

**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Hearing
January 3, 2013
Approved 2/7/13**

I. CALL TO ORDER

Tim Morgan, Vice Chair, called the meeting to order at 7:02 p.m. Chairman Tim Kinnon is expected to arrive within the half hour.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

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

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

III. APPOINTMENT OF ALTERNATES

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

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 posted agenda.

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

VI. NEW APPLICATIONS

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

J. Dever read the case into the record.

Citing the fact that he lives on New Durham Road, and that many members of the public present at the hearing are his neighbors, some of whom he had discussed this case with before he knew it was going to come before the Zoning Board, Paul Monziona recused himself from hearing this case.

With a four member Board present, the applicant was given the option of going forward at this meeting, continuing to another meeting or waiting for Tim Kinnon to arrive, which was to occur within 15 – 20 minutes.

At 7:10 p.m. T. Morgan recessed the meeting.

At 7:25 p.m., the meeting reconvened with T. Kinnon presiding as Chair.

The Board reviewed the application for completeness.

T. Morgan made a motion to accept the application for Case Z13-1 as complete. P. Larochelle seconded the motion which passed without opposition.

Brad Jones of Jones and Beach Engineering presented this case; he is representing the applicants Tom and Maureen Fitzgerald. The Fitzgeralds' are getting ready to sell a piece of property consisting of 3.05 acres located at the intersection of New Durham Road and Route 11. There is a potential buyer; McDonald's is interested in purchasing, but one of the stipulations is that the parcel is acceptable through zoning.

A restaurant with a drive thru is an acceptable use in the Residential Rural Zone; there is a note saying that frontage on and access directly from a Class I, II, III, or IIIa highway is required. He stated that through his research, they had identified that even after the reconfiguration of the Alton Traffic Circle, the property had stayed the same dimensions and size. The existing McDonald's is across New Durham Road. The state still owns 250' from the center line of Route 11 going up New Durham Road; after that it becomes town road all the way to New Durham. The state will not allow access from Route 11; the most logical place for access would be directly across New Durham Road from the existing access going to McDonald's and Hannaford. Mr. Jones used plans to show the location of the proposed two entrances. Bohler Engineering has produced a plan that shows the location of the proposed entrances; their rendering shows a "best guess" as to where the entrances could be located. Mr. Jones reminded the board and the members of the public present that this is just a best estimate as nothing has gone before the Planning Board yet.

S. Miller asked about the size of the site on which the current McDonald's is located; Mr. Jones estimated it to be about 1 acre. S. Miller asked how much of the proposed site would be utilized for the building and parking; Mr. Jones again stated that the plan from Bohler Engineering is conceptual but does look like it uses about half of the site. S. Miller stated that it would go from roughly ½ acre to 1 ½ acres for the site; Mr. Jones agreed with that statement. He also pointed out that there would be drainage ponds and other development. S. Miller asked about the sight line from Route 11; Mr. Jones answered that the state has cleared back to the right of way so it would be visible from Route 11. S. Miller asked about the height of signage; Mr. Jones stated that signage, traffic, etc. would be handled at the Planning Board.

T. Kinnon asked if any traffic studies had been done; Mr. Jones answered that one has not been done by them, and that it would more likely be something Bohler Engineering would do. He also thought that by the time of final approval, they would need to have a traffic engineer come in and do a complete study. T. Kinnon asked if the Board was being asked to grant a variance for unspecified entrance locations; Mr. Jones answered yes, and that Bohler felt this was a good concept and that it would also be the desire of the town to line up the two entrances. Going through the planning process could adjust the location of the entrances.

L. LaCourse asked why two entrances would be needed instead of a single one. Mr. Jones answered that there would be an in and an out; one of the entrances is in/out and the other is in only. L. LaCourse pointed out that the entrance that is in/out is right on the radius and could have limited sight. Mr. Jones agreed that would have

to be looked at; there also might be a left turn lane involved. All those nuances would be answered by the traffic study; this meeting is only the first part of the process.

S. Miller asked Mr. Jones to address the hardship element of the ordinance; Mr. Jones explained that this parcel has 420' of frontage on Route 11, which is a controlled access highway on which the state is very unlikely to give an access point. In this zone, they do have plenty of frontage, but the hardship is that there is nowhere to put the access anywhere that the state owns. Mr. Jones also brought up whether the state has access up to the highway bounds; according to DOT in Concord, with documentation to back it up, the state owns station two plus 50. A copy of the letter dated in 1963 giving the town New Durham Road, from station two plus 50 to the New Durham town line, is in the Board packets for this case.

Mr. Jones explained that at one time this parcel was in the Residential Commercial zone; the owners took it out of that zone and put it back to RR because of the high taxes. This is right on the edge of the existing commercial zone.

T. Morgan asked about the class of the current McDonalds' access; J. Dever thought it was Class V. S. Miller asked if the state will absolutely not grant access from Route 11, or if it is just cost prohibitive to do so. Mr. Jones answered that it absolutely is not economic; the state will not grant access due to the rotary, and the state does not like to grant access from a highway.

P. Larochelle asked if there is any knowledge of what is to be done with the existing McDonald's. Mr. Jones answered the he does not know exactly, and Mr. John Mueller, a real estate broker familiar with McDonald's stated that it will not be another fast food restaurant due to non-competition clauses. It could be a bank or real estate office, but would not be a restaurant. The limitations of the current access/lot size were briefly discussed.

Mr. Dever explained to the Board that the road agent for the town had also raised a question about the sight distance; that will be discussed more at the Planning Board level. T. Kinnon agreed but stated that he is concerned about granting because if someone comes along later wanting to do something similar, he would not want to grant a variance without knowing exactly what they are granting. The request is for an entrance and he would not want to grant without stipulating something in the way of traffic study.

T. Kinnon opened the floor to public input in favor of the application. Mr. Fitzgerald, the seller, stated that he is in favor of the application.

T. Kinnon asked for input in opposition to the application. Mrs. Alice Ziegra Calvert spoke in opposition; she is a neighbor of the Fitzgeralds' on New Durham Road and has lived there for 50 years. She spoke about the history of the area; it used to be the junction of Route 11 and New Durham Road. Due to traffic/accident problems, the rotary was added in 1963 and recently amended; she is in favor of the amendments that were done. This is an attempt to add an entry; there are curves and grades the entire length of this road, which has a solid yellow line from New Durham to the traffic circle. The speed limit is 25 miles per hour; you can't go fast on that road safely. This attempt to put in an entryway is on a grade and a curve; you can't see back up around that corner from the proposed exit. There are other roads that feed into that corner; they will feed in from Hannaford and the other business there, from McDonald's, a proposed restaurant that will come in from that same entrance. There is also Range Road and the traffic from the clinic approved for Huggins Hospital. There is a lot of traffic and this is an invitation to accidents and injuries and is a liability to the town. She urged a traffic safety study before any variance is granted to allow the confluence of 8 or 9 different roads into that corner. It is an accident waiting to happen because of the curve, the hill, and the fact that people don't slow down. It is more trouble than Alton needs. As much as she would like to see the Fitzgerald's sell their land, she is concerned about that entrance and urged the Board to have a survey/traffic study to show that this is a safe place with all the other entrances/exits there, and the traffic coming off the rotary. She hoped the Board would pursue the safety issues before granting this variance.

Robert and Phyllis Page of 49 New Durham Road, across from the subject lot, spoke in opposition. Mr. Page spoke at length about the research he has done; he has not been able to find any evidence that the said property was ever Residential Commercial, and would like to see the evidence of it. His research has been within the

guidelines of Sections 400 and 401 which deal with zoning districts. He feels that there is no reason to move the existing McDonald's across the street into the RR zone; it is in a commercial area. Permitted uses listed in Section 401 include a restaurant or fast food restaurant, which generate motor vehicle traffic; the only way a restaurant can go in without a variance is with frontage on and direct access to a Class I, II, III, or IIIa highway as defined by NH-DOT. If that has not been applied for, they should not be applying for a variance. Updates to any articles or ordinance have been posted extensively; there is nothing posted about this property and would probably not apply as this property was subdivided in 1986 knowing the allowed uses which are still in place.

The traffic circle was installed to divert traffic around town; it seems like they are trying to push back to where it was. If one special exception is granted there are 15 places on New Durham Road without a hope of getting onto the state highway except one. If this one is allowed, you will have fast food restaurants all the way to the New Durham line. In the 20 years he has lived here, there have been restaurants at different locations in town, and all of them have access on a state highway. There have been no exceptions that he knows of.

It is unclear exactly what this variance is asking for; the application from the Fitzgeralds' states a drive thru restaurant, family restaurant with no mention of McDonalds', with drive through, parking and exits (2). He asked if the application was for the restaurant, the two exits, or the drive thru. Mr. Jones answered that the request is for the two entrances; T. Kinnon felt that calling them "curb cuts" would be more accurate as one is an entry/exit, and the other is entry only. Mr. Page stated that according to state DOT plans, there are 1,353 feet of frontage on Class I, II, or III highways, and there are 953 feet of frontage on New Durham Road for a total of 2,251 feet of frontage. J. Dever disagreed with the figures; the subdivision plan from 1988 shows that the frontage on Route 11 to the entrance of New Durham Road is 417.87 feet, and the frontage on New Durham Road is 626.77 feet. That is as it was laid out by the surveyor, Mr. Colbath in 1988, and signed by the Planning Board in 1987. John Dever explained his measures; Mr. Page acknowledged that he had included other measures in his figures.

Mr. Page questioned the difference between the application which states 417 feet of frontage and the plan done by McDonald's, which shows 435 feet of frontage – there is a discrepancy of 17 feet. He stated that there is only one dimension on the McDonald's plan, and it is inaccurate. This was discussed briefly, with Mr. Jones stating that he does not know where the measurements came from, as it is not a plan done by his firm. Mr. Jones pointed out that this is a conceptual and he is not sure why it is laid out as it is. Mr. Page stated that he is at this time trying to point out discrepancies; he feels that if he doesn't make his concerns known at this meeting, he will not have another opportunity. T. Kinnon assured him that all meetings, including the Planning Board, are open to the public and they are encouraged to continue bringing up their concerns at those meetings as well. He also explained that the reason for this meeting tonight is simply to get approval for the 2 curb cuts; there are many more parts to this proposal that will be before the Planning Board, and many more opportunities for public input.

Mr. Page stated that the variance would be decided on five points and addressed each of those points. He stated that the specific request should be the minimal variance that will grant relief to the owner and is necessary for reasonable use. He questioned the need for two entrances and asked if two are really necessary to gain minimal relief; T. Kinnon pointed out that minimal relief is stated in the variance, but safety also has to be a consideration, and two accesses may be safer than one.

Mr. Page spoke about the plan at the present McDonald's and the 6 parking spaces at the entrance; this is a fast food restaurant and there are limitations due to vehicles with trailers or boats. The present cut has approximately 8 businesses, and there are other cuts already approved. The proposed exit will exit across traffic; current traffic in his estimation is fast and does not usually signal their intent to turn at the present location. Mr. Page went on to talk about whether this variance would maintain the spirit of the ordinance or the intent of the Master Plan. He cited the traffic circle in Lee with a fast food restaurant with two entrances off the circle and a lot no bigger than the existing McDonald's in Alton. He was present at the meeting when the existing McDonald's fought to come in; they have been there for 15 years and they do a great business. He does not know why they are moving; they can't get a better location than where they are now.

Mr. Page feels that the public interest part of the variance is not met. For him, there are open fields on both sides with views of two mountains. If that lot is cleared, the entire traffic circle will be visible. He has 110 acres in current use; Mrs. Calvert has 30 acres in current use. The changes and possible expansion of commercial use down the road and the possible increase of value is not necessarily a help. He voiced that he does not understand the reference to substantial justice, but feels that it would not be done.

Mr. Page stated that it is clearly indicated that the access has to be direct. There is no hardship; they have not applied to the state and been denied, and even if they have, that was put in the ordinance for a reason. He asked when that provision was added; nothing has been changed with that in the last 10 years. T. Kinnon stated that the applicant is here because of the ordinance. Mr. Page stated that in the "Y" part of the Table of Uses, there are 30 uses with no variance needed. There are 6 more uses that have minor stipulations. This is the biggest stipulation on any of them, so he thinks it needs to be considered heavily. He has visited the Police Department and the Highway Department, both of whom were noticed concerning this plan; when they sign off on something like this, and all the accesses are built in that area, and there's a problem there with traffic, who is going to correct it? The taxpayers.

T. Kinnon pointed out again that the reason for this meeting is simply the two curb cuts; if the Board can't find justification for it, they don't approve it. If it is approved, there would still be several meetings with the Planning Board, and that would be the point to bring up the other businesses, the site drives, Range Road and all of that. That is when the whole picture is looked at. The zoning board doesn't look at that; that is not par of what they do. Mr. Page asked T. Kinnon what this Board can do. T. Kinnon answered that they are going to look at the entrances – that is what the request is. They will go through the same questions that he looked at. Mr. Page pointed out that they have vague spots to look at; they don't have a solid plan to look at, and that could come back. He has been in construction for a long time, and the plans need to be specific because things don't move once they are on the ground.

Mr. Page addressed wetlands that are on the subject lot; as an abutter he has been all over the property. The wetlands are far more extensive than the plan shows; the property has not been properly tested. T. Kinnon again pointed out that this would be part of the planning process; it is not part of the consideration at this level. This Board has been very thorough in the past in looking at all factors that could come down the road in the future; any decision will be just and based on a good foundation. Again, this Board can't delve into wetlands and specific locations for the entrances; that is Planning Board, and they welcome input from the public when they are making a decision. Mr. Page stated his feeling that once something is passed by the Zoning Board, it is pretty much done there; he questioned whether he would be listened to there and whether anyone is listening now. T. Kinnon assured him that the entire Board is listening.

Mr. Page asked that the Board address his request that the applicant go first to the State and apply; T. Kinnon explained that is something the Board will deliberate on, but right now they are just trying to get a feeling for what the public wants.

Mr. Page brought information forward from DOT showing that the state owns New Durham Road all the way around the radius of the curve; John Dever has conversed with Dave Silvia concerning this as there is a letter from 1963 showing that the state only has concern with Station 2 + 50. There was discussion concerning the parts of New Durham Road maintained by the town. J. Dever will have further conversations with Mr. Silvia to clarify what is owned by the state and what is controlled by the town. Mr. Page contended that perhaps the letter written in 1963 had never been acted on. J. Dever explained that the letter he has is actually a copy that was sent to him yesterday and is from the NH-DOT archives. There was further discussion about what the town does to maintain the road; J. Dever stated that the town plows, maintains, and grades the whole length of New Durham Road. The state did pave the first part of the road after the circle was reconstructed, but that was the same as paving the first part of a driveway when a roadway is re-done.

Mr. Page suggested that a full survey should be done in order to know who owns what. T. Kinnon explained that the state will not grant a curb cut if it is not appropriate; that would be up to the state. Mr. Page asked at what point the town would go to the minimum; he does not see where two entrances are safer than one.

Mrs. Calvert asked if the ZBA considers safety; T. Kinnon answered that he works in the traffic safety industry and that the whole Board considers safety. Mrs. Calvert stated that the area in which the entrances are being proposed is very unsafe because people exiting can not see.

Tom Varney has looked into this variance on behalf of one of the abutters. The variance is on a Class V Road, the New Durham Road where it can be on a Class I, II, or III. He has heard that the road is not what he thought it was; it is a Station 2 +50. If that is true, and he has doubts about that, there would still be an option to go there for an access. There is no need to go on the town road. They might be able to get the driveway from the DOT; there is no need for a variance. The minimum requirement for a variance is one entrance; two is more than meets the hardship. If the entrance were located on the state portion, then it would have to meet all of the safety standards set by the state and it would be subject to their engineering standards. If it goes beyond there and the town does it, it is similar to putting two sticks in the ground and the Road Agent approving it. At this point, it is not known if it is safe anywhere along New Durham Road, and that may never be known. The Planning Board just approves whatever is asked of them, usually in one night. There is a real safety issue; it may never be discussed beyond this. The real point of a public hearing is safety, so he is concerned about that. The fact that the denial of the variance would result in unnecessary hardship is not met; there is an alternative. The remedy is what is there for frontage; there is no need for a variance, at least until there is a state denial.

Mr. Varney went through the points of granting a variance. This lot fits the intent of the zoning; it has frontage and it has an opportunity for a driveway. There is no need for a variance. The driveway could be unsafe; the Board could approve an unsafe driveway tonight without knowing because they have nothing to go by. Two driveways are not a hardship. What is being asked for is not in the spirit of the ordinance; beyond this property is all residential; there is no commercial property. There would be a conflict between this property and the farms across the street and next to it. There are severe environmental concerns because of the wetlands there; if you keep filling in the wetlands all around the circle it could negatively affect properties within a mile of the river. Substantial justice would not be done. Property, especially the one across the street, would decrease in value.

Mr. Page gave the Board members a map showing that there are five properties, each of 100 acres or more on the other side of New Durham Road from this property. He can go across those properties and be in New Durham.

J. Dever responded to the comments made by Mr. Varney; the comment in question was that the Planning Board just takes whatever comes to them and maybe in the course of a night they approve it and off it goes. That may have been true in past years, with other Planning Boards and with other staff, but in the three years he has been involved with the planning process that is not the case at this point. This is a multi-step process. They sat with the engineer from Bohler Engineering and two representatives from McDonald's; this will easily be a 6 – 8 month process, should they gain the approvals they need. There are at least two firm steps to the planning process and sometimes there are three. The first step is a conceptual, where the applicant comes and tells staff what he wants to do and finds out what they think. The next is a design review, which is where they bring in the plans and go through the whole process. The purpose of that is to attempt to not have plans re-engineered every time the applicant comes back. That could take 3 – 4 months. After that is final approval, where they bring all of the parts before the Planning Board for final approval. This is not a one night, out the door process. It may have been that way in the past, but it is not that way now.

Mr. Page showed copies of the realtors' listing including information to do with traffic. It also shows property designated as "potential future access" which he interprets as meaning there is more to this than just an access for a drive thru. Once this is allowed, it will continue to go until all of it on this side is done. McDonald's is there now, and there is other commercial land if they want to move. There are other uses for that land that has always been rural residential. It is hard to see a variance or special exception for something that is not restricted in any way; they can go somewhere else for that use.

Mrs. Calvert asked if there would be a Site Plan Review before this Board makes a decision; T. Kinnon explained that is part of the Planning Board process.

Paul Monziona spoke as a citizen, not in his capacity as a Zoning Board member. He is recused and speaks only as an interested citizen. He lives on New Durham Road and drives past this spot several times a day. He is very familiar with the layout and use of the road. This is a 25 mile per hour road because of its limitations; both in terms of sight distances and the configuration of the road itself. It is a difficult road in that sense, and it is not a large road. He thinks the zoning ordinance that requires fast food restaurants to be on something better than a Class V road, such as a state highway is an ordinance that makes sense. He would say that putting these curb cuts and adding to the traffic flow and congestion at that particular spot on this road is not in harmony with the safety of the area, be it pedestrian or vehicular. There are a lot of children on that road; people jog and push strollers on that road, and there are no sidewalks. There is a lot of vehicular traffic because of the improvements that have been made at that intersection, whether that is people coming from Rochester or New Durham to go to Hannaford, or Dunkin Donuts, or McDonald's – that road gets quite busy compared to what it was before all the commercial establishments were constructed. When you look at this, you have to see it in conjunction with the influx of traffic that has already been created on that road. It has been pointed out – there is Hannaford, McDonald's, Huggins that is going in, Ranch Road, another restaurant that is going in, all the businesses in the yellow house. Now all that traffic is going to be going into a very small, congested area that in his opinion is not in harmony with the safety of that neighborhood with regard to pedestrian or vehicular traffic; on a very limited road, you are now increasing the flow of traffic in a congested area substantially, particularly in light of what is already know is going to happen there with Huggins' clinic and so forth when that gets underway.

As he looks at the criteria, one that is not met by this application, is that it is not in harmony with the spirit of the ordinance for that area. The other thing he is concerned about is the insufficiency of information; he appreciates that this matter proceeds to the Planning Board where there is a full site review and everybody has an opportunity to get into the details. But, before a variance can be granted, he thinks the Board should be given at least sufficient information to determine whether the criteria have been met, and that includes determining whether there is a safety issue. If you don't know whether there is one or two driveways; where exactly they are going to be located; what the dimensions of them are going to be... How do you determine from this application whether those criteria have been met. From the information that has been provided, he thinks it shows that it is not in harmony with the health and safety of the neighborhood.

Mr. Monziona went on to say that there are other uses for this lot. According to Mr. Page, there are 30 other uses for this lot that would not require creation of a safety issue on this lot, in this particular area by putting all this congestion into one spot. He would love to see the applicants sell their property; it is their right to do so and he does not want to do anything to hinder that process. By the same token, he is going to be going up and down that road for a very long time, and he can foresee how unsafe it is going to be if they keep adding more and more entries and exits in that very small area. As far as he is concerned, the information is insufficient; if you look at the information submitted, they don't meet the criteria of being in harmony with the safety of the neighborhood, and the hardship criteria is not met because there are other reasonable uses for the property that could easily be done.

Mr. Monziona stated that as a member of this Board, he has stated his opinions in the past; not all members agree with his opinions and there have been many times the members have voted against what he is saying. He has no problem in saying that this Board will do the right thing; he has complete faith in their work and what they do. He has worked with all of the members long enough to know that they follow the law when they do this. His having expressed his view is no different than he has done in the past as a member of the Board; people disagree and he will respect whatever the outcome of the vote is. He thinks everyone knows that; he brings it up only because he is in the awkward situation of being a member of the Board, but now talking as an interested party because he lives on the road.

Mr. Page added that there is a pre-approved subdivision with 30 houses on the road; T. Kinnon explained that the pre-approved subdivision is not something this Board can look at. Mr. Page stated that it is additional traffic.

Brad Jones addressed the concerns about the traffic and the locations of the drives, and to have the locations set in stone tonight. He thinks that would limit the Planning Board; that is why they are here with a conceptual plan so the Planning Board and the traffic engineers could do their job. It would be a shame to set a limit on exactly where the driveway would go in; common sense would place the entrance directly across from the existing entrance, and that is why that was drawn and signed at that location. He has heard talk about locating the entrance in the controlled access to eliminate being here, but that would not function properly and would be dangerous. That is why they are going to the Board because the correct thing to do is to line the two entrances up. There are a lot of other things that could come into play; there could be a left turn, an island, or other sorts of things. That will come out in the traffic study; when that is done they will take vacant lots, future building, Hannaford, and all those factors. Additionally, the McDonald's, which already generates a lot of traffic, will be removed from the equation and moved across the street; the use of the other building is unknown, but would probably have a lower traffic count.

T. Kinnon asked if the state had been approached about locating a curb cut in the limited access Station 2 +50. There was a conversation during which the state did indicate that it is a limited access highway and there is no way they would allow it there. T. Kinnon asked if any concerns had been voiced concerning the proximity to the slip ramp going onto New Durham Road; Brad Jones answered that it had not been addressed because it was out of their jurisdiction. He has worked on quite a few projects, and the first thing they want is an alignment of the intersections. Every location is a little different, but that would be the common sense approach.

S. Miller asked why two exits are needed; Brad Jones answered that it is probably a McDonald's requirement, and that when it came to the Planning Board they would probably want two entrances as well. It is a safety issue to have a parking lot with a second exit because it gives traffic flow. S. Miller asked if Foxy Johnny's had one entrance or two; there was one. S. Miller asked the real estate broker, John Mueller whether property values would go up or down with a McDonald's going in across the street from a farm and next to other rural properties. Mr. Mueller answered that he could not speak to that particular situation because all of his activities have been in the commercial realm, so he is not versed on how the commercial would affect the residential. In general, in commercial real estate, McDonald's tends to increase the value. S. Miller acknowledged that there are no traffic counts, and this begs to the hardship issue – why is McDonald's moving from one side of the street to the other? Brad Jones addressed the heavy traffic times during the summer when there have been incidents of a backup that causes traffic to back up beyond the entrance. The aim is to resolve the safety and access issue, and increase their sales. Brad Jones also mentioned there are some operational expenses there as well. S. Miller asked J. Dever if the property is residential or commercial; J. Dever answered that today it is Rural Residential, though it was Residential Commercial in the past. No variance is needed for the use as the use is allowed. S. Miller asked P. Monziona, as a real estate lawyer, whether it is possible to get a firm ruling on whether it is state or town road; the answer to that could make this whole discussion moot. If the town does not have jurisdiction, should a vote be delayed until the Board is sure they have jurisdiction over this issue. P. Monziona stated he is not a real estate lawyer but he does deal with issues regarding right of way from time to time. This is not really an issue with regard to ownership of the land; it is regarding the area where the state has a right of way. It is still a town road, and is maintained by the town. The state Route 11 right of way extends into the intersection; it will still be a town road. T. Morgan stated that it is an issue that still makes him uncomfortable.

J. Dever stated that there are two different sides from DOT – Mr. Page has information that is different from what is indicated in the letter sent to the town by DOT.

T. Kinnon suggested that the Board begin an open deliberation to see if the applicant is willing or able to do anything to alleviate the concerns of the Board prior to going to closed deliberations.

T. Morgan agreed and asked J. Dever if the right of way is as the applicant states, and having heard all of the concerns about traffic and safety, along with his own concerns about that area, could there be a binding condition that the DOT approve the specifics, including the location of the curb cuts, the sight lines, etc.. J. Dever answered that he does not think the Board can compel DOT to do that. T. Kinnon added that it is his experience that DOT will not take on that liability, especially if it is outside of their right of way. T. Kinnon clarified with a comment that the oversight would then be through the town Planning Board. J. Dever explained

that the Planning Board can request that the traffic engineer for McDonald's submit all their studies to the Planning Board and then the Planning Board can forward them on for further review by an independent engineer, which would be at the expense of the applicant. The town does deal with traffic engineers for its own projects, or it could be the engineer routinely used by the Planning Board for reviews. Brad Jones added that the state could have some involvement because there would possibly be shoulder work that the State would want to review.

T. Kinnon is concerned that this may be putting the cart before the horse. He sees the uniqueness of the property but is also very concerned about the safety issues. He would be more comfortable with a safety study to show whether a curb cut anywhere on that radius is safe. He does not know if the applicant or McDonald's is willing to do this; Brad Jones answered that the applicant wants to get this approved so McDonald's can go in and do the full design. Right now, this is at their expense. This is now getting into a Planning issue; when it comes to the final site design, the driveway could move a little. It will be affected by drainage and a lot of other factors that will go into the decision of the layout.

T. Morgan voiced his concerns. He is concerned about what the DOT rights actually are, as there is conflicting information on that issue. He is concerned about safety, which is a component of several of the criteria a decision would be based on. Lastly, he is concerned about the wetlands, which he also appreciates is under the purview of the Planning Board.

L. LaCourse addressed the State's desire not to have the curb cut in the limited access, and also to have the driveways line up. He is also concerned about the safety of that area because of the traffic and the way people are known to drive there. He asked if, knowing the concerns, the State would relinquish their position and allow the cut closer to the circle. If so, that should be looked into. Brad Jones stated that he would have to check the regulations, but he knows that due to stacking it would be difficult. T. Kinnon voiced disappointment that this question had not been asked to the State; there are obvious safety concerns with this, and it is of great concern because of where the property is.

S. Miller asked if the discussion was concerning the safety of two exits, or the validity of McDonald's going in. T. Kinnon answered that the discussion is concerning the two entrances. S. Miller pointed out that a lot of the information is moot; it is not the charge of this Board. This Board's charge is whether or not to grant the two entrances safely. T. Kinnon stated that, at the end of the day, the Board is charged with determining whether two site entrances are justified. P. Laroche also voiced concern about two entrances; looking at the current McDonald's location, he wonders what the traffic will be to the existing location, as there is no idea what that building could become and how much impact that will be. T. Kinnon added that the open field now across the street is going to be the Huggins Clinic, with all the additional traffic of that as well. P. Laroche added that he would like to see a study on the impact of 4 or 5 entrances in that area.

T. Kinnon spoke about his concerns about other applicants using this approach if a traffic study is not done; he is concerned about the lack of evidence of safety with more parking spaces and spaces for trailers. He is concerned about the increased flow of traffic on this radius with no safety study having been done. The members talked about the entrances and concluded that a study would be helpful to determine the location and configuration of the two entrances.

T. Morgan suggested asking the applicant if they would like to continue to another meeting with the aim of addressing and answering some of the Board's concerns, or whether they wanted to pursue a ruling tonight. Brad Jones clarified by questioning that the Board is looking for traffic impact studies. T. Kinnon answered that he at least would like to see a traffic impact study that will show the impact of the proposed configuration. With all the existing and future businesses that access this, and with the understanding that McDonald's is moving across the street, he feels that this is already a poor design and is concerned about adding to it. He thought initially that this was a very simple application; now he thinks it is very complex. Brad Jones voiced his concern about crossing the line with the Planning Board; they deal with not just the driveways but also with all the components of the site, which could cause the driveways to shift. T. Morgan voiced that one of the major

concerns was safety, and whatever the applicant could do to reassure the Board with regard to safety would be useful.

S. Miller voiced a concern about whether there is any evidence of change in property values. He suggested that each side, both the applicant and those opposed, should attempt to gather information showing any projected change in surrounding property values.

T. Kinnon summarized the three items the Board is requesting: information concerning changes in property values, a traffic study with safety impact, and DOT rights. He also stated that he appreciates the Fitzgeralds' position, but that the Board can not consider financial impact when they make a decision.

Brad Jones asked about the submission deadline for upcoming meetings. To be eligible for the meeting on February 7, 2013, the application deadline would be January 24, 2013; the deadline for the March 7, 2013, meeting would be February 21, 2013. T. Kinnon clarified that the applicant is not being asked to specify the locations for the entrances; a general safety study is needed. The ZBA is not trying to get into the realm of the Planning Board. He also requested that the study should come from a licensed traffic engineer. He personally agrees with two entrances.

Brad Jones asked about the process to continue to a future meeting if they are unable to get a submission by January 24, 2013, for the February 7, 2013 meeting; a letter would be sent to the Planning Department, and the Board would meet to announce the continuance to the future date.

S. Miller asked about open issues going forward if the Board membership changes after the election; new members would simply have to catch up.

T. Morgan made a motion to grant the requested continuance to the February 7, 2013 meeting, with said continuance to count as one of those allowed to the applicant. S. Miller seconded the motion which passed without opposition.

P. Monziona rejoined the Board.

VII. OTHER BUSINESS

A. Previous Business: None

B. New Business:

T. Morgan and L. LaCourse are up for re-election in March; J. Dever informed them that the filing period is January 23 – February 1, 2013. He will put application forms in the mail slots.

Land use law books were given to members.

S. Miller asked if the Planning budget went through as submitted; J. Dever answered that it had, to the best of his knowledge.

C. Minutes: December 3, 2012

T. Morgan made a motion to approve the minutes as presented. L. LaCourse seconded the motion which passed without opposition. P. Monziona abstained.

D. Correspondence: None.

K. McWilliams is working on grant funding for a charette; discussion topics could include a central waste system for the downtown area.

P. Monzione asked about the funding; the funds are provided by the state and then the town needs to approve a matching amount. The selectmen would need to vote on the expenditure. T. Morgan spoke about past charettes, which were not well attended because they were not well advertised and there was no excitement generated.

Members and planning staff discussed the various aspects of the charette; what it would encompass, how to get the word out, etc. They also spoke about the value of a central waste system, which could allow commercial expansion in town, as well as the idea of a supplemental water supply. T. Morgan spoke about a local farm with a huge well built long ago; a wooden aqueduct brought water from the well to locations in town.

J. Dever spoke about his comments to Mr. Varney during the hearing. P. Monzione praised the Planning Department; he has heard from people around town that it is very professional and well run. A charette with Ken McWilliams, with all of the planning behind it and properly advertised, would get a better turn out than past ones.

The cell tower location and access was briefly discussed; the new entrance will be from Jude Hill.

VIII. ADJOURNMENT

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

The meeting adjourned at 9:35 p.m.

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

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session