

ZONING BOARD OF ADJUSTMENT
WARNER, NEW HAMPSHIRE TOWN HALL, LOWER LEVEL
MEETING MINUTES OF JANUARY 13, 2016

Members Present: Janice Loz-Chairwoman, Rick Davies, Andy Bodnarik, Kimberley Edelmann-Vice Chairwoman, Gordon Nolen, Alternate Howard Kirchner

Members Absent: Alternates Corey Giroux and Beverley Howe

Land Use Secretary: Lois Lord

1. OPEN MEETING and ROLL CALL

Chairwoman Loz opened the meeting at 7:02 and roll call was taken.

2. APPROVAL OF MINUTES

Meeting Minutes of December 9, 2015 – Chairwoman Loz brought the meeting minutes forward for discussion and approval. Andy Bodnarik noted a few typos.

Andy Bodnarik made a **MOTION to APPROVE the minutes** of December 9, 2015 as amended. Gordon Nolen **SECONDED** the motion. **MOTION PASSED by roll call vote 5-0-0.**

3. REHEARING OF ZBA 2015-03

Property Owner/Applicant: Melissa & Michael Biagotti

Property location: 393 Pumpkin Hill Rd, Map 15 Lot 15, Zoning District R-3

Special Exception: Zoning Ordinance Article VII, Provision B, Use Table Retail and Services No. 3.

Vice Chairwoman Kimberley Edelmann stated that she would be recusing herself from the board for this rehearing. Chairwoman Loz asked Howard Kirchner to sit in for Kimberley.

A. Review and Accept/Reject Application

Janice noted there were some new documents relative to the case that had just been received late this afternoon. These were passed out to the Zoning Board of Adjustment members. Gordon Nolen stated they would need some time to review the documents before beginning discussion. Chairwoman Loz said the board members would be given time to read the documents which the board did until 7:19.

Chairwoman Loz explained that the board would now go through the process of accepting or rejecting the application and gave the details of the application. She said she would like the board to specifically pay attention to whether or not they feel the Use Table designation is appropriate for the Special Exception application.

Howard Kirchner said a document from the applicant they had just been given dated January 8th, is asking the board to reconsider the decision to grant a rehearing. He asked if that fell within the scope of today's meeting. Janice stated the board needs to discuss that and it's come after the fact and should have been received in December before they decided whether to rehear the case or not but she wanted the board to be aware of it in case the applicant wanted to discuss or reference it this evening. Rick Davies noted they had made the decision, advertised it and noticed the abutters and he doesn't think the appeal process is part of that. He agrees that it should have been brought up earlier.

Janice explained that the public would get a chance to participate in the process and the first thing the board will do is accept/reject the application, then they will open the Public Hearing and hear from the applicant, abutters and the general public. After which the meeting will be closed, there will be no further communication with the public and the board will deliberate and make motions.

Rick Davies asked Chairwoman Loz on the Item 3 Retail and Services part of the Use Table if her question was if that was appropriate? Janice replied yes. Rick said for a Special Exception whatever is being asked for has to be

specifically referenced and on the application *Eating and Drinking Place*, is specifically indicated and there is wording that elaborates that. Rick noted the reference to Article VII, Section B refers to the Use Table and there is information in question A which could be interpreted that is specifically what they are asking for. He stated there is embellishment on the purpose use explanation which may or may not be related to the specific Special Exception. If there was additional outside of the Special Exception territory it might be something that would warrant a Variance if it was not included in the Use Table.

Chairwoman Loz noted there was some question when they decided to rehear it as to whether or not that was an appropriate designation and whether it should be a Variance or a Special Exception. Janice asked Rick Davies if he believes the Use Table definition is appropriate and he replied, if we're going to accept the application as an eating and drinking place for Special Exception, it's appropriate. A question might be that there's enough embellishment that the eating and drinking place gets convoluted as that's not exactly what's being asked for and that eating and drinking would be up to interpretation by the members of the board. Rick said a cleaner submittal might have been asking for a Special Exception and a Variance at the same time. He talked about uses described in the application that aren't literally eating and drinking, if they are ancillary to eating and drinking and that a gathering for whatever purpose is opened ended.

Andy Bodnarik brought to the boards attention to a timeline that had been included in their meeting packets. One of the bullets was that the Planning Board made an interpretation of the Use Tables and the consensus seemed to be that the applicant should seek relief from the Zoning Board of Adjustment and the other issue is there is no definition in the ordinance itself for eating and drinking place. The reference on the Use Table is what we have to go on. Chairwoman Loz was in agreement.

Howard stated regarding the eating and drinking aspect of it, he saw no reason to not hear the case. He questioned if the board were to deny hearing this situation because of the lack of asking for a variance as well, where does that leave the applicant? Rick said the applicant could reapply, the Special Exception could be approved as submitted, and there could be an interpretation that a variance is needed for something else associated with the Special Exception. Rick continued, if we accept the application as complete enough to proceed tonight that would imply that we think there's enough information to proceed relative to the Special Exception that's asked for.

The Zoning Board of Adjustment discussed that if they approve something they might have criteria as to why it was approved and conditions attached to it, that the definitions on the application were thorough, complete and well understood, and the possible verbiage of a motion to accept.

MOTION – Rick Davies made a motion to accept the referenced application of Michael and Melissa Biagotti for 393 Pumpkin Hill Rd, Map 15 Lot 15, Zoning District R-3 requesting Special Exception for eating and drinking place per the Zoning Ordinance Article VII, Provision B, Use Table Retail and Services No. 3 Eating and Drinking place not including drive-in establishments. Motion was seconded by Gordon Nolen.

Andy Bodnarik noted the Use Table No. 3 was not included in its entirety in the Motion. Andy moved to **amend the motion** as such. Amendment is included in motion above. Rick Davies seconded Andy's motion. The Zoning Board of Adjustment voted on the amendment with a roll call vote resulting in **5-0-0**.

The Zoning Board of Adjustment voted on the motion with a roll call vote resulting in **5-0-0**.

B. Close Meeting and open Public Hearing

Chairwoman Loz opened the Public Hearing at 7:39 and noted that the applicant would be given a chance to speak first after which the public would speak. Janice asked the applicant Missy Biagotti to present her application.

Mrs. Biagotti asked if she should read it verbatim and if there are additional comments should she add them now or wait? Rick Davies stated the application form is intended to help get the questions out and how it's presented is up to them and to the chair; there is no set rule in how to do it which Janice agreed with.

Mrs. Biagotti presented her application as follows:

My name is Missy Biagotti, the address is 393 Pumpkin Hill Road also referenced as Pumpkin Blossom Farm in the application. What I'm requesting is to operate the property as an eating and drinking place to host professionally catered functions such as wedding, dinners, luncheons and things of that nature. For the benefit of everyone here I'd like to go through more details but will jump to the question on the applications. Our intended use is specifically identified in the Town of Warner Zoning Ordinance Use Tables under Retail and Services, Use No. 3 as one eligible to be conducted with a special exception. It's clear that the intention is certainly to protect the public in any location where eating and drinking will occur. By partnering with local, professional catering companies or other types of service providers we would like to create an opportunity for onsite preparation of easy to prepare foods and hors d'oeuvres and also provide refrigeration needs and a staging area where caterers can heat and plate pre-cooked meals.

- A. We are confident this requested use will prove desirably to the public convenience for a number of reasons. My application cited the Master Plan from 2011 summarizing some findings of a community survey as well. We hope to utilize some of the local businesses to provide goods and services in order to prepare the venue as well as to operate it on an ongoing basis.
- B. The requested use will not impair the integrity of character of the district but rather, I believe quite the contrary. We will not make any outward structural changes to the property other than improvements. It will still look and essential act as our residential home. Our improvement plans would include extensive landscaping, restoring rock walls and adding vintage lighting and things of that nature to enhance the property hoping to attract people who would like to have an event there.

Missy said she could go into detail about this but would prefer to address some of the more pressing questions rather than going back over the application as she presented initially. I don't want to lose time going back over what is written and what you've already read.

Mrs. Biagotti said she thinks the important question that you all were asking was pertaining to the use and there has been a lot of discussion about whether or not it fits into that use and a lot of discussion on the board to where that information comes from and how you make that determination. I looked at the local level and there's nothing provided by the town of Warner. I looked at a county level and there's no licensing or authority on the county level that provides any definition there. I went to the state level, Department of Health, and they do have a licensing department that I would fall under. I went to them for guidance in determining what type of licensing requirements I would need. So my description of what I'm trying to do as events was meant to isolate it to a particular function with a start and a stop time, a private function rather than it being open to the public. It was my intention to call it an event to isolate it to a particular function rather than calling it a public restaurant.

That wasn't to liken it to a Powwow, Fall Festival, and the things that were discussed. It was my intention to give a very honest accurate description of what would be there versus open it up to huge public events so I'm hoping that will give clarification in terms of what I'm calling event. It's an isolated dinner or luncheon.

The last time I was here we discussed the application on a state level and there was a lot of discussion of whether or not that description of an eating and drinking place was accurate. Since that is the only licensing requirement I have that is the definition I used but I took it a step further and looked to some of the other municipalities that have the same issue. They have a code administrator in larger municipalities to determine if it fits into this category. I pulled one from the Concord code of ordinance; they have a very specific way in which they determine whether or not it fits into a use. In reaching their decision, the Code Administrator considers the similarity of the proposed use and other uses included in the table, in terms of its characteristics, its function and its intensity of use. The Code Administrator can also consider the similarity of proposed use to that developed by the U.S. Department of Labor Standard Industrial Classification system. When I went to that classification system and searched for eating and drinking places, which is a very unusual term, it is a very specific industry category called Major Group 58 Eating and Drinking Places and there is a very long list of eating and drinking places that fit

into that category. Missy continued, the description of this major group includes retail establishment, selling prepared foods and drinks for consumption on the premises. The intent is for it to be a place where people are eating and drinking so this category exists at the federal level and my guess is that our Use Tables in the town of Warner came from somewhere. When you research other categories, the exact term will pop up such as Amusement and Recreation Services. There is a list of 110+ things such as circuses, day camps, fireworks and fairs, none of which I asked for or applied for. I know there was some discrepancy as to whether or not it fits into this category or that. These categories exist; they match the Warner Use Tables and have been around since the 1930s. My guess is the language originated from somewhere and it's a pretty good indication that it includes more than just a public restaurant.

Mrs. Biagotti continued, on this list is an item called Drive-in establishment so my guess is what Warner has adopted this category and excluded that. That's the category I'm asking for and I'm guessing that's the one I fall under. That would be a source of information rather than everyone's interpretation of what it could include. It's not only something at a federal level that other municipality's look to for guidance in trying to determine whether or not a use fits into a category. It's a very important document because it seems to be the core issue. If I could give that to the board for your consideration at some point I think it's very important.

Chairwoman Loz said that they would make sure to include it with the minutes and the packet that goes with the minutes. If anybody wants to look at it or reference it at some point please say so. Rick Davies suggested that if the board is going to put it in the minutes they should get a copy.

The document referenced, United States Department of Health Standard Industrial Classification is as follows:

Description for 5812: Eating Places

Establishments primarily engaged in the retail sale of prepared food and drinks for on-premise or immediate consumption. Caterers and industrial and institutional food service establishments are also included in this industry.

Automats (eating places), Beaneries, Box lunch stands, Buffets (eating places), Cafes, Cafeterias, Carry-out restaurants, Caterers, Coffee shops, Commissary restaurants, Concession stands prepared food (e.g., in airports and sports arenas), Contract feeding, Dairy bars, Diners (eating places), Dining rooms, Dinner theaters, Drive-in restaurants, Fast food restaurants, Food bars, Food service institutional, Frozen custard stands, Grills (eating places), Hamburger stands, Hot dog (frankfurter) stands, Ice cream stands, Industrial feeding, Lunch bars, Lunch counters, Luncheonettes, Lunchrooms, Oyster bars, Pizza parlors, Pizzerias, Refreshment stands, Restaurants, Restaurants carry-out, Restaurants fast food, Sandwich bars or shops, Snack shops, Soda fountains, Soft drink stands, Submarine sandwich shops, Tea rooms, Theatres dinner.

Description for 5813: Eating Places

Establishments primarily engaged in the retail sale of alcoholic drinks, such as beer, ale, wine and liquor for consumption on the premises. The sale of food frequently accounts for a substantial portion of the receipts of these establishments.

Bars (alcoholic drinking places), Beer gardens (drinking places), Beer parlors (tap rooms), Beer Taverns, Beer wine and liquors: sale for on-premise consumption, Bottle clubs (drinking places), Cabarets, Cocktail lounges, Discotheques alcoholic beverage, Drinking places alcoholic places, Night clubs, Saloons (drinking places), Tap rooms (drinking places), Taverns (drinking places), Wine bars.

Janice asked if there was anything else Missy would like to bring to the Zoning Board of Adjustment. Missy said I'm trying not to rely too much on the first hearing but it doesn't go away from our memory. It probably would be beneficial for some of the people who work here but for your purposes in making a decision I feel it's more important that I address some of the additional questions that had come up as a result of the last meeting. Chairwoman Loz stated that was a good idea and if there was anything else that needs to be added or anything new, that is something we want to hear.

Rick Davies said to clarify, we're looking at this hearing and everything we need to hear on this case needs to be in this meeting one way or the other and referencing back to the other meeting might not be a good thing to do. Chairwoman Loz

said she thought what Rick was getting at was that this is a rehearing from the beginning and we can't reference it as if it was heard before.

Mrs. Biagotti asked if she could assume that all the restrictions and everything that came up in the first hearing are now off the table. Janice replied, yes because we would be doing a whole new motion for this hearing and anything you want to add do so but be careful not to refer to it as being said in the previous meeting. Gordon Nolen asked if Mrs. Biagotti had a copy of the Motion to Rehear and Chairwoman Loz asked the Land Use Secretary if she had given Missy a copy to which Lois replied yes. Mrs. Biagotti stated she had not been noticed on any of the meeting notices or anything else. Chairwoman Loz asked Lois Lord if she had noticed Mrs. Biagotti on the rehearing. Lois stated she had checked with NH Municipal Legal who said it was not a requirement but could let the applicant know as a courtesy which she had done.

Andy Bodnarik verified that Mrs. Biagotti had received a copy of the original decision and she said she had.

Missy said before she felt there was an opportunity to make a presentation on the merits of her application. This time around she feels like there is that obligation but also to address issues that have come up since the hearing and in doing that it's a very open ended thing unless I know what the issues are. I stand by my original application and am confident that it's an accurate description of what we would like to do. Whether or not some of the issues brought up in the Motion for Rehearing are valid, that is another story and I don't know whether or not the board wants to address them or if they are issues with the board. It is difficult for me to address it not knowing the grounds for the rehearing.

Rick Davies said it might be a two part thing, any questions we have as a board, and the abutters and public might have some questions to bring up and it will evolve. Missy said in going back to the application she wants to reiterate that it's a fair and accurate description of what they're hoping to do and she was hoping that providing the definitions would help the board to see that what she's asking for is exactly indicated in the Use Table. But despite those definitions I think the most compelling thing is that I'm bringing to you an idea that is not brand new but existed and was operating at my property for many years. I know during the first hearing it was brought up that there was maybe an opportunity to contact the previous owner's son which I did to try and clarify what the process was. I think that's the most compelling thing at this point, that another board in another time reviewed this, it was granted, I brought it to this board before, it was granted on its merits. So without elaborating and going into other details about what could potentially happen on the property, what I requested is what I believe will occur there, not anything above and beyond that.

Chairwoman Loz asked if the Zoning Board of Adjustment had any questions. Rick asked about the approval of a board in the past and that it was his understanding that the records were looked through by the current secretary and previous secretary and nothing was found relative to a decision. He said they have had the Zoning Ordinance since about 1969, the Use Table evolved in that vicinity but if it was approved by a board in the town here there should be a record of it somewhere and if there's hearsay about it being approved that may or may not be appropriate. There's also the question of when is the last time it was used in that manner which from what I'm seeing dates back in the 1980's which is 25 or 30 years ago and since then it might not have been used in the manner which might have some bearing.

Mrs. Biagotti said she wasn't trying to say since it was approved before it's grandfathered I was just saying it for the historical information. In the last hearing there was some question about contacting some of the previous owners to find out if that process had occurred for whatever reason. I don't know why it was referenced in the last meeting as being potentially helpful in determining whether or not this use could exist again. Rick Davies asked to re-ask the question and said you are of the understanding that you need to have a Special Exception to which Missy replied, I am there is no question. I'm here asking for it because there is no record it exists and on the merits of my own application and am not asking for it to be grandfathered because it existed before. But to show that it did exist, it did operate and it functioned and coexisting in a residential rural area in the past probably with very few restrictions would be my guess, without any parking requirements or what have you. Even though paperwork doesn't exist for it being approved, and I'm not looking to have it slide through on those merits, my point is that a board looked at this exact function before and approved it to exist in this R-3 zone. I found a copy of Mrs. Hick's obituary which notes she ran Pumpkin Blossom Farm in Warner a popular spot for wedding receptions.

Chairwoman Loz made the point that it may or may not have been approved but it was certainly used. She asked Missy how long she has had this property and she replied 10 years. Janice asked about the barn and if they have used it for anything other than events. Mrs. Biagotti replied they have used it for family functions. Chairwoman Loz clarified it had not been used for events in a business sense and asked about the barns location on the property and where the closest house is. Missy said she was not sure. Janice asked about foliage and trees on the property and Missy replied there is a large tree line that covers the front and the side and clarified by front she meant road frontage and the property line behind it. Janice asked if there were trees around the barn and was told there are some trees in front of the barn. Chairwoman Loz asked if Mrs. Biagotti intended to have all the functions in the barn to which Missy replied no and referred to her original application and the restrictions put on the Special Exception and that she fears the word event has evolved and that word can mean lots of things which people are concerned about such as fireworks. She said in using the word event she is trying to isolate it to a private function. Janice asked for her definition of a private function. Mrs. Biagotti answered, a start and a stop time, she would know the exact number of people attending to which Janice asked what the approximate number would be. Missy answered it could be a luncheon of 15 to a cap not to exceed 125 but probably much smaller. Missy stated her concern with the restrictions on the Special Exception she was granted was that the view of the board and the concern of the abutters was that all of the events were going to be large. It's her clear understanding that it was limited at the previous hearing to 125 or the capacity of the barn, whichever was less. Missy said if she is going to invest in a commercial kitchen, she doesn't want to have a restriction on it to not be able to use it 4 days a week when she can have a small catered luncheon on a Tuesday afternoon.

Chairwoman Loz asked if the food would be prepared off site and brought in or would it be prepared in the home? Mrs. Biagotti said not necessarily and again, this was confusion in terms of the use versus the business practice. I cannot make money renting my property; I have no intentions of ever renting it and handing over the keys to someone. This was intended to be a fulltime operation run by me. I'm not a chef and my intention was to partner with caterers. I questioned the Department of Health about whether or not I would be required to have a license in that manner. They gave me some direction in that and I sent them a note asking them, as the application was written what would be my licensing requirement. Their reply was if you or the caterer is doing any type of food preparation on that site you're required to have a food service establishment license. I have to have a minimum requirement in terms of sink, sanitation, mop sink and things of that nature.

Janice asked if that was something Missy wanted to do and Missy replied it is. I can't afford to hire a staff to run catered events but I can use someone with a catering license to provide the same service. The use is identical, how I structure the business is a business plan so whether or not I hire a caterer to come onto the site and offer the food and beverage to people, they might not know that it's Schoolhouse or whoever catering, but I would be offering the same type of catering services. The Health Department was very clear that if these meals are served more than four times a month or if there is any type of preparation, refrigeration, a staging area, any time there is on site preparation I have to be commercially licensed. There is a grey area of when I will be able to utilize a caterer's license and when I would have to get my own.

Chairwoman Loz asked if Mrs. Biagotti would be putting up tents and she replied no. My intention is to have an area where there are existing tables and chairs in a room where people can come in and choose a menu, have lunch or dinner and the basic things are there. Initially I may have to have somebody rent tables and chairs. Janice clarified this would be in the barn and Missy said the barn or the room she has in the house that is about 1,000 square feet. The use, regardless of who's providing it, is identical. It would not mean I could rent it out for any particular purpose there would have to be a business arrangement in which I could make money on the catering as I'm not going to make money renting my facility.

Janice asked if Mrs. Biagotti was going to make any changes to the property and what about parking. Missy said that's part of the plan and going forward I understand there has to be a site review process in which I have to present a plan. Even after the last meeting and getting approved for 125, I could walk away from here, have the landscaping company come in and say this is all we have parking for and also I might not be pleased with the amount of it or what type of changes I would have to make to my property that could limit it. There is a plan in place to provide for some landscaping and changes to the property but no additional structures; it would all be confined to the interior such as lighting improvements. There is a possibility of building a

deck off the back of the barn so it's wouldn't be visible from the street or from anyone. No additional structures, purely landscaping and cosmetic improvements.

Chairwoman Loz read from the application, 1-3 functions per week in June to October. Mrs. Biagotti said my thought is I would rather have more frequent smaller events rather than a larger event. One family has contacted me and they would like to rent it on a Thursday night for a rehearsal dinner and then have their reception for 75 the next night and on Sunday have a bridal breakfast. There is an opportunity for a lot of smaller events throughout the week that would go relatively unnoticed within a dining room. My biggest concern about the initial approval was that limitation on the number of days which is an awful lot of pressure if I am going to invest in a commercial kitchen.

Rick Davies asked of Mrs. Biagotti, in summary for the amount of use, you would have it whenever and whatever fits into the schedule? She replied, there were concerns, especially time of day but I certainly wouldn't want to have a restriction in terms of the time of the week. Rick asked if the three day a week would be a problem. Missy said it would put a lot of pressure on the types of functions I would have and given the nature of the business it's not a restaurant open 7 days a week where you have an opportunity to pack in as many people as you can. If I can have smaller functions, reservation only types of things, this license itself gives me the opportunity to provide those types of things on smaller scales whenever. I would have to be licensed in order to do that because I don't think I can find a caterer to come in on a whim. It would put a lot of pressure on the three days of the week I would want to operate. Janice asked if she was saying any day of the week as late as possible. Mrs. Biagotti said no, I don't think so because I know in the previous hearing that was discussed as an issue, I'm not looking to have events until 10:00 p.m. seven days a week but having the ability to utilize the property and would make a whole lot more sense than having to rely upon larger events on the weekend.

Rick Davies said that getting back to the three questions we have to answer, question B is regarding if it is desirable and C integrity and character of the district which are sort of related. Can you address the concerns if there is a big gathering and there's lots of noise which I anticipate might be of some concern and the hypothetical situation of a wedding if that's the boards idea of eating and drinking, at capacity, would there be music outside, would the gathering be outside? Missy replied there will be nothing outside, I have a barn and an events room and going back specifically to address issues B and C, we did look at what people would want. There are businesses that would benefit from it; those concerns of my immediate neighbors would be of the utmost importance. I don't feel that what I'm presenting is anything different than what's already existed there and coexisting in that area very well. I would do anything and everything to make sure people were not inconvenienced by it, providing ample parking is really important. If I have cars backed up on Pumpkin Hill I'm probably not doing my job. An important note with noise, cars, fireworks and things of that nature, the most important thing I can do is preventing that from harming any of our neighbors otherwise we're probably not going to be in business for long. That's an important aspect, we've been there for 10 years and love the area and don't have any intention of doing anything that would harm it and besides the restrictions the board would put on us we would have our own and they would probably be a higher standard. We hope to live there and enjoy the property as we have so I wouldn't necessarily want to have big events throughout the weekend. I'm going to be the one that hears them and they would be confined to the interior or our home which is an important part of making sure it blends into the community.

Andy Bodnarik said Mrs. Biagotti mentioned in her request she is limiting use to 1-3 functions per week. Are we now to understand there would be more than 3 functions a week? Mrs. Biagotti replied that she was given instructions on how to fill out the application and offered it as sort of the worst case scenario and someone asked what she saw happening in three years. Missy said she may have 4-5 small functions one week and none for 3 weeks. I don't anticipate having regular events every single weekend. Andy said, the maximum might be 4-5 a week but the average would be 1-3? Missy answered it could be none, I would not be a restaurant with normal operating business hours so it's difficult to gauge what I would have the opportunity to do. Andy asked for clarification of the length of 4-5 hours and Mrs. Biagotti said it could be 2 hours and not any longer than 4-5, think of your typical retirement dinner or something similar. Janice asked about music that is played and clarified it would be in the barn or within the house and nothing outside. Missy said she would put limitations on any type of amplified sound after a certain time and has done research on sound absorbers, frequency cancelling machines and other

things that can be done to minimize that as well as smaller speakers throughout the house and is confident they can keep it confined and controlled. Janice asked if she would say the barn is less or more soundproof than the house and Missy didn't know. Most people that have these events in rural areas know that there are probably more limitations than they would have in a hotel dining room.

Rick Davies asked for clarification and said the application referred to wedding receptions and other gatherings and he heard weddings mentioned and a possible magnet might be to have an outside wedding but Mrs. Biagotti said there will be no outside events. She clarified they had asked about outside entertainment and music. Rick asked what functions might be outside. Missy said I don't for see that happening because we have enough space within the buildings we have.

Chairwoman Loz asked Mrs. Biagotti how she intended to monitor alcohol use. Missy replied that goes back to the licensing requirements by the state. If I'm not covered under a caterer's license then I have to have a license of my own. Additionally there has to be insurance and in terms of monitoring their use it is something we have done in the past. We've been in business and self-employed for 20+ years and I would think that would be something that would be a huge priority for us. Janice said she only asked because it says in here you would have licensed bartenders to serve and monitor alcohol so it made me curious as to how you would do that. Mrs. Biagotti said it goes back to just because a Special Exception is granted doesn't mean I can do it without licensing and following rules. Chairwoman Loz asked if there is something in the licensing that monitors alcohol. Missy answered a caterer has to hire professional bartenders. Janice asked if there were drink limits and Missy said just like you would in any bar and not limitations but obligations, they can't serve people who are obviously intoxicated beyond certain limits and they have their license on the line.

Mrs. Biagotti said she did want to go back to Mr. Davies point and items B and C in the application and one item that was a concern. I want to make sure to go back to these two items and there are issues people brought up I want to make sure to address. This is a request for something that is not new and is not untested. Things may change in the district but that is what the ordinance is for, to monitor that growth. The use was allowed back then and is allowed now, whether or not there is change around us, I don't necessarily agree with that argument. In terms of addressing the desirability or the convenience or how it will affect this particular district it is important to note this is not a new idea. I believe it was acknowledged by the community, was an asset and enjoyed by a lot of people. There are a lot of people I know that worked there and have stories about it and it thrived and coexisted in a rural district and it can do the same thing now, responsibly.

Chairwoman Loz asked if there were any other questions from the board. Howard Kirchner asked about parking and there were concerns about it from abutters, and some reference about landscaping around it. He asked if the parking would be between the house and the barn or behind the barn. Mrs. Biagotti replied that they have lots of space on the property and restrictions on the approval that required some type of screening for the parking. She said she would leave that up to the experts and knows she has space to utilize and clarified that she is flexible but doesn't want to lose the use of her driveway. There is also property around the barn where it could be discreetly put and screened.

Janice asked Missy to elaborate on the conversation she had with the Warner PD. Mrs. Biagotti said that prior to the first hearing she contacted the Warner Police Chief to address question C in the application and to ask whether there were any specific ordinances within the town that would need to be complied with if we were to have this. He referenced the noise ordinance. He asked if parking would be on the road and she told him that was not her intention as it is too dark and not safe and he said he thought they had done it like that in the past. Chairwoman Loz asked for clarification on what that meant to which Mrs. Biagotti responded, when it operated like that in the past and he was referencing peoples use in general for any types of events. Janice asked if he was familiar with the property and Missy said as far as she knows he is but the statement made was that "I think it's a good idea as long as some reasonable precautions are taken". She said she did not have a letter from him and did not call him with that intent, rather to make sure whatever they were requesting was not going to break any existing ordinances.

Public Comment – Chairwoman Loz asked for comments from abutters first and asked the audience to speak clearly, state their name and their address.

Beverly Heaton, Old Pumpkin Hill Rd. – I did a little bit of research on what an eating and drinking establishment is in NH and found it is any place that prepares food to be sold on the premises. I don't think that fits that form and listening to Missy, I am now so confused as to what she plans to do. First we're going to have it catered, if maybe someday we put in a professional kitchen and then we have a restaurant and then we have something five days a week. That is so open ended I can't even believe it and as far as yes, perhaps you're going to have somebody come in and do landscaping and it will be beautiful. The visual is not the problem, it's the traffic, and it's the noise. When we bought our land it was a bucolic beautiful place across the street you saw horses in the field. Do I want to look over there and see a couple of twenty-somethings with beer cans because yes the facility is going to be in the barn, the party is going to be in the barn but you're not going to put up a partition and say no one beyond this point. If you've got beautiful land, rolling hills and some day at a wedding they're going to be out there walking that land, drinking their beer and using those wonderful words that twenty-somethings use. We don't need to hear that in our homes that we have spent so much money to provide our place to live and invest and have this in our backyard and it is so open ended at this point I don't know what she's thinking. And, bathrooms, where are they going to go to the bathrooms? If I see one person urinating in the field... I'm not upset. Where are the bathrooms going to be, are you going to have outhouses, that you're going to have 125 people and there's not bathrooms.

Chairwoman Loz stated that is a very good question and asked Missy about that. She said it is something she has discussed with the Department of Health as well. There is a specific agency she can contact in order to get approval for any number and if her location prohibits her from having that they will let her know. If I were to have up to 125 people there they will have to approve what I have in terms of restroom facilities. Janice asked what she has and Missy replied she has the bathrooms in the house on the first floor and there are two. She said they have researched the option of having additional facilities in the barn so that is a possibility.

Jim Zablocki, 430 Pumpkin Hill Road – In the board starting this conversation there was a concern about whether or not the definition of eating and drinking establishment in the town of Warner. Eating and drinking establishment was brought out from the state of NH and it's very clear what the state defines as an eating and drinking establishment that's how our zoning boards are based. When you look at the state of NH and more importantly, our own regs, an eating and drinking establishment means you're preparing food on site. It's a fundamental issue that needs to be discussed before we get to all the other things that need to be discussed. If you recognize that this does not fit in eating and drinking establishment, Missy Biagottis own definition is a private event center so you're not preparing anything there. It has nothing to do with an eating and drinking establishment like the Hicks used to do many years ago, it's not a restaurant. The whole purpose of that Zoning Board reg was designed for restaurants; this is not going to be a restaurant but strictly catered. The point is it doesn't fit this reg. If you want to come back to us and talk about a variance discussed earlier this clearly fits a variance application, not a special exception situation. It's very clear the board understands that.

Chairwoman Loz stated couldn't you say that eating and drinking happens at a place, not necessarily cooked, but food and drink are served. Andy Bodnarik said he has researched the ordinance which has no definition, he has researched the RSA which has a definition only for food service establishment and he has no reference here for anything regarding eating and drinking place. The only reference in the Zoning Board Ordinance is the statement in the table. I've read over the request for a Rehearing and in that it was referred to in terms of an RSA 143:A:3-2 which I could not find in the RSA but I could find RSA 143:A4 and that's a discussion of what a food service establishment is or is not. That does not limit the operation to an operation preparing food on site.

Frederich Moeckel, Zablockis Attorney - Mr. Moeckel stated the Andy Bodnarik is correct in that RSA 143:A3 IV doesn't use the eating and drinking place term and the statute we're talking about calls it a food service establishment. We're talking about that statute because the applicant refers to it as the basis to analogize eating and drinking places as used in the Warner Zoning Ordinance with what the state defines it as. When you read the applicable statute, in the sense it's been raised in this hearing, with any of the food establishments in the statue the food is prepared on the site. The applicant referred to the Department of Labor Standard Industrial Classification System and she is correct in looking at the subcategories 58-12 and 58-13 which are retail food sales and retail drinking. The thing that 58-12 and 58-13 cannot do without is the retail sale which

is exactly what Mr. Zablocki was talking about. The sine quo non of an eating and drinking place or food service establishment is the retail sale. From what I've heard, the documents before this board tonight and in the past all related to one thing in common, it's not going to happen on site. The applicant tonight said in precatory language that she would like to have a commercial kitchen. The problem with precatory language in a hearing like this is you need to know what is going to happen not what the applicant would like to happen. It's important for this board to understand two things; one is your ordinance doesn't define eating and drinking place you're going to have to come up with that solution. Secondly the references that you've heard whether its State Statue of Department of Labor SIC code, they're all saying the same thing. We're talking about whether it's a restaurant or a hot dog stand, a customer walks in and lays some money on the counter and gets the food that's prepared there. What we're hearing tonight is that it's going to be catered.

(1:56) Mr. Moeckel continued, earlier tonight Mr. Davies was talking about ancillary uses. Zoning uses are divided into two things, principal uses and accessory uses. What this board needs to decide is what is the principal use that's put forth in this application and what I've heard is that this is an event venue. When you're talking about and analyzing if this use is permitted, look at the table of uses. This use as proposed isn't one that's available under a Special Exception. It may be that the secondary or accessory relates to one but it's the primary use that you must first look at because that's what you're granting the Special Exception for. Some towns are very granular and will say in the residential zone you may have a single family home which would be the principal use. Accessory uses to a single family home may be a swimming pool, shed, garage or tennis court.

Mr. Moeckel stated when the Zoning Board of Adjustment is reviewing the application tonight they must ask themselves what is the principal purpose of this use, is it a restaurant, a precatory commercial kitchen or an event site. If it is an event site, it's my client's position that a Special Exception is not appropriate. As the law stands this use is an outdoor event site which is not subject or available to a Special Exception. I want this board to pay attention when it's deliberating to the specific words in your code and in the application with respect to the applicant putting forth evidence that this use is an essential use.

Is it desirable? What I've heard is talk of nostalgic reminiscing of what once was there which is not the same thing as being desirable. I ask the board to look at the determination of whether this use will impair the integrity and character of this R-3 district which I'm sure the abutters and other interested parties will speak to.

Jim Zablocki, 430 Pumpkin Hill Road – One of the things we've done since the original application is a traffic count. Using the number of 125 potential people, minimum 60-80 cars with perhaps another 20 cars for the caterers and other staff for a total of 100 cars. You can set a game counter on a road to count cars which we did. The only point I want to make about this is there would be an 80% increase in traffic if that occurred which would impact the integrity of an R-3 District. There has not been a restaurant there for at least 40 years and since it has not been in continuous use as such that should not have much bearing on conversations going forward. 40 years ago it was a very different world with fewer houses and less people around.

Rick Davies noted that each year there are various places in town that have traffic counts done by Central NH Regional Planning in conjunction with the Board of Selectmen and Planning Board so there is a count somewhere on record on that road. If we do talk about it, that may be something to consider.

Susan Roth, 60 Old Pumpkin Hill Rd – stated she sees the barn in question when she's standing on her deck. Susan said she wanted to clear up a few things; Mrs. Biagotti has said this is our home, it is not their home it is their income property and has been rented out. I've heard numerous renters stay there and several Sunday mornings I have heard firearms go off there. That is when they're not there but are renting so I wanted to be clear that it hasn't been occupied as an owner occupied home so it's not like a home based business. I don't like the idea of all the noise, I heard there was an event in 2012 there with parking on both sides of the street, people crossing back and forth, outdoor music I could hear clearly. I worry about a parking lot being put on the property because there is a sizable grade there and a problem with erosion so they would probably have to pave a portion to keep that from happening and install lighting none of which we want for our bucolic rolling hills views. My other point is if I wanted to buy a house next to a commercial facility having late night parties I could have bought any number of places.

John Heaton 53 Old Pumpkin Hill Road – We bought the property 12 years ago, paid a ton of money for it and the appeal of it was the quiet, open lots, forest and no business and assurance there would be no businesses because that's what the property is zoned for. When this came up a few months ago and you gave your initial approval of it we were astounded because it was my understanding that you were supposed to defend us and hold up the laws and the things we understood when we invested in this property and that didn't happen. As much as I love the stories and reminiscences I don't think the property and the intended use is being described properly. The previous use happened occasionally by comparison to the current proposition and I don't think it's appropriate for the neighborhood. If the laws and zoning aren't worded correctly to protect us then maybe that needs to be addressed and fixed.

Mrs. Biagotti asked to interject before she lost track of what has been said and stated there is one point that I must make because I have a great deal of respect for everybody here and no ill will for people trying to protect their property rights. However I take great offense to someone not calling this my home because I'm a real estate broker and investor and this is the worst real estate investment I've ever made and an emotional decision. If anyone knew the length to which we go to get out kids here 4-5 times a year packing kids and cats in a car for 24 hours you would not question my love of the property and town. I am not in my mind part time and rent a home in Florida because we have no ties there. This is not a home I own as a second home because I can afford to, it's because I cannot afford to live here yet and we have our businesses in Florida. I do not pay part time taxes and when someone is talking about property rights I have the utmost respect for that. I love it up there; I have no intention of doing anything but do take offense to someone saying it's not my home. I love the house and I drove from there tonight very nervous about this hearing but I wasn't nervous at all when I got here because I thought what insane person would leave Florida and do this. I'm trying to protect my property rights and am done tip toeing and trying to be respectful because I do feel like a part time resident. That is one thing I will not have anyone challenge me on. As far as people's property rights being able to subdivide, most of the abutters have come originally from this property and it's okay when people want to subdivide to get a piece of property in a R-2 District. But when it comes time for my property rights to use it the way I want it should not be assumed that because that field has been pristine for 10 years and I haven't done anything doesn't mean I don't have the right to use it as I want. Missy continued there are things that are allowed in that district that cause far more harm. I could have a pig farm in that field if I wanted to. There are so many things that could happen and I am trying to do it responsibly by coming to the board to ask permission to do something that quite frankly people in this town do already and people have told me to just continue doing what I'm doing. The noises that come from that house are from my kids, shooting their guns, riding their 4 wheelers around and raising hell. That's what I brought them up there to do. Just because I'm a part time resident does not mean I don't deserve the same right to use it. If people were not as concerned or they were concerned about their property values then they would be concerned with things that effect it like the dilapidated building that one of my abutters has falling into the ground.

Chairwoman Loz directed Mrs. Biagotti back to what is being discussed tonight.

Aarika Reynolds 20 Old Pumpkin Hill Road – I am the closest abutting property and can see the barn and house as it directly abuts my yard. The house is quiet with a nice yard, wonderful neighbors and we want to be part of a community and neighborhood. Had this been established prior to, we would have moved to a different town. This is my home and I have a two year old and I fear for my child slightly with the amount of traffic increase, potential people walking through our yard, drunk drivers. I don't want to have to worry about my kid or my dog being in the yard and that's not fair to me as a home owner. I also want to comment on one word that distinctly stuck out in my mind was isolated. I work in the medical field and isolation implies that it is contained so it will not contaminate anything around it. This does include traffic and noise contamination. You get 75 people in a barn in August you're not going to open the doors and windows and people aren't going to go outside and walk around in a beautiful neighborhood? That's unrealistic and not even fathomable. I will be devastated and should this happen and we try to sell our house to get away from it we will significantly lose value on our property. The dilapidated broken down house that's across from my driveway, keep it there as long as you like because I know there's not going to be any noisy drunk neighbors that are going to go there.

Lee Maynard, owns property as an abutter but lives in Hopkinton – my husband and I are looking to downsize and looked all around. It's hard to find a place that's quiet and peaceful. We found a piece of property that's right next to Pumpkin Blossom Farm, we haven't built yet we would like to but don't want to if there is an event center next door. If we go to sell the property I don't think it's very desirable selling a piece of property in a beautiful area like this with an event center next door. My husband and I went to a wedding at Dimond Hill Farm in Concord and I mentioned it to someone who lives about as close by as we would be to the barn and the wedding was considered small at 85 people who were in the greenhouse. It didn't seem loud to us but our friends heard the noise from the barn and knew what type of music we played. I feel we would also be hearing that whether it's inside a barn or not. It's definitely not desirable to us with the traffic, noise, and lights from the parking lot.

Jean White 40 Old Pumpkin Hill Road – We bought our property from Mrs. Hicks 26 years ago. I would collaborate with Susan and Beverley and all the people who have just discussed the problem. There was a party that went on there on the 4th of July, we had people coming up the field and had to call the police. These people who were setting off fire crackers were coming on our property and it was horrendous. We're all affected by this.

Mr. White 40 Old Pumpkin Hill Road – Mrs. White did a great job, I agree with what she said and all of the other comments.

Beverley Heaton 43 Old Pumpkin Hill Road – I have a question about something that was brought up with a license or a variance or whatever going with the property, not with the owner. Mrs. Heaton asked if a Special Exception went with the property and was told by the board if there was one previously it runs with the land. Mrs. Heaton stated God forbid that the Biagottis are granted a Special Exception and decide in five years that it's not working. If they sell that piece of property to who knows what and who knows when and with the Special Exception given, she can say all she wants that she's going to keep it under control or whatever but the next person who comes in what type of restrictions does that person have. We have to look to the future.

Janice Loz stated that whatever potential restrictions are put on will follow the land.

Mr. Zablocki 430 Pumpkin Hill Road – Wanted to add he has letters from two different realtors from Warner mentioning that if this goes through we would lose value on our property. Chairwoman Loz confirmed the Zoning Board of Adjustment had copies of those letters. Mr. Zablocki said it's important to remember with this event center the owner of the facility lives in Fleming Island Florida, they come up 6-8 weeks a year so the other 48 weeks a year means they are not present for these events. Janice clarified with Missy the events are going to be June to October and Mrs. Biagiotti added that she is generally there end of May and many more weeks than 6-8 throughout the year. Chairwoman Loz asked if her goal was to have the functions only when she is there and Missy replied that is correct, I will not hand the key to anyone to hold an event there without my direct involvement, without my presence there.

Mr. Zablocki – Let's stay with that process; she has young children in school. That means May, June, September and October which means she has to pull the kids out of school? Janice replied that is not our concern and is not part of the application. Mr. Zablocki said it is if you're assuming she's going to be present. Rick Davies stated the board couldn't put a condition on to have a certain person there at a certain time.

Chairwoman Loz asked if there were any public that could like to comment. Mrs. Biagotti said she thought they had, that she had been trying to keep track of names and some have popped up that weren't on the abutters list to which Janice said she had been asking for just the abutters. There was discussion on whether or not the public who had already spoken were abutters, the process is to have abutters speak first, if that was misunderstood and non-abutters had spoken that was unfortunate, and that everyone would get a chance to speak. Rick clarified that an abutter is not necessary right next door, it is a distance of 200 feet and there is other criteria.

Carol Zablocki – With the exception of Mr. Moeckel, everyone who just spoke had gotten an abutter notice.

Clark Lindley 490 Pumpkin Hill Road – I understand the dilemma of this board and there is a difference between a Special Exception and a Variance. One of the biggest differences is that with a Variance you have to prove hardship which is a

difficult threshold to get to. I would like to talk about my career of 46 years dealing with farms. I assess risks in farms that have special events in 33 states. It's become the vogue thing to do, to take farms and have special events because it gives them additional revenue. From the corporate side, it increases exposure to certain risks to the entire area.

In reference to what has been described by Attorney Moeckel and the Zablockis and the integrity and desirability of the area, that's what the board is really going to be focusing on. Many of the folks that live on this road are familiar with Twin Ridge, an equine operation which sits on both sides of the road. Many times I have driven up and down that road, particular on weekends and I see someone holding a horse walking cross or along the road. The point is something could happen.

How does this pertain to this situation? We have a situation where we could have anywhere from 20 to 50-60 cars going to a destination within a period of 30-40 minutes. I venture to say the majority of those people are not from this community and don't know that curve. Therein lies in my mind a question as to desirability and if we want this exposure. When I came to this community 20 years ago the first thing I did was to come to the Alderman and the second thing was to go to the abutters and ask if they had a problem with me setting up a farm and having bison on it. That bison range, which unfortunately I have no way of controlling it, has added traffic to the road. I apologized to my abutter because they come up to see the bison and turn around in her driveway. It's my suggestion that we're creating an undesirable situation in the community up there and also the community on the road.

It was mentioned this evening that they may be serving liquor by somebody that has a license. I believe the words were that the applicant may be the individual providing the liquor. I would suggest to this board if they consider this that you seriously think about "liquor liability" and is the town named as an additionally insured. How is the traffic going to be controlled entering and exiting the property? If you think I want to sit out there with 25-50 cars coming out or in at the same time and trying to get through and one of my animals gets loose, it's not my problem it's the community's problem.

Kimberley Edelmann – The reason I have recused myself from the board is because of what Mr. Lindley just mentioned, Twin Ridge Farm. My property is for sale and when I sell it I'm planning on staying in Warner and my horses will hopefully live at Twin Ridge Farm and I don't want them on that farm with this type of traffic and people who are drinking. I don't want to be riding or leading my horse down the road or crossing from the pasture to the barn and risk losing a \$100,000 dressage horse.

The other thing is I consider myself an abutter as I live 2500 yards due west at 825 feet altitude. Old Pumpkin road is at 840 feet and I live on the next hill, Tory Hill. The neighbor across the street recently cleared all the woods and I can now see David Karricks house and Old Pumpkin Hill road from my house. My horses can see Old Pumpkin Hill road from the pasture and somebody was shooting off fireworks and my horses freaked out.

Kimberley continued, I happen to live close to the Mt. Kearsarge Indian Museum and 1-2 times a year they have a Powwow. I know exactly when and I know to treat my horses ahead of time to prevent them from getting over anxious and to keep them calm to prevent injury. I can't do that if there is a wedding and all of a sudden a huge cheer comes up over the hill. If one of my girls is leading a horse down our road or on our property and something happens on Pumpkin Hill on the other side of the valley our horses think in terms of miles and they can spook and I end up having to deal with insurance because I have an injured employee. This is a rural community and rural district so don't screw it up and turn it into a commercial district.

Barb Marty 333 Pumpkin Hill Road – I have two comments, one is about bootstrapping. Over and over its mentioned about a prior use of this property and we can find no Special Exception or Variance granted for it. And in fact it hasn't been used for that for the past 4 owners of that property. It should not have been considered in either the application or the testimony for this hearing, that's bootstrapping. I think it's been over used, in the original hearing it was the Chairs reasoning for granting the Special Exception and I think it never should have happened.

The second thing is the 6 additional people who own part of what was originally the Hicks property. All of those people bought and built with an investment backed expectation that their property would remain a rural setting and I think it's this board's job to protect them and I hope you do that tonight.

Irene Pilling 499 Pumpkin Hill Road – I wanted to go back to what Mr. Lindley was saying, he is my neighbor. To no fault of his the traffic that comes up to the Bison Farm can't be helped. It becomes a problem for me when they start turning around in my driveway, when my dogs come out to their vehicles and I worry about how this will impact me. We bought our house in 2013 and had we known this was a possibility we would not have moved to Pumpkin Hill Road. I think it would ruin the community to have an eating and drinking establishment. I worry about the drinking and the noise coming out of the barn. The windows aren't set up so that there's a lot of airflow in their barn so the doors will be open. To think that it could be muffled down, I don't know if it's insulated or not but it's beside the point as it will still put out a lot of noise. So my concern is the noise, the traffic and the drinking.

Chuck Hicks whose family owned Pumpkin Blossom Farm – I'm almost 100% my parents got a variance or an exception granted. I remember going to the Zoning Meeting with my father at the time and I don't know why there's no record of it. At the same time, he was... Chairwoman Loz interjected to ask what year that happened to which Mr. Hicks answered; I've narrowed it down to 1978 or 1979. He continued, while he was doing that he was also doing over a tavern on Main St. in Concord and I wonder if the records were comingled, it's where Charlie Macs is now. It was clarified that Mr. Hicks meant Main St. in Warner, not Concord. Andy Bodnarik asked was that recorded with the deed. Mr. Hicks said he doesn't have the deed, he does still have a small piece of land up there and he's looking to see if that might be in a packet his Mother gave him but he couldn't find it. He said they had some neighbors that were quite upset about what was going on and he remembers Senator Jack Chandler was at the meeting speaking for them. Mr. Hicks described the restaurant that his father had at the property.

Lucinda McQueen 519 Pumpkin Hill Road - Lucinda stated she remembers the Hicks and that she was always under the assumption that she was living in a rural residential agricultural district and if any businesses were allowed it was a home business and the person who was in charge of the business had to live on the property. I know very many people up and down our road that have this but they also live where they have businesses. I don't know Missy but I understand her love of that house as I'm very familiar with it and it's a beautiful spot. When we bought our house it wasn't an investment but a home, things have been developed a lot and I respect the neighbors saying when they bought their house they didn't think a business was going to be put up.

Chairwoman Loz asked Lucinda if she was there when the Hicks ran their business and she replied that she was. It was very quiet and the Hicks lived there 365 days a year. Janice stated that Mrs. Biagotti does own the property. Lucinda says many other people in the town understand that when you're in a rural area you can have a business. I don't know when the rule changed so that you can own a piece of property and own a business on it when you're not in residence.

Rick Davies offered some clarification for Lucinda by noting that what she is referring to Home Occupation which we do have in our Zoning Ordinance. It's a situation similar to what she is talking about and there is also Special Exception for commercial, retail and services, with about a dozen Special Exception situations. Chairwoman Loz stated it is not defined as a home business, it is two separate things. Lucinda said she was not under the awareness that you could have a commercial business in a rural area and Janice clarified that you can with a Special Exception. Lucinda said that just goes back that it's not needed or wanted and is not an addition to the community. If you're granting a Special Exception it should be for something that's wanted by the abutters.

Barb Marty – The Hicks past use was brought up again and testimony about that shouldn't be allowed because it was abandoned. There have been 4 owners of that property and it was always residential. Chairwoman Loz said it follows with the land if it was a use. Barb replied there is no record of anything being granted to that property. Janice said other than the son who was there with his father, you're right it's something we would have to look into. Barb said if you're going to look into it then we can't have a hearing on the decision tonight.

Mrs. Heaton – That usage has been interrupted by 4 other owners, the usage has to be continuous in order for it to pass from owner to owner so it no longer is a grandfathered issue.

Rick Davies had a question of Mr. Hicks, did he say he was at a Zoning Board of Adjustment meeting or was it a Planning Board meeting? Mr. Hicks was unsure of which it was but that it was a meeting and he continued running the restaurant for 5 years afterward and if he didn't get it I'm sure they would have shut him down. Rick asked if it was a restaurant and Mr. Hicks said a restaurant and he was a caterer.

Chris Daniels 676 Pumpkin Hill Road –I am happy to offer additional insight with regards to the Hicks establishment specifically. I waitressed there during the catering events and I've known Chuck Hicks my entire life. I grew up on School Street and am a Warner original. I can attest that the town has certainly changed and the points that have been brought forth are very valid and do warrant serious consideration. I heard something from the Zablockis attorney that caused me some concern because I think he asked the board to determine if they had properly accepted the application tonight. He had some concerns about the specific use of eating and drinking. I was curious if you were going to respond to that, I didn't raise my hand because I'm not a direct abutter. We are two plus hours into dialogue and conversation and I'm still not sure if my efforts and energies to speak in favor of this are even warranted at this point because I don't know if as a board you are prepared to make a decision or not.

Chairwoman Loz said she can't speak for the board as a whole until they get to that process and she encouraged Ms. Daniels to tell them about the events.

Chris continued I was approximately 17 years old when I worked there and it was about 1985. I did work there on weekends only for special catering events that were closed for the most part although there was a holiday event that was offered. Janice asked Chris how large these events were. She replied she couldn't give a number and the room in question is a large function room that is part of Mike and Missy's home.

George Pellettieri – George described some of the situations he has addressed at various properties on Pumpkin Hill Road as a landscape architect, including Twin Ridge Farm and the Zablockis. He stated he has been involved with the Pumpkin Blossom Farm property since he moved to town in 1985 and has worked on drainage problems and other issues there. Mr. Pellettieri said he had gotten involved in keeping up the gardens there for Mrs. Biagotti because she is concerned about the character of the place. George said the principal use of this property is a residence and it doesn't matter whether Missy lives there.

He stated his conversation with Missy was to offer options for the property and all of them were to enhance it and some of them she's already taken advantage. I stressed the urgency of having the sugar maples treated and she did and they are in far better shape than when they bought the property. I've looked at parking arrangements, removing pavement to lessen the commercial look and a couple of smaller lots might be better than one big one. If we were involved we would address the kinds of concerns that have been expressed such as traffic flow whether it's pedestrians or vehicles. The erosion that occurred on the property is because Missy wanted the field to be maintained, a tractor went across the drainage swale we put there that captures all the run off and directs it around the end of the barn. The tractor put such large ruts in it that all the water coming down the hill came out onto Missy's property. We've gone back and addressed that.

The principal use visually, physically and as it is utilized is as a residence and that's why it's listed and zoned R3. It's not as a big event or function center. Interestingly enough the requirement that she only have 2-3 events a week almost necessitates larger events when smaller events could be held in the same room that the Hicks utilized. Any change in the future whether it be with Missy or a new purchaser of the property, there are controls for that. Any change in use has to come before the Planning Board.

Mr. Pellettieri stated the Warner Zoning ordinance has been amended probably 30 times since 1969 and it would be hard to tell where and when the tables come from but they most likely came from the Central NH Regional Planning Commission which set them up for a variety of towns. Some towns still have no zoning and other towns have very restrictive and detailed zoning.

George wrapped it up by saying he is a business owner and has had a business on Old Pumpkin Hill Road since 1985 when he moved there. He asks his neighbors up and down the road about his drivers and doesn't know why anyone would expect at this point that the applicant would do anything different. All of the concerns that have been raised this evening from traffic

flowing out of the property could be controlled by an attendee. If lighting is a problem it could be set to go off at a certain time. There are means and methods for dealing with any of the concerns that are being addressed and any of these neighbors can do it in a neighborly way to address and applicant who is interested in preserving and enhancing the character of that residence and the property. It's clearly hopeful that large events not be held there, I don't know why the applicant might not consider that as an option. My point is that there are ways to physically deal with a lot of the questions that have been raised and there are legal town, state and other controls that will be going into place with whatever types of functions the applicant has there. There is always neighborly community input that sways a business owner otherwise we can't survive.

Mr. Moeckel asked to make a point, specifically to address something Mr. Pellettieri had said. He said he didn't know if he was an agent of the applicant but an important representation has been made to the board which is critical for your inquiry relative to the use. The gentleman said the principal use of the applicant's property is residential. I submit to the board that in the world of zoning principal uses are paramount because you can only have one per property. That raises the question that if there is already a principal use of this property then the applicant is changing the principal use. What the applicant should do is request a variance for multiple principal uses.

Kimberley Edelmann – The board is supposed to read letters from the abutters and we haven't heard them. Chairwoman Loz said that would happen.

Rick Davies said he didn't see anything in the rules of procedure or agenda relative to when the meeting is adjourned. Is there some point where we should adjourn the meeting because it gets too late and there is a lot of ground still to cover? Janice said yes and that she would speak to that in a minute but would read the letters mentioned earlier. The following letters were read:

1/13/16 - Darryl Parker, CEO Parker Web, Owner Schoodacs Coffee & Tea, Business Advisor Babson College

Please enter this email into your minutes tonight as registering my full support for the work Pumpkin Blossom Farm is doing and the business they are bringing to Warner. This choice to invest in our community is an investment in the future of Warner. Thank You.

1/12/16 - David Karrick

An obituary of Virginia Hicks with the following: *Together they ran the Abbott house in Concord and Pumpkin Blossom Farm in Warner, both of which were popular spots for wedding receptions.*

1/13/16 – Pat Drown

I understand there is a question about the pumpkin hill farm having been used as a catering and party business in the past. I worked there for a few years and enjoyed it very much. The Warner men's club used to meet there and have a dinner at least once a month. We did many meetings and weddings there. I left when I went to work full time in 1981. I know the business was still running then and even after Arthur Hicks passed away. Everyone I know loved going there and enjoyed the good food.

1/13/16 – Anastasis Glavas

Hello. I am a resident of Warner but cannot attend the meeting of the zoning board at 7 pm. I don't know of all the details but I am not sure why the Pumpkin Blossom Farm is having so much trouble getting their business going. I support small business ventures in the town of Warner. It is really what makes out town great. It sounds like some have complained about traffic issues. I don't think the scale of the project is such that this would be a problem. The bottom line is that progress is always of interest to me. I urge you to re-consider this proposal and think carefully about these people and their dreams for their business.

Chairwoman Loz said the board has the possibility to adjourn and continue the public hearing at the next Zoning Board meeting and stated she would also like to propose the Zoning Board of Adjustment do a Site Walk. Rick Davies made a **MOTION** to do a site walk at a point to be determined. Chairwoman Loz seconded the motion.

Gordon Nolen asked if there were any of the board members who had not done that and Janice said she has not. Howard asked if that would be something where the applicant would be there and several board members answered it would be a public

meeting, the public could attend but not participate. Gordon said he didn't think it was necessary, most of us have driven by it and this is not a good season for getting together. We have a person asking for a Special Exception and 27 people here all who are against it for a lot of valid reasons.

Janice asked for any other discussion and Andy Bodnarik asked if the Zoning Board of Adjustment was going to continue this to the next meeting. Rick said that would be the next step. Andy said he thinks a drive by would be sufficient at this point rather than a full site visit. Chairwoman Loz stated she felt the board would be remiss not to have a full site walk, is something we didn't do before and for her, was one of the reasons she wanted to rehear the case. Howard said he could go either way as he understood what Gordon said and also Janice's feelings about it. He said it's a matter of scheduling and notification. Chairwoman Loz said they are probably going to continue the meeting to next month so why not do a site walk.

The board voted on the motion to have a site walk as made by Rick. **A roll call vote was taken with the results of 4-1-0. Gordon Nolen voted against.**

After discussion the board arrived at the date of February 10, 2016 for the site walk to begin at 10:00 a.m. Gordon Nolen stated he would not be there as he has a class.

Rick Davies spoke regarding old records and said he had spent time 2-3 years ago looking at old microfiche in the town library relative to the Planning Board. In doing so he stumbled on a bunch of Zoning Board documents, i.e. should we somehow research additional records. Lois Lord said she had found some boxes of files in the town hall and some ZBA going back to the 1960s but nothing regarding Pumpkin Blossom Farm. Andy asked if any of that got recorded with the deeds at the Merrimack County Registry of Deeds.

Rick Davies made a **MOTION** to continue this Public Hearing of ZBA Case 2015-03 to the next regularly scheduled meeting of the Zoning Board of Adjustment on Wednesday February 10, 2016 at 7 p.m. in the Warner Town Hall.

Mr. Lindley asked for clarification that since the Public Hearing is being continued, the public could come to the next meeting and speak and he was told that was correct.

Andy Bodnarik seconded Rick's motion. **There was a roll call vote on the motion with the results of 5-0-0.**

Kimberley returned to the meeting after recusing herself.

Rick Davies made a **MOTION** to postpone the First Reading of Site Visit Procedure Document to the next meeting. Andy Bodnarik seconded the motion. **There was a roll call vote on the motion with the results of 5-0-0.**

4. FINISHED BUSINESS

5. NEW BUSINESS

There was no new business.

6. COMMUNICATIONS AND MISCELLANEOUS

7. ADJOURN

Rick Davies made a **MOTION** to **ADJOURN** the meeting at 10:28 pm, Andy Bodnarik seconded the motion. **MOTION PASSED** by a voice vote of **5-0-0**.