

**TOWN OF ALTON  
ZONING BOARD OF ADJUSTMENT  
MINUTES  
Public Hearing  
May 5, 2011  
Approved 7/7/11**

**I. CALL TO ORDER**

Tim Morgan, Chairman, called the meeting to order at 7:05 p.m.

**II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS**

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

John Dever, Building Inspector and Code Enforcement Officer  
Steve Miller, Member  
Paul Monziona, Member

**III. APPOINTMENT OF ALTERNATES**

Alternate Paul Laroche was appointed as a member for this hearing.

**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**

J. Dever brought forward changes to the agenda. There is a request for a continuance to the next meeting for Case #Z11-07. P. Monziona asked for the reason for this request; J. Dever explained that more information has come forward and the applicant needs more time to address it. A letter of explanation has been given to the Chairman. P. Monziona explained that the reason for his question was to ascertain if the continuance was at the request of the applicant and would count for one of their allowed continuances; J. Dever reiterated that the continuance is the applicants' request.

**P. Monziona made a motion to grant a continuance in Case Z11-07 at the request of the applicant and that the continuance should count as one of the allowed continuances. S. Miller seconded the motion which passed without opposition.**

**S. Miller made a motion to approve the agenda as amended. P. Monziona seconded the motion which passed without opposition.**

## VI. NEW APPLICATIONS

<b>Case #Z11-03 402 Rand Hill Road</b>	<b>Variance Map 49 Lot 7A</b>	<b>Arthur N. and Donna L. Russell Rural Zone</b>
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*Application submitted by Arthur and Donna Russell for a Variance to Article 400, Section 452 A and D, to expand an existing accessory apartment on a non-conforming lot.*

J. Dever read the case into the record. The applicants, Arthur and Donna Russell came forward and introduced their application. Mr. Russell explained that they are applying for an addition on top of the existing house; this is to accommodate their grandchild, daughter, and son-in-law. Their grandchild has cerebral palsy; this addition would allow for a bedroom for her as she is now sleeping in a walk-in closet. This addition would also accommodate a handicapped bathroom and a therapy room along with the bedroom.

T. Morgan asked Board members if they have reviewed the application; all members answered that they have. P. Monziona asked the applicant if there is a plan to depict the structure after it is altered as proposed, and that would depict the location of the structure on the lot, with all the setbacks noted. Mr. Russell pointed out that there is such a drawing; there is also a Septic Design produced by Tom Varney which has been submitted to the town and the state. P. Monziona stated that there are photos showing the property, and a tax map; on the back of the tax map there is a depiction of the lot. Mr. Russell explained that the drawing shows the lot size and the location of the house on the lot. P. Monziona clarified through questioning that the applicant will be able to use that drawing to explain the addition, which he understood would be on top of the existing structure without going outside of the footprint. Mr. Russell answered that the existing structure is 24 feet wide; after the addition it will be 28 feet wide. It will extend 2 feet in the back and 3 feet on the front.

**P. Laroche made a motion to accept the application as complete; P. Monziona seconded the motion which passed without opposition.**

T. Morgan asked the applicant to take the Board through the application and to explain a little more about the project. Mr. Russell explained that they are trying to set up a non-profit organization fund to support the project; it is called Friends of Alyssa. Donations are already starting to come in. They are looking to this option because financially they can not do the project. The organization Partners in Help have been helping his son-in-law set up the program.

The building will have two additional bedrooms, a handicapped bathroom and a therapy room. It will sit on the existing house and extend out two feet on the front and three feet on the back to make the 28 foot span.

T. Morgan invited Board members to ask questions. P. Monziona clarified through questioning that the 2 foot extension on the front and three feet on the back is on the second floor only; the ground floor will not be expanded at all. The foundation and footprint of the current building will remain the same. Mr. Russell explained that there is an existing overhang of 1.5 feet on the back and 1 foot on the back. P. Monziona asked if the need for the variance was because the addition, when completed, will be approximately 900 square feet more than the ordinance permits. Mr. Russell explained that when he submitted his application that was correct; he pointed out that the drawings indicate that the original plan was to have a 31 foot length, but due to the need to accommodate Alyssa's wheelchair, the plan was extended to 36 feet X 28 feet. P. Monziona asked if the square footage when complete is going to be more than what is listed in the application; Mr. Russell answered that it is. The total square footage will be 1,826 square feet, or approximately 1,120 square feet more than what the ordinance permits.

S. Miller asked about the existing septic; Mr. Russell explained that it is a three bedroom design with a 1,000 gallon tank and a 20 X 15 leach field.

There were no further questions from the members.

T. Morgan invited public input in favor of the application; there was none.

T. Morgan invited public input in opposition to the application; there was none. Public input was closed.

T. Morgan commented that J. Dever has supplied a copy of the zoning ordinance; he went on to say that this is a rather unusual case. RSA 674:33 V states that the hardship requirement for a variance has an interesting subparagraph stating “Notwithstanding subparagraph I(b), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

(a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.

(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.”

T. Morgan went on to state that this is an unusual subset of the hardship requirement recently codified by the legislature.

T. Morgan asked members if they desired discussion prior to completing the worksheet. S. Miller asked if the Board should consider whether they want this particular variance to survive past the current owners, or infinitely into the future. P. Monziona answered that this almost seems to be suggesting to the Board that if they were to make a motion to grant that they do so on the condition that the variance would survive only as long as this person is living at or using the property. Then, when you think of it as a practical matter, once this construction is completed and if down the road the grand-daughter who is in need of this no longer resides there, how do you then impose upon the property an obligation to reconstruct it back to the normal configuration. He sees that in the ordinance as a practical matter but not as a condition that makes sense practically or economically.

T. Morgan agreed and added that he believes the operative word in sub-section (b) is “may” provide. Although the legislature has given some leeway there, he does not think that the Board needs to take advantage of it. S. Miller added that if the Board were to implement that, they would render the property almost unsellable at some future date; that is something the Board might not want to consider. P. Monziona agreed; it is a nice provision but as a practical matter? There might be some circumstances, such as outdoor ramps that go into a setback on a property that otherwise does not meet the hardship standard, but the variance is granted with the condition that if the person moves, the exterior wheelchair ramps need to be removed. There are probably fact patterns where that provision would be good to implement, but it is not appropriate here.

There was no further discussion; the Board members proceeded to the Variance Worksheet. P. Monziona thanked J. Dever for attaching RSA 674:33; the Board had discussed this earlier at other public meetings because the hardship criterion is now so difficult for any applicant to meet, particularly in light of the fact that the New Hampshire Legislature has codified this as opposed to the case law, which is what previously governed. It was good to have the RSA as a reminder because this application may not have met the hardship standard if not for that subsection.

## **VARIANCE WORKSHEET**

1 – P. Monziona stated that the variance **will not** be contrary to the public interest because of the statutory provision and the fact that the applicant in this case is seeking this variance on the basis that a child who will be residing there is in need of this. S. Miller, P. Larochelle, and T. Morgan all agreed.

2 – S. Miller 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, and of the citizens as well. P. Larochelle, T. Morgan, and P. Monziona all agreed.

3 – P. Larochelle stated that by granting the variance, substantial justice **will** be done. T. Morgan agreed that substantial justice would be done and added that the benefit to the applicant far outweighs any loss to the public. In this instance, there is very little impact on the public other than the expansion of a house in a residential area. P. Monziona agreed for those same reasons. S. Miller also agreed.

4 – T. Morgan stated that the request **will not** diminish the value of the surrounding properties. There has been no evidence offered with regard to changing of values of surrounding properties, but he does not feel there is any reason for concern. P. Monziona agreed; there is nothing in the application that indicates an adverse affect on surrounding properties, nor did anyone come forward with any evidence, nor is there any evidence in the record. S. Miller agreed; when additional square footage is added it is a rare case where value goes down. P. Larochelle agreed.

5 – P. Monziona 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. If the criterion 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 cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use of it. He added that under RSA 674:33V, unnecessary hardship does not need to be found in this case; he also stated that he is frankly unsure it would have been found in this case, but it is not necessary given the nature of this application. S. Miller agreed and stated that reference should be made to RSA 674:33, and also that it would not be reasonable for the ZBA to consider a restraint that this variance would only survive as long as the property was owned by the current owners because it would be too much of a challenge to sell this home in the future. P. Larochelle and T. Morgan agreed.

T. Morgan stated that even though it is not necessary, due to the unusual criteria a vote might be necessary. He also pointed out that the Fire Department has some specific requirements and it might behoove the Board to reference the recommendations of Assistant Fire Chief Consentino as part of the conditions of approval. J. Dever explained that he has discussed those items with Assistant Chief Consentino and they are a normal part of the construction process. They also discussed requirements for fire separation doors. T. Morgan clarified that the Board would then vote simply on the variance; J. Dever agreed and added that he and Assistant Chief Consentino will work closely together on this.

**P. Monziona made a motion to approve the variance for Case #Z11-03. P. Larochelle seconded the motion which passed with four votes in favor and none opposed.**

<b>Case #Z11-04 47 Letter S Road</b>	<b>Variance Map 30 Lot 17</b>	<b>Paul Blackwood Residential Zone</b>
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*Application submitted by Paul Blackwood for a Variance to Article 300, Section 327 to allow the construction of an accessory storage structure and the addition of a deck to the existing house on a non-conforming lot.*

J. Dever read the case into the record. Paul Blackwood came forward and introduced himself and his wife, Joan.

T. Morgan asked the members if they had reviewed the application in this case. Mr. Blackwood asked if he could present some photos taken by his wife earlier in the day; T. Morgan answered that if there were enough copies for everyone, he could turn them over to J. Dever. Members reviewed the application materials and the new photos.

P. Monziona asked Mr. Blackwood who had prepared the plot plans depicting the location of the proposed garage. Mr. Blackwood answered that he had done them himself by taking the original plot plans he had when they purchased the property and modifying them. P. Monziona asked if he had depicted that to scale; Mr. Blackwood answered that the depiction was to scale. P. Monziona asked if the location of the building in relation to the setbacks and boundaries were also to scale. Mr. Blackwood answered that they were and added that he has downsized from a garage to a shed since creating the plans; that could be located anywhere in that area that would be acceptable.

P. Monziona stated that the original application is to add a garage and a deck. Mrs. Blackwood answered that the application had been amended. J. Dever added that the applicant had indicated that he wanted to reduce the size of the garage to a shed size. After discussion with the planner, they felt it was acceptable to bring the application forward in that he was not going larger which would necessitate additional notice. P. Monziona asked about the deck; J. Dever answered that the request for the deck is the same; the change is to the size of the shed, which will be smaller.

S. Miller asked if the shed would be 16 X 24; Mr. Blackwood answered that it will be 12 X 18. Mrs. Blackwood produced a photo of the shed, which will be purchased from Reeds Ferry Sheds. There is still a plan to build a deck which will be attached to the house. S. Miller asked if the shed is going to be portable or fixed; Mr. Blackwood answered that it will be portable.

P. Monziona explained that the drawing or plot plan that is provided that indicates the proposed changes or structures still indicate a 16 X 24 garage; the house and septic are depicted, and behind the house there is a proposed deck also depicted. He asked if the plan indicates the rear boundary of the property so that it can be viewed in relation to where the deck is; Mr. Blackwood indicated that the drawing does show the boundary lines and that everything is to scale. P. Monziona stated that if he looks at what the plan is depicting, the deck will be pretty much on the boundary line. Mr. Blackwood said that the deck will be about two feet from the boundary line; it is about 10 feet from the edge of the water to the house, and the deck is going to be 8 X 17. P. Monziona asked, if the Board is to take this plan and take the proposed garage as depicted and reduce the 16 to 10 and the 24 to 18; Mr. Blackwood agreed. P. Monziona continued; he asked Mr. Blackwood if when you reduce the proposed garage to 10' does it change where the front end of the garage is. Mr. Blackwood answered that he had been hoping to set it back from the road more.

P. Monziona raised concern as to whether the application should be accepted as complete; one of the things that is essential to the Board when making a determination is whether the application provides sufficient information so the members can understand what is being requested. One of those things is that the members want to see, when all is done, where it really is going to be located on the lot. The way the garage is proposed, it is feet from the right of way or boundary line of the road; now with the reduced structure, the location of that structure is going to be different, and there may be more footage between the shed and the boundary line in the front. The drawing provided does not show that. For him to vote that the application is complete is causing him some difficulty.

Mr. Blackwood explained that when he put the application in, he had intended to talk to John (Dever) about it, but John was on vacation at the time. He waited for him to come back, but in the meantime, this was going forward and everybody was looking it over but he did not know who to talk to about the changes for his drawings. He thought the Board would give him a little grace on that. One of the reasons he had thought of going with a shed is because it is such a small lot and a garage would be big and close to the road. He wanted to draw back from the road, but at the same time he couldn't go too far back the other way. Right now he can bring it back about 10 feet from the edge of the pavement

P. Monziona asked Chairman Morgan if it would be appropriate, as the application is being reviewed for completeness, to take the plot plan and have the record reflect that the proposed location of the structure, which is on the plan as a garage, would be changed to a shed, and that it would depict the shed being placed 10 feet

from the road edge. Mr. Blackwood and J. Dever discussed the exact location in regard to the reduced dimensions; reducing the shed from 16 feet to 10 feet, he was originally going to have 4 feet from the property line; the extra 6 feet makes him 10 feet from the street, keeping the back where it was proposed. The movement is away from the street, keeping the rear distance as depicted.

T. Morgan expressed concern that the documents presented become part of the record, and don't really reflect what the applicant is now asking for. J. Dever stated that in his staff review, he indicated that a survey needs to be done and that it could be used to certify the location of the structures when they are complete; that would be part of the record.

S. Miller voiced concern about accepting the drawings as adjusted, even with that notated because if there was ever an appeal to the Board in this case, the plans would be evidence and they are inaccurate. On that basis, he suggested a continuance, said continuance not to count against the applicant.

P. Monziona stated that under normal circumstances that would make sense, but he is also hearing that this was an unusual circumstance for the applicant. He suggested as an alternative to that, if the variance is granted, that the Board would have an opportunity to impose a condition that a new plan, that would become part of the record for purposes in future litigation or appeal, be submitted. That plan would accurately depict the location now being described as modified and that for purposes of this application, the Board review this case with the idea that it is a shed, that it is 10 feet, and with the modifications to the proposal. If the Board can understand that tonight, the only concern at that point would be for the record to clearly state that as a condition.

T. Morgan raised the point that there are actually two different variances being requested here and wondered if this should be a two part application. What happens if the Board likes one part of this and not another? P. Monziona stated that he thinks that would mean that the whole variance would be denied because the applicant is choosing to submit it as one, and it really is two. The deck might be okay and the shed not, or vice versa. S. Miller acknowledged the point made by P. Monziona based on the outcome that the variance is granted. If the variance is not granted, and the Board still has imperfect evidence entered as evidence for that decision, it could be used on an appeal. On that basis, he would still prefer to have a proper document in hand and wait another month to do it right rather than rush to judgment here.

**S. Miller made a motion to continue this case to the next meeting, with the stipulation that accurate plans be provided for the shed versus the garage, as well as any other changes that may take place.**

P. Monziona added that the idea of the survey, as J. Dever pointed out, that if the variance were to be granted, the Board could impose a condition that a qualified surveyor's signed report to verify the location after construction to show that it conforms completely to what the applicant is saying. As to the original motion, he is concerned about this being submitted as one variance when there are two separate items for consideration. He asked S. Miller to consider an amendment to the motion that it be continued not only because of the discrepancy with the drawing but also to give the applicant an opportunity, if he chooses, to submit it as two separate variances.

Mrs. Blackwood asked if that would mean a double fee. T. Morgan addressed that; he does not believe it is necessary to have another fee for the second application, unless the Code Enforcement Officer has a different opinion. J. Dever did not feel that an additional fee would be necessary; there is no additional action being requested. The notice would be the same. T. Morgan stated that any fee associated with splitting the application in half would be waived. P. Larochelle asked if acceptance of the application could be contingent upon having permits issued for the proposed shed as opposed to the garage, and if that could be done rather than the applicant having to go back and redraw the plan. T. Morgan stated that there is an amended motion before the Board.

**S. Miller amended his motion to a continuance and that such continuance would be for the applicant to produce a drawing showing what is currently being proposed, and that it be in two applications. P. Monziona seconded the motion which passed with all votes in favor.**

T. Morgan clarified for the applicant that the Board is requesting that he make another drawing replacing the proposed garage with the shed and showing where that would be. The distance to the street is a very important consideration; the plan should clearly show that distance. Also, he should be splitting the application into two parts – one for the shed and one for the deck. Mrs. Blackwood requested return of the plans they have already submitted, citing the expense involved with having them copied. Mr. Blackwood confirmed through questioning the Board that what is being asked of him is just to redraw that plan, showing the correct location and size of the shed. T. Morgan agreed and added that he will also have to fill out new forms for the deck. S. Miller stated that only one set of plans would be needed for both; there is no need for the applicant to go to the expense of producing two different plans. T. Morgan explained further that the Code Enforcement Officer would issue another case number for the deck because they are really seeking two separate variances. Mr. Blackwood asked if the information the Board now has would just remain for the shed; T. Morgan answered that it would.

Mr. Blackwood asked about the surveyor; that will still wait until completion.

<b>Case #Z11-05 23 Lady Slipper Lane</b>	<b>Special Exception and Variance Map 76 Lot 18</b>	<b>Thomas and Lorraine Mitchell Rural Zone</b>
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*Application submitted by Tom Varney on behalf of Thomas and Lorraine Mitchell for a Special Exception to Article 300, Section 320 to construct a full foundation under an existing non-conforming cottage, and a Variance from Article 300, Section 327 to allow the structure to be within the side property line setback.*

J. Dever read the case into the record. Tom Varney of Varney Engineering, Thomas Mitchell and Lorraine Mitchell came forward to present.

T. Morgan asked if members had reviewed the application. There were no questions or concerns with regard to the completeness of the application.

**Paul Monziona made a motion to accept the application for Case #Z11-05 as complete. S. Miller seconded the motion which passed will all votes in favor.**

Mr. Varney stated that this property is at Sunset Lake; it is an older cottage on Lady Slipper Lane. There are pictures included in the application. Presently the cottage is held up by cement blocks and piers. The Mitchells would like to put a foundation underneath it. To do that and make it more conforming, they are moving it away from the property line because at present it sits on the property line; one-tenth of a foot of the building is over the line. They are also moving it back from the lake to make it more conforming and get it away from the setback of the lake; the Shore Land permit requires them to try to get it out of the 50 foot buffer zone. They do meet the 30 foot Alton setback. In order to excavate this foundation without digging up the neighbor's property, they need some room. They can't move it back any further because they would be in the driveway and the septic tank.

In order to get here, the applicants have complied with the checklist and had a land survey done, which has been provided. The septic design is pending approval. The Shore Land permit was approved last week. To do that, they have added more vegetative plants along the shore and implemented some storm water measures.

The Mitchells are adding more to the porch; the porch they have is small and they are making the porch bigger. Other than that, the building will stay the same but for the new foundation. The elevations stay the same; the diagram at the top of the plan shows the new foundation.

Mr. Varney read from his narrative “Thomas and Lorraine Mitchell are proposing to replace the existing pier foundation with a full concrete wall basement. The building will maintain the same footprint. The existing side porch is to be increased in size. The sill elevation will remain the same. As the cottage is currently touching the property line the plan is to move the cottage to be five feet away from the property line and five feet back from the lake. The intent is to make this property more conforming and allow the necessary excavation to take place within the boundary line. An existing septic tank and the unusual shape of the shoreline and the new setbacks make the movement/rotation of this building difficult. A new well and a state approved septic system are to be installed on the property. Storm water measures and vegetative plantings will be installed to meet the requirements of the NH DES Shore Land Protection Act.”

Mr. Varney invited questions from the members.

S. Miller asked what the thought process was in deciding on five feet, versus 10 feet or 20 feet. He asked if that was an economic or a structural consideration. Mr. Varney answered that it was all about the placement on the property; after measuring where it can go and meet the setbacks. Originally the thought was to go 10 feet, but if they do that, they are less than 30 feet to the lake. They can only move it back so far. Five feet works and keeps the cottage in the same location; that is about the best they could do. S. Miller asked for the distance from the shore line; Mr. Varney answered that it is about 32 feet from the shore line.

P. Monziona asked for clarification on the application; he clarified through questioning that even though there was going to be a foundation under the cottage, the height of the cottage is going to remain the same. Mr. Varney agreed. P. Monziona went on to ask if the foundation was going to be all excavated and under the structure; Mr. Varney agreed. P. Monziona asked if the footprint of the structure was going to be expanded at all; Mr. Mitchell answered that it is not, except for the porch, which is going to be expanded. P. Monziona asked if in this process, they are going to relocate the entire structure farther back from the lake. Mr. Varney answered that it will be essentially the same distance from the lake as it was before. It will be five feet from the side line where it was zero feet before. P. Monziona clarified through questioning that there is a DES Shore Land Permit on file.

P. Larochelle asked if the addition to the porch is going to be further encroaching into the shore line setback, or would it be more toward the corner of the building. Mr. Varney indicated the before and after drawings; the porch is behind the 50 foot line. P. Larochelle also confirmed that the bottom sill will be 8 feet above grade after the foundation installation, just as it is existing now.

T. Morgan asked if the porch is covered; Mr. Varney answered that it is just a platform and more like a deck.

S. Miller asked if they are going to install a sump pump; they are not. He asked about drainage, as the structure is on a grade and water heads down toward the lake. Mr. Mitchell explained that they don't get any water there now.

P. Monziona asked about the requirement for the variance; the building is non-conforming and they are going to be changing the structure. The variance being sought is because of the non-conformity in regard to the distance to the property line, which is less than 10 feet. They are going to be changing the building by moving it further back from that same property line, but it will still be in the 10 foot setback. P. Monziona asked if a variance was required because of the porch; they are expanding the size of a non-conforming structure which should require a variance. J. Dever explained that as far as the town is concerned, the porch is within the building envelope. It will remain in the building envelope for the town's purposes. You are allowed to take a non-conforming structure and expand it into the building envelope as long as you are going into the building envelope. In this case, they are reducing the non-conformity by moving away from the side lot line; the porch is well within the building envelope by the town's standards. P. Monziona stated that he thought the porch was being expanded outside the envelope; J. Dever assured him that it was being expanded into the building envelope.

T. Morgan asked Mr. Varney if he had anything to add. Mr. Varney offered to go over the criteria for the Special Exception if the Board required it; the members did not feel the need for that.

T. Morgan opened the floor to public input in favor of this application; there was none.

T. Morgan opened the floor to public input in opposition to this application; there was none. Public input was closed.

T. Morgan asked the members if they had questions prior to beginning the worksheets. P. Monziona asked J. Dever about the worksheets for the variance and the special exception. He clarified with J. Dever that the Special Exception is for Section 320 and asked about the variance; Section 327 is the variance request.

### **SPECIAL EXCEPTION WORKSHEET**

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

2 – S. Miller stated that the specific site **is** an appropriate location for the use. In fact, it is more appropriate for the use. P. Larochelle agreed. T. Morgan agreed; it is Lakeshore Residential and they are just moving the house over a little bit. P. Monziona agreed and added that the use is not changing; it was appropriate before and still is.

3 – P. Larochelle stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. T. Morgan agreed; it will probably increase values by getting this place off the property line. P. Monziona and S. Miller also agreed.

4 – T. Morgan stated that there **is no** valid objection from abutters based on demonstrable fact; there were no objections voiced at all. P. Monziona agreed for those reasons. P. Larochelle and S. Miller also 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; nothing about the proposed alterations to this structure is going to have any impact whatsoever on pedestrians or vehicular traffic. S. Miller, P. Larochelle, and T. Morgan all agreed.

6 – S. Miller stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. As it is presented the foundation will not create a finished bedroom or bathroom in the basement, so the current septic and other utilities are entirely adequate. He suggested that this issue needs to be considered at the end if this exception is indeed granted; there should be a condition that there be no additional bedroom or bath in the foundation area. P. Larochelle, T. Morgan, and P. Monziona all agreed.

7 – P. Larochelle stated that there **is** adequate area for safe and sanitary sewage disposal and water supply. T. Morgan agreed. P. Monziona agreed; there is nothing about this proposal as described and applied for that indicates it will in any way impact sewage disposal or water supply. S. Miller 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; this is simply moving a cottage over a few feet. P. Monziona, P. Larochelle, and S. Miller all agreed.

**P. Monziona made a motion to approve the Special Exception for Case #Z11-05.**

S. Miller asked if the Board felt the need to place a condition on the approval to preclude the addition of a bedroom or bathroom in the basement area.

**P. Monziona amended his motion to approve the Special Exception for Case #Z11-05 with the condition that the foundation described in the application not be permitted to be used as a bedroom and or bathroom. P. Larochelle seconded the motion which passed with all votes in favor.**

**VARIANCE WORKSHEET**

1 – S. Miller stated that the variance will not be contrary to the public interest; as a matter of fact, it is becoming more conforming and is therefore in the public interest as statutorily written. P. Larochelle, T. Morgan, and P. Monziona all agreed.

2 – P. Larochelle 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. T. Morgan agreed; the intent of the Master Plan and the Zoning Ordinance in this particular instance is to keep property off the property line and they are in fact moving it away from the property line, so it is in the spirit of the Zoning Ordinance. P. Monziona agreed for those reasons and added that by improving the foundation of this structure, that is consistent with the health, safety and character of the district. S. Miller agreed.

3 – T. Morgan stated that by granting the variance, substantial justice will be done; the benefit to the applicant far outweighs any detriment to the public by having this property moved and placed on a new foundation. P. Monziona, S. Miller, and P. Larochelle all agreed.

4 – T. Morgan stated that the request will not diminish the value of the surrounding properties; the improvements that are being proposed for this structure will enhance the economic value of this property and potentially of surrounding properties. There has been no evidence submitted tonight; there have been no objections and there is nothing in the record that indicates that property values will be diminished. S. Miller agreed and added that it is reasonable to assume that property values would be increased. P. Larochelle and T. Morgan agreed.

5 – P. Monziona 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. He added that it absolutely is a reasonable use, and it is making the proposed structure much more habitable and much more sound. He continued with the summary statement; if the criterion 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 cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use of it. P. Larochelle agreed. T. Morgan agreed and added that there is no need to go to sub-paragraph B; they reach the criteria under sub A. The proposed use is a reasonable one; it is the continued use of a cottage on a lake, and the hardship arises in that this has been a non-conforming property built on a property line and the general provision of the ordinance is to get things off the property line, and that is what the applicant has proposed. Therefore, it meets both #1 and

#2 under sub A. P. Monziona agreed; the unnecessary hardship test requires the finding of a special condition of the property that distinguishes it from other properties. In this case, that special condition is a non-conforming structure that is sitting on a property line since prior to zoning requirements. This change will make it less non-conforming.

**S. Miller made a motion to approve the variance for Case #Z11-05. P. Monziona seconded the motion which passed without opposition.**

T. Varney thanked the Board and asked to revisit the issue of having a bathroom in the basement. It had not been discussed and he really wasn't thinking about it, but he knows the Mitchell's wanted to have a bathroom in the basement, as well as two bedrooms. There is nothing in the zoning that says that is not permitted; how could they come back to straighten that out. T. Morgan explained that it gets into issues like the septic, which would need to be addressed; J. Dever could help with the aspects of the ordinance that they would need to address. Mr. Varney pointed out that they have a new septic design pending approval; they are upgrading from two bedrooms to three.

S. Miller explained that as ludicrous as it may sound, they could put three bedrooms and two baths down there and rent it out to students; he understands they are not going to do that, but this carries forward to future owners. What the Board has to do is look at a worst case scenario.

P. Monziona pointed out that the application as submitted informed the Board that the reason for the variance was in part because of the need to construct a foundation under the building which was non-conforming to begin with. As far as he knew, there was nothing in the application that described that there would be bedrooms and/or bathrooms in the basement. This was sent out to Fire, Code Enforcement, Conservation Committee and a number of other departments to receive their input. Neither they nor the Board had an opportunity to consider the issues of septic and adequate sewage, if they listened while the criteria that talked about adequate sewage was discussed. He personally would have looked at it differently if he had known what the space was going to be used for and what the demands were going to be. Because the application does not have that in there, and because one Board member raised a concern about it, he amended the motion to include the condition that the basement not be used for those purposes. Another application to permit that would have to be made.

T. Varney stated that he thinks the land is sufficient; it is a big lot. There are not multiple buildings, and they are not constricted. T. Morgan explained that the Board is not saying they would deny such an application, but it was not contemplated in this application as it came before the Board. The Board is not saying it is not possible, it just has not been properly asked for. T. Varney said they would have to ask for it then.

Mr. Mitchell asked if his desire to put bedrooms in the basement is something that needs to come before this Board. T. Morgan answered that because it is a non-conforming structure, it does. J. Dever explained that there was a condition to the motion; he can't go around the condition. He asked whether this would be a motion for rehearing or another request. S. Miller felt that it would be a new request; they have already made a decision with regard to moving the house. The issue is adequacy of the septic for the number of occupants and things like that; whether it is going to be residential or residential/commercial; whether they are going to rent it out. It hasn't been brought up, so the Board does not know any of those answers. J. Dever explained that the request would be for the Board to change their present decision. T. Morgan opined that if they made that request, the applicant would have to show documentation that this septic design is suitable; there is nothing presently here about the septic design or DES approvals. Some documentation would be needed; this case could no be reheard based on the documentation that was submitted at present.

J. Dever again asked how the applicant would go about having this issue resolved; would it be a motion for rehearing or a new application. P. Monziona explained that the motion for rehearing would have to argue that the Board made a mistake. Given the application as presented, he is not sure what the outcome of that would be, whether they would find that they made a mistake. They have, as is the Board's authority, imposed a condition

on the granting of the variance and that condition needs to be applied to. He wondered if there was an application process to the Board to remove a condition on a variance that has already been granted. Procedurally, he is not sure how that gets done, but he thinks the thing would be to come before the Board with a request to remove the condition on the variance and to demonstrate the valid reason why the condition should not be imposed as opposed to thinking it was done mistakenly. J. Dever stated that he would consult with Ken McWilliams, the Town Planner, to figure out how to proceed at that point. T. Morgan added that they are willing to consider it, but they need to be supplied with the information to make that consideration.

<b>Case #Z11-06 Rte 28 South/Suncook Valley Rd.</b>	<b>Special Exception Map 8 Lot 49</b>	<b>Robert H. Carleton, Trustee Rural Zone</b>
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*Application submitted by Tyler Phillips on behalf of the Robert H. Carlton Revocable Trust, Robert H. Carlton, Trustee, for a Special Exception to Article 400, Section 401 to allow a Recreational Camping Park in the Rural Zone.*

J. Dever read the case into the record. Tyler Phillips from Horizons Engineering is representing Mr. Carleton. T. Morgan asked the members if they had reviewed the application as submitted.

S. Miller asked about the narrative that states that the purpose of meeting today was to gauge the ZBA's opinion on whether or not it makes sense to go further as opposed to applying for a specific Special Exception. He acknowledged that he may have read it out of context, but he would like to know what the issue is before the Board; is he specifically applying for a Special Exception today? Mr. Phillips answered that he is, and he thought that the part about the gauging was due to another special exception they need to acquire based on the last Planning Board hearing. J. Dever had suggested that they may want to have both of those hearings together, and he asked that they at least proceed through with the Special Exception at this time to do that gauging. It is more in response to, but he would like to proceed with the Special Exception if possible. The question really is whether the Board will require more information and would it be more efficient to do that at a future meeting.

P. Monziona asked which application he should be looking at right now, as there are two applications in the packet now. There is a request for a Special Exception from Article 400, Section 401; that is the one being considered now, per Mr. Phillips.

**P. Monziona made a motion to accept the application for Case #Z11-06, Special Exception from Article 400, Section 401, as complete. S. Miller seconded the motion which passed without opposition.**

Mr. Phillips stated that Mr. Carlton owns a parcel of land that is south of the Alton Traffic Circle, near Route 28. The lot has significant frontage along the Merrymeeting River. He indicated the property in relation to the river and to Route 28. There is currently a gravel pit there; it is his intention to convert the gravel pit to a campground. S. Miller clarified the location of the property through questioning; J. Dever explained that the primary entrance will be just south of Water Industries' fenced in area. It will go back through and behind the River View Deli and back in that area. They could potentially use the access next to Tire Warehouse as an emergency access, as indicated in his review.

Mr. Phillips indicated the location of the parcel on the plan; it is a fairly large parcel at approximately 169 acres. They are proposing to merge it with another 16 acre parcel so it will increase in size. He asked if there were any questions about the location or layout of the parcel. P. Monziona asked if the parcel is landlocked; Mr. Phillips indicated a 33 foot frontage and a Right of Way through the parcel where Water Industries is located. The intention is to construct a road to meet town standards, to provide 200 feet of frontage which is required in this zone, and then merge the two parcels. P. Monziona asked Mr. Phillips if presently, as he is standing here applying for the variance, is the parcel on which the proposed campground is to be located landlocked. Mr. Phillips answered that it is not. P. Monziona asked for an explanation; Mr. Phillips indicated that the parcel does have 33 feet of frontage, but it is inadequate and not conforming. P. Monziona asked if there is a road that would lead from the frontage on Route 28 to the site of the proposed campground. Mr. Phillips indicated that

there is an existing gravel road that serves the gravel pit, and there is an additional road to a point he indicated on the plan. P. Monziona asked about the road on the south part of the photograph; there is a Right of Way that only goes partway to the campground location. Mr. Phillips agreed. P. Monziona asked if there is any Right of Way beyond that to take them the rest of the way into the campground. Mr. Phillips answered that there is no additional Right of Way. P. Monziona clarified through questioning that the only road they do have is the one further north, and that doesn't get to the campground site either. What they are counting on is that some time in the future, they are going to try to acquire some Right of Way so that the road he has depicted as being there presently will one day be there. Mr. Phillips corrected that statement; the owner of the parcels (indicated on the map) has a road that goes all the way through to a point he indicated on the plan. It is rough; vehicles can go over it but it needs to be improved. The owner does not wish to use this access. P. Monziona explained that he is just trying to understand where it is legally, and presently what exists in terms of Right of Way and access from the proposed access road that he is depicting. As the application is being presented, P. Monziona questioned whether there is something further, legally, that is going to have to be done, even though the same owner may have both lots. Is there going to be a merging of lots or granting of a Right of Way that takes you in further? He asked what the applicant is anticipating because if the variance were to be granted, maybe some conditions would be imposed that those things would need to be achieved, or is what is being represented there now, or are they going to be there in the future.

Mr. Phillips explained that in regard to access, the intent is to build a Right of Way and a road that meets town standards that will provide the lot with adequate frontage; currently, it is landlocked. This lot will be merged with the larger lot thereby giving the now merged lot 200 feet of adequate frontage in that zone. P. Monziona asked if that would be on a private road; Mr. Phillips answered that it would be, but it is his understanding that they still need to have frontage on some road that is built to town standards, just as you would in a subdivision to conform. T. Morgan stated that the road would either have to be approved by the town or approved by the Selectmen; Mr. Phillips answered that the road would not have to be approved by the Selectmen because the owner would like to construct this road to be larger than what is required for the campground so that in the future, if there is any other development within this lot, he does not have to come back and permit with the state for drainage and storm water. He wants to build the road to meet town standards but there is no intention at this point for the town to take the road over or for it to become a public road, only for it to meet town standards so that it is a conforming frontage.

T. Morgan asked if that would meet frontage requirements under the ordinance. J. Dever answered that at that time it would; it would be the same as building a subdivision with a private road. P. Monziona asked why the road has not been taken care of prior to the time of this application for variance. He is trying to understand the application; the application is telling the Board that they will, at some time in the future, turn this into a road that they will have legal rights to use to gain access to the parcel. If it does not currently exist with his right to go from Route 28 back to the campground site, he would like to know that. That is what they are being told, and the intent is that some time in the future either because the same person owns the lots anyway, they will either merge them or grant Rights of Way, and that will be part of what they plan to achieve. As they come forward tonight, they do not have that done and legally conveyed. J. Dever agreed; the applicant has been to the Planning Board and this is a step to go back to the Planning Board because the granting of the Special Exception is a requirement for it to go back to the Planning Board.

P. Monziona stated that as they go through the criteria for the granting of a Special Exception, it is important that the Board members understand the present condition of the property and whether as it is presently being applied for, it has legal access through the proposed roadway from Route 28. As he understands it, it does not at present, but the intent is to acquire that. J. Dever pointed out that it is presently a legal Right of Way; P. Monziona acknowledged that he understands that, but as it is shown it falls short of the proposed campground. J. Dever explained that the Right of Way passes over another property and then to the existing lot. There are roads in there now that were developed for the gravel pit. They are all on the lot that is being presented. P. Monziona restated the question; the lot that is going to be the campsite lot has access all the way from Route 28

to the campsite. Mr. Phillips agreed; it does have access, but that is not the access they choose to use. The Right of Way at this point serves other lots.

They are asking for the Special Exception because they cannot proceed further with the Planning Board until they get the Special Exception, which is merely to use this land for the campground, which is a use other than a single family residence and a use that is only allowed by Special Exception. The Catch-22 is that they need to know that the use is approved before they proceed with the Planning Board to provide that. His hope would be that the only possible way one could proceed with this project is to obtain the Special Exception with the understanding or condition that they acquire necessary frontage or easements through the Planning Board. He fully anticipates that might be a condition of approval; he thinks they need to be here first to do that.

S. Miller asked if the three pieces of property being discussed are all part of the same trust, or are they individual trusts, and does each individual trust have different constraints to allow them to convey access? He asked Mr. Phillips if he has read the trust documents to determine whether that is going to be possible. Mr. Phillips answered that the trustee is the same for all three of the lots; he has not personally read the documents but their surveyor has, and there was nothing seen that would prevent that. S. Miller asked if it was all one trust; Mr. Phillips answered that is his understanding. There is only one trustee, and that is Mr. Carleton. S. Miller pointed out that trusts get written at different times; somebody gets an ah-ha moment, and something goes in the trust, and the last trust is a lot different than the first trust, in his experience. Mr. Phillips stated that he believes these were all conveyed at the same time.

Mr. Phillips continued his presentation; they would like to obtain a Special Exception. He believes the most important part of the application narrative is the fact that in addition to the Special Exception criteria for zoning, there are also specific criteria relative to a campground. He is not sure if they are pertinent and offered to read the project narrative into the record. Members felt that their reading of the narrative was sufficient.

S. Miller stated that from his perspective, a piece that is significantly missing is a business plan. There are a lot of generalities around how this park is envisioned at this time, and he would guess it will be a lot different when it is finished. There are 100 questions he would have but having a business plan in front of him to review would probably answer 99% of them in terms of current and future impact. You can say that he wants a certain number of units, but a business plan could indicate that in a year, with a favorable growth rate, he is going to have significantly more units. Mr. Phillips expressed that he could understand that concern, but he thinks that Mr. Carleton's interest is not in going along under the radar in small increments; his intention is to show the full build out of the site. Should he at some point want to expand, he would be back before this Board for another Special Exception. If there are other questions that relate outside of intensity, he would be happy to answer those. He does not know that there is a formal business plan at this time; he has discussed the general intentions with the applicant and thinks that most of them are represented here. They intend to construct what is shown on the plan. A lot of the intensity will be market driven. Mr. Phillips did not know if all of the units would be built the first year; the intent is to shoot for having them all built within two years. Again, that would be part of the Planning Board approval where they have certain time periods within which you must construct all of the units.

S. Miller asked if for example the intent is to limit the stay to six months. Without that being in writing, for instance, that is something the board may want to consider as an addendum. If it was in the business plan the board could say that as long as the business plan is adhered to as is on file, there are no issues going forward. That is only one thing off the top of his head; there are many other issues that come up and will have to be addressed piecemeal. S. Miller went on to say that the applicant does not have to submit a business plan, but it would be helpful. Mr. Phillips did assure S. Miller that the applicant will adhere to the 180 day stay limit as is allowed for in the zoning. It will be a condition by the Planning Board to provide campground rules and regulations, similar to covenants in a subdivision. One hazard of providing a business plan is that it is a projection and if your approval is tied to a business plan, that may be more limiting. The applicant would prefer to address issues individually. Mr. Phillips stated that if there are questions that are unaddressed, he would be happy to answer them.

P. Monziona stated that the application on behalf of the trustee is for a proposed 150 site recreational camping park; the dimensions would be 3000 feet wide and 2800 feet deep with 33 feet of frontage on Route 28, that being the frontage that is not going to be used as the primary road. As far as he is concerned, the Special Exception being requested would be based on the description of the campground as contained in the application. Mr. Phillips responded that there was a question in completing the application; he did not want to present this as having frontage that they did not yet have. In large part what he hoped to do was to enter into the record verbally what their intentions are. P. Monziona understands that on the frontage issue, but addressing S. Miller's point that a business plan would tell him the owners' intent and plan that the ZBA does not know about as they sit here. He is going to take 150 sites and as his business booms, turn those into 300 sites, and suddenly the question is "What did the zoning board allow to happen?" His response as a member of the Board is that he takes whatever the applicant is saying in the application as being the fact of what they are seeking to do. If they were to extend this beyond 150 sites, they would be outside the application and therefore outside of the Special Exception.

P. Monziona went on to say that another question pertains to Section 355 of the Alton Zoning Ordinance; under 401 the Table of Uses, Section 46 describes recreational campsites in detail. This is what is being sought; the E in the Table of Uses in this section, under the Rural Zone, indicates that the Town of Alton permits these types of uses provided you get a Special Exception. In addition to that, Section 355, Recreation Camping Park Performance Standards, lays out all the criteria that applies to this type of use; he asked if the applicant is familiar with these and whether the representation in the application that the campground will be in conformance with Section 355. Mr. Phillips indicated that to absolutely be the intent; that is in the narrative. P. Monziona added that this deals with square footage, frontage, number of sites, off street parking spaces, and any number of things that regulate this use.

Mr. Phillips suggested that he could go through the narrative; he specifically addresses each of those points and can explain specifically what will be done. In no way would there be any intention to change any of those items. P. Monziona stated that as long as Mr. Phillips is representing on the record and as part of the application that this application seeks to have a recreation camping park in compliance with Section 355, he is fine with that. Mr. Phillips asked if, as they move forward in design, for example under item 4 of the performance standards which indicates the need for a certain amount of open land for common space, they have indicated that there is 18.4%; if going forward in permitting and design, if that number drops to 18.1%, would that be something the Board would have a problem with, or would it be okay as long as it meets the performance standard which is 15%.

P. Monziona stated that as the reason he suggested that the application be made with representation by the applicant that compliance with Section 355 would be met. First of all, it is the ordinance, so you either have to meet it or come back for a variance to get around the requirements. If Section 355, #4 says that each park must maintain at least 15% of its area as common land, exclusive of individual campsites, etc., is Mr. Phillips saying that the narrative differs from that 15%? Is there any place where the narrative tells the Board that the campground will have less than 15%? Mr. Phillips answered no. P. Monziona stated that being in compliance means you can have a greater percent, but not a lesser amount.

S. Miller stated that he would prefer a blanket statement from Mr. Phillips that it is going to be in compliance with Section 355 and just give value to whatever the Board wants to give value to in the application; his statement would supersede what is written in the application. Mr. Phillips made that statement; their campground complies with Section 355.

Mr. Phillips offered to go through the Special Exception criteria; he thought there may be additional details the Board might want. T. Morgan suggested that due to this being an important issue, the criteria could be read into the record.

Mr. Phillips stated that as to Item #1, they have submitted the plat.

As to Item #2, this is an appropriate location for the use because as indicated, this is a pretty large lot with a forested buffer that bounds the boundary closest to the abutters. The closest abutter is 900 feet away from the site. It offers a good marketable site people will enjoy using. It is in the rural residential zone; it is a unique parcel and it is something that is different in that it has waterfront access and privacy, as well as the long access road that sets it apart.

S. Miller asked if there have been any studies or camping/recreation park standards for decibel levels or times of activities. Every trade organization has standards; a couple of those come to mind and a statement that there is a trade organization and they have standards that would be abided by, and if they could be referenced for the Board, that would be appreciated. Mr. Phillips answered that he does not know of any industry standards; he knows that there will be quiet hours and that those will be addressed as part of the Rules and Regulations. A previously approved campground owner was at the Planning Board meeting and had mentioned that she would provide a copy of her rules and regulations for the Planning Board to base their decision on and compare those that are provided by the applicant here. He does not know that there are industry standards for noise, but he does believe that the intent is to have those rules and regulations vetted to the public at the Planning Board hearing.

S. Miller noted that Mr. Phillips had said that the nearest abutter was 900 feet away and asked if there is a buffer in there. Mr. Phillips answered that there is a forest buffer at the water's edge, and the abutter is across the water. S. Miller stated that the noise would carry right across the water. Mr. Phillips explained that he compares this use to one that is allowed in the zone anyway. For example, the minimum for a home is 2 acres; if there were homes in there, would this use create a higher noise level than might be created by homes. If that is the case, is that difference in noise level adequately addressed? Does the site itself through having a buffer and a separation distance address that incremental difference to the abutters? He feels that there is an adequate buffer; it is also important to note that what the abutters currently see here is a gravel pit that is intermittently used. As they grade the site, it will be dropped down lower so there will be berms up that are higher than the ones there now. The Planning Board will be doing a site walk of the site to determine what can be seen from the site and what can be seen of the site from abutters' properties. His guess is that the site will be visible; you will probably be able to see the campers from two or three structures across the water.

S. Miller envisions that if this is successful, and all the lots are full every Friday and Saturday and possibly Sunday, there will be a communal party, which would make good business sense. Essentially, that would be like having a party three nights a week outdoors and running as a party event business. You have the same type of noise issues; there could be others. A business plan would probably address that; if there was going to be a communal party for everybody three nights a week, that may or may not be an issue. Mr. Phillips answered that he could not say that would never happen, but knowing the owner he does not feel that is what he wants to encourage. The quiet hours would address that; the same could be said for a neighborhood having a block party every week. Again, he is trying to compare this to what would already be allowed in the zone and some of the other uses that are allowed without Special Exception that could be even louder.

P. Larochelle asked about the water usage and the possible impact on the town. Mr. Phillips answered that they have designed a septic system; the septic use is derived from the State formula which determines 60 gallons per site per day. That compares to 150 gallons per day per bedroom, with a two acre lot zone. They have been assured that the town has adequate water; the intent is to connect to town water. Water supply is constrained, but the state estimate, which he feels is a little conservative as the typical RV has a 60 gallon water tank that is not expended over the course of a weekend. Worst case scenario, the park would use 9,000 gallons a day.

As to Item #3, Mr. Phillips stated that factual evidence has not been found that property values in the area would be reduced due to incompatible uses because there are natural buffers and berms and grading. The gravel pit permit allows them to remove gravel closer to the abutters, so they will be re-vegetating that area; none of the sites will be within 75 feet of the water. They will not be going in doing any re-grading within that 75 foot zone. It does comply with comprehensive shoreline protection, but as far as property values go, their feeling is

that due to the landscaping and the existing buffers, property values will not be reduced when compared to other uses that would be allowed in that zone. Mr. Phillips stated that it is a seasonal use and this location is largely isolated from abutting property owners.

In reference to Item #5, Mr. Phillips stated that there is adequate sight distance and they have applied for a driveway permit from DOT to gain access off Route 28. There will be more information on that as it develops, but DOT will not approve a permit they think is unsafe. They will likely have a traffic engineer do a design for any improvements that are needed there; that is in the works.

For Item #6, as mentioned before, there will be town water and a state approved septic. Each site will have electrical, water, and sewer, there will be five additional lavatories to increase the comfort for guests.

S. Miller asked to return to the issue of value of surrounding properties, Item #3; he asked if the statement that values would not be reduced was a factual statement. Mr. Phillips explained that he is not an assessor so it would be outside the level of his profession to say with the level of certainty S. Miller needs. What he would do is to compare it to what is allowed in the zone or what is going on today. He asked the Board members what they would typically look for in terms of that item; would they look for a pre and post appraisal. S. Miller answered that in the past, appraisers have come before the Board with comps that it has not affected property values, or abutters have come forward with comments about property values either saying they don't care or saying that their property values are going to drop. He added that if a statement of fact is going to be made, he is going to assume that there is something to back that up. Mr. Phillips acknowledged that he did not come prepared with an assessor; he did not know that was a requirement for all the Special Exceptions. S. Miller explained that it is not a requirement, but it is part of the decision making process. Mr. Phillips replied that the only statement that he can make as a non-assessor is that the proposed use is likely to not affect property values as much as a gravel pit would, as it is currently operating with considerable gravel still remaining there. He is comparing to the existing use; some may argue otherwise, but he would ask the Board to make that judgment as to whether they would rather be next to a gravel pit or a campground that is seasonally operated.

With regard to Item #7, Mr. Phillips briefly read the Master Plan; some of the uses allowed by right are hotels, radio towers, energy facilities, etc., this use could be compared to a hotel, but with lower impact than a hotel. Lastly, one of the recommendations when the Master Plan was updated was that they are encouraging Boards to have the highest and best use of the land; to accept proposals that would best use the land. He would offer that this is perhaps the best use of the land, period. The site is sandy which means the grading can be flat and the site can be lowered down. It provides a good blend of access and quiet. It is near a water body that is not as heavily used as Winnepesaukee. In his mind, this is exactly what the Master Plan is encouraging the town to do.

S. Miller raised a question concerning Item #4; he asked if there is any factual evidence from the DOT or through research to validate that. Intuitively, they are looking at a significant increase in traffic and a significant increase in tonnage in a very congested parcel of space. On Route 28, if there are any pedestrians at all, they would be on that part of Route 28 as opposed to any other place. He asked if there was any factual evidence Mr. Phillips could present that there would not be an undue hazard. Mr. Phillips stated that he was deferring to DOT; they have adequate sight distance to enable that use. DOT will be looking at vehicular safety, so he would again defer to them. There is a Catch-22 here in that not often will people pursue all the studies before they know if that use can be allowed, so he would look to the Board to defer to DOT's judgment for vehicular safety and condition the approval on obtaining the DOT permit. He believes they satisfied all the concerns from the Police and Fire Chiefs. As far as pedestrian safety, again with the use as a gravel pit, there are trucks coming in and out all the time from the other entrance. There probably is going to be an increase in traffic, but the tonnage is probably on par. Due to the seasonal nature of it, the two will balance out. The tonnage has not been looked at; pedestrian traffic is unknown. Their intent is to provide evidence through the DOT permit.

S. Miller stated that he understands that the applicant is going for the Special Exception and asked Mr. Phillips if his primary purpose here isn't to find out where the real rats nests are in this operation so he can address those

before they go to the Planning Board. Mr. Phillips answered that his purpose in coming here was not to find problems; he thinks the Planning Board can do that. He needed to come here because of a use that is only allowed by Special Exception. He did acknowledge that S. Miller was onto something; he does have to apply for another Special Exception because it is a non-conforming lot due to inadequate frontage. They have to apply for a use other than a single family dwelling which in his mind is largely the same as this. If he felt that the Board has concerns that largely surround access, there is another approach they could use for access, but it is far less desirable for the town and for the owner. There is a strip of land they can not find owners for at this time, so there would be some legalities to solve in going over that strip. He is in a way using this as a gauge for that other Special Exception; he feels the Board can address this one tonight, but John (Dever) may feel differently. It was more a matter of efficiency.

P. Monziona asked about the frontage requirement and whether it is a requirement pursuant to Section 355. Mr. Phillips answered that it is not; it is a frontage requirement for use in that zone. Interestingly, it is the frontage requirement for the zoning boundary split right there; it is 75 feet they are actually accessing and in the rural zone it is 200 feet. They were going to address that and not just go for the 75 feet; they will be meeting the frontage requirement. T. Morgan asked why that would be a Special Exception rather than a variance; Mr. Phillips answered that they are proposing to meet the frontage requirement. P. Monziona stated that he knows that if there is a subdivision, you have to have so much frontage on a Class V or better road; he is not understanding what the frontage requirement is that is being referred to here, that they are going to have to come back. Mr. Phillips explained that a lot must have 200 feet of frontage. P. Monziona asked if these lots pre-exist the zoning.

J. Dever explained that along Route 28, when they originally built it, it was shifted onto another piece of land. At that point, it bisected another piece of land. There is a very narrow strip (Old Route 28) that was created when the state built new Route 28. Ownership of that narrow strip is unknown because the owner conveyed the main parcel but there is no record for the strip in question. P. Monziona stated that he understands that; he doesn't understand the ordinance that requires that lot at this time to have at least 200 feet of frontage on a Class V or better road. Mr. Phillips explained that it started with a provision in the zoning; they actually have another procedure they were going to go through had that little strip of land not been there. The provision in the ordinance says that if you own a non-conforming lot and wish to use it for something other than a single family residence you must obtain a Special Exception. P. Monziona expressed understanding.

Mr. Phillips explained that there is another provision that states that if you own adjoining pieces of property, you must merge them to make them more conforming; that is what they initially tried to do at the Planner's request. It was a good idea, but they found out that they don't actually have frontage on Route 28. P. Monziona stated that the requirement to have 200 feet of frontage for this particular lot exists because they seek to use it for something other than a residential dwelling. J. Dever answered that the requirement in the zone is that you need 200 feet of frontage on a rural lot; presently he has 33, which makes it non-conforming.

P. Monziona countered that the lot was created prior to the zoning; he realizes that is going to be a separate application, but as the Board goes through the criteria and tries to determine whether they have what they need, it is important to note that by granting a Special Exception, they may be creating a non-conforming lot. Presently that lot may not be non-conforming because it pre-exists zoning and it is not being used for anything. If someone wanted to put a house up there on all that acreage, he questions whether 200 feet of frontage would be required; J. Dever answered that it would not be. P. Monziona stated that once they grant the Special Exception for the use that is being sought, that may impose an obligation of a 200 foot frontage requirement, and therefore the Special Exception would be creating a non-conforming lot which begs the question of whether both applications should be brought at the same time.

Mr. Phillips left the Board with this thought; if the members could put themselves in the applicants' shoes, he is hoping there is a way that at least procedurally they can proceed with this and that to the extent they feel the

application is incomplete to any measure by not having information that can only be provided at a subsequent meeting, he asked that the Board consider conditioning it on the receipt of that.

T. Morgan asked if there were any further questions before Public Input; there were none.

T. Morgan requested input in favor of granting this application.

Vickie Howard, the owner of River Run Deli came forward. As she has stated at past meetings, she wants this thing in. Speaking for the small business owners of the town, she stated that there is a need to get people in; they have watched businesses open and close, and it is really tough. As far as traffic, they are going to go by there anyway, but they just keep going. They are in a recreational area; there is no industry in town. It is basically up to the Board members how they want the future of this town to unfold. We can stay the way we are; she has been in business for 11 years and is pretty lucky. She has a little history there that keeps her going, but she has seen a lot of people open and close. It is up to the Board what they want to see; if they add the 150 campsites there, that would make about 500 people; she would like to see more than the 10 people a week she feeds now. She needs more business; it is tough out there. This is a recreational area and that is a beautiful piece of property. As far as pedestrians go, the minute they walk off that property onto her property, they are on a sidewalk. They're not going to be walking on the road because the sidewalk goes clear across in front of her deli. She can see her property increasing in value; that is mostly all commercial there. There is another person there who is pretty excited, and he is thinking his property will increase as well. This can't get in fast enough. She understands the people who don't want it, but as a business owner, she wants this in there.

June Sanborn is an abutter across the river. She would be very happy to see this come in there because she is very unhappy with what is going on down there now. She is glad the gravel pit and the rock crusher are leaving; she thinks that if she tried to sell with the rock crusher going that would cut her value by 50%. The noise carried over the water is unbelievable. Also, there are dirt bikes over there often and that is an unbearable noise. There is also a lot of shooting that goes on; she does not know if that is legal or allowed by the town, but it goes on. She is in favor.

There was no further input in favor of the application.

T. Morgan invited public input in opposition to the application.

Sandra Esposito of 53 Pine Street stated that she is an abutter across the river; she owns 9ish acres and the campsite would be directly across from her property. She is opposed on a lot of levels. She has never been to a ZBA meeting and she has tried to educate herself as to why the Board would give a Special Exception to a project like this. Would it have to be for hardship? Would it have to be because they could not use the property as it exists as a gravel pit? She is concerned about the wetlands and the DES permits that were applied for; there have to be at least four applied for as she understands it. She understands it is going to bring 200 – 400 people into that area where there is a fragile wetland; there is a river that is going to be destroyed. She is hoping someone will look into that on the state level, too. There will be an impact on the density of population; there will be an impact on the wildlife of the area – there won't be any. She asked about milfoil and what the Alton Milfoil Committee thinks about this. The noise and lighting are going to be a big factor; no studies have been done on this. Mr. Miller brought up that none of these studies have been done yet. She can understand why Alton might think they want all these people to come and stay, but on the flip side they are going to destroy a very beautiful natural resource, and she does not think that is an appropriate use of the land. She would like to see an appraisal done on her property because she thinks this is going to lower the value of her house. That is secondary to the fact that the area is a treasure for Alton; that is the primary reason for her opposition. She thinks it will be harmful to the river and the wetlands. She lives there because of the peace and quiet; she wants to keep her property in its natural state and this will impact her property and the wildlife there. Alton will never be the same. She hopes the members consider this carefully because this will be a drastic change in the flavor of the town.

John Moore is a small business owner in Alton; he is also hurting for business. Having the environment change like it will because they plan to have a dock there for kayaks and boats; he would rather see the environment stay the same.

Tulah Fattio also lives at 53 Pine Street; as far as the motorcycles and bike riding, Mr. Carelton gave people permission to do that even though they and other neighbors had complained about it. It is his land and he can give permission for people to do that. It just seems like he doesn't really care about his neighbors, so that is another point she wanted to bring up. People can say one thing, but if they are really thinking about what is going on with the abutter; when you are on the river like that, there is a big echo. Also, with the hardship, if he can still use it as a gravel pit, how can he get an exception? If he wants to get an exception to the zone, if he can still use it as a gravel pit, she is questioning that.

Charlene Gordon of 12 Apple Yard Lane is concerned about the water line; she is confused that they want to run it under or through the river. Her concern is what that is going to do to the condition of the river. Also, use of the river is going to be increased; there are going to be 400 – 500 people over there. She does not know if there is going to be a specific area set aside to allow people access to the river; she has a safety concern about getting kayaks and boats into the river. She is also concerned about the environmental issue; the river is a delicate place where there is a lot of wildlife. It is not a big river and is very narrow; she feels there are some big environmental concerns regarding the river and what will happen if they put a water line across the river.

There was no further input in opposition to the application; public input was closed.

T. Morgan offered Mr. Phillips an opportunity to explain or rebut anything he had heard. Mr. Phillips stated that as far as the DES permits are concerned, they fully intend to get them. DES does a pretty good job of protecting their rivers and wetlands. They are proposing a very minimal wetlands impact considering the size of the parcel and the use. There is a minimal crossing; they have addressed turtle crossings and over-sizing culverts there. They are retaining significant habitat for raptors along the river and are actually setting aside three acres on the peninsula with no public vehicular traffic allowed. The public would have access but not through vehicular travel. He thinks they are doing quite a bit to protect wildlife; perhaps more than most to increase the protection over what is there today. They'll be setting aside some habitat for turtle nesting and so forth.

As far as milfoil, they do intend that some of the users will bring canoes and kayaks and some of those might have an electric motor on them; most will not have electric motors. Certainly there will be increased use; when people come into town they want to use the water bodies; this water body is not currently overused. There is a capacity on any water body; no one wants to see any water body overused. The question is what would be the real impact of this increase in use. Does it rise to the level of overuse – he does not believe it does. As far as destroying wetlands, he would just ask, because the criteria here as he understands it is asking if there are any factual statements made. He considers himself an expert in wetlands; they are having a very minimal impact on the wetlands and in fact there is a considerable setback from the wetlands. He does not think they are impacting wetlands. The storm water systems they are proposing exceed state criteria by a large margin. The one thing they can say about this property is that in terms of water quality, it will have an extremely low impact on water quality, both ground and surface water.

He thinks he can say that as a professional; they are going to have far less impact than would a single family residential use of the site. He asked that comments be held to the same standard he is held to when he makes statements. As to the appraisal, he asked the members if that is something they are typically looking for in all applications for Special Exception; he wants to know if that is typical or a judgment call.

He is unaware of anything concerning motorcycle riding; that is an owner item. Mr. Carleton has allowed snowmobilers to cross to the State trail system. If abutters really feel this is a make or break, he could probably close it up, which would be a shame for the snowmobilers.

He is aware there is a hardship criteria here for a Special Exception; he is not trying to beat that. Certainly Mr. Carleton can demonstrate that he is able to use that property as a gravel pit. He is not sure that is one of the items they are looking at here; he is looking at whether or not what is proposed in this zone on this property is acceptable.

As to the water line going under the river, they selected that approach because it has the least amount of impact. There are other approaches to get water lines across; there are companies that do large cuts across rivers and that is far more impacting than what they are proposing which is called directional drilling. It is a small diameter drill that creates a pilot hole then pulls the pipe along under the river. It is considered the least impacting approach to providing a waterline through a river way; you don't need a wetlands permit for it. It is not cheap to do this but they are going to extend that well beyond the forested buffer; they are keeping a buffer along the river for the abutters rather than just coming out on the edge of the river, cutting the trees, and running an open trench. The owner has agreed to keep it underground until it pops up behind the trees so he can save the trees to provide extra buffer for the abutters. Mr. Phillips added that they have not secured the easement; they are talking with the owner should they need to secure the easement on the other side of the river. If they don't secure an easement to go underneath a portion of their property line which extends out into the river, they can directionally drill around that if they need to.

He does not see an increase in the use of the river; it is a great resource and an asset to the town. There are taxes derived from the homes on it. It can also be an asset in the complementary use seasonally, for six months out of the year, where you can generate some retail in the area without bringing in school children and so forth. In his mind, this is really the best use of the land and it will have a positive financial benefit to the town without the associated expenses the town might incur from another use of the property.

P. Monzione asked about the concerns about noise; he asked if Mr. Phillips can point out on the photograph where the gravel pit is operating currently. Mr. Phillips indicated the gravel pit on the photo. P. Monzione explained that he just wanted to get a feel for where that is located and the impact on the neighbors; he clarified that there are trucks going in and out and a rock crusher. Mr. Phillips could not confirm that there is still a rock crusher there at present.

P. Monzione asked if there are copies of the Department Head comments; he wanted to see what Fire and Police had to say.

S. Miller asked what the estimated tax impact is for Alton; Mr. Phillips asked if he is asking for the direct impact of this use versus the gravel pit. S. Miller asked if there would be an increase in tax revenue to the Town of Alton, and if there is, to what extent. Mr. Phillips did not know. S. Miller asked how much of an investment Mr. Carleton is making in this operation. Mr. Phillips could not say because not all of it is approved; he would estimate the water line alone at a couple hundred thousand dollars. S. Miller asked about the target opening date relative to granting of approvals; Mr. Phillips stated that Mr. Carleton is optimistic that he will be able to construct it this year, but that may not be the case. S. Miller asked Mr. Phillips to state his credentials, as he had claimed to be an expert in wetlands. Mr. Phillips stated that he is an expert witness for National Discharge and Elimination System permits, which are the DEA permits related to that. He is a certified professional in erosion and sediment control, and his experience is over 15 years doing watershed management, storm water management designs and various things like that. S. Miller asked if there are any studies concerning the environmental impact and whether this is harmful to our resources. Mr. Phillips answered that he does not have anything in writing; when they obtain the permits, he believes the permit process through DES is thorough and that they will have to obtain an Alteration of Terrain permit. This project will exceed DES standards for storm water treatment. The RV's are self-contained. He would ask that the permits themselves be presented as evidence. He would be happy to address other concerns if there are specific ones.

S. Miller again brought up the business plan, stating that it would address not allowing people to bathe in the river, not creating excessive sandy beaches in the river, etc. The business plan by nature has to address all these

because the business plan creates the rules and regulations that guide the customer; frankly with something like that in front of him, he is betwixt and between protecting the citizens of Alton and significant economic activity and additional revenue. Although they have had verbal testimony, they have had no factual information to make it easier, at least for him. Mr. Phillips answered that he thinks the best thing is that if there are concerns, he can address those concerns verbally but indicate that the Rules and Regulations of the campground will be the tool that is used to ensure that they are followed. He is concerned that a business plan would consistently fall short in addressing concerns they do not yet know. They could provide a business plan, but he is thinking to himself that the Rules and Regulations would be more binding and have more impact on the users. He does not know if there is a concern about impacts from the owner or more so from the guests that come. The Rules and Regulations would certainly address the guests and what they have in the record as well as the approvals through the Planning Board and a very detailed set of plans would likely address the potential impacts that might come from the owner if he was to deviate from those. There is also the general sense that we all have to follow the rules; you could list all sorts of rules that may never be broken.

S. Miller asked if the capital investment would be more or less than \$3,000,000; Mr. Phillips guessed it would be less than that.

T. Morgan asked if members want to deliberate before proceeding to the worksheet. P. Monziona commented generally that some of the information concerning business plans and what they are investing may be proprietary. If he were the applicant, he would tell S. Miller it was none of his business; he is not sure it is part of the criteria. The other thing he wants to say is about the concerns of some of the abutters; he stated that the criteria the Board looks at is very limited on Special Exceptions. It is all laid out and they are limited to that. Many of the concerns that are being raised by the abutters are more appropriately addressed at the Planning Board meeting where all the details of how things have to be done are addressed. An application for Special Exception as contained in the Table of Uses is a very limited thing for this Board. There are very few criteria they get to look at, and most of the real deal is hammered out or determined at the Planning Board level and that will give the abutters a further opportunity to address some of their concerns.

P. Monziona pointed to Mr. Phillips' comment that this is a Catch-22 situation; whenever you have a situation where the applicant has a decision to go out and do all these things and complete them and they are very time consuming and expensive, only to then come before the Board and be turned down because of one thing they did not get. Many of the things he would like to see answered are left unanswered for the Board; he understands why the applicant does that, because it is expensive and time consuming. At the same time, it means that the Board is given very limited information, and there are many things about this application that are still up in the air and yet to be determined. Sometimes the way to get around that is to impose a number of conditions on it, but he sees problems with septic, water supply, roadway entry, Rights of Way, the creation of another non-conforming lot requiring more footage. To him, he is going to have a lot of conditional things that are going to be necessary because the applicant just has not chosen to do those, which in many ways makes this more difficult.

T. Morgan agreed; the criteria for a Special Exception are fairly cut and dried; hardship is not one of them, as the Board is well aware. However, they are the criteria that are set forth in the ordinance and by statute. T. Morgan stated that there is one criteria here that concerns him, and that is the one P. Monziona brought up regarding the fact that if this Special Exception is granted tonight, the Board might be creating a non conforming use by that act. There was a case that was scheduled for earlier this evening but was continued which in some ways analogous in that the act of a Board had created a non-conforming use, and it had been non-conforming for a while. T. Morgan went on to explain that he is not sure he understands that the little strip of land, if the owner can not be found or if conveyance can not be found, he does not understand the Special Exception would cure it, and it would not require a variance to cure the issue. Either way he is concerned that granting this Special Exception would be creating a non-conforming use, and what P. Monziona said was well taken; perhaps the way to address this would be to put lots of caveats and special requirements on the approval. For example, with regard to the issue that concerns him, if they can't acquire the other Special Exception or Variance that is

required to cure that small portion that any approval given here tonight be voided, just so this Board has not created a problem by granting an exception. A number of other things like DOT approval and DES permits should probably be conditions of an approval as well. As P. Monziona had said, a number of the things the abutters were objecting to are unfortunately outside the purview of this committee and fall under the authority of the Planning Board; they are the ones who will set the rules of governance and the rules for how the campers behave and what use is to be made of the natural resources. If he were to go forward, he would want to put some conditions on this exception.

### **SPECIAL EXCEPTION WORKSHEET**

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

2 – S. Miller stated that the specific site **is** an appropriate location for the use. It is landlocked and it is next to a river. There is access to a major road way. There is a huge customer base for a town that derives a significant amount of revenue from tourism. It is in fact an appropriate location. P. Larochelle and T. Morgan agreed. P. Monziona would agree from the perspective that it is a rural open space, but he does not agree that it is an appropriate location without making it conditioned on the fact that the location is in conformance with all other zoning ordinances and requirements. That would be a conditional agreement; it is an appropriate provided that by turning it into a campsite that does not turn it into a non-conforming lot. P. Monziona agreed with conditions.

3 – P. Larochelle stated that factual evidence **is not found** that the property values in the district will be reduced due to incompatible uses. T. Morgan acknowledged the concern voiced by abutters that their property values may be affected by this, but no factual evidence in the form of appraisals was presented showing that there would be an impact. P. Monziona agreed. S. Miller agreed; all evidence presented was opinion or intuitive; there was no factual evidence.

4 – T. Morgan stated that there **is no** valid objection from abutters based on demonstrable fact; there were objections from abutters but most of them dealt with things outside the purview of this committee, and there was no demonstrable fact on the criteria that the Zoning Board is required to consider that creates a valid objection. P. Monziona agreed and added that he totally appreciates the comments of the objectors and thinks they were well taken. He will say that for those same reasons these are things that are going to have to be addressed at the Planning Board level when they get into the specifics of the use of the land and how things will be constructed. He also pointed out that currently there is a gravel pit being operated there and the Board heard some evidence from an abutter that it is a noisy operation that digs into the land and is, in his opinion, a worse use of the property from an environmental standpoint than would be a campground. The zoning ordinance also permits lodging, a lumber yard, recreational areas not for profit, riding stables – these are things that would be permitted and no one would even have to be here for an exception. S. Miller stated that there **is** a valid objection from abutters based on demonstrable fact; the very fact that there has been testimony that the people living on the river are very familiar with how noise travels and they understand that noise travels across the river. They can extrapolate that to some greater number – 2, 3, 5, or 500. Also, there is a valid objection concerning lighting because lighting does not exist right now. If they prefer the darkness at night, the fact that there is going to be light instead of darkness is a valid objection. There has been testimony that there would not be a significant environmental impact; he accepts that on its face, from an expert. There may be a valid objection from abutters in the significant increase in boaters or rafters on the river because at this point they are satisfied with the lack of boaters or rafters

on the river and it is their personal feeling that if they saw between 1 and 50 people on the river, that would bother them. That is a subjective decision, and he understands that. P. Larochelle agreed that there is no valid objection from the abutters.

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; again, he makes that determination only on the condition that all the requirements of Ordinance 355 are met strictly because 355 addressed off-street parking, for example. Also, on the condition that the access road that is going to be used for this proposed campsite is the one that has been pointed out tonight as the one they want to do but for which they do not have the legal right to pass. They also don't have DOT approval or traffic studies; the Police Department expressed a concern about the traffic impact on Route 28. The only way he can agree that there is no undue nuisance or serious hazard to pedestrian or vehicular traffic is to condition his agreement on the requirement that the Police Department concerns be met; that the DOT concerns be met; that all the legalities are addressed. S. Miller stated that he believes there **is** undue nuisance to pedestrian and vehicular traffic. Until he sees proof that all these issues have actually been addressed, he would not change his mind because on a best or worst case scenario you're going to have 150 cars, 500 people in a very small area for at least half a season. He would agree that he would be open to addendum and would be willing to change his mind, based on an addendum. P. Larochelle agreed that there is no undue nuisance or hazard contingent on dealing with the concerns of the Police Department and DOT. T. Morgan agreed and indicated that he would expect DOT approval of access on Route 28, and the creation of proper access that gets 200 feet of frontage, whether that requires a Special Exception or a Variance to accomplish.

6 – S. Miller stated that adequate and appropriate facilities and utilities **will** be provided to insure proper operation of the proposed use or structure. This is why he was asking for the capital investment; he wanted to hear a significant number to show that there was going to be a significant investment in large capital improvements such as utilities, facilities, etc. If this were going to be run on a shoestring; for instance, \$200,000 for the water line and \$700,000 for the whole operation, that would have affected his decision. P. Larochelle agreed. T. Morgan agreed; he thinks that Section 355 in the ordinance sets forth some of the requirements and that the applicant's proposal meets those requirements. P. Monziona agreed but only on condition that the requirements of 355 are met, and that the DES requirements are met, and that a proper water supply and septic are obtained and met. Right now, they don't know what the water supply is, but as long as the approval is conditioned on obtaining appropriate water supply and other utilities, they can agree that adequate and appropriate facilities will be provided.

7 – P. Larochelle stated that there **is** adequate area for safe and sanitary sewage disposal and water supply. The water supply could be an issue; he believes that it should be looked further into to see what the impact would be on the town. It should be laid out as to what the actual water usage will be. T. Morgan agreed that there is adequate area for safe and sanitary sewage disposal; they would just require the permits for the septic and any DES permits because of the proximity to the water. P. Monziona stated that again this decision is being made in a vacuum because the Board has not been presented with a specific plan as to where the septic will be, what the septic design is, how many facilities there will be such as toilets or outhouses, or what the water supply will be other than that the applicant intends in the future to have town water and will be obtaining septic approvals. P. Monziona agreed to this, but only on the condition that all of those things are achieved. S. Miller 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; what is being considered here is a Special Exception which means that the drafters of the ordinance contemplated that this is something that is appropriate if proper application were made and proper disposition of the requirements was created. The intent of the Master Plan in a business like this in an area like this is consistent. P. Monziona agreed without hesitation or problem; the proposed use is consistent with the spirit of the ordinance and the intent of the Master Plan. A campground is consistent with the Master Plan. S. Miller agreed that the proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan; he referred to the 2007 Alton Master Plan which encourages the development of inns, restaurants, retail shops, marinas, and other water dependent uses. P. Larochelle agreed that the proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan.

Prior to voting on this, T. Morgan asked for specific conditions to be attached to the approval.

1. T. Morgan suggested that the applicant should be required to acquire another Special Exception or Variance to keep this from having created a non-conforming use. If that is not done, any approval granted here tonight would be voided.
2. DES permits would be required
3. DOT approval of access onto Route 28 would be required
4. Access with frontage and a road built to town standards. The applicant has represented that they will merge several pieces of property to create the requisite access and frontage.
5. The applicant needs to go before the Planning Board to set the Rules of Governance for the campers' use.
6. The concerns as stated in the submissions by the Fire Department need to be met; they deal with adequacy of access.
7. The concerns of the Police Department also need to be met; those overlap with appropriate access onto Route 28.
8. The campground must meet all the requirements of Section 355 of the Alton Zoning Ordinance.
9. Appropriate water supply and septic as required by the Town of Alton and/or the DES, State of New Hampshire also be met.
10. Whatever legalities need to be achieved such as conveyances or Rights of Way or otherwise to use the road that was represented to be the road of access for this campground also needs to be obtained as a condition for the granting of this Special Exception.

S. Miller asked J. Dever if any governmental agencies had been missed; J. Dever stated that it is mainly DOT and DES. As he sees it, acquiring those permits will cover everything. This would encompass wetlands issues, alteration or terrain, etc. S. Miller asked if it would make sense to limit the units to 156 units. P. Monziona stated that the only other condition in a Catch-22 application mandates that there is an extraordinary number of conditions that go along with a motion to approve. He thinks his condition to address that would be that the approval is conditioned on the application as presented which references 150 sites, as well as the description provided in that application as to the area of this campsite; it is described in terms of frontage and all of its dimensions were referenced. That is the campsite on which he made his determinations of agreement or non agreement on these criteria and what was based on the testimony by the applicant as to the size and extent of this campsite. J. Dever explained that one of the statements he uses on the Notice of Decision is that it is based on the representations and testimony of the applicant provided to the Board by the applicant. S. Miller asked if by strictly following Section 355 the number of units were to increase from 150 to 300, would the

applicant be permitted to have 300 units. J. Dever stated that it was a non-issue; the application is for 150 units, so that is all he can have. That also lands squarely in the purview of the Planning Board.

**P. Monziona made a motion, based on all of the conditions articulated on the record and in light of the vote of the Board going through the criteria, that the Board approve the Special Exception for Case Z11-06. P. Larochelle seconded the motion which passed without opposition.**

T. Morgan spoke to Mr. Phillips, telling him that he has a rather vague approval based on a rather vague application; it helps to get around the Catch-22. Mr. Phillips stated that he was under the impression that when a Special Exception was obtained for a use, it is by definition creating a non-conforming use. A campground in that zone would be non-conforming. J. Dever answered that it is a use allowed in the zone by Special Exception. The non-conformity that had been referred to was concerned with the lack of frontage.

## **VII. OTHER BUSINESS**

A. Previous Business: Adoption of proposed amendments to Zoning Board By-Laws

**P. Monziona made a motion to adopt the proposed amendments to the Zoning Board By-Laws as previously reviewed, amended, corrected, and read. S. Miller seconded the motion which passed with all votes in favor.**

B. New Business: None

C. Minutes: April 07, 2011

Approval of minutes was tabled to the next meeting when there are more members present.

D. Correspondence: None

## **IX. ADJOURNMENT**

**P. Monziona made a motion to adjourn. S. Miller seconded the motion which passed without opposition.**

The meeting adjourned at 10:30 p.m.

The next regular ZBA meeting will be held on June 2, 2011, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau  
Recorder, Public Session  
(not in attendance – transcribed from tapes)