

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
May 3, 2012
Approved as Amended 8/2/12**

I. CALL TO ORDER

Tim Kinnon, Chair, called the meeting to order at 7:12 p.m.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

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

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

III. APPOINTMENT OF ALTERNATES

There was no appointment of the alternate at this time, as there was a full Board present.

IV. STATEMENT OF THE APPEAL PROCESS

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

T. Kinnon informed all present that this Board desires to hear all cases, but that it is the practice of the Board to stop hearing cases at 10:00 p.m. None of the five cases on the agenda this evening requested a continuance.

V. APPROVAL OF THE AGENDA

There were no changes to the posted agenda.

T. Morgan made a motion to approve the agenda as presented. P. Monziona seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

VI. CONTINUED APPLICATIONS

Case #Z12-01 10-14 Lionel Terrace	Variance Map 40 Lot 4	Wayne and Karen Webster Lakeshore Residential District
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On behalf of Wayne and Karen Webster, Arthur W. Hoover, P. C. d/b/a Alton Law Offices is requesting a variance from Article 400, Section 401 of the Zoning Ordinance to permit the property owners to identify four specific sites on their property to construct wooden platforms to house tents.

As he had done at the previous hearing, T. Kinnon recused himself from this case. T. Morgan chaired the meeting for this case.

P. Monziona made a motion to appoint Paul Larochelle, Alternate, as a member for the purpose of hearing this case. S. Miller seconded the motion which passed with four votes in favor, none opposed, and no abstentions.

Attorney Hoover and his client, Wayne and Karen Webster, came forward to present.

Attorney Hoover addressed a letter he had sent to the Board. At the end of the previous hearing on this case, there were two issues the Board was concerned about. The first was concerning the possible affect this variance could have on surrounding property values, and the second concerned whether or not a variance could be terminated after a certain time. In response to those two issues, Attorney Hoover drafted a letter to the Town Planner, which was then sent on to Attorney Sessler for his comment. The intent of the letter was to point out that the purpose of the platforms was to provide for the provision of pitching tents. The variance itself would not terminate at any point, but the provision for pitching tents could be terminated.

T. Morgan closed commentary and the Board began deliberation. P. Monziona observed that the use of the property by this family is very well done; it has resulted in a great use of the property and it has done all of the things the Board has heard about as far as bringing generations of this family together. For that reason, he is very disturbed about the wording of the current zoning regulation, and the criteria the Board has to follow in this case. They are stuck with the law the way it is written and the definition the way it has been drafted. From a personal perspective he would love to see this use go on, but the Board is duty bound to follow the criteria.

T. Morgan agreed with P. Monziona; he feels that the ordinance is badly flawed and needs to be addressed at the next opportunity to change town ordinances. He is concerned whether a variance is an appropriate way to address a flawed ordinance and whether they would be doing the proper thing granting a variance, particularly with respect to the codification of the hardship rules. L. LaCourse added his agreement with P. Monziona's comments.

WORKSHEET

P. Monziona stated that the variance will be contrary to the public interest. The variance will run with the land; it will not simply apply to this family and their use of the property. Given how the definition of campsite is currently drafted, a variance would be contrary to public interest. L. LaCourse agreed. S. Miller agreed and added that his concerns are with the size of the septic system and the maximum number of people who can be there at any one time. Also, anyone driving by and seeing a lot with a number of tents would assume it is a campsite; he would be concerned whether the zoning regulations were specifically meant to permit a campsite on residential property. P. Larochelle agreed. T. Morgan agreed and added that it would be contrary to the public interest, but he is also concerned with the statutory perspective and not with what this family wants to accomplish.

L. LaCourse stated that the request is in harmony with the spirit of the ordinance and the intent of the Master Plan and with the convenience, health, safety, and character of the district within which it is proposed. The issue is that, even though it is in harmony with the intent of the Master Plan, it is contrary to the public interest. S. Miller agreed and added that it is in the spirit of the Master Plan because the intent is to have a family residence where all the family can visit and enjoy each others' company. The way it is set up is not what the original ordinance intended. P. Larochelle agreed. T. Morgan agreed and added that it is in the spirit of the ordinance and the intent of the Master Plan, but that spirit is not well expressed in the ordinance as it is currently drafted. P. Monziona agreed; he would add that the spirit of the ordinance was probably to permit this type of

use but the language of the ordinance does not. Unfortunately, this Board can not expand that language at this hearing.

S. Miller stated that by granting the variance substantial justice would not be done. This is due to the language of the statute and the ordinance. P. Larochelle, T. Morgan, P. Monziona, and L. LaCourse all agreed.

P. Larochelle stated that the request would diminish the value of surrounding properties if the surrounding properties feel that having campground platforms could have a direct impact on the surrounding property values. T. Morgan cited evidence presented on both sides of this issue, but he is going to come down on the side that it will have a direct impact if the variance is allowed. P. Monziona agreed for those same reasons. L. LaCourse commented that the jury is out concerning the values as there are opinions on both sides, but he is aware of negative effect surrounding other campgrounds he is familiar with. For that reason, he agreed. S. Miller disagreed; he does not think the request will diminish surrounding values. All the evidence he has heard was somewhat intuitive and was not substantiated. Given no evidence to the contrary, he is making the basic assumption that there will be no change in property values in either direction.

For purposes of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area that no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property, and that the proposed use is a reasonable one. T. Morgan finds that there is a fair and substantial relationship between the general purposes of the ordinance and the specific application here, and that there is not a hardship shown that would allow the granting of the variance. P. Monziona agreed and added that this was one of the hardest criteria for him to try to find something in the evidence that would demonstrate this. He did not see any special conditions of the property that distinguish it from other properties in the area. It is a large parcel, but there are many large parcels in the same zone. Size alone is not sufficient to constitute a special condition of the property that distinguishes it from other properties. L. LaCourse agreed. S. Miller agreed that there are no special conditions with this property; it is a large piece, but there are other alternatives to the campsites. They may be more expensive, but there are other alternatives available. P. Larochelle agreed.

P. Monziona stated that if the criteria in sub-paragraph A are not established, an unnecessary hardship will be deemed to exist if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property can not be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use of it. In the absence of the tent platforms and provisions for camping as proposed, the property still has a reasonable use as all other lakefront properties in this zone do. He finds nothing in the record that demonstrates a special condition of the property that distinguishes it from other properties in the area. L. LaCourse agreed. S. Miller agreed and added that there are other alternatives available, such as a more permanent structure. P. Larochelle agreed.

S. Miller made a motion to deny the variance for Case #Z12-01. L. LaCourse seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

Attorney Hoover thanked the Board for their time and effort on this case.

T. Kinnon rejoined the Board; P. Larochelle reverted to alternate status.

VII. NEW APPLICATIONS

Case #Z12-06 142 Spring Street	Variance Map 36 Lot 34	Ruth Webb Residential Commercial District
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On behalf of Ruth Webb, Thomas W. Varney, PE, is requesting a variance to permit a proposed deck and stairs within the twenty five foot (25') right of way setback from NH Route 11.

T. Kinnon read the case into the record.

P. Monziona made a motion to accept the application as complete. T. Morgan seconded the motion which passed with five votes in favor, none opposed and no abstentions.

Tom Varney and his client, John and Ruth Webb, came forward to present. He explained the property which his client has owned since 1976. The plan is to tear the current building down to the foundation and rebuild it adding a second floor, and addition on the side, and a garage ell. The septic will be upgraded and new storm water measures will be put in place. The request before the Board is to add a porch to the back of the cottage which extends into the 25' setback of Route 11. The property line has been set by a survey done at the beginning of the project. The application includes a picture of the new house. There is also a Shoreline Permit and septic design that have been approved; the applicant is ready to get the building permit.

On this property, there is a setback on Spring Street, as well as a front setback on Route 11. Instead of being 10 feet in the back, it is 25 feet because they are calling it frontage on Route 11. The property is on a banking that drops off 40 feet; there is a set of stairs that goes down to Route 11 and across the street to another set of stairs down to the lake; this is located past Sandy Point. T. Kinnon clarified that the property line is not 25 feet from the road, but 25 feet from the right of way. T. Varney explained that it is more than 50 feet to the edge of the pavement; the state owns 99 feet of right of way for what used to be the railroad. When this house was built there was no Route 11; there was just the railroad. Access for the house was on Spring Street.

T. Varney went through the list of criteria. The request will not be contrary to the public interest because this proposal will not block any view that is known; the position of neighboring structures is such that there is no interference with their view of the lake. The request is in harmony with the spirit of the zoning ordinance and the intent of the Master Plan and with the health, safety, convenience and character of the district in which it is proposed because Route 11 was a railroad at the time the cottage was built, and drainage improvements are planned for this property. By granting the variance, substantial justice will be done because this lot was developed before zoning, so the lot of record and the house goes back way before zoning. The request will not diminish the values of surrounding properties because improvements to this property will raise its value and the values of surrounding properties. Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship; this property has frontage on two streets. The Route 11 right of way is approximately 40 feet lower than the house due to the banking. Large grade separation exists from Route 11 and the proposed encroachment is away from public or private access. This property is an existing lot of record.

Mr. Varney explained the plan and pointed out the location of the porch. S. Miller asked if there would be any trees cut down; the owners stated that no trees would be cut down. They also explained that the stairs down to Route 11 are existing and have been there since the 1970's. They are a long stairway with landings. P. Monziona clarified that the variance is being sought for the right of way of Route 11, not of Spring Street. He also asked if the existing building is non-conforming; it is not. P. Monziona also clarified through questioning that all necessary septic and DES permits have been obtained. T. Morgan questioned the concrete slab on the property; it is used as a patio and is about the same depth as the proposed deck. He also asked T. Varney about the proximity of the deck to the property line; Mr. Varney stated that it is approximately 52'.

S. Miller asked for an explanation of the drainage improvements. T. Varney explained that the water from the eaves will be caught and kept on the property. The roof drainage will go into drip edges that are stone and 1 ½ feet wide and a foot deep. When it rains off the eaves, it will go into the stone. There will be a drywell in the driveway to catch driveway runoff; it will then be absorbed in the soil. Almost all of the runoff will stay on the property. L. LaCourse questioned the silt fence shown in the photos; it will be removed after construction but is required during construction. The fence actually shown in the photos is simply decorative and serves no other purpose.

There was no public input on this case.

WORKSHEET

All members agreed that the variance will not be contrary to the public interest. The house that is being built is within the present envelope and improvements are being made to septic and drainage.

All members agreed that the request is in harmony with the spirit of the ordinance and the intent of the Master Plan and with the convenience, health, safety, and character of the district within which it is proposed. This variance would permit part of the structure to go into the right of way setback by approximately 12 feet but still remain quite a large distance from the actual road; the right of way for the state is quite large. There is nothing that would in any way not be in harmony with the ordinance or the intent of the Master Plan; this is a wonderful structure planned near the lake. As far as health, safety, convenience and character, the rendering of the structure looks nice and with the drainage and septic improvements, convenience, health and safety are greatly improved. In addition to the distance from Route 11, the elevation of 40 feet is also significant.

All members agreed that by granting the variance substantial justice would be done. The home, with a patio in the area, already exists; this will improve the home and the deck and will use the property in essentially the same way it is currently used. There will be upgrade to the structure, the drainage, and the septic. The benefit to the applicant outweighs any potential detriment to the public.

All members agreed that there would be no diminution of value of surrounding properties. There is no evidence presented that there will be an adverse affect on surrounding properties. In fact, based on the renderings, it looks like values will improve.

For purposes of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area that no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property, and the proposed use is a reasonable one. The variance is to put a deck on a nice improvement to the residence; the deck is still well back from Route 11. Special conditions that distinguish this property from others in the district are that this cottage predates the right of way, and the lot is steeply banked.

T. Morgan made a motion to approve Case #A12-06. S. Miller seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

Case #Z12-07 55 Prospect Mountain Road	Special Exception Map 2 Lot 19	Kathleen and Michael Currier Rural District
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Kathleen and Michael Currier are proposing to establish a Commercial Function Facility on their property.

T. Morgan recused himself from hearing this case.

P. Monziona made a motion to appoint P. Larochelle as a member for this case. S. Miller seconded the motion which passed with four votes in favor, none opposed, and no abstentions.

Members reviewed the application for completeness.

S. Miller made a motion to accept the application as complete. P. Larochelle seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

James Cowles of Walker-Varney in Wolfeboro, NH came forward with Mike and Kathy Currier. Attorney Cowles explained the intent of this application and described the property. The Curriers wish to use their property to host events on their spacious rural property, which the applicants desire to keep as it is rather than dividing it or using it for any of the other business ventures allowed in that zone. Many of the abutters are in favor of this use; the voting that took place in March also indicates that the townspeople are in favor, as this use was added as a Special Exception during the recent election. This use will also support other local businesses associated with events such as florists, caterers, bakers, bridal shops, lodging, etc.

Several abutters and local businesses have written letters in support of this application. The applicant has gone to a lot of detail to make sure that all facets of each event maintained so that the rural character of the property is preserved.

Attorney Cowles went through the criteria and explained other commercial activity in the area. There have been lodging, farms, a restaurant, and horse breeding on the farm; there are several other types of businesses within a short distance.

Noise mitigation measures have been put in place; there will be quiet areas, and there will be separation between abutters and the source of noise. Attorney Cowles used plans to show the location of the DJ/Band area as well as the direction the sound will be facing; he also showed where berms and sound barriers will be located to shield abutters from noise. There is also a natural sound barrier in the form of dense vegetation between the source and the nearest abutter. Additionally, measures have been taken to direct traffic in such a way as to minimize headlight/taillight shine toward abutting properties; as vehicles are leaving, they will be oriented with their headlights toward the Curriers' home.

Attorney Cowles explained each of the criteria of the Special Exception. The use of this property as a function facility is a reasonable one, and there is no evidence that there will be diminution of property values. The town assessor indicated that this weekend use will have no effect on surrounding properties. There will be no hazard to vehicles or pedestrians because all parking is off street. There will be adequate facilities in the form of Porta Potties that will be brought to the location for each event.

P. Monziona asked if there are any zoning regulations governing the parking for the function facility. J. Dever explained that there are standards which will be addressed with the Site Plan review by the Planning Board. There are 100 spaces which are more than adequate for any use of this facility. If this Special Exception is granted, parking issues will be addressed during the Site Plan review. Attorney Cowles explained that there is handicapped parking available, and that there may be a golf cart available to transport people from the parking area to the function.

S. Miller asked what the busy season for events would be; Mrs. Currier answered that it would likely be May through October. S. Miller asked if events would run concurrently with the corn maze; Mrs. Currier explained that it would be one or the other, but not both at the same time. S. Miller asked about the maximum number of people expected for any one event; Mrs. Currier answered that the maximum limit would be 200 people including any staff. That would mean there would be approximately 100 cars in the lot, which can easily accommodate that number of cars. S. Miller asked if any sound testing has been done and whether the buffers will actually work to mitigate the sound at this property. Attorney Cowles explained that the berms and barriers will direct the sound, which will be no more than 90 decibels, which is the level at which one must wear ear protection in a manufacturing environment. S. Miller asked about the time at which events will end; Mrs. Currier stated that the latest will be 10:00 p.m. Attorney Cowles added that in addition, all noise ordinances will have to be complied with. At L. LaCourse's request, Attorney Cowles again explained the location of the berm and other noise barriers. L. LaCourse asked about other abutters and their issues with noise; Attorney Cowles explained that the abutters across the street are present and in support and had no issues with events held in the past at this location. S. Miller asked the applicant if they can hear the campers at Mi-Te-Na; Mrs. Currier can hear the campers and their music. P. Laroche confirmed through questioning that the noise will be facing toward the pond.

T. Kinnon opened the floor to public input in favor of this application.

Leon Hillsgrove came forward to speak on behalf of his parents and his brother; their properties about the Currier property. There are no problems and he thinks this will be a real good use of this property. He spoke in favor of the corn maze and the proposed use as a function facility. He did not see a problem with the lights as he feels there is more shining from vehicles coming down from Prospect Mountain.

Bill Manion spoke in favor as well. He and his wife feel that this use will help maintain the rural character and bring business to the area. This will be a wonderful compliment to the area; it is weekend activity and it will have a curfew no later than 10:00 p.m. This seems to be wonderful and exciting and helpful to Alton.

Judy Hillsgrove spoke in favor. She lives directly across the street and stated that she is in favor and offered to answer any questions from the Board. They can hear the music but do not consider it invasive.

Peter LaPenta also spoke in favor of the application. He lives less than 3 miles from the property and feels that it would be a wonderful use for this area. The traffic plan is thought out and he can't think of a better way to use a large rural piece of land. He would like to see this pass because he likes to see people make a living off their land.

Susan DePopolo is an abutter to the east; she is in full support of the project and looks forward to seeing people celebrating life.

Rene Dugan is a neighbor in full support of this endeavor.

T. Kinnon invited public input in opposition to this application.

Carol Locke is the abutter on the side of Route 28. She has several concerns. She is encouraged by the efforts to buffer the noise as she has heard noise in the past. She is still concerned that the noise is going to go across the hill and directly into her bedroom area. She hopes the buffering works; she is afraid that the noise will simply bounce off the pond and not be mitigated. She does not want to make waves with the neighbors but she feels that this is a large enterprise with a potential to grow. She was unable to have an official appraisal done, nor could she get help from a realtor because there are no comps because this is a new ordinance. Therefore, she does not know if this business will negatively affect her property values. Mrs. Locke is also concerned about alcohol consumption at events; she has five grandchildren in the area and is concerned about how consumption will be regulated. She voiced concern about the traffic issues as a large number of vehicles will be passing her home in a concentrated time. This has great potential for growth and will affect the rural character. She is puzzled by the Camp Mi-Te-Na references because they occasionally have concerts but it is mostly the sound of children playing which is much different from wedding music. Mrs. Locke handed the members a statement of her feelings on this.

P. Monziona asked Mrs. Locke if she has seen the plan for this proposal; she has not though she has read the newly drafted ordinance concerning this type of use. He also asked if Mrs. Locke has seen the conditions on the plan done by Mr. Varney in December of 2010; Mrs. Locke was present at that meeting but has not physically seen the mitigations mentioned on it. P. Monziona explained that all of these materials are public record and are available to her if they would help with her concerns. Mrs. Locke explained that she is resigned following the public vote which passed this ordinance, but that she would be remiss if she did not voice her concerns.

There was no further public input.

Attorney Cowles commented about alcohol consumption; there will be bartenders and caterers available who will be accountable if they are not careful about how and to whom they serve alcohol. There are ramifications to serving alcohol to people who may be driving whether it is at a bar or at a party.

T. Kinnon asked if there is any requirement for a police detail at any of these functions; presently there is no requirement for police presence. P. Monziona cited the department head comments in which the police request that they be notified of large events and that parking is handled in such a way as to not obstruct the flow of traffic which would create a safety hazard. P. Monziona asked the applicant if they would object to having a condition which would require them to notify the police of all events; the police department could then determine the need for either police or flaggers. The police department could also decide to dispatch a car to watch those leaving the events to make sure there is no over-consumption of alcohol by those driving.

P. Larochelle asked Mrs. Currier if she would know the number of people attending an event beforehand; she answered that she would and that it would be limited to no more than 200, including staff. She has no problem contacting the police before each event. She does not have a liquor license but does insist that a professional bartender or one or two designated people serve any alcohol brought in by the client. She also has contacts for a taxi service for any guest who might need it.

The Board entered into deliberations. The biggest concerns were noise and traffic which the applicants have worked to mitigate. L. LaCourse asked about ramifications if the noise abatement is not effective; P. Monziona stated that the noise ordinances are still applicable and subject to police action if needed. The criteria for this is well developed; if this exception is granted he would propose that the 15 conditions cited in Mr. Varney's plan of December, 2010, along with the ordinance, would address any concerns. L. LaCourse voiced concern about traffic and the speed at which some people come over the hill and reach the intersection with Route 28. P. Larochelle pointed out that the police did not voice concern. T. Kinnon added that there are several routes from this property and that by the time traffic gets to that point it will be pretty well dispersed. Also, the 100 cars mentioned is a very high number and will probably be considerably lower. The police will determine for each event what they feel is appropriate in regard to traffic.

WORKSHEET

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

All members agreed that the specific site is appropriate for the use; there is plenty of land with appropriate layout of building and facilities including parking and sound buffering and mitigation.

All members agreed that there is no factual evidence that property values in the district will be reduced due to incompatible uses; a lot of thought went into the drafting of the ordinance and that property values will not be reduced. There is no evidence of effect on property values going in either direction; the ordinance specifies that the effect has to be due to incompatible use, which this is not.

All members agreed that there were no objections from abutters based on demonstrable fact; there were significant concerns voiced by one abutter but the majority would welcome this project. Mrs. Locke's comments were appreciated, but there are no demonstrable facts to support claims of a decrease in value.

All members agreed that there would be no nuisance to pedestrian or vehicle traffic including the location and design of access ways and off street parking; parking is adequate and safe and plans are in place for safe and courteous traffic flow. P. Monziona voiced the condition that the police department requested that all parking be off street and that the applicant needs to notify the police department prior to all events. There were no negative comments from any department heads about this use of the property.

All members agreed that appropriate and adequate facilities and utilities would be provided to insure proper operation of the structure. Parking will be adequate and facilities in the form of Porta-Potties will be available for all events.

All members agreed that there is adequate area for safe and sanitary sewage disposal and water supply, provided that an appropriate number of Porta Potties are available for all events. P. Monziona suggested a condition that facilities need to be provided at an appropriate level.

All members agreed that the proposed use of the structure is consistent with the spirit of the ordinance and the intent of the Master Plan; there has been a lot of discussion of keeping the town rural while encouraging business, and this project meets those needs. There are no large permanent structures being erected which will also help preserve the rural character.

P. Monziona made a motion to approve Case #Z12-07 with the following conditions (from the Site Plan drafted by Mr. Varney and dated 12/21/2010):

- 1 - The proposed use is for weddings and social events
- 2 - Food service is to be brought in by outside caterers
- 3 - Portable toilets are to be provided for all weddings and social events
- 4 - The number of portable toilets will vary with the size of events
- 5 - Parking is for 100 vehicles plus 5 handicapped spaces
- 6 - Handicapped spaces and walkways will meet the requirements of the American Handicapped/Disabilities Act
- 7 - Five handicapped spaces will be provided, four with five foot walkways and one with eight foot walkways for loading and unloading
- 8 - Vehicle access to the property meets all season safe sight distance requirements
- 9 - Parking area and walkways are not to be paved or improved with gravel
- 10 - Parking area is to be maintained as a field with grass height of 4 inches or higher for soil stabilization and storm water runoff mitigation
- 11 - On site traffic is to be directed as shown on the plan
- 12 - Music is to be played in designated areas and limited to 90 decibel average
- 13 - Outdoor lighting is 100 watt shielded downward fixtures

Those conditions are directly from the applicants' plan and application. Further, this approval will comply with all requirements of Section 334 A-D inclusive.

Additionally there will be a requirement that the police are to be given notice for all events of 50 people or more; they can determine the need for further action if any. Such notice is to be given not less than 48 hours prior to the event.

There was discussion concerning where testing of decibel levels was to be taken. P. Monziona proposed testing at the property line; S. Miller is in favor of testing at the point of origin. Discussion continued and concluded that if there is an issue with the sound the noise ordinance will be put into effect and the police will determine whether the condition is being adhered to, taking into account the concerns of the neighbors.

P. Monziona added a further condition that sound must be within current town noise ordinance levels. L. LaCourse seconded the motion which passed with five votes in favor, none opposed and no abstentions.

A short break was taken prior to hearing the next case. Following the break, T. Morgan rejoined the Board and P. Larochelle resumed his role as an alternate.

Case #Z12-08 142 Spring Street	Special Exception Map 36 Lot 34	Ronald L. and Susan Bell Residential District
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On behalf of Ronald L and Susan Bell, Roger Sample, BSM, is proposing to amend a condition of a Special Exception approved by the Zoning Board of Adjustment on December 10, 2010 to allow a 3 season screen porch to be converted to living space by removing a non load bearing wall between the front sitting room and the 3 season porch.

T. Kinnon read the case into the record. Roger Sample came forward to present this case.

T. Kinnon voiced his concern that this is being addressed properly; he has not heard of a condition being amended by way of a Special Exception. J. Dever agreed. T. Kinnon cited the original condition that stated that the three season porch was to remain a porch and not become living space. The original application and condition were discussed at some length; removal of the wall in question would turn the three season porch into living space. There was further discussion concerning the proper steps that should have been taken, including an application for rehearing followed by an appeal to the Superior Court; none of the steps have been taken. Members agreed; the specific, time-limited steps for appeal have not been taken. S. Miller recalled that at the time of the application, the Board was assured that this three season porch would not be living space; he is not aware of any change in circumstances other than convenience.

T. Kinnon addressed the applicant and made him aware of what the Board is doing; he assured Mr. Sample that the members are not ignoring him, they are simply trying to ascertain whether the application is complete and whether it is the correct vehicle for hearing this case.

P. Monziona voiced his concern as to what the criteria would even be to hear this type of case; this is a request for an amendment to the condition which is being requested outside of proper procedure. Members discussed and agreed that proper steps have not been taken and that this application does not show anything different than what was on the original application.

L. LaCourse made a motion to **not** accept the application. S. Miller seconded the motion which passed with five votes in favor and none opposed.

Mr. Sample explained that all they were trying to do was to have a Special Exception; the reference to changing the prior condition was just in the wording. Members discussed that if this application were to be accepted as submitted, that would force them to accept all applications for rehearing. T. Kinnon explained that this material has already been covered and decided and the criterion for a rehearing has not been met at there is no new evidence. Mr. Sample argued that this is not a rehearing; this is a brand new special exception as the previous application did not address the three season porch as living space. P. Monziona cited the application and noted that the first statement of the application notes that this is a request for a special exception to Section 520-B, and then to permit removal of a non-load bearing wall between the front sitting room and the three season porch. Going just by the title and wording of the special exception, it is simply a request to remove a non-load bearing partition. If the purpose of removing the wall is to turn the three season porch into living space, which is contrary to the condition originally imposed by the granting of the special exception, then the Board would be correct in interpreting the intent of this application as the removal of a condition previously imposed. One could argue that it is an application being submitted to get around a condition that was not appealed nor was a rehearing requested. It is still the same analysis – if removing the non-load bearing wall would create living space of the three season porch, and not creating living space of the three season porch was a condition of the original special exception, in essence this application is asking for removal of the condition. T. Morgan agreed; the language cites the original condition.

Again, P. Monziona stated that he does not know what criteria could be used to decide this case; T. Kinnon added that this is not a Special Exception but a request to remove a condition, which is in essence a rehearing.

Mr. Sample asked what avenue he should take to get this done; the wall needs to come out. The Board had no guidance for him; there is no avenue for this Board to honor this request as the time limit for a rehearing has lapsed. P. Monziona thought there was an avenue, assuming that a special set of circumstances that warrants a new application exists. He does think that the essence of the application is to remove the existing condition and does not show circumstances that would warrant action by this Board. T. Kinnon agreed and suggested that the applicant might want to seek legal counsel. P. Monziona asked if the intent of removing the partition was to add living space; Mr. Sample answered that it would.

Case #Z12-09 186 Black Point Road	Special Exception Map 44 Lot 31 and 32	Nicole Zompa and John Reilly Lakeshore Residential District
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Nicole Zompa and John Reilly are requesting a special exception to erect a new 8' high foundation in the same footprint and raise the roofline up to 3' for an existing non conforming structure. This property is located in the Lakeshore Residential Zone.

T. Kinnon read the case into the record. John Reilly came forward to present the case. There is no change to the location of the structure; it is simply a foundation change and the existing structure is going to be raised and then lowered onto the new foundation. J. Dever is comfortable with the level of information on the application; this is simply a change to the height of the ridgeline. K. McWilliams suggested that upon completion there should be a certification of the new height, just to make sure it stays within the requested height adjustment.

P. Monzione made a motion to accept the application as complete. L. LaCourse seconded the motion which passed with five votes in favor, none opposed and no abstentions.

John Reilly explained the plan which is to jack up the house and remove the current cinder block and skim coat foundation and replace it with a poured concrete. There is a current septic approval with this property. There are no plans to turn the basement into living space; the basement will not be accessible from the main house and will be used only for storage.

P. Monzione asked whether the structure is already within the 35' height requirement; J. Dever answered that it is well within the 35' and is a single story cottage. The reason for the 3' restriction is to limit the applicant to the height requested in the application. L. LaCourse asked if they would be going down considerably. J. Dever explained that the current foundation is a combination of cinder blocks and open piers; they will be going down as far as they can, barring water table and ledge interference. The reason for the height is to get the top edge of the basement above the level of the driveway so that runoff does not go into the basement. The lot behind this lot is owned by the applicant and is not buildable as it is very steep; this is significant in case the lot were to be sold and this improvement were to be considered a detriment to that property.

There was no public input in this case.

WORKSHEET

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

All members agreed that the specific site is appropriate for the use; the use is not changing.

All members agreed that there is no factual evidence that property values in the district will be reduced due to incompatible uses; there is no incompatible use presented and no abutters have raised concerns nor has the applicant brought any evidence that values will be affected.

All members agreed that there were no objections from abutters based on demonstrable fact; there was no input at all.

All members agreed that there would be no nuisance to pedestrian or vehicle traffic including the location and design of access ways and off street parking; none of what is propose will have any effect at all.

All members agreed that appropriate and adequate facilities and utilities would be provided to insure proper operation of the structure; the proposed use is not changing and the living space is not being expanded, and there are facilities already provided.

All members agreed that there is adequate area for safe and sanitary sewage disposal and water supply; there is an approved septic on this site.

All members agreed that the proposed use of the structure is consistent with the spirit of the ordinance and the intent of the Master Plan; this is a structure that is being significantly improved and is a benefit to the town.

P. Monzione made a motion to grant the application for Special Exception for Case #Z12-09. S. Miller requested addition of a condition that the addition will not be used as living space; P. Monzione agreed to amend his motion accordingly. L. LaCourse seconded the motion which passed with five votes in favor, none opposed and no abstentions.

VIII. OTHER BUSINESS

A. Previous Business: ZBA Fees update

There will be a public hearing concerning ZBA, Planning Board, and Building Department fees at the Selectmen's Meeting on Monday, May 7, 2012. There has been discussion of stepping the ZBA fees rather than going straight to the requested amount. There was a brief discussion of the number of permits for new construction in Alton; there are currently 6 building permits issued for new construction.

B. New Business

T. Kinnon asked about the proposal for the property newly constructed behind the Post Office; there had been discussion of connecting that parking lot to the lot owned by Fiddlehead Farms. Negotiations are ongoing but the owners of Fiddlehead Farms are not amenable at this time.

C. Minutes: April 5, 2012

On Page 1, T. Morgan stated that it is the practice of the Board to stop hearing cases at 10:00 p.m.

At the top of page 3, the paragraph credited to Mr. Dever was actually stated by Attorney Hoover.

During election of new officers, P. Monziona was nominated as Chair but he declined the nomination and led discussion of other options.

T. Morgan made a motion to approve the minutes as amended. S. Miller seconded the motion which passed with five votes in favor, none opposed and no abstentions.

D. Correspondence: There was none

IX. ADJOURNMENT

P. Monziona made a motion to adjourn. T. Morgan seconded the motion which passed with five votes in favor, none opposed, and no abstentions.

The meeting adjourned at 9:55 p.m.

The next regular ZBA meeting will be held on June 7, 2012, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session