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

I. CALL TO ORDER

Tim Kinnon, Vice-Chairman, called the meeting to order at 7:07 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Timothy Kinnon, 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
Tim Morgan, Member
Lou LaCourse, Clerk
Steve Miller, Member
Loring Carr, Selectmen's Liaison

(Paul Monzione, Chairman, arrived at 7:20 p.m. and took a seat in the audience until after the vote was completed in Case Z10-25.)

III. APPOINTMENT OF ALTERNATES

There were no alternates appointed for this hearing.

IV. APPROVAL OF THE AGENDA

Election of Officers was moved to a time later in the meeting.

S. Miller made a motion to move Election of Officers to the end of the meeting. T. Morgan seconded the motion which passed with four votes in favor and none opposed.

There were no other agenda changes proposed.

V. 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.

T. Kinnon read Case Z10-25 into the record. This continuance is following the site walk that was held April 12, 2011; T. Kinnon announced that the Board would go straight to deliberation. J. Dever stated that he had sent an e-mail because the question had come up during the site walk asking how to proceed if the Board felt they needed to ask questions during the deliberations. Attorney Sessler had answered that asking questions during the deliberations would be acceptable as long as comment was addressed specifically to the question asked. T. Kinnon asked if any of the members had viewed the e-mail; members answered in the affirmative.

T. Kinnon opened the deliberation by stating that he has two concerns about this application. First, there is no maintenance agreement between the applicant and the two abutters that share the road. The second concern he has is with regard to ownership of the road. He feels that the maintenance agreement is something that should have been done or taken into consideration prior to the submission of the application. Shared driveways are always a concern in a community; while things may be very civil and friendly at this time, people and land ownership can change. The potential for disputes is great, especially if some terms are not put forth at the beginning.

S. Miller stated that he feels the case is going to focus in on the hardship test. To establish unnecessary hardship, the applicant will first have to demonstrate that there are special conditions of the property that distinguish it from other properties in the area. That has not been proven by any evidence. There are a significant number of large properties in the area with small frontage. The applicant understood that situation when he originally purchased the property. It was originally purchased, he would imagine, as a residential property with a large amount of land. There was no evidence presented that they were looking to subdivide at some later date. A return on investment is not an element that should be considered.

S. Miller continued. Secondly, the applicant must establish that due to special conditions of the property no fair and substantial relationship exists between the general public purpose and the ordinance provision and the specific application of the provision on the property. You have to demonstrate that because of the special conditions of the property that the proposed use is reasonable. The reasonableness of the use will depend to a large extent on how the proposed use will affect the surrounding area. S. Miller submitted that it is probably a reasonable use, but there are a number of abutters who have taken issue with this. That is a significant consideration at this time.

L. LaCourse stated that his concern is the lack of frontage; the frontage is on paper, not actual. He was thinking originally that if the frontage was there as actual frontage, that it would be an area for excess snow storage and for parking while they pick up mail; all that goes away when it is just a circle drawn on the map. The size of the property has no bearing on whether a variance should be granted or not. He noted that someone had mentioned that if everyone who has a back lot wanted to do the same thing, there would be issues. That is how this Board needs to look at it – it is not just one person with one case, they are opening the door for anyone to do it.

T. Morgan stated that he agrees with most of what has been said; there are a lot of little things about this that concern him. There is no actual cul-de-sac; there is no real frontage. While the ownership of Lake Avenue is pretty clear and that the applicant has the right to cross that, he is not sure he understands the ownership of the property within the cul-de-sac and the way it was presented from the plat that was given. Of most concern to him in this instance is the lack of hardship; Mr. Miller explained that fairly well.

VARIANCE WORKSHEET

1 – T. Morgan stated that the variance **will** be contrary to the public interest. There are a lot of reasons for frontage beyond the residential spacing. Counsel for the applicant argued very well that in this case it is not a matter of insufficient spacing, but he thinks there are a lot of other reasons why the ordinance requires that there be adequate frontage for property, and those other reasons have not been met by this application. L. LaCourse agreed that it is not to the public interest to grant the variance because the Board would open up a Pandora's Box of allowing back lots to suddenly be subdivided. Thought it may be in harmony for a single lot, when you look at the greater picture, he does not feel that it meets the criteria. S. Miller stated that the variance would be contrary to the public interest because it creates an exception, and he could not find a valid reason to create an exception. T. Kinnon agreed that it would be contrary to the public interest.

2 – L. LaCourse stated that the request **is not** 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. There are a lot of back lots in Alton and opening up the Pandora's Box of developing back lots will go against

the Master Plan's point of keeping the town rural and small. S. Miller stated that he had a problem with the Spirit of the Ordinance and will abstain. Frontage is not addressed at all in the Master Plan, either on a commercial or residential basis. It is two large lots and two single family homes on two large lots are allowed in the Master Plan. Since it was not specifically addressed, he does not know how to answer that yes or no, so he will abstain. T. Kinnon stated that he believes that it is not in harmony with the spirit of the zoning ordinance. He concurred that it is not addressed in the Master Plan. He does not believe it is in harmony with the spirit of the zoning ordinance because the requirements of the ordinance have reasons that are not met with this property; this property does not have a uniqueness to it that would allow a variance. T. Morgan stated that the request is not in harmony with the zoning ordinance and his concerns are with the convenience and safety of that area. It is going to be an increasingly busy intersection with additional traffic coming. They exit onto Route 11 which gets a high rate of traffic and speed in that area.

3 – S. Miller stated that by granting the variance, substantial justice **will not** be done. The abutters have reasonable issues. The owners were aware of the frontage issue when the property was originally purchased, and a potential return on investment is not enough of an element to support an injustice. T. Kinnon agreed; as far as the concerns of the abutters balancing their rights and the property owners rights just did not weigh out for him. T. Morgan added that one of the measures for substantial justice is harm to the applicant based against the public benefit; in this case the harm to the applicant is outweighed by the public benefit if the Board turns this down. L. LaCourse agreed for all the aforementioned reasons.

4 – S. Miller stated that the request **will** diminish the value of the surrounding properties. There was no evidence to the contrary; a variance, by definition, will reduce value. Since there is no maintenance agreement there are potential problems in terms of plowing and maintenance and of traffic movement. That could deter other people from looking at that area, in terms of paying a premium to live there. T. Kinnon and T. Morgan agreed. L. LaCourse stated that he feels this request will not diminish the value of the surrounding property.

5 – T. Kinnon 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. While he does feel that the proposed use is a reasonable one – there are other residences in the area and there would be two large parcels – he also feels there is no substantial relationship that would cause an unnecessary hardship by denying this variance. The property is not unique; there are other properties in town that meet this configuration. Also, with the lack of a maintenance agreement, he is concerned with the cul-de-sac that is simply on paper. There is no area for snow storage or any agreement for repairing the roads and maintaining them. T. Morgan agreed; there is nothing about this property that distinguishes it from other properties in similar zones in the Town of Alton. For that reason, there is no basis for a variance. L. LaCourse agreed; although it is a very nice large piece of property that could be subdivided, he does not see that the hardship criterion is met. It is a reasonable request; there is not a fair and substantial relationship that exists between the public purpose and the application. S. Miller does not believe the hardship criterion; if the variance were not to be granted there is no extraordinary harm that would come to the applicant other than a possible additional use of the property. The property is not particularly unique; therefore, it has not met the hardship test.

T. Kinnon read a summary statement for hardship – "If the criteria in Subparagraph A are not established then 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 conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it." He does **not** feel that a variance is needed for reasonable use of the property, based on the statements for hardship criteria. T. Morgan agreed. L. LaCourse agreed and added that he does not see anything really unique about the property and he does not see where it will be burdened by the ordinance in a manner that is different from any other property in the area. S. Miller agreed.

L. LaCourse made a motion to deny this application. S. Morgan seconded the motion which passed without opposition.

P. Monzione came to the table and took over as chair.

L. LaCourse questioned whether he should have mentioned the case number as part of the motion in the previous case. T. Morgan stated that they are probably alright as the case had been introduced as Case Z10-25. P. Monzione added that they could clarify for the record that the last case on which the motion was made, the record should reflect that it was for Case Z10-25.

VI. ELECTION OF OFFICERS

Chairman –

S. Miller complimented P. Monzione on his chairmanship and added that he does believe in a change of leadership from year to year.

For that reason, he nominated Tim Morgan as Chairman of the ZBA. T. Kinnon seconded the nomination. T. Morgan accepted the nomination. The vote for T. Morgan as Chair was unanimous in favor.

T. Morgan immediately took over the role as chair.

Vice-Chair –

S. Miller nominated P. Monzione as Vice-Chair. There was no second.

T. Kinnon nominated L. LaCourse as Vice-Chair. L. LaCourse cited his short time on the Board and the questions he still has in regard to the laws, as well as his discomfort with correctly running the Board if needed, and declined the nomination.

P. Monzione nominated T. Kinnon as Vice-Chair. T. Kinnon accepted the nomination which was seconded by L. LaCourse. The vote for T. Kinnon as Vice Chair was unanimous in favor.

Clerk –

S. Miller nominated L. LaCourse as Clerk. L. LaCourse stated that he would accept the nomination. The nomination was seconded by P. Monzione and passed with all votes in favor.

VII. OTHER BUSINESS

1 – Previous Business – Second reading of proposed ZBA By-law amendments

S. Miller made a motion to accept the second reading of the proposed ZBA by-law amendments. L. LaCourse seconded the motion which passed without opposition.

2 – New Business

S. Miller raised discussion concerning the hardship element of the variance. There are different interpretations; looking back over past cases there have been times when the board has deferred to the variance or the exception. His thought is that this needs to be tightened up going forward. The laws are there for a reason. It is hard to make a decision when you have to say no to the good people of the town.

L. LaCourse mentioned that the last explanation they had from Attorney Sessler helped him; he has always struggled with the hardship criterion. In the past that has been troublesome but since it has been codified, it has been easier than it was before.

T. Kinnon stated that one of the things he likes about deliberating before going to a vote is that it helps him to come to terms with things like substantial justice and hardship. The level of the case sometimes dictates the level of the hardship. Hearing other opinions helps to come to better decisions.

S. Miller cited hard economic times with property owners trying to make the best use of their property. This board needs to have a long term prospective as what they do today will make case law for the future, and not going out of the way for a strict interpretation but more of a balanced interpretation while giving a lot of weight to how it was written.

P. Monzione stated that there have been applications that he really wanted to grant because the applicant was such a nice person who was trying to do something that really wasn't going to disturb anything and made complete sense to them, but the criteria were not met. He would have loved to grant the variance, but if he followed the law, he had to turn it down; he thinks that happens to all of the members. He also feels that they are not really permitted to consider the economic times. Prior to this hardship standard being put into the statute the Supreme Court said that if a person could not do what they wanted to with their property, nearly everything could be considered a hardship. Most applicants qualified for a hardship and it seemed like nearly every application was granted. Boccia said that a hardship existed for nearly everything. Now that the hardship standard has been codified, that has been taken away; now if there is no unique characteristic present on the property, the zoning regulations is more strictly applied based on the present application. It is now a lot more difficult to meet the hardship standard, and the Board is going to keep a careful eye on how they do these applications.

T. Morgan acknowledged S. Miller's concern about making the right decision on a case by case basis and added that the Supreme Court told them when they came out with Simplex and then Boccia that they were also having a hard time deciding as well. They thought the statute was strict and they were concerned about how to interpret it as well. People at a higher level than this Board also wrestled with this, and for this Board, it is a matter of wrestling with it on a case by case basis and doing the best they can to apply the law as they understand it. It's not easy, and there are some times when it's more appropriate to grant the variance, but that is not what the law says.

S. Miller commented on the importance of T. Morgan and P. Monzione, especially in cases where only one side is represented by legal counsel, that they play Devil's advocate to get more information out there to help the Board make decisions, especially on legal issues.

T. Morgan recommended attendance at the Spring Planning and Zoning Conference. There are many sessions and presentations as well as question and answer sessions. J. Dever encouraged members to attend; they should see Randy Sanborn in the Planning Department to sign up. The conference is to be held at the Radisson Hotel in Manchester on June 11; registration is required by April 15, 2011.

L. LaCourse mentioned again that he would like to have the hardship question moved to the beginning of the worksheet. He feels that applicants' hopes get built up going toward the hardship only to be shot down right at the end. T. Morgan commented that even if the hardship criterion were not met right from the beginning, the rest of the criteria would still have to be met in the event the case was to be appealed.

3 – Approval of Minutes

March 3, 2011

On page 2, T. Morgan's motion to accept the application for Case Z10-26 should read for Case Z10-25.

On page 3, third full paragraph, the second line from the end reads "…land and whether putting it in current user is enough…" It should read "…land and whether putting it in current **use** is enough…"

On page 7, the second full paragraph, third line down reads "…what Attorney Nix hear him say…" It should read "…what Attorney Nix **heard** him say…"

On page 8, the second full paragraph, fifth line reads "…Mr. Coskren indicates that they built this…" It should read "…Mr. Coskren indicates that they **bought** this…"

On page 10, third full paragraph, third line reads "…Winnipesaukee Land Company propose development…" It should read "…Winnipesaukee Land Company **proposed** development…"

L. LaCourse made a motion to approve the minutes of March 3, 2011, as amended. S. Miller seconded the motion which passed without opposition.

March 12, 2011 (Site Walk of Coskren Property, Case Z10-25)

L. LaCourse made a motion to approve the minutes of March 12, 2011, as submitted. T. Kinnon seconded the motion which passed without opposition; P. Monzione abstained.

4 – Correspondence

There was none.

J. Dever mentioned that one of the applications for next month is a variance request for medical hardship. He directed the Board to review the statute concerning the hardships for variance; the information needed is under Powers of the Zoning Board, section 674:33.

IX. ADJOURNMENT

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

The meeting adjourned at 7:55 p.m.

The next regular ZBA meeting will be held on May 5, 2011, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session