Durham Road. This case was before the Board on January 3, 2013; they are requesting a variance from the Zoning Ordinance item #9 which requires that a drive through restaurant must be located on a Class I, II, III, or IIIa highway.

Mr. Jones went through several plans showing the proposed new McDonald’s to be located directly across the street from the existing one; there will be another use for that property at some point.

At the previous hearing, the applicant was asked by the Board to get information concerning DOT approval for the driveway, to conduct some traffic impact assessment, and to assess the impact on abutting property values.

Mr. Jones presented on the driveway permit issue. Mr. Jones met with Mark Morrow of DOT District 3 and submitted a driveway application for the proposed site. Based on the meetings and the permit denial from District 3 (proposed driveway is in a controlled access, which Mr. Jones indicated on his presentation materials), there is a hearing scheduled with the state to get approval for the entrance in the controlled access; Mr. Jones is confident that once the hearing with NH State DOT is completed, the permit will be granted. The classification of the roadways was also clarified; Route 11 is a Class I highway, and New Durham Road is a Class V highway.

The lot needs to have access from New Durham Road that will line up with the entrance to the existing McDonald’s; the secondary access will be located on the town portion of the New Durham Road.

Stephen Pernaw, of Stephen G. Pernaw and Company, Inc., spoke to the traffic study issue; he conducted a preliminary traffic evaluation to aid the Board in making this decision. He conducted the study for the original McDonald’s, and for the Hannaford Supermarket, so he is familiar with the area.

In this case, he reviewed the previous studies and conducted some current data collection; all the information is summarized in a memorandum produced in February, 2013. He used several charts to illustrate his findings.

According to the NH DOT, which had a traffic counter on New Durham Road, at the New Durham town line, the daily traffic count in June, 2011 showed an average of 1,000 cars on Sunday, with about 700 per day on the weekdays. He pointed out that the hourly rate is more significant than the daily rate when studying traffic; the peak is late afternoon during the commuter hours on weekdays. On the weekend, the peak is around noontime.

Physical traffic counts were conducted in January, which Mr. Pernaw acknowledged is not the best time to conduct a traffic study. The number he obtained in this count were factored up to reflect July/August volumes. Based on the hourly counts, the peak hours were 4:15 p.m. to 5:15 p.m. on weekdays and 11:45 a.m. to 12:45 p.m. on Saturday. Mr. Pernaw concluded that the existing McDonald’s generated 108 trips during the peak weekday hour; on Saturday there were 191 trips during the peak hour. During both peak periods, there were a high number of left turns into Homestead Place, and a high number of right turns out. This is a stop-sign controlled intersection.

The NH DOT requires use of the ITE Traffic Generation Manual; it is used to estimate trips based on land usage. He referred to Table 1 in the report, which he handed out revisions to based on an increased size of the restaurant. The results of the 2003 count done for Hannaford showed that McDonald's generated 139 trips during the peak hour on the weekdays, and 158 during the peak hour on Saturday.

Mr. Pernaw used charts to show the projected traffic for the new restaurant; he explained that traffic data can be based on the size of the restaurant, or on the seating capacity. In this case, he used the average of the two methods. Based on that, he estimated that the new location would generate 100 trips during the peak weekday hours and 200 during the Saturday peak hour. Those numbers correspond pretty closely with the actual observation done in January. He reminded the Board that this restaurant is already existing; when it moves across the street, there will be no increase in the traffic in the Alton Traffic Circle. Instead of taking a left from New Durham Road into Homestead Place, they will be taking a right into the new driveway. When the existing McDonald's closes there will be a decrease in the traffic in and out of Homestead Place; when a decision is made regarding a new business at that location, the traffic will go back up. In terms of trips, traffic numbers will not change – cars will just be using a different driveway.

He spoke about sight distance from the proposed driveway from New Durham Road. The main driveway from New Durham Road shows sight distance looking left all the way back to the Traffic Circle; there is a lot of vegetation in the way and during winter there would be snowbanks to deal with. However, with clearing and snow bank maintenance, there is a clear shot back to the Traffic Circle. To the right, again with clearing, you can get the 400 feet DOT looks for. Sight distance is obtainable. The secondary site driveway is exit only; with vegetation trimmed back, there is over 400' of sight distance looking left and looking right.

The location on the inside of a horizontal curve is not ideal in terms of sight distance. The implication is that clear sight distance needs to be obtained; Mr. Pernaw showed a chart indicating that clear sight distance will be sufficient in both directions from both driveways.

Mr. Pernaw concluded that there will not be much traffic impact because the restaurant is moving from one side of the street to the other; there will be a decrease at Homestead Place for a while, but that will come back up with use of the existing McDonald's location. The location of the proposed driveway is ideal because you always want to line up the driveways or get them as far apart as you can. The secondary location has sufficient separation from Homestead Place. The intersection currently operates below capacity.

Steve Miller asked if the Hannaford and McDonald's traffic had been overlaid together; Mr. Pernaw explained that in the traffic counts done in January, 2013, there were a total of 192 cars in and out of the shopping center driveway on weekdays and 157 on Saturday.

Steve Miller asked Brad Jones if seat capacity affects traffic; he questioned the sense of going to the trouble and expense of moving the McDonald's if there is not going to be a significant increase in the number of trips, thereby generating more revenue. Mr. Jones explained that he can't speak for McDonald's, but he does know that the traffic flow at the existing site is very poor and nearly prohibitive for larger vehicles; the aim is to correct that traffic flow and make it better. The new location is bigger and does have more seats, but Steve (Pernaw) has taken that into account. He is not saying the new McDonald's will have more or less people, but the new traffic flow will be much better. S. Miller stated that this is a significant investment, and there would have to be a significant increase in revenue for McDonald's to even consider it; he does not see that increase reflected in the numbers. He would assume a 30 – 40% increase in business to cause McDonald's to go forward; he is finding it difficult to make a decision without knowing about an increase in the visits.

Mr. Pernaw used his Table 1A to show the two different methods of estimating site traffic; based on the size of the restaurant, they calculated 258 trips during the peak Saturday hour. In August many years ago, they counted 158, and in January they counted 191. When the future traffic study is done, they may use that number or an average of the two. He did agree, however, that the number of trips will go up, but the increase can be designed into the site. The seat method shows 146 trips, and that doesn't make sense compared to the 2003 and January 2013 observations. When they do sit with the DOT to have a formal scope meeting to start the actual study,

they will bring this information along and DOT will advise them which method they should use. The trips may go up, but they are not going to double. July and August must be the busiest month as those are the busiest traffic months for the Traffic Circle.

S. Miller asked what McDonald's has planned for the existing location. Mr. Jones speculated that McDonald's would not allow competition with the new restaurant; if they did sell the existing location, it would be limited so it would not be a competing entity. Mr. Pernaw added that how traffic is calculated for the existing location after the move will be determined with guidance from DOT; it may be that the existing number of trips to the current McDonald's will be left as is with the new one being added on top of it. Without a future use, there is no way to calculate the traffic there.

John Mueller, the broker representing the Fitzgeralds came forward to speak to some of S. Miller's questions. The existing McDonald's does not have a leach field; they have a holding tank that needs to be pumped at least twice a week during the summer. The move will create a significant difference in operations. He believes that there are a significant number of accidents caused by the congestion in the existing driveway, which adds to the operational expense due to insurance rates. Sales volumes and anticipated growth rates are confidential and have not been disclosed to him or the rest of the team. Mr. Mueller has been told that they intend to dispose of the current property; he believes there will be deed restrictions prohibiting any other fast food type restaurant. His current knowledge indicates that there could be a banking concern there.

L. LaCourse asked about the statement that the intersection is currently under capacity; Mr. Pernaw explained that this type of intersection does not have a finite capacity, as an intersection serviced by a traffic light would. He based the "under capacity" opinion on the number of gaps in the traffic stream heading into the Traffic Circle. There is little to no stacking to get in or out of Homestead Place. The delays are reasonable because most of the traffic coming out takes a right turn and heads toward the Traffic Circle. The capacity is estimated at hundreds per hour, and possibly more. If there were an issue with stacking, the solution most suggested is to widen the driveway to two lanes so left turning traffic doesn't hold up the right turns.

T. Morgan asked Mr. Pernaw if he was aware that Huggins Hospital owns the property on the other side of New Durham Road and has a right to build a facility across New Durham Road from these proposed driveways; Mr. Pernaw stated that he was not aware of that, but that would all be brought together at the traffic scope meeting, as would any other approved development in the area. He asked if this was definitive and explained that the Town of Alton will be invited to the scope meeting, as is standard. S. Miller stated that Huggins Hospital does own the land, but at this time they have no intention of going forward with any facility there.

S. Miller spoke about traffic turning right off Route 11 at Depot Street in New Durham to avoid congestion in the Traffic Circle; they would be coming off Route 11 at a higher rate of speed then proceeding through residential areas. Even though that is a law enforcement issue; he questioned whether people wanting to avoid the congestion at the Traffic Circle could be creating a hazard cutting through what is now a quiet residential area. Mr. Pernaw requested clarification of the streets so he can look at it, but he stated that it is a high speed run through New Durham to the Traffic Circle, and then an easy right into the new site. Currently, cars have to turn left across the stream of traffic. His gut feeling is that the diversion S. Miller is speaking of would not happen.

T. Morgan asked about the DOT denial of the driveway permit, and Mr. Jones' statement that he is confident the appeal will go through. Mr. Jones explained that the denial was based on the controlled access, which the state is researching based on conflicting information about where the controlled access ends. On one side of the road, it is at station 2+0; on the other side, it is station 5+0. The next step is a hearing with the state and a determination on the controlled access. T. Morgan asked about the affect on the project if the state determines that they did not give control back to the town; Mr. Jones answered that the property would still be developed, but he does not know if it would still be developed by McDonald's. T. Morgan commented that a great deal hinges on the meaning of the letter concerning the controlled access; Mr. Jones agreed.

Mr. Mueller, a commercial real estate broker with 25 years in the business, addressed the issue of property values when commercial development abuts residential properties. He presented the letter showing his findings, which indicate that commercial development increases the value of real estate, which is the highest and best use other than multi-family development. He looked at a great deal of data to come up with an opinion. He went to the Town Assessor and looked at the total value of all real estate in Alton. In 1980, the value was 95 million dollars; in 2012 it was 1.4 billion dollars. That represents about a 15% growth rate between 1980 and 2012.

Mr. Mueller explained that there are a couple of transactions that are relevant. The 2.41 acre site that were sold to Huggins Hospital in 2006 sold for \$265,000 or \$109,000 per acre. The New Durham Road frontage was sold to them in August of 2007 for \$107,000 per acre. The abutting 110 acre piece of property was purchased in 1992 at an average value of \$1,283 per acre. Based on those figures, the property value has risen by a factor of 85 times between 1992 and 2006-2007. The property under discussion for the variance abuts that, so that speaks to the increase in value of the property.

S. Miller asked about the affect on property values of the abutters if McDonald's were to move to the new location. Mr. Mueller answered that highest and best use determines the value; large parcels tend to be subdivided and therefore go up in value. If it is not residential, it would go up in value by being commercial. The sellers (the Fitzgeralds) intend to remain on their property and are the immediate abutters. Across New Durham Road is the Huggins property, which is already commercial. S. Miller asked if the highest value to be gained in the sale of abutting properties would be to go commercial. Mr. Mueller answered that it could also be to subdivide into smaller lots.

L. LaCourse asked Mr. Mueller if he had made any study as to the difference in the price of homes in that area. Mr. Mueller answered that he did raw land only because he had sales of raw commercial land in the area. He looked at it but could not evaluate it in any real sense because there have been very few transactions. What he did find through the town assessing department that the average home prices have fluctuated over the years with no clear trend identified. He listed the following figures regarding the average transaction price for homes in Alton: 2005 - \$333,000; 2006 - \$353,000; 2007 - \$457,000; 2008 - \$337,000; 2009 - \$251,000; 2010 - \$384,000; 2011 - \$322,000, and 2012 - \$340,000.

T. Morgan opened the floor to public input in favor of this application; no one came forward to speak in favor.

P. Monziona came forward to speak in opposition; he is speaking as a resident of New Durham Road, not in his capacity as a member of the Zoning Board of Adjustment. He is familiar with the traffic on the road. He asked about the status of the DOT approval; there is a plan showing the controlled access at that intersection. The applicant is depicting controlled access on his plan, and he has heard the applicants' representative say DOT will not provide approval for a driveway cut on a controlled access, which is why they can't put a driveway on Route 11. The applicant has been unable to inform the Board whether this is a controlled access, regardless of who owns the real estate. It is a DOT right of way if it is a controlled access; they are not going to get a driveway cut on Route 11 or on New Durham Road, which is an issue still to be answered.

In regard to traffic counts, he heard 108 in and outs on weekdays and 191 on Saturday, but he still doesn't know what the traffic counts will be with regard to Hannaford, the current restaurant when it becomes a new business, the new restaurant, the facilities that may be constructed by Huggins or some other commercial building. Picturing a bank at the site of the current McDonald's, he asked about the count on a payday Friday night in July, when people are going to the bank, McDonald's, and Hannaford. He has heard increments but no totals, and he has heard that the total can not be determined.

P. Monziona went on to say that he has heard that the driveways are going to be located on the inside of a horizontal curve; he compared it to trying to get out of the Dunkin Donuts on a Sunday morning, and what that does to the Traffic Circle and Main Street. He is of the opinion that this will be much worse on the other side of the Circle.

P. Monziona asked if there is anything unique about this lot or its configuration that prohibits another reasonable use for this lot without a variance being granted. He suggested that building a house would be a reasonable use. He asked if there is any thing unique about this lot that, due to its circumstances, prohibits a reasonable use if the variance is not granted. If the answer is no, that this lot can have a house on it, then this variance must be denied.

Robert Page, an abutter, came forward to speak. He questioned the traffic count based on the difference in seating count and parking between the existing McDonald's and the proposed new one. The current site has 30 seats and 42 parking spaces; the new site will have 74 seats and 50 parking spaces. According the traffic counter, the traffic will go up based on the seating. He does not think it is important to have elaborate driveways unless they intend to have a lot more people coming in there.

Also, this is a residential lot; it comes down to the hardship of the variance. He spoke about current use and that not everyone wants to develop their property. The Huggins lots were subdivided back in 1980; one of them was commercial. The other one he owned; he was approached by Huggins Hospital to sell. All of the approvals are in place for the Huggins Hospital property; they could go tomorrow if they choose to. That is part of the traffic flow, and something will be built there.

Also, the McDonald's plan, which abuts a wetland, shows designated spots for future access. Again, this is a residential lot that should not be developed as any more than a house lot; there are wetlands there, and the septic test pits that were done over 25 years ago will have to be reviewed by the State of NH because the lot is under 5 acres. The state has controlled access; they kept that access for 50 years to control the growth. It is a mess now because the town owns the road but the State owns the right of way. According to Mr. Page, the state is not going to grant the permit for the road.

He spoke about the septic at the existing site; it is more than a holding tank. He was at the meeting 15 years ago when the McDonald's got approval; they have had the septic replaced two or three times. At the new site, even though the land seems high, by the time they do the cuts and fills and there is a seasonal high water table, the State needs to approve the septic design because it is a less than 5 acre lot. Mr. Page has walked this site; it is nothing but rocks and puddles right now. There is a culvert on the lot where they propose their second driveway; it goes diagonally across the proposed parking lot. It does not show on the plan because they have not done that work yet.

Mr. Page questioned the traffic count; during peak times, up to 30,000 cars per day can use the Traffic Circle, and the traffic count is suggesting that only about 3% will use the McDonald's. Mr. Page spoke about the stop sign at McDonald's; looking at the road, if there was a stop bar there in addition to the sign, and if a car were to stop at the stop bar, they would probably be hit because people coming in cut across and don't use their turn signals. The traffic is going to increase because the restaurant is going to have more parking and more seating.

The plan produced by Norwood Realty shows that there are two additional acres for sale; this has access from McDonald's parking lot. There is no way the state is going to allow access on a town owned road and ever okay it because there is no reason to have a controlled access if they are not going to control it.

You can misrepresent if you are selling; he has 105 acres in current use. Not everybody is going to sell their land. If you look at the history, from the Traffic Circle all the way to New Durham is residential. He does not see how a variance can even be considered if the town doesn't have control of the access. The wetlands testing should have been done; Huggins Hospital did their studies and got their approvals after they bought their property. If the state is going to give access for this property, they are going to do their own traffic study. They are the only ones who have done any official studies in this area anyway.

Tom Varney of Varney Engineering has been asked by one of the abutters to explain the zoning aspects of this case. Mr. Varney stated that if they had a driveway permit, they would not need a variance. They do not have a driveway permit, and if the ZBA were to grant the variance, and they don't need one, that would be some sort of an injustice. If you get beyond the traffic, which is something of a red herring, there are five criteria to be met in

granting a variance. One of those requires that there be something unique or special about the land and when you look at that land, it has nice shape and frontage, but there is nothing unique in the characteristics of the land that require a variance. Another criteria states that the request must be in harmony with the spirit of the zoning ordinance and the intent of the Master Plan and with the health, convenience and character of the district within which it is proposed. The Master Plan points out that the people of Alton want the town to have a village appearance and they like to protect the natural resources, which includes wetlands. When you keep filling in wetlands, you pay for that down the road. Once the Merrymeeting River becomes impaired, it will restrict property owners for 1,000 feet from the river. Recently at the Town Meeting, there was a vote to allow easing of restriction of the Aquifer Overlay District; the people of Alton voted it down which indicates that the people want to protect the natural resources of the town.

Mr. Jones addressed the comments from the public. Speaking to Mr. Varney's points, Mr. Jones pointed out that the property is unique in that it meets the zoning because it has frontage on Route 11, which is a Class I highway. The uniqueness is that all along that stretch of Route 11, the state will not allow cuts and it is completely controlled access. The only way to access the property in a reasonable manner is to go on to the Class V section; they are here tonight because they understand that regulation which was to keep commercial properties near other commercial properties. Mr. Jones showed a plan depicting the subject site; all of the property surrounding it is commercial property and it is abutting the state highway.

Mr. Jones explained that this is not a fully engineered plan; this is a concept. When they get through the ZBA, they will go to the Planning Board, where there will be a full survey of the property with wetland delineation. There will probably be mitigation for the site; when Hannaford's was developed, they actually had a mitigation gravel pit and replaced the impacted wetlands back in the town of Alton. Those concerns will be addressed during the planning process. There is a cross culvert; that will also be taken into consideration when the fully engineered plan is done.

Mr. Jones explained the driveway permit process. They had to apply to District 3 for the access; because of the controlled access, the DOT had to deny the permit. The next step is to go the State of NH Right of Way; they are following the pattern that NH DOT required and going through the process.

Mr. Pernaw noted that it had been stated that the Huggins Hospital project was ready to go; that tells him that when they get to the traffic study scope meeting in Concord, they are going to be handed the Huggins traffic study and told to include it in their projections.

Mr. Mueller stated that this is just the first step in what will be a long process – the wetlands mitigation, the traffic study and all of that will be conducted with great propriety and effort. McDonald's is not willing to do that until they get past this first hurdle.

## **WORKSHEET**

L. LaCourse stated that the variance will not be contrary to the public interest. The issue of safety has been demonstrated; the traffic patterns now cross oncoming traffic taking a left into McDonald's, and this would have them taking a right. Exiting traffic would be beyond the area that is busy now because it is beyond the curve. S. Miller agreed, adding that he has significant concerns about the traffic and believes it is significantly underestimated. It is in a residential rural zone; there is a commercial boundary there for a reason. He is not in favor of moving that boundary on a regular or piecemeal basis unless there is an absolutely significant reason to do so, and he does not have one yet. P. Larochelle agreed. T. Morgan stated that it will be contrary to the public interest because there is still the unanswered question upon which all of this is predicated, and that is whether the state will give a permit. If the state doesn't give a permit because they find that it is a limited access road and the Board gives an approval, there is no telling where access will or won't be. He also thinks the town's people and the vote in March indicated that they don't want to make any changes to the aquifer zone by a fairly good sized majority. They were expressing a desire to maintain and preserve properties like this; he thinks it will be contrary to the public interest. Mr. Miller indicated that in saying it would not be contrary to the public interest, he misspoke – he does believe it would be contrary to the public interest.

S. Miller stated that the request is not in harmony with the spirit of the ordinance and the intent of the Master Plan and with the convenience, health, safety, and character of the district within which it is proposed. He is not convinced that it is in keeping with the Master Plan; he thinks the wetlands issue is a significant issue, and it is still set up as a residential rural district. P. Larochelle agreed, adding that there is more work to be researched. T. Morgan agreed that it is not in harmony with the spirit of the ordinance and the intent of the Master Plan which is to maintain a rural and village atmosphere in the Town of Alton. L. LaCourse stated that the request is in harmony with the Master Plan because McDonald's already exists and it is only moving across the street. If it wasn't in harmony with the Master Plan, it wouldn't be there in the first place.

P. Larochelle stated that by granting the variance substantial justice would not be done. T. Morgan agreed that substantial justice would not be done; he thinks there is more harm to the town than benefit to the applicant. L. LaCourse disagreed; he believes that substantial justice would be done because the question of safety has been put to bed, and the McDonald's already exists and is only moving across the street. S. Miller stated that by granting the variance substantial justice would not be done; there is only one significant reason to ask for this variance, and that is to maximize revenue and profit, and that will be at the expense of the rural community.

With respect to the value of surrounding property, T. Morgan stated that this would not diminish the value of surrounding properties; it is close to a commercial area. L. LaCourse, S. Miller, and P. Larochelle agreed.

L. LaCourse stated that for purposes of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and that the proposed use is a reasonable one. He added that there are special conditions attached to the property but it could be put to another use, and therefore this request does not meet paragraph A. S. Miller added that he does not believe the hardship criteria has been met; there are significant other uses that this property could be used for in its current residential rural form. P. Larochelle agreed. T. Morgan agreed.

S. Miller read the summary statement: If the criteria in sub-paragraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property can not be used in strict performance with the ordinance and a variance is therefore necessary to enable a reasonable use of it. S. Miller stated that the reasonable use it could be used for could be as a residential lot or farmland, and probably a half dozen other used. P. Larochelle agreed. T. Morgan agreed. L. LaCourse agreed.

Because there were several split opinions within the criteria, T. Morgan requested a motion to settle this case.

**S. Miller made a motion to approve the application for a variance for Case Z13-1. P. Larochelle seconded the motion. There were no votes in favor, four votes against, and no abstentions. The granting of the variance was denied.**

<b>Case #Z13-3</b> <b>443 Roberts Cove Road</b>	<b>Special Exception</b> <b>Map 21 Lot 12-2</b>	<b>Trustees of Brewster Academy</b> <b>Lakeshore Residential District</b>
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*On behalf of the Trustees of Brewster Academy, Regina A. Nadeau, Esq. of Normandin, Cheney & O'Neil, PLLC, is proposing a physical expansion of a dwelling structure having a non-conforming use.*

J. Dever read this case into the record. The applicant in this case requested a continuance until the meeting on May 2, 2013.

**L. LaCourse made a motion to grant the requested continuance for Case Z13-3. P. Larochelle seconded the motion which passed without opposition. P. Monziona abstained as being recused.**

## VIII. NEW APPLICATIONS

<b>Case #Z13-4</b> <b>25 Perkins Road</b>	<b>Special Exception</b> <b>Map 69 Lot 15</b>	<b>David A and June B Howell</b> <b>Rural District</b>
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*On behalf of David and June Howell, Dean M. Clark LLS or DMC Surveyors and Wesley W. Whittier of Waters Edge Builders are proposing to replace the existing 2 bedroom house with a new structure on the property, removing the existing house from the 30 foot setback with the exception of 188 sf of the deck.*

J. Dever read this case into the record. P. Monzione rejoined the Board.

Board members reviewed the application for completeness.

**P. Monzione made a motion to accept the application for Case #Z13-4 as complete. L. LaCourse seconded the motion which passed without opposition.**

Wes Whittier came forward to present the application. His clients wish to save their property by tearing down the present dilapidated house and replacing it with a livable structure. In order to do that, they realize they need to put the house back in the setbacks; because the property is in such a tight location, they have been able to get the house out of the setback, but part of the deck is in the setback.

Presently, the house is located very close to the lake; Mr. Whittier showed photos of the current structure from different angles and elevations. P. Monzione clarified that the new construction so that more of it will be in conformance with the setback. P. Monzione asked about the dimensions of the new structure and how it will compare to the old. Mr. Whittier explained that the actual footprint will be slightly smaller because they are going to eliminate a small shed attachment from the new building. They will gain square footage with the addition of a second floor. P. Monzione clarified through questioning that the footprint is not going to change. Mr. Whittier explained that the new house will be a cape with a shed dormer facing the lake. P. Monzione asked if the height would be greater than the current structure; Mr. Whittier stated that the ridge line would stay the same height whether he puts the second floor on it or not. It will still be a 12 pitch off the back or road side, and on the front will be a shed dormer with a 4 pitch. It would still be 12 feet above, 20 feet from ground height. P. Monzione cited regulation 320-B, #5, it permits the removal of this type of structure, and replacement in kind. It says "in kind replacement means permitting replacing of the same building dimensions, length, width, and height, within the same building footprint, with no increase in the number of bedrooms, and would not permit change from season use to year-round use." P. Monzione asked if the structure represented on the plans and in the application and proposed to be built would meet the requirements. Mr. Whittier responded that it will not be year-round use; it would have the same footprint less the jog-off for the shed. It is a two bedroom now and will remain a 2 bedroom. One of the bedrooms will move upstairs so it will not be congested. Currently there is a room in the basement that has undetermined use as the ceiling is very short. Currently there is a kitchen, bathroom, two bedrooms, and a living room on the ground floor. The new house will have the kitchen, living room, master bedroom, and a half bath on the first floor, with a second bedroom, full bath, and sitting room on the second floor. There will be a walkout basement on the new house. They are going to dig back into the slope, so the basement will still be the same, the first floor will be the same elevation, and the roofline and ridge height will be the same. The footprint will be the same, and there will be no increase in height.

S. Miller asked if the house would be able to be used year round. Mr. Whittier explained that it will be heated and insulated, but the road is impassable in the winter due to drifts coming off the lake. There is no plan to use the house year round. S. Miller asked about the location of the oil tank; it will be in the house on stands. P. Monzione questioned whether the current building also has heat; Mr. Whittier stated that it does. J. Dever explained that current code requires that all dwelling structures must be built with heating and insulation; the days of building an open stud wall lakeside camp are gone. He also spoke about the fact that 320B #5 addresses moving structures into the building envelope; once the structure is in the building envelope and is conforming, there is no restriction in the code as to size, as long as it is conforming to setbacks. P. Monzione acknowledged that but pointed out that this applicant is still going to be in the setback even after he is done. He is coming under replacement in kind of a non-conforming structure. As long as he is dealing with non-conforming and he

is replacing it, he has to meet the in-kind criteria. The same regulation states that to the extent that you are able to move the building and make it more conforming by taking it out of the setbacks, you should do that.

S. Miller asked for the total number of feet requested for the Special Exception; the applicant clarified that it is 188 sf of exterior deck; the extension into the setback is 6 feet.

T. Morgan asked for Public Input in favor of the application; there was none.

Several members of the public spoke in opposition to the application.

Judith and Arthur Knapp, the daughter and son-in-law of Norma Graham, a neighbor, came forward. They do not have much of an issue with what is planned, except that they disagree with the description of the height of the new building; he thinks it is going to be higher than what is there now. The existing structure needs to be torn down due to neglect. The additional runoff that goes onto Norma's property goes through a small pipe; it needs to be cleaned out and maintained. The area is wet year round. The mound system will cause additional runoff as will the new camp. That is a lot to think about, especially if they are going to move the road for the new septic system to go in. He is not sure if this is a wetland; it is not a big area, but it is always wet and is always an issue with the water running down the road to the pipe. The property has been owned since the 40's and always maintained nicely. The road that goes behind the property is very close to the cottage; boulders are coming out and heavy equipment is going in, which will be a hazard to her property and possibly to the cottage itself. That is a big concern; he does not know if the Board members have looked at the property and what is being proposed. The Knapps requested that the Board look at the property before making a decision. Mrs. Graham is 83 years old

S. Miller commented that he had not been down there in a long time and asked about the terrain. Mrs. Knapp explained that the road is very steep; it comes down off the mountain at Place's Mill, and then Perkins Road goes down in.

Mr. Knapp stated his major concern is the traffic coming through for the building; he is concerned about the concrete truck coming through and what it will do to Mrs. Graham's fieldstone foundation. Her septic is out back there too, and he is concerned about it being pushed in. Mr. Knapp again raised the issue of the height of the structure. It is going from a 6/12 to a 12/12, which will double the height of the roof; it is going to be higher. He understands why they are going to tear it down, and they are going through all the rules as far as the setbacks, but it could be put right back where it is. Mrs. Knapp added the Howells have used this as a year round home in the past, when they carried 5 gallon buckets of heating oil up to the top of the road and then down to the cottage.

S. Miller asked if the setback issue were to be met, the Knapps would have any other issues. Mrs. Knapp asked why Alton requires a 30 foot setback, and the State of NH requires a 50 foot setback. J. Dever explained that Alton set the 30 foot setback many years before the state decided they wanted 50 feet. The zoning ordinance was established in Alton in 1970, so this cottage predates zoning in Alton. Since changing the zoning in 1995, the setback on a lake or river became 50 feet. The state did not establish their 50 foot requirement until the mid-80's. Mr. Knapp added that in addition to the setback, their concern is the drainage; if they are going to create a problem where they need drainage for this area, they should allow the drainage on their own property. He suggested the use of a retaining wall to keep the water on their own property. The new configuration and location of the structure on the property will cause more drainage.

T. Morgan asked Mr. Knapp about the drainage pipe he mentioned earlier that needs to be kept clear; Mr. Knapp indicated the location of the pipe on the plan – it goes across the road and is in the lower part just off the Howells property line. Currently, the Knapps or other family members are clearing it of sediment and leaves at the top end; the water flows through it to another area, then goes through another pipe to the lake. L. LaCourse stated that if the size of the lot is not changing and the size of the house is not changing, there will be no change in the runoff. Mr. Knapp used photos of the existing cottage to show why he believes the change in the location of the house and the mounded system will create additional runoff coming onto Mrs. Graham's property. He

also again voiced his concern about the heavy equipment coming through to deliver building materials and remove a large boulder. T. Morgan stated that the Knapps had previously voiced the opinion that the cottage needed to be replaced; the heavy equipment will be needed no matter what the replacement looks like.

The width of the road was discussed; Mr. Knapp stated that he drives an F-250 Ford pickup and his mirrors are in the trees on both sides of this one lane road. When the Howells had the house cleaned out last summer, the people who brought the dumpster in would not go down the road with a 30 yard dumpster; they ended up delivering something shorter because of the condition of the road. P. Larochelle asked the Knapps how they would expect this property to be rebuilt so the owners can use it with some state of comfort. Mr. Knapp explained that the road was originally supposed to be put in at a different location, but it was easier at the time to do it as it was done which makes it closer to the Howells' and Grahams' cottages; he suggested that one fix might be to relocate the road to the original designed location.

Kim and Eric Johnson, abutters directly to the right of the Howells, and also across the street, came forward to speak about their concern about the road being moved onto their lot across the street. According to the proposal, it looks like the road is being moved onto their property; they are questioning that move. Mr. Whittier explained that because of the size of the lot and the location of the well, the septic grade run off runs out into the road. The septic itself is not in the road, but the elevations required by the state taper the grade coming off the septic for proper runoff; that taper is going to be in the road. The Howell's property pin is out into the cleared area that is used as the Johnson's parking area; that is the corner they are going to shave, where the Howells' property widens to the Johnsons' parking area. That little area will be shaved causing the road to jog out toward the Johnsons' parking area, so they don't have to run up on the edge of the septic. Mrs. Johnson commented that the drawing looks like the road is being moved over in back of the Howells' property. Mr. Whittier used the plan to illustrate the change in configuration of the road; he indicated a corner that is now just rocks and trees that they are going to dig back about 8 feet to allow the road to come around. The road will still be the same everywhere else except in that one small spot. There was discussion concerning the width and location of the road; Mr. Johnson explained that for 80 years the road has run behind the cottages and has shared the properties. They all knew it because that is the way it has always been. It was built in the 30's, and now all of a sudden it is going to change and go into a parking area that is shared by the residents, even though it is on the Johnsons' property. Additionally, when they bring their boats in, it takes every bit of that land to turn their boats around; backing out is not an option due to the nature of the road. The road and parking area has been there forever; they weren't even told about this and knew nothing about it until they received the abutter letter in the mail.

Mr. Johnson questioned whether this property met the criteria for the variance because it was not destroyed by fire or some other disaster; it was abandoned. The first year after the abandonment, the stench was awful, and they smelled it for a full year. P. Monziona spoke about the regulation, explaining that the Johnsons have the old regulation, not the new one that was voted in during the last Town Meeting. Mr. Johnson restated that point that it was an abandoned property; for four years they lived with junk cars and the stench, and wild animals inhabiting the property. He had approached them a few times to encourage them to clean up the property; at this point it needs to be gutted, even though the structure and roof are still tight. The process will almost need to be done surgically; small vehicles only and no heavy trucks like 10 wheelers or concrete trucks.

P. Monziona explained about the new regulation which was designed specifically for the purpose of allowing owners to remove dilapidated cottages and replace them in the building envelope with new, safer homes. Before this new regulation, if you tore down an old cottage, you couldn't remove the entire structure without losing your grandfather clause, which could mean loss of the use of the lot. This is permitted by Special Exception as long as it is an "in-kind" replacement with the dimensions of length, width, and height remaining the same; owners are also encouraged to move the new structure to conform with the setbacks. In the process of doing this, if the home owner damages your property with a cement truck; if they cause noise; if they dig up the road – those are not part of a ZBA application. The ZBA is required to look at the application and determine whether the information presented in the plan and the information given by the applicant satisfies the Special Exception Criteria. If it satisfies the criteria, then most likely the application will be granted. If it granted, the ZBA can not resolve issues of trespass or torn up roads. The ZBA can place conditions on the granting of an application,

and they concern themselves with pedestrian and vehicular traffic, and sewerage and septic as they go through the criteria. Many of the points raised, as valid as they may be, could be outside the criteria the Board has to consider.

Mrs. Johnson mentioned the height of the new structure; it will be higher than the existing structure. L. LaCourse questioned the applicant who explained that the new ridge will be about 6 feet higher than the old one; the shed dormer will not add to the height. S. Miller asked the Johnsons if the movement of the road would infringe in any way on their property rights. He asked if the placement of the mound system, and the slope thereof, would cause them to lose any property. Mr. Johnson answered in the affirmative; when they move the road, the Johnsons' will lose their parking area and their turn around. S. Miller clarified through questioning that this is indeed property owned by the Johnsons, and not a common area. The Johnsons affirmed that it is their property.

P. Monziona asked the Johnsons if the movement of the structure as proposed would cause the building to encroach on their land. Mr. Johnson explained that it is the septic system that will be causing the road to move. The existing road goes through the location of the septic system. P. Monziona asked Mr. Whittier if there is any way to locate the structure on the lot that would be completely conforming with all setbacks. Mr. Whittier answered in the negative. P. Monziona asked about the current septic and why it can't be used for the new structure; Mr. Whittier explained that the current septic would be in the house. P. Monziona clarified that in order to move the house to be more conforming, they also have to relocate the septic. Mr. Whittier agreed and added that there is currently no well; in order to put a well in and have a 75 foot radius, the septic is just outside of the well radius. P. Monziona asked if all elements including the structure, the well, and the septic system were going to stay within the bounds of this lot; Mr. Whittier answered that they would.

Mr. Johnson raised the point that the new right of way will be within 25 feet of the septic system, and the right of way would be in a wetland. Mr. Johnson asked if it matters under the regulation that the structure was abandoned; there is no difference at all.

S. Miller suggested losing the deck and moving the house forward, thereby relocating the septic. Mr. Whittier explained that the location of the septic is driven by the location of the well and the 75 foot well radius. S. Miller asked the applicant if he is certain about the location of the well; Mr. Whittier explained that they have not dug the well yet, but due to the configurations of the lot and in order to get the distances between the well and the septic, there is only one location for the well, and one location for the septic.

P. Monziona asked the applicant if he is proposing in this plan to change the location of a right of way. Mr. Whittier answered that they will end up having to shave the corner of the Howells' lot in order to gain the slope of the septic; they will be offsetting the right of way. P. Monziona is unsure how that would have anything to do with the ZBA or this application; the right of way would be a private matter between the property owners who own the right of way. How an individual can do that on his own is not part of this application; the ZBA has no authority to approve a change of right of way. J. Dever explained the right of way location and the fact that it is not located as it was shown in the deeds. That was another limiting factor in trying to maintain the 25 foot right of way setback; that is why the house is located as it is between the setbacks for the right of way and the lake.

Mr. Johnson pointed out that the contention between the property owner and the owners of the right of way involves 18 families because they all own the right of way. T. Morgan expressed his appreciation of the point, but stated that the Board has absolutely no authority to opine on that at all. This is not a zoning issue, but it is a deeded issue. Mr. Johnson asked if the Howells' could take their right of way and declare that no one can use it anymore; P. Monziona answered that these are all legal property issues that are either resolved between the parties involved or in court. Legal ownership is not resolved at the Zoning Board; the Board looks only at the criteria that is set forth in the regulation and what the applicant is representing to the Board. If the applicant goes off and encroaches on a right of way, or attempts to alter the right of way, there are other avenues than here. Mr. Johnson asked P. Monziona if he was saying that they would allow a permit that would clearly be encroaching on someone else's property. P. Monziona stated that they have not made a decision on this case at

all, but if he as the objector is pointing out that the construction as proposed on the plan would encroach on property that does not belong to the applicant, that is a factor the Board would take into consideration.

Mr. Knapp asked about the removal of trees on the property; that is not a decision made by the Zoning Board. He also asked if the house is different than the one that is there now, as far as the height, and if it is higher than it is supposed to be, where could the abutters go after this. P. Monziona stated that this process can not turn into a discussion where they talk about legal issues and questions. They listen to the applicant's presentation and apply the criteria, then base their decision on that. As nice as it is to have a discussion about other issues, this meeting is not the place for it.

Ann Gallant, the fiancé of Bob Morrill came forward to speak. They are the last house at the end, next to the Johnsons. She is concerned about the access in and out; they had an incident last season where they had to get Mr. Morrill out for a medical emergency, and she is concerned about the chaos this building process will create and how that will affect their ability to get in and out. They probably travel the right of way more than anyone else on the road. She wants to know how long the process is going to take, and while it is ongoing, how are they to get in and out. Mr. Whittier explained that he would not block the access; he has built houses since 1991, many of them larger and on smaller roads than this one. His crew is himself and one other guy; there will be 2 ¾ ton pickups and one 14 foot job site trailer at the site. He is sure he can get the 14 foot trailer backed in off the road. Last fall, he was at the site with a 16 foot flatbed and Kaboda tractor, and a ¾ ton pickup when he dug the test pit for the septic; there was no issue of blocking the road. There may be an occasion when there is a cement truck that comes in, but it will back off the road into the setback. It will not be in the road. They may meet a vehicle coming or going, but the road will not be blocked. Ms. Gallant asked about the Board's position because on the last case they talked a lot about pulling in and out of driveways; she feels that the Board needs to be concerned about peoples' health and safety if an ambulance had to get in and out. They would love to see something new, because it is an eyesore. Mr. Whittier stated that he will do everything in his power to keep the disruptions minimal; he explained that a loaded cement truck has less impact on a road than a loaded pickup or six wheel because of the way it is designed. If there is any damage to the road, they will grade it out and repair it; he will also make sure that if they knock any shingles off cottages, they will repair the damage, and he agreed to provide an insurance binder.

Mr. Johnson asked what would happen to the natural flow of the water that always came through that area if the mounded system is put in place. T. Morgan stated that there is a very well established area of the law that deals with damage due to run off from someone else's property. Changes that they make to their property that has an adverse affect on another property allows the abutting property owner very strong rights. Mr. Johnson asked if that had any bearing on the zoning decision; T. Morgan stated that it does not. J. Dever pointed out that Mr. Johnson had been quoting from the Aquifer Overlay District, which is only in the downtown area and not out where this property is located. He also explained that when they go for their permits from DES, runoff and other factors will be reviewed by DES, which they do particularly on these small lots with regards to runoff, retaining things on site, and preventing it from running into the lake or to the lot next door. The abutters will be notified when that application is submitted; if they have concerns they will be told how to make input.

Public input was closed.

S. Miller asked if this exception was approved, the Board would in effect be creating an event which caused the encroachment of a right of way because it is on a plan; he asked if that is within their purview to do. P. Monziona explained that as a ZBA, they have no authority to infringe on another property owners' rights. He does not know that the building in any way encroaches on anyone else's property; his specific question to the applicants' agent was whether all of the features including the well, the septic, and the house as proposed were within the boundary of the owners' lot. The answer was yes. There is nothing on the plan that shows anything being constructed outside the lot onto a neighbor's lot, or even in a commonly owned right of way. S. Miller pointed out that there was testimony by Mr. Whittier that the slope of the septic, as it is drawn, would encroach on the right of way to the extent that the right of way had to be refigured. It wasn't just the loss of a couple of inches; it caused it to have a turn, and he thinks that is significant. P. Larochele stated that the slope does not show up on the print; S. Miller acknowledged that but referred to testimony given by the applicants' agent. P.

Larochelle again stated that in what they can see on what was presented to them, you can not see the slope outside the boundary lines.

P. Monziona stated that he is very much in favor of the applicant being able to voluntarily take this structure down and to construct a nice new structure in its place. He thinks that by being able to do that, not only will the applicant benefit from that property change, but the neighborhood will also; they won't have this horrible condition they have been dealing with, and it will be in everybody's best interest to see this happen. However, he thinks it does have to be in absolute strict compliance with the regulation, and from what he is seeing this application is not. He would love to see this go through because he would love to see a nice new building there for everyone's benefit, but it has to comply strictly with the requirements of 320B, #5. S. Miller asked if, in case this application is turned down, the applicant can still design a new building with a different structure and go ahead with it, just not with this particular plan. P. Monziona stated that a condition on the approval could be that the building would have to strictly stay within the dimensions of width, length, and height of the roof. As far as how the applicant builds this, there is enforcement, and everyone including the State of NH is going to be there to see things like runoff and to make sure that no one is encroached upon and there is no damage to abutting structures. S. Miller asked if there is a Special Exception that would permit the increased height; P. Monziona answered that there is not for this building.

## WORKSHEET

P. Monziona stated that a plat has been accepted in accordance with Town of Alton Ordinance 520-B. All members agreed.

L. LaCourse stated that the specific site is appropriate for the use; moving the building away from the lake is making it less non-conforming. All members agreed, and P. Monziona added that the use is the same.

S. Miller stated that there is no factual evidence that property values in the district will be reduced due to incompatible uses; it is a compatible use, and property values will probably go up. All members agreed.

P. Larochelle stated that there were no valid objections from abutters based on demonstrable fact; in his opinion, the abutters are concerned with travelling back and forth during construction. He feels that during construction things will run as smoothly as possible; the contractor will take care of that. After the fact, when the project is completed, there will be a beautiful property to look at, and the owners of the road can determine how they want to maintain the road. T. Morgan stated that there is a valid objection from abutters based on demonstrable fact; that has to do with the height of the proposed building which unfortunately falls outside the purview of the statute. P. Monziona agreed that there is a valid objection from abutters based on demonstrable fact, and that is the height. This application is for a structure that is going to have a roof that is 6 feet higher than the in kind that the regulation permits. L. LaCourse agreed. S. Miller agreed due to the height issue which is black and white, and also because the approving of this Special Exception would create an encroachment on an abutter's right of way or ownership of land, and he would not like to see this Board a party to that.

T. Morgan stated that there would be no nuisance to pedestrian or vehicle traffic including the location and design of access ways and off street parking; although there has been a great deal of concern expressed with regard to the right of way, it is not clear that what is proposed will be more serious than the rather constrictive right of way that currently exists. P. Monziona agreed and added that this does not restrict vehicular or pedestrian traffic or off street parking; under any circumstances, the applicant would be required by law to stay on the right of ways as they exist, and not to alter any of that. L. LaCourse agreed.

P. Monziona stated that appropriate and adequate facilities and utilities would be provided to insure proper operation of the structure. As he understands it, the application represents a new location for a septic and well, so facilities and appropriate utilities will be provided. L. LaCourse agreed. S. Miller stated that appropriate and adequate facilities and utilities would not be provided to insure proper operation of the structure as stated by testimony that the only way to have the proper septic field was to have it slope onto an encroachment of a right

of way. P. Larochelle does not see evidence on the plan that shows a slope; there is no view of that fact happening. Therefore, adequate facilities will be provided. T. Morgan agreed with that statement.

L. LaCourse stated that there is not adequate area for safe and sanitary sewage disposal and water supply, based on the fact that the septic is going to encroach on the right of way; for that reason he does not feel it is a safe area. S. Miller agreed. P. Larochelle stated that there is adequate area, according to the print. T. Morgan agreed that there is adequate safe and sanitary sewage disposal and water supply. P. Monziona agreed that there is adequate safe and sanitary sewage disposal and water supply, according to the plan.

S. Miller stated that the proposed use of the structure is consistent with the spirit of the ordinance and the intent of the Master Plan; it is an improvement in this residential area, and a nicer home. P. Larochelle agreed. T. Morgan agreed that it is consistent with the spirit of the ordinance, but not with the letter of the ordinance. P. Monziona stated that it is not consistent with the spirit of the ordinance and the intent of the Master Plan because this application violates the reg because it fails to provide a structure that is in compliance with the in-kind requirement, particularly with regard to height. L. LaCourse stated that the proposed structure is not consistent with the spirit of the ordinance or the intent of the Master Plan because it does not follow the direct guidelines with regard to size due to the increased height of the roof ridgeline height.

**S. Miller made a motion to approve the Special Exception for Case #Z13-5. P. Larochelle seconded the motion which received four votes against. The Special Exception for Case #Z13-5 was denied.**

<b>Case #Z13-5 118 Old Wolfeboro Road</b>	<b>Special Exception Map 12 Lot 57-1</b>	<b>Deanna O’Shaughnessy/Fae Kontje-Gibbs Residential Rural District</b>
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*Deanna O’Shaughnessy and Fae Kontje-Gibbs propose that in addition to the current use of their “vacation rental by owner” they would like to use it occasionally as a “commercial function facility”.*

J. Dever read this case into the record.

T. Morgan recused himself from hearing this case and moved to the other side of the table, as he represents the applicants in this case. P. Monziona took over as Acting Chair.

Board members reviewed the application for completeness.

**S. Miller made a motion to accept the application as complete. L. LaCourse seconded the motion which passed without opposition.**

Tim Morgan and Deanna O’Shaughnessy came forward to present. T. Morgan stated that last fall, Ed Consantino was at Sunny Slope Farm, which is the subject of this application, to talk about fire concerns, including use of fire retardant tents when people are doing events, and being careful with bunting. With him were Mr. Dever as the Code Enforcement Officer; he had some concerns about the electrical service in the barn with regard to the number of outlets overall, and the number of GFI’s. Accompanying them was Ken McWilliams, the Town Planner who told them they needed a Special Exception under Article 200. T. Morgan disagreed, based on the language of Article 200; they filed an application to come before the Zoning Board to get an opinion rendered by the Board.

In 2002, Deanna and her sister inherited the farm from their father; the farm was in some disrepair due to his ill health. Mr. Lund, then Town Planner, suggested that one of the options to keep the farm solvent and in good shape was to create a vacation rental by owner as defined in RSA 540C. This allows property owners to rent their home to vacationers. They formed a company called Joy Hill LLC, a management company registered with the state to administer vacation rental by owner. They have a state tax registration to pay taxes under RSA 78A which is Meals and Rooms Tax.

Mr. Morgan gave a brief history of the rentals, explaining that the first renters came in October 2003, and that many of the people who come to rent the property come back over and over. In April of 2004, there was a couple who rented the farm and had a wedding in the library. That summer, there was an outdoor wedding that was a feature in Bride Magazine. There is a website for the property that gives pricing for 3 days, five days, or a week. A lot of families use the property around the holidays because you can get multi-generational use and the house will hold up to 20 people.

When there is an event, people are required to rent the farm for a minimum of 3 days; the company contributes nothing to the special events. The renters are responsible for all their own needs, including tents, porta-potties, caterers, etc. The renters have full use of the house, barn, and grounds. Ms. O'Shaughnessy explained that she expects people to treat Sunny Slope like it is their own home; she wants a continuation of families coming and that it is a continuation of love. People who want to have weddings are told that they need to make all their own arrangements. Mr. Morgan continued, stating that everything from the house, the barn and the pond, right down to salt and pepper shakers and silverware, is provided.

Mr. Morgan referred to Article 200 and explained why he does not feel they need to be before the Board. Article 200 has two parts of the language which exempt them from needing a Special Exception. The first line states that the Exception is needed to have "a facility designed exclusively and predominantly for the gathering of people for functions, events, or for commercial purposes." The design of Sunny Slope Farm is not exclusively and predominantly for functions; it is for people to rent as a vacation rental by owner as Joy Hill is registered with the state to manage Sunny Slope Farm as a vacation rental. They follow the guidance of RSA 540C and the taxation statute under 78A. Finally, following the town elections in March, 2013, the final sentence of the statute now says "a gathering of people for events or functions for commercial purposes including but not limited to weddings, reunions, birthday parties and other social, religious, political or meeting events that is accessory to a lodging use that is the principal use of the property is not considered to be a commercial function facility." The majority of the time, Sunny Slope Farm is rented to people gathering there for vacation purposes and for various local events and activities.

Mr. Morgan stated that the farm, and Joy Hill LLC do not require a Special Exception. S. Miller asked about the payment of meal taxes; Mr. Morgan explained that they do not pay meal tax because people prepare their own meals. Ms. O'Shaughnessy added that it is their home while they are there; if they want to cook they can. Mr. Morgan added that a rooms tax is paid on the rental amount. S. Miller asked how many events with ten people or more take place on the property. Mr. Morgan clarified that the basic rental covers eight people; any additional guests incur a per person/per night additional charge. Looking at events that drew guests beyond those staying in the house, he would guess there were in the neighborhood of 10 events last year. S. Miller asked if the fact that they do not pay a meal tax is the reason why they are not under the criteria of Article 200. Mr. Morgan clarified that they do not "give" the wedding; they simply rent the farm and the renter does whatever they wish. Mr. Miller stated that the same amount of commotion and noise would exist whether the farm "gave" the wedding or whether the renters did it themselves, and wondered why they think they don't come under Article 200 just because they don't have anything to do with the wedding. Mr. Morgan observed that they are very careful to inform people that there are noise ordinances and the like, and also they have added the requirement that people are trained to dial 911, and that all tent rentals must be fire retardant. They try not to impact the neighbors by telling the renters what the rules are. He reiterated that the functions are an ancillary use – you can not have a function there unless you are staying at the farm. Ms. O'Shaughnessy added that the ordinance states that you can have weddings or functions, regardless of who is providing the wedding, as long as it is ancillary to the lodging, which it is.

P. Monziona made the point that even if there were no weddings or functions on the property, they would still be in business; Ms. O'Shaughnessy stated that they have been in business for ten years. P. Monziona clarified the point that they were in business before there was ever a wedding or function there, and that they would still be conducting their business on a regular basis if there was never a wedding or function all year; there would still be lodging going on there. Ms. O'Shaughnessy agreed with that statement, adding that it is the rentals they care about.

P. Monzione opened the floor to public input in favor of the application.

James Bureau of 72 Pierson Road came forward; he is not in opposition to the application but he is impacted by the noise from this facility. He lives right across the field, and noted that the noise level is sometimes too high. He would like to see some noise mitigation. During the weddings, he can hear the music and revelry. When there are bands there, the wall of his house directly facing the barn will literally be shaking, sometimes at 11:30 at night. Very often there will be a fireworks show at the end of the night. He is not a direct abutter, but he does feel there should be a limit on the amount of noise he should have to take. He appreciates that the applicant cares about the families coming into town to rent their place, but he feels they should also care about the families that live right there. Ms. O'Shaughnessy voiced that she wishes he had called her. Mr. Bureau stated that she has said that she rents out the place and then is hands off; he wasn't sure who is responsible. He has called the police at 11:05 when his walls were shaking. The police go talk to the renter who is paying thousands of dollars to rent this place and put on a wedding, what is a \$60 noise ordinance violation going to matter?

Mr. Bureau went on; sometimes the functions start outside and move into the barn, but all the windows and doors are open, so he is still hearing it through the windows.

Ms. O'Shaughnessy spoke to Mr. Bureau's concerns. When he calls the police, they should be talking to the renter. She has called people and told them to cool it when they are noisy late. Her family has been here since 1770, and the name and reputation are important to her, as are the neighbors and the community. She requested that in the future, if there is an issue, Mr. Bureau should call her; she can't fix a problem if she doesn't know about it. She owns the property, and when people come to rent she will tell them to be more careful, in addition to telling them about the noise ordinance. She had no idea he was having an issue, because her neighbors around her don't have an issue, and she lives on the property. Obviously, the sound is travelling down the hill and finding Mr. Bureau's home.

Mr. Morgan reminded the Board that the original request was to see if there was even a need to go forward with the Special Exception. P. Monzione acknowledged that and explained that he went ahead with the process so that if the vote to see if an application was warranted were to indicate that the application was necessary, the Board would have heard the case and public input and could then decide on that issue.

There was no further public input; public input was closed.

The Board deliberated on the issue of whether or not the application for Special Exception was warranted. P. Monzione appreciated the neighbor coming forward concerning the noise issue. P. Monzione was involved in the drafting of the ordinance as were others on the Board; he pointed out a redundancy in the language that points to "exclusively and predominantly". When this was being drafted, the understanding was that this ordinance covered those people who wanted exclusively to open a function facility; it was not intended to be for those who have hotels or motels or other lodging and occasionally throw a wedding or function. The regulation states that if the function is ancillary to the lodging, a Special Exception is not needed. Therefore, there is no need for this applicant to require a Special Exception; the zoning permits it. L. LaCourse agreed; this was put together for those who cater to the customers. This is lodging and the function is ancillary. S. Miller questioned whether the test of this is whether this should actually be tested by quantifying how much of the business is generated by the functions. In other words, instead of being lodging where you can also have a function, has it become more of a function facility where you can also stay. P. Monzione explained that the ruling needs to be made based on the letter of the regulation, which states that it must be "a facility designed exclusively..." for functions. If your facility is not exclusively for functions, and you are doing lodging and allowing people staying there to conduct their own functions, you do not need a special exception because the use is already permitted. S. Miller agreed that due to the word exclusively, the previous statement made by P. Monzione was correct. P. Larochelle questioned prior cases for approval of function facilities during which noise mitigation and other factors had to be considered. P. Monzione explained that due to the fact that "Function Facilities" were not addressed in the Table of Uses, and because zoning in Alton is exclusive, a variance was needed every time someone wanted to open one. Because of that, the Zoning Amendment Committee drafted a regulation allowing function facilities, but also added language so that people who had lodging facilities were not required

to gain a Special Exception. If an applicant is looking only to exclusively set up a function facility, they do need to apply for a Special Exception and meet all the criteria concerning noise, headlights, etc. L. LaCourse added that there could be a difference based on the fact that a commercial function facility is catering the event, and Sunny Slope Farm is not. S. Miller added that he thought Sunny Slope Farm met all the criteria except possibly intent of the Master Plan; the use of “exclusively and predominantly” swings that in favor of not needing the Special Exception.

**L. LaCourse made a motion that in Case #Z13-5, the applicants are not required to gain a Special Exception, based on the Town Meeting decision in March, 2013. S. Miller seconded the motion which passed without opposition.**

#### **IX. OTHER BUSINESS**

- A. Previous Business: None
- B. New Business: None
- C. Minutes: February 2, 2013

**T. Morgan made a motion to defer approval of the minutes to the next regular meeting on May 2, 2013. L. LaCourse seconded the motion which passed without opposition.**

- D. Correspondence: None.

#### **X. ELECTION OF OFFICERS**

**S. Miller made a motion to elect P. Monzione as Chair. T. Morgan seconded the motion which passed without opposition.**

**S. Miller made a motion to elect T. Morgan as Vice-Chair. P. Monzione seconded the motion which passed without opposition.**

**S. Miller made a motion to elect L. LaCourse as Clerk. P. Larochelle seconded the motion which passed without opposition.**

#### **XI. ADJOURNMENT**

**L. LaCourse made a motion to adjourn. P. Larochelle seconded the motion which passed without opposition.**

The meeting adjourned at 10:30 p.m.

The next regular ZBA meeting will be held on May 2, 2013, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau  
Recorder, Public Session