

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Meeting
October 7, 2010
Approved as amended 12/2/10**

I. CALL TO ORDER

Paul Monziona, Chairman, called the meeting to order at 7:10 p.m. The delay in start time was in the hope that Member Tim Kinnon would arrive.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Paul Monziona, Chair, introduced himself, the Planning Department, and the members of the Zoning Board:

John Dever, Building Inspector and Code Enforcement Officer
Timothy Morgan, Member
Lou LaCourse, Clerk
Steve Miller, Member

Timothy Kinnon, Member, was not present at this meeting.

III. APPOINTMENT OF ALTERNATES

There are four members of the Zoning Board of Adjustment present so there is a quorum; they are able to proceed with all cases on the agenda.

IV. STATEMENT OF THE APPEAL PROCESS

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

V. APPROVAL OF THE AGENDA

There were no changes to the submitted agenda.

S. Miller made a motion to approve the agenda as submitted. T. Morgan seconded the motion which passed without opposition.

VI. CONTINUANCES

<p>Case #Z10-24 Heidi Beaudoin</p>	<p>Map 4 Lot 21</p>	<p>Variance 141 Tibbetts Road</p>
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Application submitted by Heidi Beaudoin to request relief from Article 400 Section 452B Restrictions Governing Use to allow the subdivision of land owned by Robert and Judith Tibbetts; with the proposed new lot(s) not having the required 200 feet of frontage on a Class V or better road. This parcel is located in the Rural Zone.

P. Monziona read the case into the record. Heidi Beaudoin, Robert Tibbetts, and John Beaudoin came to the table to present.

P. Monziona recalled that this applicant had been before this Board at last month’s meeting. Evidence and a part of their presentation was accepted at that time; it was determined that a continuance would be granted to this meeting to enable the members of the Zoning Board to obtain advice from the Town’s Counsel regarding this matter. The Board did in fact schedule a meeting and conduct a meeting with Jim Sessler, Town Counsel for Alton; the meeting took place a week or two ago here at the Town Hall. Various questions were posed to him that the applicant’s agent had raised. Specifically the question was, given that the town had abandoned the road at a time when residential structures were already present whether the town would have a continuing legal obligation to maintain the road under those circumstances. The Board was informed by Town Counsel that the Town does not, and that once the town abandons that road and it becomes a private road, the Town has no responsibility whatsoever to provide any maintenance to that road. In fact, that is the reason for abandonment; it would be contrary to the concept of abandoning a road if you abandoned it and yet still maintained it. One of the primary reasons roads are abandoned is so that they are not continued to be maintained. There was also the issue of whether there is an obligation to provide emergency services on a private road without appropriate frontage on a Class V or better road; Town Counsel informed them that while services are typically provided anywhere they are called for, he knows of no legal obligation on the part of the Town that would require them to provide any form of emergency services, although the answer was they certainly would. As far as a legal obligation was concerned, those were the questions.

Having received that information from Town Counsel, P. Monziona thought it would be appropriate to give the applicant further opportunity to make any further presentation that they feel is appropriate; when they have concluded that, the floor would be opened to public input because that is where they left off at the last meeting. P. Monziona recalled that they had pretty much finished their presentation, but he thought it fair to give them another opportunity now that they have the input from Town Counsel; the applicant could certainly address that and then they could go to public input.

Mr. Tibbetts stated that he had sent a letter to the Board approximately two weeks ago; he had been told that if he could show that the Town has maintained the road right along since 1953, that it is considered good evidence that there is an impression that it is still a town road. There was no indication that the road was discontinued at the Gilmanton town line other than what was in the 1953 report; he acknowledged and agreed that it is there. The “Subject to Gates and Bars” was never put there and the road has always been maintained by the Town – either Gilmanton or Alton. He asked the members if they had read his letter. P. Monziona answered that he had not. Mr. Tibbetts asked who would have received it; it was registered. J. Dever stated that it would have gone to the Planning Department. Mr. Tibbetts stated that he had sent three of them – one to the Selectmen, one to the Zoning Board and one to the Planning Board. Mr. Tibbetts had a copy of the letter with him; copies of the letter were made and given to the ZBA members.

Mrs. Beaudoin asked if the Board had come over and done a walk. P. Monziona answered that they had not done a site walk; they would have to schedule that.

Board members took a moment to read Mr. Tibbetts' letter. P. Monzione commented that he thinks Mr. Tibbetts may be presenting some very good points in his letter, and some strong evidence, although he did not want to be the one to judge it; the points in the letter may enable them, in the proper context, to establish that the abandonment of the road by the Town of Alton never fully took place. Therefore, maybe this is indeed a town road, or at least it has been treated as one even though there has been an official document saying the road is abandoned. All of what is listed in the letter would seem to argue in favor of that, even though the road is abandoned on paper, in reality it does not seem to be abandoned because of all the things that have gone on; it could truly be a town road. However, from P. Monzione's perspective, and for purposes of this application for a variance, as far as he is concerned and the other Board members would have an opportunity to consider this themselves, they are going to have to consider the road a private road for purposes of this application. Mrs. Beaudoin stated that it is not a private road. P. Monzione stated that he knows that's his position, but until that legal point changes, Town Counsel takes the position that it has been abandoned on record and therefore it is an abandoned road which reverts to being a private road.

P. Monzione went on to say that the last time this applicant was here, he had asked a number of times, and this would be in the minutes, whether this was really an application to obtain a subdivision on not only a road that is less than a Class V road, but really on a place that has no public road. The engineer, who was their agent at the time, agreed that is how they are to view the application. Given what Town Counsel says about the road and the Town's position at present that this is an abandoned road, the application as presented, as far as he is concerned, is calling for them to determine this variance based on a private road, not a town road. If the applicant were to take these facts and present them at the appropriate place, in the appropriate forum, and get that fact changed so that when they come back before this Board they have a legal determination that indeed the road is not a private road but is one that the Town still has responsibility over, and then applied, it would be a different application.

Mr. Tibbetts asked how he could do that. P. Monzione answered that is where he goes from being a member of the Board to providing specific information and advice, which the applicant would not want to hear from him anyway. He went on to say that he thinks, for the limited purpose of what is being done here, with this application, until there has been a legal determination that the road is anything other than a private road, as far as he is concerned, the Board would have to view this application as a request to allow a subdivision on a non-public road, which is a completely different set of facts. P. Monzione went on to explain that there is probably a way; he is not the person to tell them what that way is, where they could present this information (referring to Mr. Tibbetts' letter) in the proper forum and attempt to get a legal determination that based on these things he has submitted to this Board, the applicant could attempt to prove that this is not a private road. Maybe just because it says so from something back in 1953 doesn't mean that the reality is that this is a private road. If the applicant can establish that fact and then file an application for variance and present the application with an established fact that it is on a town road, they would have a different application than what they have here.

Mr. Tibbetts explained that he has more papers with him that back this. P. Monzione answered that as far as he is concerned, and any member is free to disagree and they can deliberate and maybe they will agree or disagree on certain of the points, but he is not sure that the Zoning Board of Adjustment would have any legal authority this evening to make a determination as to whether this is in fact a private road or a public road. Rather, they have to take the application as presented and the information they have to date in the record. As far as he is concerned, this Board can not take the applicants' facts in the letter and listen to all of their arguments this evening and make a legal determination that this is indeed a public road; that is beyond the scope of this Board's authority of what they can do legally. There are appropriate forums and places where they can go to have that issue adjudicated one way or the other. If they were to adjudicate that issue in the applicant's favor, that this is indeed a road over which the Town has responsibility and it is therefore a public road, and they apply back, it would be a different application for variance on a town road as opposed to a variance on a private road.

Mr. Tibbetts asked if P. Monziona was suggesting that he needed an attorney. Mrs. Beaudoin stated that was what he was saying; they would go to Town Meeting. P. Monziona answered that how they do that, he would not feel comfortable trying to give them bad advice on how to do it. Mrs. Beaudoin asked if this would have gone a different direction if they had not handed the members that paper (referring to Mr. Tibbetts' letter). P. Monziona answered that it would not have; they have not ruled on the application yet, and they are still open to public input and further presentation. He is simply saying that as part of their presentation, responding to the information the applicant has given them in the letter, which will become part of the record. As he reads it, it impresses him as being an argument they are presenting to establish that this is not a private road but a public road. That is one of the things they are going to want to convince this Board of this evening. What he is saying to the applicant is that as far as he is concerned, and other members may have a different view so they can debate it and deliberate on it, he does not think it is within the authority of the Zoning Board of Adjustment to make a legal determination as to whether this is a public or a private road. He thinks they have to receive the application as presented, which as they established at the last hearing, was an application to grant a subdivision on a private road, with no frontage on any public road, let alone a road that was at least Class V or better. That is why he is saying on this point, he does not think they are in a position to be able to determine that.

S. Miller stated that he has had an opportunity to review a number of Annual Reports that characterize private roads versus town roads. In at least three of the years going back to 2005, which he just happened to have handy, Tibbetts Road has always been characterized as a private road. The Annual Report is a public document that is available to everybody at any time; there are plenty of extra copies. At any time, he believes the family could have noticed that their road was characterized as private; if that was in dispute, could have taken steps to correct that at any time. There was also an issue or statement of evidence that there was an agreement between Gilmanton and Alton that Gilmanton would take care of Tibbetts Road and Alton would take care of one of Gilmanton's roads. Through their fact finding, which was informal at best by asking the Highway Agent and other people including the town Administrator, if there is such an agreement in effect, no one could attest to any such agreement, either formal or informal. He added that this is not to say they don't. Mr. Tibbetts asked if he could present a couple of letters that say they (Gilmanton) do. S. Miller answered that he could; nobody that he has spoken to in the town is aware of that agreement. Mrs. Beaudoin asked S. Miller if he talked to Paul Perkins; S. Miller answered that he had not and that he only spoke to people in Alton to see if they had an obligation, and nobody admitted to an obligation to take care of a Gilmanton road. That is not saying that they don't, but nobody admits to an obligation. He thinks what is critical is that it has been characterized at least back to 2005 as a private road; his guess is that it goes back further than that and he has no idea unless he checks all of the Annual Reports. If it has always been characterized as private then it is a basic assumption that it always has been treated as a private road by Alton.

P. Monziona recalled that he had told the applicant's agent at the last meeting that the Board would candidly share; sometimes when they meet with counsel they do it in the context of an attorney-client relationship and those can be confidential. In this case, the Board informed the attorney and the applicant that they would share the subject of their discussion with Attorney Sessler and tell them what they learned. In fact, they talked about whether there was an agreement between the Town of Alton and the Town of Gilmanton to plow the Town of Alton road, and according to Town Counsel for Alton, there is no such agreement. Further, it raises some legal questions of one town spending resources on another town's road. P. Monziona went on to say that the big point is that for purposes of this application, the Board has no choice but to consider this an application that is seeking to have a subdivision created on a parcel of real estate that does not border on any public road, at least as of now. He is saying that the arguments the applicant has presented to the Board could probably be presented someplace else and may succeed in proving their point, and they may be able to get this road reclassified to being a town road, at which point if they resubmitted an application to allow a subdivision, it would be a different application for the Board to consider.

Mrs. Beaudoin asked if once they got the variance, if the answer was no, weren't they done; they have already put \$6,000 into fees and a surveyor. P. Monziona answered that if the circumstances changed such that the applicant was coming back with a variance seeking something else – if they just come back seeking the same thing they are seeking now, which is to have a subdivision on a parcel of land that has no public road, they would have already

decided that and there is no sense coming back on something that is exactly the same. However, if they bring an application that is now seeking to have a subdivision on a public road, even though perhaps it is a Class VI road or something less than a Class V road, the Board would review that. The applicant would have the right to have the Board review that application.

Mrs. Beaudoin questioned whether they were here this evening to do this on a private road. P. Monziona answered that she was correct. Mrs. Beaudoin then asked if they were going to talk about it. P. Monziona answered that they are certainly free to do so; he had been addressing that one comment. Mr. Tibbetts stated that he is not sure they should go forward asking for a subdivision on a private road because in their minds, it is not a private road. If they ask for a subdivision on a private road, then they are going to be stuck with that forever. Mrs. Beaudoin stated that her sister had done this 15 years ago, and that they just want to renovate the old house. She then suggested that maybe Alton should just come over and start plowing it.

P. Monziona stated that whatever effort the applicant has put into this process they can still utilize going through a procedure that may get them where they want to end up here; as far as the application this evening and as it was defined at the last meeting, it is an application that seeks a variance on a private road with no public road on this parcel. That is how they are going to determine it when they go through the criteria and deliberate whether to grant it or not; they are going to view it as a parcel that is on a private road that has no public road. To address the issue of if they came back with a different application, now on a public road, in his opinion, they would not be precluded for doing that based on a ruling they get from this because it's a different application they would be coming back in with. Mrs. Beaudoin asked if they would have to go to Town Meeting; she had been told by the surveyor that if they went to Town Meeting and gathered enough signatures, all of a sudden it would not be a private road.

T. Morgan stated that he is in agreement with what P. Monziona has said; what the applicant has (in Mr. Tibbetts' letter) may be very persuasive, but this Board does not have the authority to change the status of the road – this Board just does not have that authority. They can only go forward on an application they have now on the private road or they could wait for the applicant to come back after having done whatever is necessary to present this to the body that does have the authority to make that decision.

Mr. Tibbetts asked if he could ask for a meeting with the Selectmen; T. Morgan answered that certainly he could. Mr. Tibbetts asked if that is a starting place, or if that was wrong also. T. Morgan deferred the answer to L. Carr who stated that the applicant can certainly apply to have a hearing with the Board of Selectmen.

P. Monziona asked with regard to this application if there is anything further the applicant would like to add; he asked if they wished to go forward with further presentation. Mrs. Beaudoin stated that people had come. Mr. Tibbetts stated that he never thought it would be like this; he would like to give more information to the Board. After they see this he knows their answer is going to be the same, and asked if he could show it to them anyway. P. Monziona told him he was free to make his presentation.

Mr. Tibbetts displayed a packet which contains the Town Report from 1953; there is no question about that and he knows what it says. The next page is a map he got from the Town of Alton Highway Department; according to that map, it looks like Tibbetts Road is Class V, which he wrote in on the far side so the Board could see it. Actually, it looks like it is Class V for almost ½ mile. The next document is from a Road Agent for Alton back some time ago; he talks about working on the Tibbetts Road; he requested that the Board take a few minutes to read that document, which they did. The next page is from another road agent from 1971-1972 who was told by Fred Perkins and the Selectmen to go over and work on the road. The next document is a letter from Wendell Beck who lived with his grandparents, Henry and Doris Tibbetts, from 1950 – 1961; he is present at this meeting, and has given more facts. Mr. Tibbetts went on to say that the problem is that no one in town recalls any of this, it is because there are no veterans in this town – they are all new people, with few exceptions. He asked how he was supposed to know things had changed; the Board could say he could go and read the Town Report, but he does not read it word for

word. Mrs. Beaudoin added that the town has been plowing it; they turn around in her driveway, so why would they think otherwise.

Mr. Beaudoin suggested that they should take these facts and instead of saying it is a Class V road, to think about this as the quality of the private road having been maintained. It doesn't matter by who at this point because it is a private road, but you can see it has been maintained and kept up. Mrs. Beaudoin stated that if the Board members had come over, they could have seen that. She had been hoping they would come, and she acknowledged that J. Dever had come over.

Mr. Tibbetts added that it was very misleading to his grandparents especially that if the town road was discontinued at the Gilmanton/Alton town line, why wouldn't they have put the sign there. Why would they put the sign "Subject to Gates and Bars" beyond the farmhouse, which makes sense. He is sure they wouldn't question it – why would they? T. Morgan stated to Mr. Tibbetts that his arguments are all very good and the documentation is very good, but he is asking the Board to do something they can't do. Mr. Tibbetts acknowledged that he understood that. T. Morgan went on to say that he sympathizes with them and understands what they are trying to accomplish, and he thinks it is an admirable goal to find a way to fix up the old farmhouse, but this Board just doesn't have the authority to make a decision based on these documents; it just is not within the power of the Zoning Board to do that. Mr. Tibbetts added that he also has his grandmother's diary from May 5, 1964 which states that the Town of Alton worked on the road. He knows this Board does not need to hear it. P. Monziona quickly stated that it is not even that they don't need to hear it; it is encouraging to him to see that they have a lot of good evidence to establish the main point which is that the Town of Alton, regardless of what the Town Report of 1953 says, has continued to treat this as a Town of Alton Road. There is plenty of evidence to establish that. He thinks that if the applicant takes this evidence and presents it where it needs to be presented, and they get a favorable decision and apply for a subdivision knowing that they are applying for it on a town road, they would be in a different situation than they are in now.

Mr. Tibbetts voiced confusion about when P. Monziona says that if he presents it at the appropriate time and to the appropriate people; who is he saying the appropriate people are? P. Monziona answered that he does not know; he does not know whether they go to the Selectmen and have a meeting with them to persuade them to recognize this as a town road, or whether they have to go to court and have a court determine this. He realizes none of these things is attractive; he can not advise the applicant how to accomplish that, but as the Board looks at this, they have a lot of persuasive facts here and there may be a way to accomplish what they are trying to do. However, to come to this Board with their application and say that they want to show that this is a town road as part of the application; part of the point too is that the road has been maintained consistently, and that is something the Board can take into consideration. Mrs. Beaudoin stated that this is what the Board had told them to do; they were to get evidence, and they did. Mr. Tibbetts requested permission to speak for a minute with Mr. and Mrs. Beaudoin; P. Monziona granted his request.

Mr. Tibbetts asked if they could hear what the Board has to say; he knows the answer but would like to hear what the Board has to say. He asked if the people who had come this evening could speak. P. Monziona answered that if they are proceeding with the application, which they have the right to do, and if they are finished with their presentation, where they had left off at the last meeting was at the point of opening it up for public input. Once they do that, the Board will deliberate through the worksheet on the application and come to a decision. Mr. Tibbetts stated that his heart tells him that they should step back and request that it be considered a town road. Mrs. Beaudoin asked if the Board were to decide in their favor tonight, could they still get their road changed to a town road at Town Meeting. She suggested that they go forward like they had never said any of this.

P. Monziona asked if there is anything further the applicant would like to add in their presentation. Mrs. Beaudoin asked about medical treatment (emergency services?) which P. Monziona had indicated would be provided. She pointed out that they go on top of Mount Major to get somebody, so she would think they would come down the

road; they have to come down the road anyway to turn around as there is no turn about between Gilmanton and her house. They would have to come down.

S. Miller stated that he is very concerned about justice and this is an old family, and they have done the right thing. They have some considerable legal issues; there is no question about that. He personally would encourage them to pursue going forward. That said, what this body is concerned about is future precedent – what is the future precedent or differentiation between a town road and a private road. If this Board finds in favor or not in favor, that essentially becomes precedent, and other families or applicants can use that as evidence in the future. The Board has to be very, very careful and look toward the future and being fair for everybody going forward. On a personal basis, he would encourage them to go forward; he realizes that could be an economic issue and there could be other issues involved, but that's all this Board can be concerned about here.

P. Monziona asked if there was anything further the applicant wanted to add before beginning public input. Mr. Tibbetts answered that he thinks he just needs to wait and see what other alternatives he has. Basically, he is coming to the town and asking for guidance; he doesn't want to prolong this and there are a lot of people behind him. He asked if he could maybe come back again, perhaps with a different scenario. P. Monziona answered that he thinks everyone on this Board, if it were appropriate, would take the time right now to give them as much advice as they could, or as much guidance as they could, but this Board is limited to just passing on these applications and judging them. They are essentially a Board of Appeal; they are not able to do that in this context. Their options are to proceed with the application and get a ruling from the Board this evening, they can withdraw their application, or they can seek a continuance. If they withdraw and then come back, they start from scratch with fees and filings and all that. If they seek the continuance, the Board's policy is that they grant up to two continuances without any adverse consequences to the applicant. It is the applicant's prerogative to ask for a continuance; if they do, the Board will make a motion and rule on it. If the continuance is granted, the applicant will be on the agenda for a later date; when they seek a continuance, the applicant can ask for a specific meeting to come back to. Mr. Tibbetts asked, if he requests a continuance, can he change what they are requesting. P. Monziona explained that during the time of the continuance, he knows they can present additional facts. The problem is that there are abutters who have a right to know exactly what is being requested; they may have to renote if the application is changed in a material way as opposed to just adding more facts to support the application that has already submitted. He can tell the applicant that even though the Planning Department is operating with an interim planner they are there to assist him in determining exactly what he will need to do. If the applicant requests a continuance and comes back, they should not have to have any additional cost associated with the continuance.

Mr. Tibbetts requested a continuance; after discussion with his family he specifically requested a continuance to January 6, 2011. Mr. Tibbetts asked, as the land stands right now, if he is able to give anything to his grandchildren or to his daughter. P. Monziona answered that the request they have before this Board is because zoning regs. prohibit the applicant from cutting that into more than one parcel without getting a variance because it does not have 200' or better on a Class V or higher road. For the applicant to try to cut that into more than one parcel, they have to subdivide, and they can't subdivide without a variance, given the parcel. At some point, they will need to obtain the variance in order to cut that into more than one parcel.

P. Monziona confirmed through questioning that the applicant is requesting to go on the calendar for the regularly scheduled meeting on January 6, 2011; the applicant confirmed this.

S. Miller made a motion to approve the request for a continuance of Case Z10-24 to the meeting on January 6, 2011.

Prior to a second on the motion, T. Morgan referred back to the minutes of the previous meeting and voiced the opinion that the prior continuance had been at the request of the ZBA and therefore should not be counted as one of their two continuances.

The above motion was amended to include the statement that this continuance be considered the first continuance requested by the applicant in this case. L. LaCourse seconded the motion which passed with all members present voting in favor.

The continuance in this case was granted unanimously; this applicant will be on the agenda for the January 6, 2011 meeting.

VII. NEW APPLICATIONS

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

P. Monziona read the case into the record. He stated that, before the applicant begins, he would like to say that shortly after arriving here this evening, he was informed by his colleague Attorney Steven Nix that he is representing an abutter with regard to this application. P. Monziona went on to disclose that he is an attorney with a practice in Wolfeboro; he and Attorney Nix have worked closely together on several cases, some of which are land use cases. They have a professional relationship which they have maintained for a number of years. Therefore, unless there are any objections, P. Monziona will recuse himself from this meeting, given that Attorney Nix is going to speak on behalf of an abutter. That will leave three members on the Board which does constitute a quorum but would require a unanimous decision in order for an application to be granted. When that happens, this Board will typically permit the applicant without having it count as one of the continuances to continue to a time when the other member (for the record, member Tim Kinnon is absent this evening) is present. He offered the applicant an opportunity to discuss it, and stated that he is not even sure he would offer them the opportunity to proceed with him sitting there because there could be other members of the public who would not want that to happen; the safest thing in his judgment would be for him to recuse himself on this, and then the applicant can decide how they want to proceed.

P. Monziona officially recused himself at this time; T. Morgan took over as Acting Chair.

T. Morgan asked Attorney Catherine Broderick of the law firm Wescott, Dyer, Fitzgerald, and Nichols, located in Laconia, to state and spell her name for the record, which she did. She explained that they are going to ask the Board for a continuance this evening. The first reason is that they would like as full a Board as possible; she voiced appreciation for P. Monziona’s judgment call. The second reason is that their surveyor, Dean Clark, is not with them this evening; his young son-in-law was killed in Afghanistan last week. Certainly, they would want him to be there as well. She asked that the Board place this case on the agenda for the following month, which would be November 4, 2010.

L. LaCourse made a motion to grant the request for continuance of Case #Z10-25 to the November 4, 2010 regular meeting. S. Miller seconded the motion which passed with all three sitting members voting in favor.

The request for continuance of Case #Z10-25 to the November 4, 2010, meeting was granted; this case will be placed on the agenda for that meeting.

Attorney Broderick introduced her client, Richard Coskren of 1683 Mount Major Highway, to the Board. Mr. Coskren thanked the Board for hearing their request this evening.

P. Monziona returned to his seat at the table.

Case #Z10-26 Kathy and Mike Currier	Map 2 Lot 19	Variance and Special Exception 55 Prospect Mountain Road
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Application submitted by Kathy and Mike Currier to request a Variance from Article 400 Section 401, Table of Uses, to allow an onsite function facility on their property. Additionally, they request a Special Exception from Article 500 Section 520, Special Exception, to permit Outdoor Recreation specifically a corn maze and related activities. This parcel is located in the Rural Zone.

P. Monziona read the case into the record. Roy Tilsley of the Bernstein Shur Law Firm of Manchester, Kathy Currier, Rich Grondin, and Mike Currier all came to the table to present this application.

Mr. Tilsley spoke about the property in this case; it is a 102 acre lot located in the rural zone on Prospect Mountain Road. Mr. Tilsley pointed out the highlighted section on the surveyor's map in the Board packet. This parcel abuts Route 28.

P. Monziona informed the applicant that the Board needs to review the application for completeness and vote whether to accept it as complete. He noted that there is also a request for waivers. T. Morgan asked about the map Mr. Tilsley had used to show the location of the property; Mr. Tilsley explained that it is not to scale, but he believes it was created by a surveyor. It was previously used, and his clients have penciled in the elements of the function facility and the corn maze. A copy of the surveyor's map was provided to each of the members.

Referring to the application packet, P. Monziona stated that there are two applications in this case; one is for Special Exception and the other is for a Variance. He asked Mr. Tilsley if the supporting documentation is applicable to both. Mr. Tilsley answered that the supporting materials do address both; they are two different issues and two different uses, but they have been lumped together in the materials.

T. Morgan stated that as part of the waiver request, the applicant is asking for a waiver of fees stating that they have come before the proper departments before. He asked if that would be for the minor site plan review. Mr. Tilsley answered that was correct; two years ago the outdoor function facility was approved by the Planning Board under minor site plan review. It has been operating since then. Last year the corn maze was approved verbally by the prior Building Inspector and operated without incident. This year the Town has come to them and indicated that they don't feel that the proper permits had been obtained. The applicant agreed that rather than expend any enforcement actions, they would come back and try to get the permits the Town wants them to get, and they are asking for the fee waiver based on a fairness argument. Their clients were told years ago they could do this; they got the approval from the Planning Board to do it, and now they are back for another round. T. Morgan asked if there have been two minor site plan reviews. Mr. Tilsley explained that there has been one minor site plan review; last year was the first year of the corn maze, which was under a verbal okay by the past Building Inspector.

P. Monziona asked about the minor site plan review by the Planning Board and asked if that had been the approval for the function facility. Mr. Tilsley answered that the applicant thought so; the current Building Inspector says no, and that is the dispute that is being held in suspense right now while they come to this Board and try to get these permits. P. Monziona, stating that his question goes to the application and the request for waivers, said that the Planning Board had done something that led the applicant to believe that they had received approval to operate the function facility. Mr. Tilsley confirmed that statement as correct. P. Monziona went on to ask if it was on that basis, and the basis of the previous Code Inspector's oral okay of the corn maze that Mr. Tilsley is arguing that in fairness to the applicant they should be exempt from having to pay the fees for the Variance and Special Exception applications. Mr. Tilsley stated that was correct; he went on to say that, as he understands it, when his clients filed the application, there was communication with a town official who suggested that would be a worthwhile waiver request under the circumstances.

P. Monziona asked if there is something specific in the application or otherwise from the Planning Department or the Planning Board that the applicant relied upon to determine that they had been given the go-ahead for the function hall. Mr. Tilsley pointed out the Planning Board approval, a copy of which is in the packet for this application.

S. Miller asked about the specific features of the business – there is a parking area with a mobile trailer near by where they serve cider. Mrs. Currier answered that it is not a trailer. S. Miller asked if they take people to a pumpkin patch; Mrs. Currier answered that they do. S. Miller recalled that they ride in a hay wagon to the pumpkin patch and asked if that is what has been approved in the past. Mrs. Currier answered that the corn maze falls under the statutes of agriculture and agri-tourism; that is how that was approved. Country Events is actually for events such as weddings, parties, etc. that was approved by the minor site review in 2007. There are two separate issues. S. Miller asked if they are asking permission for the corn maze; the applicant confirmed that to be the case. S. Miller asked if they are also asking for permission to have events under a tent structure; the applicant confirmed that as also correct. The structure is non permanent and the events would be seasonal.

P. Monziona asked if that is the only waiver; T. Morgan answered that there are quite a number of waivers.

T. Morgan made a motion to grant the waiver requests and to accept the application as complete and ready for consideration. S. Miller seconded the motion which passed by unanimous vote of the Board.

Attorney Tilsley stated that they are here today for two requests; a variance from Article 400 Section 401 to allow an onsite function facility on the property, and a Special Exception from Article 500 Section 520 to permit outdoor recreation, that being the seasonal Corn Maze on the property. P. Monziona requested that the two applications be presented separately; the variance will be done first. Mr. Tilsley went on to explain that the Alton Zoning Ordinance makes no provision for an onsite function facility anywhere in the Town of Alton. What the applicant is proposing is to do onsite weddings, anniversaries, graduations, birthday parties, and similar types of private for-hire events. Essentially, on the plan, there is a tent area indicated behind the barn; this is where the events are actually held. There is a 62,000 square foot parking area right near the bottom that can park 250 cars, which is more than enough; these functions are typically 150 – 175 people. There is a dedicated entrance and a dedicated exit for the traffic coming to the facility for functions. This lot abuts Route 28, so it is about 1/10 of a mile that people have to drive on Prospect Mountain Road to reach the facility.

Mr. Tilsley went on to say that, as the Board knows, there is a five part test they have to deal with; this year there is also the new statutory hardship test to wrestle with. The following narrative is all as given by Mr. Tilsley.

The first element of the test is that there is no fair and substantial relationship existing between the general public purposes of the ordinance and the specific application of the provision to the property. The purpose of the rural zone is to preserve the Town's historical, rural, and agricultural character; Mr. Tilsley believes that over half of the property in the town is located in the rural zone. An outdoor function facility relies on the rural character of the property for success. The outdoor function facility requires the natural setting; it requires a large lot; it requires open spaces; it requires rural country-type views. An outdoor function facility helps to preserve the rural character of the town in this particular zoning district. As such, there is no fair relationship between the purpose of the rural zone in restricting outdoor function facilities within that zone. Encouraging the use of a large lot for this type of operation helps to preserve the rural character and helps to prevent the breakdown of these large rural lots into smaller lots that can be used for other allowed uses.

The second part of the unnecessary hardship test is whether the proposed use is reasonable on the lot given the special conditions of the lot. This lot has the special conditions of a large lot size; it is over 100 acres and much bigger than any of the lots around it. It has 1,800' of frontage; it is located near Route 28 so the traffic to the lot does not have to travel far on Prospect Mountain Road; it has a natural buffer on the property to provide a buffer

from the things that happen on the property to the neighboring properties. These are all unique conditions that make this site a reasonable use for the outdoor function facility. There is adequate parking on site and the use for outdoor functions will not alter the essential rural character of the neighborhood. This is really the minimum variance that is necessary to do outdoor functions because there is nothing in the ordinance allowing outdoor functions anywhere in town; a variance for this use is required to do this.

After unnecessary hardship, the Board has to deal with whether the variance is within the spirit of the ordinance; this variance is in harmony with the zoning ordinance, the Master Plan, and the rural zoning district. This type of use helps to preserve the rural character of this zone; it is similar to other outdoor recreational uses in the zone such as golf courses and riding stables. It is a service that benefits the town, preserves its rural character, and benefits other businesses in town. This will benefit caterers, bakers, florists, and lodging facilities in town when events are held on this site.

The variance will not be contrary to the public interest because the property is uniquely suited for this particular purpose due to its size, frontage, buffer, and proximity to Route 28. Again, the public interest will be served because this will attract people to town to enjoy its rural character and take advantage of other businesses in town.

Substantial justice will be done by granting this variance. As they have already been through this as an endeavor that may have been previously approved by the Town and his client has spent time and money over the last two years investing in this particular operation. In addition, substantial justice is done because the ordinance, probably through an oversight, does not allow outdoor function facilities anywhere in the town; certainly Alton is the kind of town that ought to have a facility like this someplace so people can enjoy the rural character of the town. This property is, again, a perfect fit for that type of use.

This use will not diminish surrounding property values. It is a seasonal use; there are no new buildings on the property; it is a naturally buffered activity; additional traffic on Prospect Mountain Road is minimal because of its proximity to Route 28; and there is more than adequate parking on-site.

Mr. Tilsley concluded his presentation for the variance; he offered to move on to the Special Exception when the Board is ready. P. Monziona stated that he would prefer to take them one at a time so that they can go through the worksheet and decide on the variance before hearing the argument for the special exception for the corn maze. P. Monziona asked Mr. Tilsley if he had anything further to add concerning the variance; Mr. Tilsley answered that there was nothing else from their perspective.

P. Monziona asked J. Dever for his input prior to opening the floor to public input. J. Dever stated that as stated in the narrative he supplied for the packet with this application, the Currier's applied for Minor Site Plan approval from the Minor Site Plan Committee for a home occupation to conduct event planning. Also mentioned in that approval was the possibility of on-site functions; on-site functions were beyond the scope of that committee to approve because that requires the Planning Board and a full site plan. The applicants have had a number of functions over several years and have been quite successful, with the number of scheduled guests reaching up to 180. Again, as Mr. Tilsley pointed out, the request comes because they are not addressed in the Table of Uses. That is why they're here. He has input from the Fire and Police Departments, neither of whom had any concerns. Highway had no comment; Conservation is concerned that the drainage from the parking area be managed adequately. Another consideration will be sanitary facilities; the applicant has indicated that they have a contracted service. All parking should be on-site, not out on the road or in the right of way; as should signage. There has been a comment made by an abutter about possible excessive noise, which he is sure will be addressed. This applicant is on the schedule to go to the Planning Board for site plan approval later this month.

P. Monziona asked, if a variance is to be granted this evening, would the applicant still have to take this plan before the Planning Board to get approval for the entire plan; J. Dever confirmed that to be correct.

P. Monziona invited questions from the members.

S. Miller asked about the drainage of the parking area; he noted that there is a pond on the plan. Mr. Currier answered that there is a pond there and that it is probably 150 to 200 feet away from the parking area; the parking area does drain down toward the pond. S. Miller mentioned that was a concern of the Conservation Committee. S. Miller also asked about the excessive noise if there is a band or other music playing; he wanted to know if there is a buffer of trees between their site and the nearest abutter. Mr. Currier answered that the nearest abutter is across the street, probably 150 feet away; he indicated their location on the map in the packet. This is the home of Al and Judy Hillsgrove with Wayne Hillsgrove next door; there have been no complaints.

P. Monziona noted that there is a parking area depicted and discussed in the presentation; he asked if that is adequate under the regs to accommodate the usage that is going to go on there. Mr. Currier answered that he has not checked in on the regs. but the functions they are looking to do will max out at 150 people; there are certainly enough car spaces for that, and the corn maze does not generate that kind of traffic at any one time. That would be a couple dozen cars at any one time; it is not hundreds of people. P. Monziona stated that, in any event, the applicants are not here requesting a variance on the parking requirements that the zoning regs. state.

L. LaCourse asked about the surface of the parking area; he asked if it was grass as opposed to an impermeable surface. The applicant confirmed that it is grass; L. LaCourse commented that some of the runoff would then be absorbed. S. Miller asked if there is insurance available if someone gets stuck up to the hubcaps if the parking area is wet and saturated; the applicant answered that if it is that wet, they probably would not be holding functions. The answer to the question was no, they are not aware of an insurance for this type of problem.

P. Monziona asked if alcohol is served at these functions. Mrs. Currier answered that she does not have a liquor license, so she does not serve alcohol. If there is a function, it is BYOB and she requires that they hire a professional licensed bartender.

P. Monziona invited further questions from the Board members; there were none at this time. P. Monziona opened the floor to public input in favor of granting the applicant's request for the variance.

Joe DePopolo, an abutter came forward; he and his wife live at 10 Arianna Drive; they support the endeavor. They know when there have been events in the past and they have had no issues with the noise; they are okay with it.

Judy Hillsgrove of 50 Prospect Mountain Road is an abutter living right across the street from the applicant. Their functions are very tasteful and not intrusive at all. They have had music going, but it has not been a bother; they live right across the street, so if anyone was going to be bothered, it would be them. She is here to say it is a nice atmosphere.

Dave Bubar of 34 Arianna Drive, neighbors to the DePopolo's, never has any issues.

Susan DePopolo of 10 Arianna Drive is in favor of the applicants events.

Keith Dube of Hamwoods Road, an abutter on the other side of the woods, is in favor of what they are doing. He has heard the parties and the music and wondered why he wasn't there.

Patty Taylor Rogers of 305 Prospect Mountain Road is a neighbor, but not an abutter. She stated that if anyone would be bothered by the music, she would be because she is higher up, and everything travels up. She is here as a friend; she is in support of what they are doing. It is perfectly okay, and an addition to the town of Alton in the way the applicants are doing it. They are doing it with class, in the proper way. They had been doing it in the proper way; they had an approval. She is here to encourage the Board to encourage them.

Aaron Sisoian, an abutter to the property, has known the applicants since he moved to Alton about five years ago. It's one of the first times he has seen the town trying to upgrade in their growth. He gives the Curriers a lot of credit in standing up and doing such a thing. He thinks it is a great community service, and that it will support a lot of different people who could not otherwise afford a lot of these events without this kind of a situation.

Michael Raymond of 16 Prospect Mountain Road stated that the events are very good and not nearly as loud as his parties. He is the first house on the road; he notices no difference in the traffic. He thinks there should be an officer sitting out at the end of the road; he has kids and sometimes cars scream up the road, and he is only 200 feet from the stop sign. Everything they are doing is great; the corn maze is great for the kids. He is in favor.

Bill Manion is not an immediate abutter; he is here with his wife. He thinks this would be an excellent activity and enhancement to the town. This is the kind of business that should be encouraged in this town; it's clean and non-polluting. It is a definite asset to the town and he definitely is in favor of it.

Peter LaPenta, a neighbor at 396 Prospect Mountain Road. As far as traffic goes, he is on the road every day, and in the last week he has counted four tractor trailers, fully loaded. This is not a traffic issue to worry about. Also, in the past years he has seen three sub-divisions and a cell phone tower go in on the mountain; they opened that road up when they first built there. If that development is okay, he can't imagine that a very tastefully and thoughtfully done function setup is a problem. Anything that encourages people to keep the character rural and keep the beautiful land up there the way it is should be encouraged. He would also say that historically that house, in the 80's, was a chancery, an on-call French restaurant where you would call in and she would set it up and you would go there and dine in the house. In the 30's, his neighbor Leo Boucher, was a waiter and they ran a bed and breakfast there, so there is a history of these kinds of affairs at that location going back well before Mr. Lapenta's time. He thinks it is amazing that the applicants have been put through what they have been put through to do something that is a very consistent use in that area. He would be the first one screaming if he was not happy about it because he has 210 acres, and it is paradise up there. They should be encouraged to do what they are doing.

John Boudreau, an abutter just south of Arianna Drive, is also located up higher; he has a 12 acre lot with a five lot subdivision. He has been to some of the applicants' events, and he lives close to them out there; they are run professionally and you couldn't ask for a better job. He has no complaints either with traffic or noise or any other things that might overflow from such activity. He is in full support; this will be a benefit to the town.

P. Monziona invited further public input in favor of this application. Hearing none, he invited public input in opposition to the application being granted.

Carol Locke has her home on the down side of the parking lot that has been referred to. They have a pond at the bottom of the parking lot, so if it does go forward, she hopes that the drainage will also be considered for their pond. She is not concerned about what has been happening right now with the land because they have only had a few events, and the noise is annoying. They are close to the events; what she is concerned about is the potential for growth there if they are asking for 250 cars to go there. The Lockes' house is on the 1/10 of a mile from Route 28 to the applicants' place, and the potential for 250 cars to go by when she has her grandchildren that live next door to her and a small child who lives across the street; she thinks that is excessive. She also thinks that they have to think about ten years from now; if they are having events every weekend that would be an annoyance to her if she plans to retire there. She has lived there for 23 years; they love their home and where they live. She would find that to be intrusive and it would in her mind lower her property values if there are events every single weekend from April through October. She would not want to live there; she values her quiet and lives in a rural zone on purpose. For years she drove 20 miles to the grocery store because she likes living where she lives. She also does not want to have to listen to music all summer while she is trying to enjoy her own yard. Right now it has not been an annoyance; there was on wedding that kept her awake a little bit but it was no big deal. But, what happens if they are happening all the time, and there are 250 cars going by her house, parking above her property where they do

about that parking lot? They say the tree line buffers, but she hears the music. She thinks it does destroy the rural appearance of her property, and that is why she can't agree with this variance.

P. Monziona invited further public input in opposition to the granting of this variance; there was none. Public input was closed at this time.

P. Monziona invited further questions from the members, in light of the comments made during public input.

S. Miller asked the applicant what the limit is to the size of the events. Mr. Tilsley answered that they limit to 150 people; although there is a capacity for 250 cars, it would never get there, even if you assume 2 people per car, you are talking about 75 cars, not 250. S. Miller asked if that is an intuitive constraint, or whether it is a constraint in the business plan. Mr. Tilsley answered that he believes his clients would be prepared to live with it as a condition of approval.

S. Miller asked about the width of the buffer between the applicant property and the Locke property. Mr. Currier estimated the width of the buffer at approximately 175'. There is a small pond between the parking area and the Lock home which does not show up in any of the pictures. S. Miller asked Mrs. Locke if she agreed that the buffer is about 175'. Mr. Locke answered that this is a fair estimation, but the parking lot is higher up, so the sound goes through the tops of the trees.

S. Miller asked how many events they have held in a season; Mrs. Currier answered that this has been their largest year and there were four events scheduled, two of which were postponed due to the Cease and Desist. She actually held three this year. There are none booked for this year. L. LaCourse asked when events are held; Mrs. Currier explained that so far her events have been only on the weekend. Most wedding events are on a Saturday because people are off and have Sunday to drive home.

There was no further comment or input; the Board proceeded to the variance worksheet.

VARIANCE WORKSHEET

1 – T. Morgan stated that the variance **will not** be contrary to the public interest. The establishment of a business like this in this particular area is well conceived and is certainly within the public interest of the Town of Alton. P. Monziona agreed that it would not be contrary to the public interest; he did not see any evidence this evening that would adversely affect the public at large. L. LaCourse and S. Miller both agreed.

2 – P. Monziona stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. While the Board was in session this evening, he reviewed the Table of Uses that appear in Article 400 Section 401 under the Rural Zone, and there are a number of uses that are permitted without the need for a variance, many of which would be in harmony with what is being requested. There are also several others that are permitted by Special Exception. He can't see anything in this application that would run contrary to the Zoning Ordinance or the intent of the Master Plan. All other members agreed.

3 – L. LaCourse stated that by granting the variance, substantial justice **will** be done. He believes that, based on the previous decisions and the investments made based on those decisions, there is no reason not to grant this. S. Miller agreed; he believes that the issue is that small business should be encouraged in Alton and although he has some concerns going forward such as signage, there are significant remedies available to the abutters. T. Morgan and P. Monziona both agreed.

4 – L. LaCourse stated that the request **will not** diminish the value of the surrounding properties. Intuitively he feels that there is a significant buffer to the Lockes' property and because there are other remedies available, he

does not see any affects on surrounding properties in terms of assessed value. T. Morgan agreed that it probably would not diminish the value of surrounding properties, although he is cognizant of what Mrs. Locke and to say and he is concerned about that. It echoes what the Conservation Committee had to say, and he thinks it is an issue they will need to address if they decide to grant this variance. P. Monziona agreed, adding that when an applicant obtains a variance, the variance does not give the applicant carte blanche about what happens on the property. The property is still governed by all of the other ordinances and laws of the town, including noise restrictions and what have you. Sometimes the applicant will get what they wish for but still not be able to do exactly what they want unless it complies with all other aspects of the town's ordinances. Most of the abutters spoke in favor and felt that this was not in any way something that would diminish their values. L. LaCourse, S. Miller, and T. Morgan agreed with his statement.

5 – T. Morgan 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. Counsel for the applicant expressed this very well. The other part of this is that Alton has an exclusionary ordinance, and they have neglected to include this particular use in the rural zone; it is probably appropriate but was overlooked. He thinks the proposed use is certainly a reasonable one. P. Monziona agreed, as did L. LaCourse. S. Miller also agreed and added that if this can not be in a rural zone such as this, then where else?

Based on the above analysis, special conditions **do** exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship. He added that unnecessary hardship in this case would be that the Table of Uses does not specifically include this particular activity, although it includes a number of other similar ones permitted and by Special Exception. An unnecessary hardship would result to the applicant if, because of the lack of description in the uses, the zoning ordinance were to be enforced. All other members agreed.

The conditions of the pending motion were discussed. T. Morgan acknowledged what Mrs. Locke had to say and what the Conservation Commission had to say. He thinks it is something that needs to be addressed, but he is unsure of the correct way to do so. The runoff needs to be controlled, but how do they tell the Code Enforcement Officer what needs to be done or what is appropriate. P. Monziona noted that, in taking into consideration some of the concerns of the Code Enforcement Officer and the Conservation Commission, they were talking about runoff as well as sanitation. One of the conditions could be that appropriate sanitation and control of runoff is provided such that it would not adversely affect the property of abutters. Beyond that, this Board is not in a position to specifically design something or tell them how that is. With that condition in mind it could be easily addressed; the property owner or applicant could put in whatever reasonable measures are needed to assure that runoff is not running onto an abutter's property. They would not want to do that anyway because regardless of this variance, an abutter would have recourse. That is a condition that is a reasonable and appropriate one. P. Monziona would also like to see parking in compliance with the Town's regs. and to be on-site; and that signage also be fully in compliance with town regs. and to be on site. The conditions he sees as appropriate would be concerned with on-site parking and signage both in accordance with the town's requirements, and that sanitation and runoff be addressed so as not to adversely affect any abutting properties.

S. Miller brought up a further constraint; no one knows how successful this business could be, and he hopes it is very successful. That said, there is a difference between 150 people and 450 people. There is a significant difference. There is a difference between 75 cars and 250 cars. That said and given the parking regulations of the town, he would like to limit the number of cars in the parking lot to 100 because that can be calculated. L. LaCourse added that it looks like the parking lot is crowned somewhere around the center which tells him that if they keep the parking down to 125 cars, and those 125 cars were towards the road, the drainage would be toward the road, not toward the pond. That would take care of the drainage issue. P. Monziona explained that the reason he sees a problem with this Board jumping and micromanaging how this property should be laid out and used is that it was mentioned by the applicant that the limit thus far has been 150 people. He thinks that is appropriate; it is in keeping with the facility to date and is something that the applicant indicated she could live with. That way, they

don't have to worry about changing the parking anyway; the reg. usually deals with how many people and occupancy; if the condition is 150 people limit, they have to make sure they have enough parking for that 150 people limit. Given that parking lot, that will not be a problem. S. Miller added that he would like to give them some room for growth; he would be happy with 200 people; that would probably generate 100 cars, more or less.

J. Dever pointed out that a lot of these concerns will go before the Planning Board; the Planning Board is very adamant about dealing with drainage, parking, and other issues that will be addressed in front of the Planning Board when the applicants go for their site plan approval. The majority of these issues will be dealt with at Planning Board. P. Monziona voiced understanding of that. S. Miller added that, if it is under their purview at all, he would still like to put a constraint on the number of people and the parking because he doesn't want to approve something that becomes 450 down the road and all off a sudden it changes for all the abutters. P. Monziona surmised that signage, parking, sanitation, and run-off are all going to be addressed by the Planning Board, as J. Dever had pointed out. It is within this Board's authority to impose conditions on the granting of the variance; conditions that make sense and are reasonable. P. Monziona invited a motion, perhaps with a limitation on the number of people would be appropriate; all other items would be left up to the Planning Board.

S. Miller made a motion to grant the Variance for Case Z10-26 with the noted constraint of a maximum of 200 people present at any one time, to include guests and staff. L. LaCourse seconded the motion which passed unopposed.

The request for the variance was granted with the one specific condition as stated.

P. Monziona invited the applicant to give further presentation as needed on the Special Exception for the corn maze. Mr. Tilsley proceeded, explaining that a lot of the points are the same. Outdoor recreation is allowed in the Rural Zone by special exception provided the lot has at least 20 acres, which the applicant obviously has. Essentially, what they are doing involves a 2.5 acre piece up at the top of the plan which is the corn maze they did last year and are currently doing this year. It is open about 20 days a year in September and October; weekends during those two months, typically from 9 – 6. There were a couple of Halloween night events toward the end of the season last year. It is also used occasionally during the week for pre-scheduled field trips and outings from schools and day cares. This is basically an agricultural/agri-tourism type of use. RSA 672:I specifies that agricultural activities should not be unreasonably limited by municipalities.

Mr. Tilsley went on to say that the standards for a Special Exception under the Alton ordinance state that:

1. A plat needs to be submitted. As the Board knows, they have major site plan approval scheduled at the Planning Board, so that is pending.
2. This is an appropriate location for the use. Obviously, a large rural piece of property with a corn field is an appropriate location for a corn maze.
3. There is no drop in property values as a result of this seasonal use; it is 20 days or so a year.
4. They are not aware of any objections based on fact; they have already done this. All the parking is onsite and they have heard no complaints regarding the corn maze and what is happening on the days they have been open.
5. There is no nuisance hazard to pedestrians or traffic. They have a parking area sufficient to accommodate the two dozen or so people who might be onsite at any given time. The short distance from the highway means there is not a lot of traffic on Prospect Mountain Road.

6. There are adequate facilities and utilities; there are no new structures here so the only facility is the parking which they have adequate space for and they will obviously deal with the Planning Board more regarding specifics.

7. Sewage disposal is done by Porta-Potties because this is a seasonal use for a limited number of days. They have Porta-Potties delivered by a local company and they maintain them during this period.

8. The corn maze is consistent with the spirit of the ordinance and the Master Plan. It is a rural use in the Rural Zone. Agri-tourism is certainly something that the town would want to see in the rural zone. It encourages and supports agriculture, and agriculture keeps the land in the original form, allowing the public to enjoy outdoor activities, open spaces, and views. The farm is consistent with preserving the rural views in the town.

P. Monziona asked for further input from the applicant; there was none; the floor was opened to public input in favor of granting this application for Special Exception.

Joe DePopolo of 10 Arianna Drive spoke in favor of granting the Special Exception.

Dave Rouillard voiced support of the corn maze.

Keith Dube, an abutter on Hamwoods, is entirely in favor of the corn maze; he thinks it is a fun thing for families to do together. He has recently been appointed a den leader for Tiger Cub Den 9; this is going to be their first outing next Sunday. Families are included, and it should be a real good time.

Michael Raymond of 16 Prospect Mountain Road stated that there is no issue with traffic, and it is great for the kids; he has brought his kids there already and they had a great time. Everyone should go.

Patty Taylor-Rogers just wanted to say to anyone who is against the traffic that Prospect Mountain road has more traffic going past it than Route 11 or Route 28 at any given time during the day. The traffic, to her, is not an issue at all. She supports this endeavor to try to make a living, as everyone is trying to do.

Bill Manion has a property about 2000' away. He thinks this is a splendid activity to bring out the rural nature of the town and preserve the landscape. It is a wonderful activity on the fall for families and children, and it is something to be encouraged.

Peter LaPenta of 396 Prospect Mountain Road cannot think of a more appropriate use for a corn field than a corn maze in a rural district.

There were no other speakers in support of this application. P. Monziona invited public input in opposition to this application being granted.

Richard Locke came forward. He was at the initial planning meeting where they talked about this. What they talked about was parking for two cars and a computer – they were going to plan events. If they were going to have an event, which might be very rare, they would go to the town and get a special dispensation. Somehow, this has gone to a full time event thing. Okay, he has no problem with the corn maze as long as the corn cannon keeps pointing the other way from his house. What bothers him is that there is a lot of traffic; as other people have said, there is everything from 18 wheelers, and they are screaming down that road. If you have 100 cars, half of them may be driven by a person who has been drinking, maybe not. A bartender is going to watch them, but it is their bottle. Doesn't anyone think there could be a problem? What he would like to see, if there is a caveat, he would like to see a traffic plan and some kind of plan for a police presence when everyone is leaving. There is a beautiful hump on that hill. It is a recipe for disaster, and it would only take one bad moment. He thinks that has to be thought about and not go rushing into this.

There were no other speakers in opposition to the application; Public Input was closed.

J. Dever stated that the applicant had added on based on the verbal authority, which wasn't appropriate. They have deemed that it does fit into the outdoor recreation category. It is very appropriate as he said in his narrative. All the other concerns apply. P. Monziona asked for clarification; when J. Dever states that it fits into that category, from his perspective this activity is permitted under Special Exception. J. Dever confirmed that was correct. The definition of outdoor recreation is commercial recreational uses conducted in a natural or semi-natural setting, such as a hunting preserve, paintball, etc. It does not include amusement use.

T. Morgan asked if there is any reason for this portion to go before the Planning Board. J. Dever answered that the whole site plan will go before the Planning Board.

S. Miller asked what the average attendance has been at peak time. Mr. Currier answered that it has been 100 – 110 people for the day on a Saturday or Sunday. S. Miller asked what the maximum number of cars has been. Mr. Currier answered that it has been no more than maybe 25 at a time. S. Miller asked what he projects in his business plan for two or three years down the road. Mr. Currier answered that he does not ever see it exceeding what the wedding parking will allow. The maze is about 1 ½ hour walk. S. Miller stated that he does not know what the size of the maze is, but there is a point where too many people make it not enjoyable. Mr. Currier agreed; S. Miller asked what the point is that they would cut off. Mr. Currier answered that they only allow groups of a certain number at a time; obviously getting to a dead end and turning around with ten going and ten coming destroys the maze. S. Miller asked if any more than ten would be counter-productive. Mr. Currier stated that he would say 20; the maze is just less than 3 acres. There is a ten minute head start before the next group starts through. S. Miller asked if, at the point of 20, they start to lose business because there are too many people in there and it is not enjoyable. Mr. Currier answered that they are trying to maintain the maze itself; if they start getting an excessive number of people going forward and backward, it destroys the maze and it doesn't last as long. They have designated "corn cops" to circulate through and keep the running down. There is no alcohol or swearing; it is very family oriented. The maximum number of people at any one time would be about 20 people.

The Board proceeded to the Special Exception Worksheet.

SPECIAL EXCEPTION WORKSHEET

1 – P. Monziona stated that a plat **has** been accepted by the Planner in accordance with Alton Zoning Ordinance Section 520B and a recommendation has been made. All members agreed.

2 – L. LaCourse stated that the specific site **is** an appropriate location for the use. He believes that the applicant put forth a very good argument that agri-tourism is definitely an up and coming business; he lives up the hill so he is a little bit familiar with where this is. He thinks it is going to work out very well for them. S. Miller agreed and added that he thinks a corn maze in a corn field is probably as appropriate as it gets. T. Morgan and P. Monziona also agreed.

3 – S. Miller stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. Although there is a sidebar use of people going through the corn field, essentially it is a corn field and that is how it will remain. T. Morgan, P. Monziona, and L. LaCourse all agreed.

4 – T. Morgan stated that there **is no** valid objection from abutters based on demonstrable fact. There was an objection from the abutters based on traffic volume, but there have been no demonstrable facts presented that traffic patterns and substantial problems will increase because of this approval. All other members agreed.

5 – P. Monziona stated that there **is no** undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking. There has been no evidence presented by anyone that

a nuisance will be created or that a serious hazard to pedestrian or vehicular traffic will be created by this activity. Off street parking is going to be amply provided for. All other members agreed.

6 – L. LaCourse stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. They have a company that is coming in and taking care of Porta-Potties to make sure everything stays sanitized. All other members agreed.

S. Miller asked the applicant a question before proceeding to the next question; he asked how many Porta-Potties there are for the corn maze. Mrs. Currier answered that at this time they have one; the company they use watches it and she has been told the ratio is 50 people to one Porta-Potty at one time.

7 – S. Miller stated that there **is** adequate area for safe and sanitary sewage disposal and water supply; that being said, he offered the constraint that there should be a minimum of two Porta-Potties so there would be a men's and a women's there at all times. The ordinance for sanitation kicks in at that point. T. Morgan stated that he agrees that adequate sewage disposal has been provided. P. Monziona added that he agrees based on the representation that there is a contract in place designed to meet the demands. L. LaCourse agreed.

8 – T. Morgan stated that the proposed use or structure **is** consistent with the spirit of the ordinance and the intent of the Master Plan. The intent of the Master Plan as expressed by the people of the Town through a number of surveys is to protect the rural area, and the rural/agricultural character of the town; he thinks this does that. P. Monziona, L. LaCourse, and S. Miller all agreed.

P. Monziona invited a motion for the application for Special Exception for Case Z10-26. S. Miller offered for consideration a constraint that there should be two Porta-Potties instead of one. He realizes the ratio is one for 50 people; if there are only 20 there, there could be more than 20 people backed up waiting to go. P. Monziona voiced the concern with the granting of a variance that would specify something like that is that this would be kind of determining what is appropriate; he thinks he would be more comfortable agreeing with a motion that adequate facilities be provided, whatever that is. If the business goes down to ten people a day and you have five Porta-Potties there, or you require them to have two and they start having 500 people there, they have met their requirement. Being specific in a number would not be flexible enough depending on the business flow. Maybe a more general condition like imposing at least two would be appropriate. S. Miller feels that if you are there and you have kids, male and female, having two just seems more appropriate. T. Morgan stated that he would be more comfortable with the word adequate; he has no desire to manage their business for them. P. Monziona acknowledged that it is hard to get into specifics without knowing more about.

T. Morgan made a motion to approve the application for Special Exception in Case Z10-26 with the condition that adequate sewage facility disposal be made available on the site. L. LaCourse seconded the motion which passed without opposition.

The application for Special Exception was granted unanimously.

VIII. OTHER BUSINESS

1 – Previous Business – There was no previous business.

2 – New Business - The question was raised as to whether a permanent planner has been hired. J. Dever informed the Board that this has not happened yet; the interim planner will continue to serve, and J. Dever will be the Planning Department representative to the Zoning Board of Adjustment.

3 – Correspondence – There was none.

4 – Minutes

September 2, 2010

On page 10, the next to the last sentence of the first paragraph, which reads “L. LaCourse confirmed that there is only one family...,” should read “L. LaCourse confirmed **through questioning** that there is only one family...”

Also on page 10, the word “subdivision” which is the first word of the eighth line of the third paragraph should be “**subdivisions.**”

S. Miller made a motion to approve the minutes of the September 9, 2010 meeting. T. Morgan seconded the motion which passed with all votes in favor.

August 12, 2010

S. Miller made a motion to approve the minutes of the August 12, 2010 Workshop as presented. L. LaCourse seconded the motion, which passed with three votes in favor and P. Monziona abstaining as he had not been present at that meeting.

The approval of the minutes of the August 5, 2010 meeting was tabled until the next regular meeting; this is the only set of minutes still pending approval.

IX. ADJOURNMENT

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

The meeting adjourned at 9:33 p.m.

The next regular meeting will be November 4, 2010.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session