

Alton Zoning board of Adjustment
July 5, 2007 at 7:00pm

Approved by the ZBA 8-2-07

Member's Present: Tim Morgan, Stephen Hurst, Paul Monziona, Marcella Perry, David Schaeffner

Member's Absent: Tim Kinnon

Other's Present: Monica Jerkins – Planning Technician, Jennifer Fortin – Secretary Pro-Temp, and others as mentioned below.

T. Morgan - Member Paul Monziona is going to recuse himself from the Paige matter, which means if we don't get another member or two to show up in the very near future we won't even have enough members present to hear that matter, so we will give until 7:15pm to see who shows up.

P. Monziona – I just want to state for the record, I know Robert & Phyllis Paige, they are my neighbors. I know them socially and I am friendly with them. I also live on New Durham Road. I am a resident on that road and so for those two reasons I am not going to sit on the board and hear that matter, that is why I am recusing myself.

Call to Order: Tim Morgan called the meeting to order at 7:15pm

Introduction of the Board Members: Tim Morgan introduced the board members

Appointment of Alternates: David Schaeffner appointed

Statement of Appeal Process: (Read by T. Morgan) The purpose of this hearing is to allow anyone concerned with an appeal 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 established fact. However, it should support the grounds that the board must consider when making a determination. The purpose of this 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 Statutes. For Special Exception the Board must ascertain whether each of the standards set forth in the zoning ordinance has been or will be met.

Approval of Agenda: Motion made M. Perry to accept the agenda, seconded by S. Hurst. Motion passed with all in favor.

Case Z07-10

Map 9 Lot 59-2

Use Variance

Robert & Phyllis Paige

Old Route 11 & Range Road

(Huggins Hospital has sales agreement with the owners)

Application submitted by Dean M. Clark of DMC Surveyors, on behalf of the property owners, Robert & Phyllis Paige to request a Use Variance from the Town of Alton Zoning Ordinance

2007 Article 400, Section 401, Table of Uses, Retail Business and Service, Item 29, to allow a Medical Center, Medical Laboratory to be allowed at the above referenced location within the Residential Zone.

David Tower - President Huggins Hospital
Dean Clark – DMC Surveyors
George Walker – Attorney

T. Morgan – Do you want to go forward under the circumstances with the number of board members present.

G. Walker – Yes

D. Clark – This piece of property was a subdivision that was created back in 1980. Lot 2 is in the RR zone and lot 1 is in the RC zone. The plan is to merge the two lots into one lot giving them a better separation from wetlands and whatever else on the property, it makes the hospital property more usable. We submitted the application for a variance. The reason for the appeal is that Huggins Hospital now owns the vacant adjoining tax lot Map 9 Lot 59-1 in the RC zone, which allows a Medical Center, Medical Laboratory a right, but because of its unique location on the corner of two roads and the presence of wetlands it can expand only into the Paige property, which is needed for additional parking and property use. We are here for this application for a variance in order to expand in the Paige property. The facts that support the request is a denial of variance would result in unnecessary hardship for the owner because the zoning restrictions as applied to the property interferes with the reasonable use of the property considering the unique settings of the property in its environment, such that the much larger size of configuration and location and buffers of the hospital property when merged into the Paige lot make it unique compared to other residential lots. Its use for hospital related medical purposes as a reasonable use of the property but requires a new and expanded facility. That no fair and substantial relationships exist between the general purposes of the zoning ordinance and specific restrictions on the property because there is no fair or substantial relationship exists between the general purposes of the zoning ordinance and the present general restrictions of the RR zone, which does not provide for a medical center, medical laboratory because the immediate adjoining RC zone such use permitted, which will be on Lot 1. It is a matter of degree only in minimal encroaching into the RR zone in order to provide a more efficient medical services and a more attractive site. Item C: The variance would not injure the public or private rights of others since it would simply permit better and more efficient delivery of the use of a medical center, medical laboratory permitted on the immediately adjoining lot. It cannot be said that granting a variance would alter the essential character of the location, nor would the property rights of others be unduly or markedly affected. The specific request is the minimum variance that will grant reasonable relief to the owner and is necessary for such reasonable use.

G. Walker – As set forth in the application itself, this particular paragraph adds a 6th requirement that I don't find in the enabling Statute RSA674:33 or in the case law. I make references to pages 12 & 16 of the ZBA handbook that is published by the State Planning Commission.

D. Clark – this is the response to that even though he has handled the stuff. The hospital's present lot is on the corner of Old Route 11 and Range Road, which limits expansion only into the adjoining Paige lot which the variance is requested. The presence of wetlands towards the rear of the present hospital lot requires additional area for parking. It would also improve the attractiveness of the building site specifically with the expansion of Lot 1 into Lot 2. Item 3: The request is in harmony with the spirit of the ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed because the proposed building and its use is not contrary to the spirit and the intent of the ordinance since not only would it not alter the central character of the locality but the fundamental purpose of all zoning is to promote the health, safety, and general welfare of the community. This medical center, medical laboratory would be unique in its ability to do that. Item 4: The request is not contrary to the public interest because this constitutional right is the use of property would not adversely affect the public health, safety, or welfare, which are foundations of all zoning regulations. A hospital like a school makes a community desirable and is necessary for its health and welfare. Granting the variance would not alter the essential character of the locality as it now exists. #5 Substantial Justice will be done because there is no possible loss to an individual that is outweighed by the gain to the general public, that would result the proposed use in its setting. The efficient delivery of modern medical care is a driving factor in this proposed use. Item #6 the request will not diminish the value of surrounding properties because this Paige lot is on the boundary of the R/C zone in which medical center/medical laboratory is now a permitted use, in which a McDonald's restaurant is located in the close proximity. There are no immediate adjoining houses, there will be minimal difference between a medical center/medical laboratory erected on the Huggins present lot in the RC zone and the same facility utilizing both lots. Moreover, recent surveys have demonstrated that a medical use, such as a hospital or hospital related facility actually is a friendly use and enhances the value of the abutting properties. Additionally it is proposed to merge both lots so that the reconfigured overall lot will be uniquely adaptable to more attractive siting of the building, parking areas and buffers from wetlands areas.

G. Walker – With reference to the last criteria #6, how it would affect the value of surrounding properties, David Tower, President of Huggins Hospital is going to give the board some more information as to what is anticipated by way of a building and its facilities. On the issue of possible diminished value of surrounding properties, I would like to submit two pages from an appraisal that we have had done for the Huggins Hospital expansion in Wolfeboro. The pages I would like to submit are from an appraisal and they are pages 5 & 6.

P. Tower – We have been involved with the town for many years providing primary health care through the Alton office. The building would be of wood framing and clapboard siding.

M. Perry – Are there any wetlands on either property?

D. Clark – There are wetlands on both sites, the back, left, rear corner of the Paige property and a little bit more wetlands on Lot 1 of the Huggins hospital property. Paige's lot is a more suitable for it. They can probably put it in lot 1 but by combining the two lots they can meet the separation from the wetlands.

M. Perry –Where will the access way be if you combine the lots?

D. Clark – More than likely it would be off of Lot2.

M. Perry – And there would be no disturbing of wetlands?

D. Clark – No

T. Morgan – What sort of parking are you proposing?

D. Clark – I believe that our calculations would show a requirement for 50-60 spaces to be provided on site.

M. Perry – And you have accommodations for snow during the winter time or will it be taken off site?

D. Clark – They would more than likely plow it to the back off to one side and make accommodations for that.

M. Jerkins – The second step to this would be if they receive approval tonight they will have to go got the Planning Board for site plan approval and issues such as parking, lighting and other issues will be addressed at that time.

T. Morgan – I will open it to the public.

Adam Painchaud – You just asked about the access way and the answer was that it would be from Lot 2, does that mean New Durham Road or from Range Road?

D. Clark – New Durham Road

Dorothy Wentworth – Alton is growing and as stated the Doctor has out grown his office space here and we do need it where it is a growing community and the surrounding areas depending on Alton more, I urge the ZBA to give them a variance.

T. Morgan –I will close public.

G. Walker – it is assumed that members of the board have already taken a physical inspection of the property.

T. Morgan –That is correct.

M. Perry – Just a comment on location. I think that this area is growing in commercial and I think the town is also growing and our recent surveys there was interest in trying to attract either medical or pharmaceutical businesses so I think this is a good addition to the town.

M. Perry – The Variance will not be contrary to the public interest. I think as I stated before there were surveys done and people in town are interested in having these types of services accessible to them and where this building is one story I think it is ADA accommodating and I think it is in the best interest of the community.

T. Morgan – I agree and I think Ms. Wentworth’s comments were well placed on that point.

S. Hurst – I also agree that it will not be contrary to public interest.

D. Schaeffner – I would agree, it would be a great asset to the community.

S. Hurst – The request is in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which is proposed. Health says it all in that statement I believe, it would be an asset to the community and it is a needed one.

D. Schaeffner – I agree

M. Perry – I also agree, I think it is definitely in character of the district within which is proposed.

T. Morgan – I agree, it is within the spirit of the Zoning Ordinance. There is an unusual division there between the two different zoned areas and it seems to make sense to combine those two.

D. Schaeffner – By granting the variance, substantial justice will be done. The lots are so close together it would make it good to join them together for this project and they will be able to use their lot as intended.

M. Perry – I agree, I think that joining the two lots will give them the land mass that they need to do a good landscaping area and provide substantial parking.

T. Morgan – I agree, we decided it is within the public interest and the spirit of the ordinance so then I think substantial justice is done.

S. Hurst – I also agree.

M. Perry – The request will not diminish the value of the surrounding properties, I think with the addition of McDonald’s and Hannaford’s I don’t think I have seen of or heard of any properties being devalued in that area.

T. Morgan – I agree and I think that Attorney Walker’s comparison with Laconia Hospital was well taken.

S. Hurst – I agree also

D. Schaeffner – I would agree.

T. Morgan – The zoning restriction as applied does interfere with a land owner’s reasonable use of the property, considering the unique setting of the property in its environment and there is not a fair and substantial relationship between the general purposes and the specific restriction and there for the variance will not injure the public or private rights of others.

S. Hurst – I agree

D. Schaeffner – I would agree.

M. Perry – I agree also.

T. Morgan – Based on the above analysis, special conditions do exist such that the literal enforcement of the Zoning Ordinance results in unnecessary hardship. Case #Z07-10 is approved.

**Case #Z07-11
James Dwyer**

Map 5 Lot 1-4

**Special Exception
Dudley Road**

Application submitted by Thomas Varney on behalf of the property owner James Dwyer, to request a Special Exception as required by Town of Alton Zoning Ordinance 2007 Article 400, Section 401, Table of Uses, Retail Business and Service, Item 14, to allow Contractor Equipment Storage on the above referenced parcel within the Rural Zone.

Motion made by M. Perry to accept the application for Case #Z07-11, seconded by P. Monzione. Motion passed with all in favor.

Tom Varney – This property is on Dudley Road and the proposal is to allow a contractor storage yard in that zone so he can operate a business, which is Taylor Landscaping and Construction. This property was a 7-Lot subdivision, which was approved in 1990. He combined the back lots, which were three roads and a cul-de-sac. After he purchased this in 1999, he has been using this to store his equipment and he has the beginnings of a foundation and a well. He doesn't have a house there yet, he plans on having a house and he has a septic design. I will read the narrative that I have submitted. It says "Jim Dwyer has owned this land since 1999 and plans to build a house there. The foundation and well are existing. Equipment and building materials are stored on site. The proposed building is for storage of the equipment and the materials of Taylor Landscaping, which is Mr. Dwyer's business. The building will have no running water or septic. Traffic to the site will be limited to the daily trips of Mr. Dwyer's truck and trailer to and from job sites. I answered the questions for criteria for special exception and I will read those.

1. A plot plan has been prepared in accordance with the site plan checklist, the building and developed area is 650 off the road. The building will not be seen from the road or neighbors houses. A contractor's storage yard is not noisy and generates very limited traffic. The property entrance has required site distance and there is no parking by the road. The proposed house will provide facilities and the lot has ample room for the business, it is 37-acres. The property has a state approved septic design and well. The Master Plan provides for small business in the Rural Zone.

The Town Building Inspector gave him a Cease and Desist Order on May 2nd, over a complaint and he is addressing the complaint. We want to make this legal and proceed through the process and go to the Site Plan Review and Planning Board and all of that.

P. Monzione – We have a copy of the Cease and Desist notice that was issued on the 1st day of May and it references that storage equipment is currently occurring, is that still the case?

T. Varney – Yes, there are storage trailers on site that he uses.

P. Monzione – Is it also the case that there is a foundation on the property for which there was never a building permit?

J. Dwyer – It is actually a footing, there is no foundation.

T. Varney – He needs a site plan approval before he gets the building permit. He has applied a building permit and was told he needed a site plan because he was operating a business there, that was a long time ago.

P. Monziona – The second portion of the cease and desist notice calls for corrective measures within 14 days, removal of all contractor equipment, etc., has that been complied with as of now?

J. Dwyer – No

M. Perry – On the drawing that you have, you have a foundation listed there, is that proposed or is that where it is?

J. Dwyer – The footing is where the 4-bedroom is going to be built.

M. Perry – Also, there are other sheds are those fixed buildings?

T. Varney – No, Those can be removed in a day or two.

J. Dwyer – There is actually a shed permit that I pulled and I did put up a shed.

M. Perry – What is the construction of the pole barn?

J. Dwyer – It is like a green house. The canopy is for my RV.

T. Varney – It has metal pipes with a canopy over it.

S. Hurst – These other sheds that you have on the property, were those permitted also?

J. Dwyer – They are not actually sheds they are storage containers and I wasn't aware I needed a permit for those. Those are going to be removed from the property. They are only temporary.

S. Hurst – I am curious as to why you haven't complied with the Cease and Desist notice, the 14 days?

J. Dwyer – I thought it was just to stop building, I wasn't building anything out there. I was going to pull the permit, I started the footing.

S. Hurst – It clearly states to remove all contractor equipment, remove campers, etc, why didn't you comply with that?

J. Dwyer – I talked to the Building Inspector and he said as long as I was applying for the site application, that is what he wanted from me. He had left me a note in 1999 to apply for a site application and I didn't do it so that is why he came back I guess.

P. Monziona – Have you seen the letter that we have received from Fire Chief Johnson? There are a couple of questions that the Chief poses and I would like to ask and have answered. Will landscape chemicals be stored in the building?

J. Dwyer – No

P. Monziona – Will a fire alarm system be installed in the building?

J. Dwyer – yes there will be a fire alarm system installed in the building.

P. Monziona – I think I also saw some concerns from the Conservation Committee about detailing wetlands and what the square footage for the wetlands was. It said no square footage given for wetlands impact, has that been determined, and I think that is one of the criteria that we go through on the worksheet in terms of septic, water, whatever but I think it is fair to address the concerns of the Conservation Commission? Has that been determined the square footage of wetlands impact if any?

T. Varney – I delineated wetlands on this site plan you see in front of you. If you look on the original survey plan all the wetlands are shown on there. I have never seen that on there.

P. Monziona – That is fine but they are depicted on the plot that you have provided.

T. Varney – yes, we have wetland ribbons and pins.

P. Monziona – Is there a designation for wetlands buffer?

T. Varney – When we go to the Planning Board we will do that.

M. Perry – When this driveway was put in how did you comply with the wetlands at that time with the one impact you have there and what have you done to take care of crossing that wetlands?

T. Varney – He just put the culvert I, that needs to be approved after the fact.

M. Perry – Is that in there now?

T. Varney – Yes

M. Perry – But he didn't get a permit to put it in?

T. Varney – Not to my knowledge, no.

J. Dwyer – I got a permit for the driveway and no one informed me that I needed a permit or anything else.

T. Varney – We will submit an application for that.

P. Monziona – Has the driveway permit in fact been revoked as of now?

J. Dwyer –It has and my father just received a letter last month stating that fact that the driveway is mine and I don't understand why the letter went to him.

P. Monziona – But at this point there is no permit for the driveway in place, now.

J. Dwyer – I installed the driveway, I was returned my permit money then the driveway inspector said my driveway was over 35' wide, and I didn't realize it was so I let the grass grow over 20' and didn't cut it and I figured that was fine, I didn't know the driveway permit was revoked or even had a problem or I would have upgraded it and repaired it by now.

P. Monziona – The driveway that is depicted on the plot provided is the driveway for which the permit is currently revoked?

J. Dwyer – Yes

T. Morgan – Can you tell us a little bit about the kind of equipment that will be stored here?

J. Dwyer – pick-up truck, 2 dump trucks, two equipment trailers, bobcat, excavator, and a caterpillar machine, all under 7000 pounds. Something that a homeowner would have.

D. Schaeffner – Basic landscape equipment, not 10-wheel dump trucks?

J. Dwyer – I only have 1-ton dump trucks, I have two of them and that is all I am not getting any more.

D. Schaeffner – So you are not heavy excavation?

J. Dwyer – No, not at all.

M. Perry – What type of material do you store on-site?

J. Dwyer – Crushed stones, stone dust, mulch, wood chip, fire wood.

M. Perry – How much mulch?

J. Dwyer – About a 10-wheeler at the most, about 18-yards.

M. Perry – Do people come and pick up mulch?

J. Dwyer – No

M. Perry – Is there any plans to do that?

J. Dwyer –No

M. Perry – You had said you just got the permit but the permit was issued in 1999 with specific regulations.

J. Dwyer – No, they issued me the permit and no one told me it could only be 30' wide, no one gave me a piece of paper saying this is our requirements like they have now. They were more concerned with getting the money for the permit incase the road was damaged.

M. Jerkins – What plans do you have at this time to come into compliance with the driveway permit?

J. Dwyer – I was going to talk to Tom about that and I was going to talk to the Road Agent tomorrow. I was in there last Friday and they don't work on Fridays. I already went to talk to him but I went on the wrong day.

T. Varney – The culvert business, I informed him when I was on site did you have a permit he said no then I said we will get the permit. I don't know of any violation of any complaint about that until now, but that is something nobody every complained about but we would be an after the fact permit and get it approved. The driveway permit, I don't understand that, I haven't seen anything about that, but this was a road and a cul-de-sac and his driveway is a very typical driveway, I don't understand how that would be revoked.

M. Perry – What is on the deed? This is a ROW, what does it state on his deed, that this is a driveway or ROW?

T. Varney – It would have been a separate parcel, it should be a 50' road with a cul-de-sac, there would have been a deed written to the road itself, but he has combined all of that into one parcel now, so it is one piece of land.

M. Jerkins –Just for the record we also have letters.

Glen Talon – Why are we considering a variance when nothing has been done or approved by the town yet? Nothing has been approved, the foundation, all the trailers, work that has been done in place hasn't been approved by the town so how do you take the leap from non-compliance to a variance on something where he hasn't complied with anything to begin with.

T. Morgan –I think what he is trying to tell us is that he has made this application for a special exception to try and see if he can bring it into compliance, that is my understanding of his position.

G. Talon – My understanding is that he is asking for a maintenance building for his equipment.

T. Morgan – Storage

G. Talon – That just brings up more questions. Even with a fire alarm you nearest water source to pump water, if there was a fire and come this September it gets very dry down there, you

allow this building, what other things go along with this maintenance building, are we going to have fuel storage for these vehicles that he is going to have on site, gasoline, diesel stored on site. It is just more questions with someone that isn't in compliance to begin with. I don't understand how we are putting the cart before the horse and allow a building when there is nothing else in place to begin with and we have no idea what the final design is. He has at least three trailers there, does he have permits for them? How can we go to a variance when he isn't in compliance with anything else he has there.

Tom Whissel – I am concerned about what really might become of the property as things go on. Hopefully Mr. Dwyer mat successfully improve and may want to move on further, but if we grant permission to use the small amount of equipment that is stored now, will heavy equipment and bigger things show up later. So along those lines I definitely have concerns about the fact that Dudley and Stockbridge Corner Roads certainly aren't designed to handle any kind of regular heavy equipment. The intersections of Dudley down to 28 or Stockbridge to 28 pulling out there with any sort of equipment is certainly a hazard because you just can't see very well and those intersections rest on corners and when heavy equipment has to pull out of there it takes some time and it is tough to get through there. Mr. Dwyer has been using the property for a while noise would certainly be a concern because we can hear the dogs braking at night or when equipment needs to warm up. I am also concerned about what possible environmental impact there may be for what ever may be stored back there or leaking fluids or oil from the equipment or any other chemicals or fertilizer stored on the back lot. For those reasons I hope the variance isn't granted.

Mark Stevens – I would like to see the plan and I have a few questions.

M. Jerkins – There are three letters and they each requested the same that they be read into the record tonight.

John McAuliffe – I have deeded access tot eh ROW and that is what it is a 50' ROW and has been since it was bought. I have composed a letter that I would like you to read for the record, please.

T. Morgan – Mr. Chairman, I am here in response to James Dwyer's request for a special exception for his property located on Dudley Road. When we bought our property in 1991 Mr. Dwyer's property was three deeded wood lots. When it was purchased by Dwyer the three wood lots were combined into one lot with a 50' ROW of which Bill and Fran Burns and I have deeded access. It is my understanding that Mr. Dwyer's under Cease & Desist order on his property for zoning violations. On June 19th Dwyer's driveway permit was revoked for failing to comply with certain conditions of the driveway permit since 1999. I was surprised to see no concern on Brian review request sheet. Basically this request for special exception only benefits Dwyer and shows total disregard for all of the abutters who have already made decisions and major investments in this rural area. I do not support this special exception for this property based on the following concerns: Ground water contamination due to the amount of wetlands not shown on the town tax map; the amount and type of chemicals that could or would be stored on the property; the impact that heavy equipment would have on the road; safety devices on equipment that would be disruptive to the neighborhood; potential for this property become a junk yard of

old construction equipment. I hold the ZBA and the town liable for any depreciation of my property due to this application for a special exception, that being said I presently do not feel Mr. Dwyer's use of this property for his landscaping business in now way has impacted me personally, basically it ain't broke. Mr. Dwyer needs to address his own personal needs and meet town standards without impacting this rural neighborhood.

Respectfully Submitted, John T. McAuliffe.

T. Morgan – There is a letter as well in memo form from Frances & William Burns: We oppose this special exception. We purchased the property at 310 Dudley Road after investigating the zoning for this area and did not expect it to be changed. We would prefer that no exceptions to current zoning be made at this time. The following are concerns: construction equipment whether it be light trucks, dump trucks, or bull dozers is noisy, the hours of operation of such equipment are usually from early morning to late at night. The noise will be disturbing to us, the weekly visit from the person who services the portable toilet on Mr. Dwyer's property is a prime example; it is reasonable to expect based on past performance that much of Mr. Dwyer's equipment will be powered by diesel engines, we find the fumes from the exhaust of these engines to be at best unpleasant; if construction equipment is to be stored on Mr. Dwyer's property we can expect various spills of lubricants and other chemicals used in such equipment. We are particularly concerned that the area might become a storage place for inoperable equipment; we do not wish to see more construction equipment traffic on Dudley Road that already exists. The road is not built for daily use by trailers carrying heavy machines or loaded dump trucks; we expect a negative impact on the real value of our property. Thank you for your consideration.

T. Morgan – Finally there is a letter signed Mr. & Mrs. William Chapman of 321 Dudley Road. We are unable to attend the meeting Thursday, July 5th, thus we submit this letter in response to the plans of Mr. Dwyer to allow storage or contractor equipment on his property as noted above. We do not approve. This is an area with many residences and we feel this plan would be dangerous as many children live in this area. Both adults and children walk on the road, which has no sidewalks plus heavy contractor equipment would damage the road. Mr. Dwyer has little regard for his neighbors. This plan would further disrupt the peace in the area. In June 2007 Mr. Dwyer's driveway permit was revoked for failure to comply with driveway permit regulations since June 1999, 8-years. Mr. Dwyer doesn't own the land that the driveway is on. He only has a ROW shared with the other abutter whom he has blocked from using. The property already has had people camping on it and children riding ATV's up and down his driveway.

T. Morgan – Those letters of opposition are read into the record. Public session is closed.

J. Dwyer – I will not be storing any chemicals or any fuel, junk machines there. If anything I will be upgrading all my equipment to new equipment and if it leaks it will be getting repaired. I am not about destroying the environment, I am a landscaper, I don't destroy thing I fix them.

P. Monziona –I saw in the application that the building is not going to be visible from the road, is it visible from any of the abutting properties.

J. Dwyer – Possibly in the winter when there are no leaves on the trees.

P. Monziona – What size building are you contemplating?

J. Dwyer – 30'x60' a steel master arch building.

T. Varney – I wanted to talk about the fuel storage, that can be addressed and will be addressed at the Planning Board and will show the device of an above ground tank and so forth. When you approve a site plan through the Planning Board you define what you are going to do and then the town can hold you to that as to what the operation is, if he is exceeding it or not, you can have a plan to at least go by, that is once you approve this or the town approves this you make it better so it is understood what he is allowed to do, what he is not allowed to do. As far as removing the tools and sheds, I could have told him, get rid of that stuff, those are the things he makes a living with and when you drive in this road it is a typical driveway. It is out of the way of everybody. My neighbors have more junk in their yards than he does. I saw no problem with that. He is making an attempt to define what he is doing and to build a house there and operate a business and his business is landscaping, now there are two other companies in town that do the same thing and neither one of them have site plan approval. He is applying for that. The wetlands permit that will be addressed, that was brought up at the beginning, we will take care of that. The intent of the Zoning Ordinance here we are applying for a special exception to allow him to have a contractor storage facility in the Rural Zone that is what we are here for tonight. Most of the businesses in town you have to apply for a special exception. We do meet all of the criteria and we are out of the way. We meet your requirements one right after the other. We ask for your approval for this.

M. Perry – Actually the application is for a special exception for a contractor equipment yard. As far as the building that goes to the Building Inspector, but you are asking for a business, that is what the exception is for.

T. Varney – He is not going to get a building permit from the Building Inspector, as I understand it until this gets approved.

P. Monziona – I would like to point out that we have heard a number of concerns that are probably valid about the condition of the property being in violation of zoning or not in compliance with the Cease & Desist order and there maybe a number of problems with the property. I think it is important to note that our function as a Zoning Board of Adjustment is very limited, we are not an enforcement body, we don't hand out fines or cease & desist orders, we don't even have the authority to issue order to remedy or rectify any of these things. What ever may exist on the property is to be dealt with by the Code Enforcement Officer and Planning Board when site plans are submitted so our job is very specific and we have to apply the criteria that are set by law and with a special exception we go through the worksheet and just see whether those criteria are met and other bodies within the town will deal with some of the issues I saw in the letter, so I think it is important in our deliberation to make appoint of that and make note that maybe some of these items will impact on the criteria as we judge them but I think it is worth noting that we are not the board or body to address violations per say.

M. Perry – I agree also with what you said Mr. Monziona but there are some stipulations that we can apply to an application if we see fit to and the Planning Board will take that into consideration and I think in some areas here it is important that we do, especially as far as the wetlands are concerned. I know the Planning Board will address that but if we are accepting a plat as being complete it is not, but if we accept it with conditions that might change things.

M. Perry – A plat has been accepted by the Planner in accordance with the Alton Zoning Ordinance Section 520b and a recommendation has been made and I think that we should add to this if it is approved that the wetlands entrance way over the wetlands be addressed and that we make note of that for the Planning Board.

T. Morgan – I agree

P. Monziona – I agree

S. Hurst – I agree

D. Schaeffner – I would agree

P. Monziona – The specific site is an appropriate location for the use by that what I am limiting my determination of that to the fact that we are talking 37-acres. We are in a Rural Zone but we are also talking about the special exception for rural business so just as far as the amount of property and its location, I would have to determine that the specific site is an appropriate location for the use.

S. Hurst – I agree

D. Schaeffner – I would agree

M. Perry – I did take a ride around that area and there are other businesses on Dudley road that have large storage facilities that are well kept and I think that if this is granted that some of these things have to happen here. I happen to agree with some of the neighbors that it is important that this area be kept clean and that used storage equipment is left there, but it certainly is a large enough piece of property for this type of business

T. Morgan – I agree this specific site is an appropriate location for the use.

S. Hurst – Factual evidence is not found that the property values in the district will be reduced due to incompatible uses. As Marcella stated there are other properties in the area with similar circumstances so I don't think would have much of an impact on property values.

D. Schaeffner – I would agree

M. Perry – Again the only comment I will make is that the history of the applicant and complying with the regulations leaves it suspect but at this point in time I think that the Planning Board will take care of that because that is the governing body to make sure that this is in compliance with the Zoning Ordinances.

T. Morgan – We have actually had no testimony with regard to property values so I will say it is not found to be reduced due to incompatible use.

P. Monziona – I would have to agree with that again pointing out we are bound to follow the law with very special and limited criteria and absent factual evidence presented to us with a diminish in property value because of incompatible use we are not allowed to make that finding absent evidence presented and while there have been concerns about the condition of the property now that is in a certain condition that maybe effecting it this exception we have no evidence in front of us with the exception being asked for will adversely effect the property values so I would have to agree with that.

D. Schaeffner – There is valid objection from the abutters based on demonstrable facts. The fact that you have a Cease & Desist order and have not complied with it within the 14-days I guess would be valid. The fact that you have discussed this with Brian and there is no documentation of it, I know I have talked to Brian a lot in my business, and I know a handshake is usually pretty good. He will accept that, maybe whether he should or shouldn't but if you give him your word he is a pretty good guy on that. The fact that you haven't complied within the 14-days does show and the fact that the driveway whether you thought you always have to double check. It is just one of those things that you have to be a good neighbor and you always have to double check everything with town officials.

M. Perry – I agree, there is valid objection from the abutters based on demonstrable facts and because there is a cease and desist and it is up to the applicant to clarify and I think that should have been done with the driveway.

T. Morgan – I agree

P. Monziona – I agree with that as well I think that this driveway is an integral part of the exception that is being asked for, the condition of the property is an integral part of the special exception that is being asked for and therefore given that it is not in compliance with the cease and desist and there is a revocation of the driveway permit, I think there is valid objection from the abutters based on demonstrable fact.

S. Hurst – I agree also that there is valid objection from the abutters based on demonstrable fact.

D. Schaeffner – The fact that you are here tonight is showing that you are making a step to make everything better.

J. Dwyer – I didn't know about the 14-day exception rule or I would have removed everything from the property be now. I have been looking for a commercial piece of property for the past 5-years in Alton and I haven't been able to find one that is affordable.

M. Perry – There is undue nuisance or serious hazards to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. When the road agent gave his opinion on the driveway he didn't specify what the criteria was, what his complaint was whether it was view as far as access way in have clear view, he didn't mention that so I wouldn't say that was a safety issue there. As far as pedestrian traffic I don't think there is anything up that way that we are talking about, equipment and off street parking would be limited because there is not a lot of customers coming to your land.

T. Morgan – I think there probably is an undue nuisance to vehicular traffic since we have had this issue with the driveway permit I think it is indicative to the fact that there is a problem or hazard to other traffic.

P. Monziona – I would have to agree that there is undue nuisance or serious hazard to pedestrian of vehicular traffic including the location design of access ways and off-street parking. The reason I say this is because that the driveway permit issue as well as the fact that in granting the special exception unless we grant it with a restriction that would limit it to equipment under 7 tons and I know that has been stated by the applicant so I would find that for now with a condition that if a special exception were to be grant it would be my proposal that it contain a requirement that any equipment be restricted to that which has been described here, it is a recommendation.

S. Hurst – I agree

D. Schaeffner – I would agree with you Paul, you have to be careful with DOT regulations. 7 tons is one vehicle, if he puts a trailer on that he can become more so that we need to be careful as far as saying 7-tons =14K pounds if he is a little bit over I would say probably under 26K pounds or something like that just to be careful, the truck and trailer is a combo you have to be careful of.

T. Morgan – Adequate and appropriate facilities and utilities will be provided to insure proper operation of the proposed use or structure. There is septic and well and other utilities laid out in Mr. Varney's plat.

P. Monziona – I would agree with that that adequate and appropriate facilities and utilities will be provided, provided again that the exception if granted would go with a recommendation that there be no chemical storage and that there be a fire alarm system included to satisfy the concerns of the Alton Fire Department.

S. Hurst – I agree

D. Schaeffner – I would agree

M. Perry – I agree

P. Monziona – There is adequate area for safe and sanitary sewage disposal and water supply, given that this facility will not have any such systems.

S. Hurst – I agree

D. Schaeffner – I would agree

M. Perry – agree

T. Morgan – I agree

S.Hurst – The proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan. If you come into compliance with the Planning Board requirements and what have you it definitely is within the spirit of the Master Plan.

D. Schaeffner – I would agree, Alton is a rural community, we don't have a lot of commercial/industrial space so sometimes it forces us to work our of our homes. I would agree this is in harmony with the Master plan.

M. Perry – I agree small businesses especially this is a landscaping business and this is considered part of agricultural because it has to do with trees and with mulch as long as all state, local, and federal regulations are adhered to.

T. Morgan- I don't agree that the structure is consistent with the spirit of this ordinance, I think that number 4 valid objections we found that there were valid objections from the abutters and where a business creates valid objections it is not consistent with the spirit of the ordinance.

P. Monziona – I would agree that the proposed use is consistent with the spirit of the ordinance and the intent of the Master Plan given the special exception to permit such businesses in the rural area. I would agree however, that the current condition of the property is not but that is beyond our function here.

T. Morgan –We have now gone through the special exception worksheet and I think probably we will need to put this to a vote of the board because by my count we failed on at least one of the criteria. I propose we submit to a vote of the board Case Z07-11 fro a special exception.

M. Jerkins – Only #5 failed

Motion made by P. Monziona that the board grant the special exception but with specific recommendations that would go with it that would require compliance with the Alton Fire Department requirements regarding chemical storage and a fire alarm system and also with regard to the tonnage of equipment, with that the equipment that will go in and out and be stored there be in compliance with the requirements of the Road Agent or the requirements of the state or town so that equipment that is not too heavy for the roads is not being used there. My motion would be that it be granted with the recommendations as set forth, seconded by D. Schaeffner. Motion failed with 2 in favor and 3 opposed.

T. Morgan – In that Case# Z07-11 special exception application is denied.

M. Jerkins – There is no other business.

P. Monziona – I would like to make a suggestion. Is there anyway we can get our worksheet when we begin case.

M. Perry – What about with the packets because that will give us some time to think about it.

M. Jerkins – Yes I can put them with the packets.

M. Perry –When does the new Planner start?

M. Jerkins – The new Planner starts Monday the 9th. From what I understand she will spend a couple of days outside the office with Peer doing some training. I am sure he plans on giving her a tour of the town and talking with her about various projects that are going on right now and walking a lot of sites so she is familiar with everything. I expect her in the office on Wednesday full time at that point. I will be attending the next two meetings minimum with her to introduce her and to help her out and show her how I have done things and then she will decide what she likes and doesn't like.

M. Perry –We really appreciate it, you had a difficult time and difficult feature because there were so many cases coming along that were really difficult in both Planning and Zoning. You did a great job Monica.

Motion made by P. Monziona to adjourn at 8:40pm, seconded by M. Perry. Motion passed with all in favor.

Respectfully Submitted,

Jennifer M. Fortin
Secretary Pro-Temp