

ZONING BOARD OF ADJUSTMENT
WARNER, NEW HAMPSHIRE TOWN HALL, LOWER LEVEL
MEETING MINUTES OF FEBRUARY 10, 2016

Members Present: Janice Loz-Chairwoman, Rick Davies, Andy Bodnarik, Kimberley Edelmann-Vice Chairwoman, Gordon Nolen, Alternate Howard Kirchner, Alternate Beverley Howe,
Late Arrival Alternate Corey Giroux
Land Use Secretary: Lois Lord

1. OPEN MEETING and ROLL CALL

Chairwoman Loz opened the meeting at 7:00 p.m. and roll call was taken. Chairwoman Loz stated that Alternate Howard Kirchner would be seating on the board as a voting member for the case to be heard tonight.

2. APPROVAL OF MINUTES

Meeting Minutes of January 13, 2016 – Chairwoman Loz brought forth the meeting minutes for discussion and approval. Several board members noted a few corrections.

Corey Giroux arrived at 7:04 p.m.

Howard Kirchner made a **MOTION to APPROVE the minutes** of January 13, 2016 as amended. Andy Bodnarik **SECONDED** the motion. **MOTION PASSED by roll call vote 5-0-0.**

3. CONTINUATION OF 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.

Chairwoman Loz stated this was a continuation of a rehearing from January 13, 2016 which will start with a public session and reminded audience members to speak to the board, refrain from talking among themselves, state their name and asked that they keep their comments short and to the point as they would like to close the public session by 8:00 if possible.

Vice Chairwoman Kimberley Edelmann stated that she would be recusing herself from the board for this rehearing.

A. Continued Public Hearing (opened at 7:11)

Kimberley Edelmann read the following: Clark Lindley of 490 Pumpkin Hill Road regrets that he is unable to attend tonight. He asked me to share two comments he wanted to make in January.

1) In response to something George Pelletieri said, recorded in the minutes on page 15 of 17 as follows:

"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."

Clark wants to point out that as an employer, George can try to exercise control over the driving behavior of his employees. Clark wants to point out that the applicant will not have control over the driving behavior of event attendees.

2) Clark wanted to point out that the 4 letters read during the Public Hearing and recorded on page 16 of the minutes were not submitted by abutters. As someone who has been on the Zoning Board of Adjustments for the past 5 years, I am aware that the Board must find that:

C. The requested use will not impair the integrity or character of the district or adjoining district, nor be detrimental to the health, morals, or welfare.

The board may be tempted to think the abutters who are against the application request may be overreacting or over dramatizing the impact they believe it will have on their Quality of Life in Warner.

However, the board should not ignore the fact that they have received two letters from respected professional local realtors, both of whom believe property values will be negatively impacted if the request is approved. While the applicant may profit from the "eating and drinking establishment", the business and earnings of the local realtors may be negatively impacted.

During the past week, I've been burning the candle at both ends. This afternoon, I laid down and tried to catch up on sleep. We have work being done on our property right now. Even with the windows closed, the noise from that work while not loud was constantly changing in pitch and tone and overall quality. It was not the normal noises of my farm. And I failed to fall asleep.

Whether we are talking about babies or farmers or senior citizens, 1st shift or 3rd shift employees, people need to be able to sleep when they want to. An event venue is going to create noise such as cheering, and singing, and music. The ZBA should not dictate sleeping hours in a rural community, which is what they will be doing if they approve the special exception request and put limits on the hours of operation.

Barbara Marty 333 Pumpkin Hill Road: There was a comment made at one of the first meeting that when the Hicks had their eating and drinking place at Pumpkin Blossom Farm it was never a problem. Ms. Marty illustrated why that probably was true by showing a layout of the property when the Hicks owned it and one of the property now, showing that it had been subdivided into several parcels, five new houses and many more abutters who are much closer.

She said she believes that speaks to the peace that will be disturbed by having an event center on the property. She continued that this issue was covered in a Planning Board meeting on June 2, 2014 and read from the minutes as follows:

Stephen Laurin noted that, in addition to Toby Nickerson's interest in a music venue, he has received requests from three different property owners in town for the requirements to permit rental of their property to be used as a venue for weddings and other events. In each case the closest category in the Use Regulations table with respect to the practical use of the property is item 19 under Retail and Services. Although the impact of a wedding venue does not appear to be much different than "Other amusement and recreation service..." it is not permitted as the ordinance currently reads. He thought it would be worthwhile for the Board to consider amendments to the Ordinance because it prohibits many uses that are similar to uses which are permitted.

Barbara noted that in March of 2015 an amendment was made to the Zoning Regulations Use Table to allow in Zone C-1 under a Special Exemption, 19-1 Recreation and other Amusement where she believes this use fits and noted in our district this use requires a variance.

Rick Davies mentioned there was a discovery of some documents since the last meeting and suggested that be discussed in case the public has a comment regarding them.

Chairwoman Loz stated the Land Use Office was forwarded a microfiche of a Special Exception that was granted to the Hicks in November 4, 1976 and the Zoning Board made the following decision:

Special permission granted to conduct a function and dining room facility within confines of present residential structure to accommodate no more than 65 persons at a sitting while providing complete off-street parking facilities for all patrons, said use being identified in the ordinance as an eating and drinking establishment for which permission may be granted by special exception, and said use is considered by the Board to be desirable to the Town while not impairing the integrity or character of the Pumpkin Hill District.

It was a unanimous decision. She noted the board does have precedence to this case.

Rick Davies asked if there were any minutes available that were found or Planning Board review information or was this the extent of it. Lois Lord replied that was all that was found for that time period.

Andy Bodnarik asked if an application had been found. Lois Lord clarified the document being reviewed was found in documents at the library and that prior to that she had researched the documents in the Land Use Office, Town Hall attic and Tax Card Files and was not aware there were documents at the library until the last Zoning Board of Adjustment meeting.

Rick commented that we have a special exception that runs with the land with an approximately 30 year time period when the use wasn't prevalent and the current facility inside, per the site walk held today, has no resemblance to that facility. In our decision making we should reaffirm how we view the status of this existing special exception.

Howard Kirchner noted it's important the public knows we have this document. To him the question arises as to why we are even meeting because it appears the special exception has already been granted and continues with the property. The question before us; is it even something we need to consider now that we have this new information.

Chairwoman Loz said she believes it does matter because the current applicant is asking for different things not covered in the original special exception, her request is much broader. Rick agreed with that and expounded that because of that my recommendation is to continue the public hearing. In theory the applicant can withdraw her application.

Janice noted the existing special exception grants use specifically to the confines of the residential structure and Mrs. Biagotti wants to have events in the barn which is not mentioned. Mrs. Biagotti said she contacted the town in April, 2014 and explained to the Land Use Secretary what she was interested in doing and that it did exist before and was told if it operated there before she needed to submit a Determination of Site Plan Review to the Planning Board. She did that and the response was that no documentation to support the special exception had been found. When the next step was discussed she was told that without the documentation it could not be determined that she could have a Site Plan Review. At that time she realized she needed a special exception.

Rick Davies noted in the testimony of Arthur Hicks at the January 13, 2016 Zoning Board of Adjustment meeting he stated he was pretty sure he was as at a meeting where his father was applying for a special exception and that's when Rick had the thought that the documents might be somewhere else.

Chairwoman Loz asked the applicant how she felt about the original special exception and how it fits what she wants. Missy replied it doesn't match and her application includes the use of the barn because the residential space is better suited for their living space. She understood something existed and it may have been something they would have proceeded to site plan with.

Steve Bridgewater 333 Pumpkin Hill Road: I was at the October meeting and asked if a special exception had been granted on this piece of property and was told by the Zoning Board of Adjustment there was no record of it. Where did this piece of information come from, who received it and at what time?

The Land Use Secretary replied she received it on January 20, 2015; it was emailed to her from the librarian at the Pillsbury library. Someone had been in researching records on microfiche which Lois did not know were located there or she would have been looking there when this started. She continued she was going to do research at the library but got this before doing so.

Steve: Did the librarian also tell you that all of the files at the library also exist in the offices of the town hall? Lois replied she did not and about two weeks before she received this document from the librarian she had asked the Town Clerk if there was somewhere else she could research records and the Clerk did not tell her there were any at the library.

Steve: The answer I got from the board in October was that research had been done, no documents were available and the Special Exception had been granted and retracted. We're now being told there is a piece of documentation that existed in 1976 that was available in the town hall for the public to research on their own in the library. Where is the transparency on this board?

Chairwoman Loz answered this was not intentional. For what the Zoning Board of Adjustment had in front of them, they have done their best and it wasn't something they were trying to cover up. We come into this as public people, we're not lawyers and we learn as we go and will learn from this mistake.

Rick Davies noted per the minutes of the last meeting, he had brought this up after Mr. Hicks spoke saying maybe there is information somewhere else. In the past he has researched Planning Board information at the library, the historical society, and the attic in the town hall. He suggested researching library records at the last meeting so the transparency is, we didn't know and after Mr. Hicks suggested there was an actual meeting it made sense to do our due diligence and look for information in the library.

Mr. Heaton 53 Old Pumpkin Hill Road pointed out in the Town of Warner Ordinance, Article XVII Board of Adjustment, regarding time limit approvals granted by the board for variance or special exception are valid for a two year period.

It was noted this is on page 35 of the Zoning Ordinance and the key words are "unless vested". Andy Bodnarik stated there are two questions here; the first is does that mean unless used initially within the two year period and the second is does that use have to be continuous. He said he doesn't agree that it does because of the fact that a special exception is different from a variance and constitutes a permitted use. If it's a permitted use as indicated in the table, there is a difference. Andy said he believes they heard testimony at the last meeting that when the special exception was granted, it was used. The special exception may not apply to the current application but it runs with the land and is a permitted use with conditions.

Mr. Friedrich Moeckel, on behalf of Carol and Jim Zablocki: Regarding the 1976 special exception, and what a special exception is, they generally run with the land. What is different about the town of Warner as opposed to many other towns is that they have had in their ordinance since the 1960's the provision *Article XVII F. Time Limit: Approvals granted by the Board for Variance or Special Exception are valid for a two-year period unless vested*. Warners ordinance doesn't tell us what vesting means and generally it is used in Planning Board approvals or subdivision plats and site plans to give the developer some time to build and then the project is vested from subsequent changes in the zoning ordinance.

It seems that what Warner is doing is saying if the applicant receives, in this case special exception, demonstrates that it is going to use that special exception use in perpetuity, then it's vested. At the last meeting we heard testimony that the Hicks obtained this special exception mid 1970's and they did occasional dinners and in the 1980's I believe the senior Hicks passed away. In Warner we have a provision that is permissible in that you can terminate a special exception but you need some evidence before the board that there is intent not to terminate or an intent to have this special exception vested. I have not heard any testimony to that affect.

Whether or not this 1976 special exception is vested doesn't really matter because what we're here to talk about is the Biagotti application and what it is asking for is an event center "primarily outdoors undercover, a tent". The Biagottis require relief other than what is before you tonight because on its face they are asking for something that is entirely different from the 1976 special exception which is limited to 65 people in the house.

Chairwoman Loz: When we discussed this previously, the applicant said she wanted to use the annex of the house or the barn and that was it.

Mr. Moeckel: I understand what the applicant has said but what this board can act on is what the application says.

Mrs. Biagotti: That was from the original application that was made in 2014 asking for some guidance when I was asking about a Site Plan Determination and was told that was not allowed. My application for a special exception doesn't say anything about outside events; I did not include that specifically because of the guidance from the Land Use Secretary at the time. I'm not asking for anything outdoors.

Rick Davies noted the current application on the second page, third paragraph does read “*but not limited to the outdoor area in most cases under a tent or cover.*” It was noted the page being looked at was dated August 28, 2015 by the applicant.

Mrs. Biagotti said that was originally part of the application in 2014 in which she did include the outdoor areas and was a carryover from that application. She reiterated that is not what she is asking for on the current application.

Mr. Moeckel: Page 1 of 1 of the application stamped by the Land Use Office on September 30, 2015 reads as submitted for outdoor use. Whether or not the board decides the 1976 special exception has lapsed this application is materially different. That brings us to the inquiry that I mentioned to the board at the last meeting, the three prongs necessary for a special exception.

Is this proposed use for an eating and drinking place? We heard testimony tonight that the Planning Board adopted and inserted a new use under the Retail Section, Use 19A, that’s the use the Planning Board considers this event facility to be, an outdoor event site. On that fact alone, the applicant doesn’t meet the first prong. The board needs to decide whether the use is essential or desirable for the town so listen to the testimony. You need to find both; similarly the board needs to find that this use will not impair the integrity and the character of this district.

The last thing I want to talk about is the idea that this is a permissible use because of the special exception. I urge the board to consider the Biagottis have represented to the board that they’re going to live in this house. Once you establish a principal use, you can’t have a second principal use the exception being if there’s a home occupancy which is a use that’s entirely in the residence. Whether this is an outdoor tent or in the barn, the use won’t be in the house so it can’t be a home occupancy as defined by the Zoning Ordinance. The board in granting this proposal will permit two principal uses on this property and you can’t do that.

To disabuse notions and the confusion of pre-existing non-conforming uses, that only applies to uses established before the passage of the Zoning Ordinance that would otherwise prohibit it. As I understand the facts this is not a case of a pre-existing non-conforming use that is grandfathered whether it’s terminated or abandoned. The issue is whether there is evidence before the board that the recipient of this special exception carried it on with the purpose of maintaining it in perpetuity and the evidence is that it stopped in the mid 1980’s.

Corey Giroux asked Mr. Moeckel where he finds the language in the statute that it has to be continued in perpetuity as Corey did not see it in the Zoning Ordinance or elsewhere. Mr. Moeckel replied that you won’t find it in New Hampshire law which leaves it to the municipalities to determine whether or not they will further limit the scope of their variance. In the absence of limitation language town by town, then the general rule applies. The same is true of grandfathered uses for pre-existing non-conforming uses and every town can tailor to its specifications what constitutes termination or abandonment. In the absence of a town by town test to determine whether a non-conforming use is terminated or abandoned, our law applies in general tests. The same is true of variances, in the absence of a specific ordinance provision that tailors the timeframe for a variance or special exception, the general rule applies which is that it runs with the land. Warner, for whatever reason, going back to the 1960’s, has had Article VXII that says a variance or special exception is only good for two years unless vested.

Corey: I’m wondering where you see that because what I see is, it says there is a two year period unless vested and if vested means that it is used and the special exception carries with the land as long as it is initially vested, I don’t see where you’re finding language that says it lapses.

Mr. Moeckel said he would explain how he reaches that conclusion. When I read the provision that says approvals granted by the board for variances or special exception is valid for a two-year period, the approval is good for two years unless vested. Corey asked him if he would disagree if the initial grantee of the special exception actually vested that use by using the property in accordance, would that not constitute vesting.

Mr. Moeckel: I disagree because vesting as used in the Warner Zoning Ordinance is not defined and when I think of what a developer needs this to do, to be vested whether it's a site plan or subdivision plat, it involves some act of substantial construction. In the 1970's as I understand it, they didn't do anything.

Corey asked what Mr. Hicks would have done with this special exception to vest the special permission granted in Mr. Moeckel's estimation? Mr. Moeckel replied he didn't know because he wasn't there to see the operation and it's a difficult question.

Corey: It's my understanding that there has been some testimony that Mr. Hicks whom this was granted to actually used this piece of property and if that's the case would you concede it would be vested at that point?

Mr. Moeckel: Only if the testimony was that he didn't just mean to do it but he meant to do it forever.

Chairwoman Loz asked about it being used for ever and made the point that Mr. Hicks lived there until he died.

Mr. Moeckel said you could suggest that if they meant it to be in perpetuity, after Mr. Hicks Sr. passed, someone would have "carried the baton" but we didn't hear testimony to that. Your ordinance says they are good for two years and terminate unless they're vested which is the distinction the town of Warner makes as opposed to every other municipality or most of them.

Chairwoman Loz: He got the special exception in 1976 and ran it well into the 1980's so that was past two years.

Mr. Moeckel: That is a factual question for the board to decide, is it vesting? It's neither here nor there with respect to the Biagotti application, and only matters if the Biagottis wanted to pick up that 1976 baton and do the exact same thing. From what we have heard they do not want to do that.

Steve Hall 366 Pumpkin Hill Road: There is a thirty year gap since any of these activities have taken place and two different locations we're talking about, the house when this initial application was in place, and now the barn and a different venue taking place. You're also talking 65 people in the house as opposed to 125 in the barn. It's a whole different scenario.

Beverly Heaton 53 Old Pumpkin Hill Road: I am an abutter. I wanted to address the eating and drinking establishment. I believe when the Hicks had this, Mrs. Hicks or somebody did the cooking themselves in the home and it wasn't catered. If I remember correctly the definition of an eating and drinking establishment in Warner is the food is prepared for sale on the premises which does not fit what the applicant is looking for.

This may not be appropriate but is from my heart. I believe that the applicant has already done so much damage to the neighborhood on Pumpkin Hill, has pitted neighbor against neighbor, family member against family member. Up until now we have been a wonderful community and everybody gets along and have always been friends. This whole situation has changed the character and it is very upsetting.

Chairwoman Loz asked that we be careful not to make personal attacks.

Margaret Karrick 107 Old Pumpkin Hill Road: I completely disagree with what Mrs. Heaton just said. It was not caused by the applicant; it was caused by this group of people with the lawyer, this horrible attack on this application by these people. That is where the discourse is coming from, not from Missy. Why can't we just give her a chance?

Beverly Heaton made the point that a chance is not a chance in this case because it is given, it goes with the land. There's no saying, "UT oh, this didn't work, you're out." She apologized for bringing it up.

Wanda Anderson 29 Pumpkin Hill Road: I came to this town almost 40 years ago and we tried to build a house on land given to us and were refused. After we bought our home after going through many public hearings to be able to build, I got a letter from the town stating, you can build on your property now. This lady bought her property, there is the special zoning that's been grandfathered, and as long as she goes by the guidelines that are grandfathered, I don't understand the issue.

Barbara Marty: The issue is that she doesn't want the limitations originally put on the eating and drinking place. What it's become now is an entertainment venue, they want to have music and even though you can say it's going to be in a barn, on a hot summer day people are not going to stay in the barn. If they're going to pay a lot of money to use the property they're going to want to have free range. It really is an indoor/outdoor venue when you use the barn and in that case it needs a variance and becomes an amusement and recreation service outdoor excluding camping under the Retail Services 19-A. It's not appropriate in this use and I think the board has to consider that.

Chairwoman Loz made the point that the board will examine everything before them and that we want to wrap up the public hearing portion of this meeting.

Allan McCausland 21 Connor's Mill Road: Two points; I've read all the minutes including the preliminary ones that were corrected today. This isn't a restaurant or eating and drinking place, it's an event center. It's something where you have special occasions and is not someplace where you're going to go in and sit down and eat as you would at a restaurant establishment. I was at Hicks place to eat a number of times and was involved in the 1976 meeting when Ted Bliss was chairman.

It's an outdoor facility and I read in the minutes they talked about putting a deck on the back of the barn. That will be outdoors and is substantially different than what Arthur Hicks had. Whether he abandoned or not I don't know but he moved from there and built the restaurant downtown where the pizza place is now.

If you approve this it is going to set precedence for the entire R-3 district including Schoodac which is the area I'm in and other R-3 districts. I think you have to look at that very carefully, it's very different from what Arthur Hicks had which should be taken into consideration. As for noise, Schoodac is down below Pumpkin Hill and there are some people that have fireworks on New Year's Eve on Pumpkin Hill and my dog hides under the table.

Susan Rothe 60 Old Pumpkin Hill Road: I can see the barn from my house and if they play music outside can hear it inside my home. My concern for this is that if it passes, it's pretty obvious our property values and quality of life will dip. With that, what are my choices; live there and suck it up having my quality of life lowered and listening to nightclub type of noises when I retired as a Police Sargent from San Francisco in the night club district working nights? I like to see the deer come through and the other animals. My other option is if you can't beat them join them. My property is set up, we already have had a big party for 50-60 people, and do you want 2-3 event centers running on Pumpkin Hill which would double or triple the traffic.

Jim Zablocki 430 Pumpkin Hill Road: I am an abutter. One of the things that was stressed was how this will coincide with the Master Plan of Warner. If you read from the Master Plan in 2011, *rural character; Warner residents continue to feel that Warners hinterland is one of the most important aspects influencing the decision to live here. Residents of Warner value the rural and historic character of the town yet there is a threat to that atmosphere from increasing cars and roads and associated speed, especially in residential neighborhoods in the village core*, which is clearly what we're discussing this evening. *According to the results of the 2008 Master Plan Community Survey, Warner residences highly value the town's natural environment and rural atmosphere. They support natural resources and conservation including direct land conservation and direct land regulatory measures.* This is clearly what we're discussing this evening in R-3 Zoning.

Mr. Heaton 53 Old Pumpkin Hill Road: We retired here and lived on Pumpkin Hill for 12 years. The reason we came here is it's tranquil, quiet and idyllic. My hearing can pick up all sorts of stuff and this is going to be like the radio playing next door rattling the dishes. I never thought I would have to defend our rights on this piece of land, the towns ordinances are made in such a way that it seemed our peacefulness was guaranteed and I'd never have to argue this. We're pleading with you to please turn down this special exception. If granted the special exception for an event center being planned at 393 Pumpkin Hill Road will forever change the nature of our neighborhood introducing a lot of noise from bands and good times and will be unwanted noise. There will be traffic that comes with it and it's going to be on a regular basis, not occasional as in the past. I heard Missy

suggest at the last meeting that she'd like some flexibility to do whatever she wants to do. I would also suggest that, she runs another business in Florida that suggests this is not her only goal, if you want to pass that forward...

Selectwoman Loz: That has nothing to do with this application Sir. She asked the Zoning Board of Adjustment members not to pass around what Mr. Heaton had handed to the board member nearest to him.

Mr. Heaton: The applicant argues that in all her statements, this isn't going to happen, it's going to be quiet, we'll have sound reducing stuff and you'll never even know we're there and so on and so forth. I'm not used to driving in city traffic; a traffic jam to me is three cars in the center of town. This is going to introduce an 80% increase in the amount of traffic. She's on record for finding that her purchase of 393 Pumpkin Hill Road was the worst real estate investment she ever made. Don't make us pay for her mistake.

Chairwoman Loz noted letters that had been submitted to the Zoning Board of Adjustment regarding this application. The Zoning Board of Adjustment discussed whether these should be read in entirety this evening and it was decided they would be made a part of the record. Following are thirteen documents which were received:

Michael Reynolds

2/16/2016

To Whom It May Concern:

My name is Michael Reynolds, and I live at 20 Old Pumpkin Hill Rd. I am absolutely against having an "Event Center" next door to my home.

I am a veteran, and a new home owner. This is absolutely my dream home. I couldn't think of a nicer place to live than Warner, NH. I picked this home for my family because of the rural setting and peace and quiet! The thought of an even center and a parking lot outside my front door makes me shake, and gets me very aggravated! If I had known this before I purchased this house, I would never have moved my family here!

My concerns are these:

1. Noise - right at this moment, I can go out my front door and enjoy the sound of silence! Weddings and retirement parties are loud events. DJ's and bands are loud. I live not even 200-250 yards from the "Barn." In the summer months, I'm sure the "Barn" will be open, unless it's air conditioned. Also, NH state law requires smokers to go outside to smoke. I'm a former smoker, and smoking areas are not quiet places, especially when alcohol is involved.

2. Parking: I'm not sure where people will be parking, but I hope to God it's not in the field outside of my house!

3. Drinking: Weddings, retirement parties, etc...people drink and get drunk! There are no hotels or motels near Pumpkin Blossom Farm. Pumpkin Hill Rd is by itself a windy and pretty tricky Rd. I hope the Warner Police Department know what they are going to be dealing with. Who will be responsible when there is an accident and possible fatality? I also hope there will sobriety checkpoints conducted by the P.D.

I'm the last person who would want to be told what to do with my property, but this affects many neighbors and no one who lives here wants this!

To the people who are for this "event center" I would say this: of course you are for it..."YOU DO NOT LIVE ACROSS THE STREET!!!"

As for this being a bad investment for Missy, what about everyone else's investment? This impacts the whole rural neighborhood!

The reason I do not speak at the meetings is because I know I would be asked to leave. I am that livid and aggravated!

To:
Warner Zoning Board
5 East Main Street
Warner NH 03278

January 22, 2016

Subject:

Motion for rehearing, Case 2015-03 (Biagotti)

Dear Zoning Board Members,

At your last meeting on January 13, 2016, there were a few issues that time didn't allow to be brought up. We would like to have these comments added to your records. It should also be considered that during the spring to fall period there are over 50 seasonal camps on Tucker Pond that add a tremendous volume of traffic to School Street and Pumpkin Hill Road.

You have a previous similar request on file that addressed many of the same issues. Please refer to your Case # 03-01 that you received on 5/16/01 from Donald H. Greenwell requesting an exception (Table 1 #19 under retail & service) to build a private residential "Summer Camp" for children at 648 Pumpkin Hill Road. This property is known as Bagley Pond and the former Eleanor Cooley property. The Public Hearing was held on June 21, 2001. The request was denied due to the unacceptable traffic increase. Since that denial also please consider the new houses on Pumpkin Hill Rd, Old Pumpkin Hill Rd., Mason Hill Rd, Brown Rd & Couchtown Rd that use Pumpkin Hill Rd to go downtown or get to I-89. We request that you deny Missy Biagotti's application for a Special Exception for a "Commercial Event Center" at Pumpkin Blossom Farm.

Sincerely,
Wayne & Trudy Daniels
685 Pumpkin Hill Road

True Kelley
1/21/2016

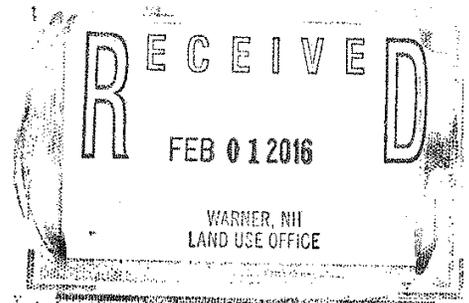
Dear ZBA,

I am writing to express my opposition to the use of Pumpkin Blossom Farm as an event center. My concern, not being an abutter, is the traffic it will create on a very rural, narrow and winding road and through the congested area of School Street. I ride my bike on that road almost every day during good weather, so I am very aware of traffic levels. In summer the increase in traffic from people vacationing at Tucker Pond already stresses these roads. We are used to that, but additional traffic will make the situation much worse. This will be especially true if alcohol is served at the event center.

Turning Pumpkin Blossom Farm into a party destination cannot possibly improve the neighborhood.

Sincerely,
True Kelley

John and Beverly Heaton
2/1/2016 (following two pages)



To the Warner Zoning Board of Adjustment

From John and Beverly Heaton, 53 Old Pumpkin Hill Rd., Warner NH

Mrs. Heaton and I are writing you regarding your decision to grant a special exception to the owners of the property located at 393 Pumpkin Hill Rd, Map 15 Lot 15, Zoning District R-3. That decision granted the use of the property as an eating and drinking place per the Zoning Ordinance Use Table Retail and Services Item Number 3.

We believe that this decision, made at the ZBA meeting of 14 October, 2015, was made in haste as it did not take into consideration the full impact on the property owners in the surrounding neighborhood, and along the road leading to this area, and should be reversed.

Mrs. Heaton and I were first drawn to our parcel on Old Pumpkin Hill Road 14 years ago when we were in search of a place to build our home. Our neighborhood is 2 miles out of Warner center, up a picturesque, winding country road and is zoned for large residential lots. It is our haven from the crowding, hustle-bustle noise of the rest of the world, and it is also the same neighborhood as 393 Pumpkin Hill Road.

When we purchased our parcel of land we had every expectation that the neighborhood would remain as then zoned. Until now, that has been the case, but the special exception under discussion here threatens to change all that by introducing frequent events that will be accompanied by noise and crowds of partiers and traffic to the area, and we beg the zoning board to reverse its initial decision.

To be clear, Article VII of the Warner Zoning Ordinances state that an R-3 district in Warner is:

“The Low Density Residential District R-3 is designated for residential and agricultural uses on land remote from municipal water and sewer services and which because of its character requires large minimum lot sizes to handle the individual family's water and sewer disposal needs. Uses normally associated with residential neighborhoods such as schools, churches and parks are permitted and certain business uses are permitted by special exception.”

Furthermore, the Warner Zoning Ordinances Article XV, Non-Conforming Use, states that:

“When a non-conforming use (existing) of land or buildings has been discontinued for a year, the land or buildings shall be used thereafter only in conformity to this ordinance.”

As documented in the October 14 Warner ZBA meeting minutes, the owners of the land under discussion here repeatedly cited the previous use of this land as similar to the use currently being requested in the special exception, but since this land has not been used for non-residential purposes for many, many years (at least for the 14 years we have owned this land) Article XV clearly prohibits that.

If this Special Exception stands, we the current residents of the area, can expect regular and frequent intrusions of large groups of party goers and the noise and disruption of our peace and quiet that will no doubt accompany them. The owners of 393 Pumpkin Hill freely discuss the site and business improvements that are anticipated to result from this new venture, but they never address the less pleasant aspects of this venture. It is these other aspects that we believe make the SE approval a bad idea.

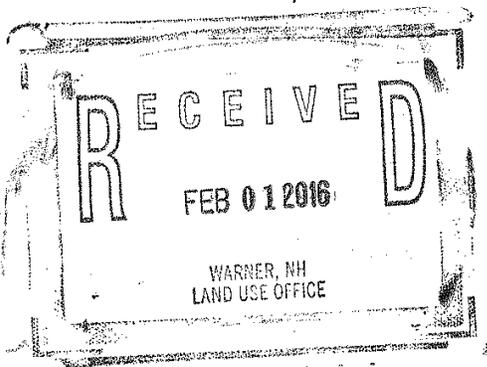
The owners of 393 Pumpkin Hill initially expressed that the proposed venue would be used up to three times a week with the expected number of participants up to 125 people, but at the last ZBA meeting the owner requested that there be no restrictions on the frequency of use. Also the owners are asking that they be allowed to build an outdoor deck on the barn. All of this suggests to us that there will be considerably more noise and that we will experience it more often.

All of this exceeds the impact of any usage previously experienced in the earlier decades. This must also be put in the current context of a more densely populated Pumpkin Hill neighborhood.

It should be appreciated by the ZBA members that all of this activity will generate an unusually high volume of traffic for the area and the road leading to the venue. Pumpkin Hill road is a narrow winding road all the way from Warner center to 393 Pumpkin Hill Rd. There are no side walks along the road and people frequently walk their dogs and baby carriages, jog and ride their horses along the side of the road. The anticipated increase in traffic will certainly pose increased danger to these activities. And then, of course, there is return traffic exiting the venue at night, when alcohol has been consumed by many of the drivers. Do you want to expose the residents along Pumpkin Hill Road and the town to this hazard and liability?

This SE, if granted, will change the character of the neighborhood and reduce the value of the neighboring properties on Pumpkin Hill. This has been documented by experienced realtors familiar with the area. The owner of 393 Pumpkin Hill Rd has expressed that she is not able to profit from the land under the current zoning constraints, but this is no reason why the neighbors should suffer a financial loss.

John Heaton *John Heaton*, Beverly Heaton *Beverly Heaton*
2-1-16 2-1-16



Aarika Reynolds

1/25/2016

Dear Board Members,

My name is Aarika Reynolds, 20 Old Pumpkin Hill Rd, closest abutting neighbor to Pumpkin Blossom Farm. I spoke at last month's hearing; however I strongly feel that due to time constraints, emotions and frustration, and lack of time to process information, my spoken words are not enough to convey my true thoughts and feelings about the matter of my neighbor pursuing an even center or "eating and drinking establishment." I do not want to dwell on things I said at the last meeting, but this is extremely important to us.

*1. As I previously mentioned, my husband and I recently moved to the community in October 2015. We invested our savings, our time, and want to invest our lives, and that of our 2 year old son into this community. This is our home. Our first home. We chose this location due to the views, privacy, peace and quiet, and the appeal of a friendly, rural community. We found out at closing that Missy had put this application to the board, and that it was approved (previously). Had we known about this before hand, we would not have chosen to move to Pumpkin Hill. I had looked at other houses in Warner, Danny Boy Ln specifically, which was lovely, but Pumpkin Hill has exactly what we want, at present. Danny Boy Ln may have been a smarter choice given the fact that this application is even under review. Unfortunately our choice was made, and we are going through this dreadful experience currently. This will significantly drop our property value, therefore we would not be able to afford to move, **as much as we will want to, if this passes.***

2. Noise travels. Even 15-25 people in one room whispering leads to an increase in at least 25 decibels to the point where you cannot hear the person standing next to you, leading to an increase in volume. Putting a large group of people, in excess of 125, even without music, will be audible at my residence. Add music to the mix, and volumes can quadruple. The increase in traffic, will lead to noise contamination of the neighborhood alone. The chart below is referenced from the American Speech, Language, Hearing Association. Not to mention living our every day lives, running the lawn mower, weed wacker, chainsaws, guns, our child playing outside, dog barking, the rooster next door, all of these things will affect the events taking place at Pumpkin Blossom Farm. I know I would not have been ideal to hear the lawn mower during my own wedding vows. Point being, everyone and everything makes noise. Neighbors make noise, but we are not expected to hear it 1-5 days a week, every week, for 5 hours a day until 10 pm.

Extremely Loud

110 dB = maximum output of some MP3 players, model airplane, chain saw

106 dB = gas lawn mower, snowblower

100 dB = hand drill, pneumatic drill

90 dB = subway, passing motorcycle

Very Loud

80-90 dB = blow-dryer, kitchen blender, food processor

70 dB = busy traffic, vacuum cleaner, alarm clock

Moderate

60 dB = typical conversation, dishwasher, clothes dryer

50 dB = moderate rainfall

40 dB = quiet room

3. Traffic - I have included photos at the end for your reference, so you can see first hand exactly how close 393 Pumpkin Hill Rd is to our home. The field outside of my front door, is a potential parking area. The field is literally 30 walking steps (I'm 5'3) from my driveway. What a perfect way to eliminate that rural feel and bucolic setting that brought EVERYONE to this area. Missy stated she does not want to lose the functionality of her driveway, which leads me to believe that my current, dead-end, dirt road will become a through-way to her "Residence." I should not have to worry about wrong turns, drunk drivers, or trespassers entering my driveway

and the safety of my 2 year old and dogs enjoying our yard. GPS does not work on Pumpkin Hill - you are welcome to try it. There is no way of preventing these things from happening with an "event center" next door. Mr. Lindley, owner of the bison farm at 490 Pumpkin Hill, as well as his neighbor, testified to this at last month's meeting. I pay way too much money in taxes to be worried about the safety of my family in my own yard. Also Pumpkin Hill can be quite treacherous for travel, especially at night with deer, porcupines, horses, and other traffic. Increasing traffic only increases the risk, and add alcohol to that, look out. Go to a bar/restaurant and have a drink is one thing, go to an "event" and witness on average how many drinks people have. I'm sure we have all been to a family gathering, work function, etc. There's no need to elaborate.

4. It is my understanding, based on last month's hearing, that what Missy is applying for implies that this property is primary a residence, with a business as second intent. At present, it is not her residence. It is a vacation "home." The limited months to the business are due to the fact that presently lives in Florida with school-age children, and these months would be the least limiting to school absence, or perhaps limiting her time away from them while they are attending school. Shouldn't this be her residence before applying to make it a business? The 5 or 6 times a year she packs up everything in the car to drive to NH, per her previous testimony, does not make this her residence, nor does it make this her home. She stated she has owned the property for 10 years, and this is the worst investment she has ever made as a real estate broker. She also stated that she has to run a business in order to afford to live here. I'm going to pass judgement when I say, that maybe if she were not wasting her money renting a home, utilities, supplies, school sports/functions, business in Florida, she could afford to live in NH. It is the worst investment she has ever made given her money spent on taxes and mortgage compared to the amount of time spent in the residence. If she cared so much about this community and region, why is she not raising her family here and spending her "hard-earned" dollars in our community?! She has also made many references to her intent, and investing in a kitchen, and landscaping etc. It is not my problem, nor the boards, to be considering the fact that she made a bad real-estate investment.

5. The Hicks' previous establishment: There have been 3 searches I believe, to locate documentation of a prior approval for the property to host events, outside of their own family functions. Legally, unless this was carried on by the 4 owners in the interim, before Missy, this does not carry over by rule of grandfathering - otherwise wouldn't documentation be in with Missy's when she acquired the property. Also, when the Hick's owned the property, the abutting properties were continuous farm land owned by the Hick's, therefore there were no neighbors, lives, homes, to have negative impact on. I know there are supporters of Missy, but I invite them to allow her business to be established next door to them.

6. Promoting small business: The closest hotel to 393 Pumpkin Hill Rd is 10 minutes away, the next 2 are in neighboring towns. I'm sorry to go back to it, but 10 minutes drive on Pumpkin Hill Rd after a couple glasses of wine is dangerous. The only catering service locally is in Bradford, not Warner, unless you count Subway. She will not be helping OUR (Warner) local businesses with anything. The "event center" guidelines that were established at the last hearing by reference to state and federal statutes, as well as by the Zablocki's lawyer, implies the food will be prepared on site - which she admitted will not be happening. Coming from a long-standing history at an Elk's Lodge, you cannot make any money by hiring everyone else to do the work for you, and making money is her main concern - She always comes back to that via way of intent.

7. Missy has stated that she cares about this community, this neighborhood, and the effect of her "establishment" on this. What kind of community and neighborhood will we then have if this passes? Neighbors hating neighbors? People hating their community for lack of support from their zoning board? What kind of relationship will we have with Missy? What does she expect after all of this emotion and controversy. She can return to Florida, get away from it all, sell the property and make her money back that she lost after the past 10 years of not living here. Those of us who live here, will remain here, in disdain.

After last week's meeting, she literally turned around and said, "I just want to meet you. I know we are emotional," and she shook my hand. As a neighbor, she has had ample opportunity to meet me, or come knock on my door. Her family was here for the Christmas holiday, and she arrived 3 days prior to last month's

meeting, yet I only met her because I was present for the meeting. It took everything I had not to be rude, and that is putting it nicely. When we moved in October, 7 different households in the neighborhood came to greet us, welcome us to the neighborhood and community, and introduce themselves. This atmosphere is what we want to hold on to.

I'm not against small or private business owners. Everybody has the right to earn a living, even if out of their home - but that does not give them the right to negatively affect the lives of others around them. My neighbors may not agree with me, but I would not be opposed to her "events" if they were limited to business hours and 12-15 people or less, even if it were 5 days a week. The application as presented, even though she should be required to obtain a variance, promotes the type of behavior and environment that is not **DESIRED** in our neighborhood by the people who live here. How is it possible that one out-of-stater's wants come above the 19+ abutting residents of the town?

Thank you for your time and consideration,
Aarika Reynolds



Caroline Cookingham
2/4/16

Zoning board of appeals,

I am writing as a concerned Warner resident. I just found out about the approval for Pumpkin Blossom Farm and don't understand how this could be allowed. I feel terrible for all the people that bought or built their homes in this residential area. The noise and traffic that this business will cause is at the inconvenience of many to benefit a few. How much thought was put into the decision. The negative affects of this business is not worth it or is it fair to the local residents.

Carolyn Cookingham
Brook meadow Lane
Warner, NH

Gail Hanson

2/10/2016

I am writing to express my concern over the proposed event center at Pumpkin Blossom Farm on Pumpkin Hill Road. This event center will impact our neighborhood in many negative ways, but one of my main concerns is the increased traffic and type of drivers we may encounter. With the possibility of several events per week with up to 125 people attending each event, this would be a big impact. Out of state drivers trying to navigate our snow covered hills often pose a safety concern as do any drivers leaving an event where alcohol has been served. Please do not allow this to go forward.

Gail Hanson
Pumpkin Hill Road
Warner

January 17, 2016

To Members of the Land Use committee:

I have given thoughtful consideration to the proposal to run a commercial event facility by non-resident property owners in my neighborhood. Though I have not been able to attend the public meetings because of family obligations this does not mean that I have no opinion on this development or support it passively.

In May I will have lived at 461 Pumpkin Hill Road for 26 years. My former husband and I purchased the property for the exact qualities identified and promoted in the Biagiotti's Home Away page, "Peace and Serenity" as well as to "enjoy quiet evenings". I find it ironic that the Biagiotti's are seeking to put at risk the very qualities that brought them to initially purchase the property with their proposal for a commercial event facility. This proposal, if implemented, would have a profound impact on our neighborhood.

Many things concern me: the fact that there is little to no support by abutters, their deepening interest in maximizing its use by seeking to run a year round establishment. the absence of a resident owner putting into question responsible on-sight management with an investment in our neighborhood. Whether or not they choose to remain property owners in Warner, they will have established a precedent for the next owner that I am not comfortable with.

My major concerns, shared by many, are traffic and noise. I am distressed by the idea of having to "get in line" on weekend afternoons behind droves of cars going to an event. Events do not have staggered attendance. I am concerned with the risks associated with having inebriated drivers pull away on to our roads on a regular basis. Weddings and alumni events are nostalgic events and notorious for alcohol use and abuse. The Biagiotti's will have no control over this.

We have no town noise ordinance. It is entirely possible that we will be subjected to the drone of techno thump on many quiet summer evenings. It is entirely possible that the neighbors above the property will be privy to intimate toasts as well as three to four hours of band or DJ music as though it was intended for them. The Biagiotti's will have no control over that, nor will the neighbors. The echo of car doors slamming may go well into the night beyond the event's controlled hours.

Users of the property have no investment in our community and will act with accordance to their own needs, not the needs of the neighborhood.

I am dumbfounded by this proposal and hope very much the town will act within our neighborhood's long-term best interest and rule against this proposal that will, I believe, negatively affect our property values. I never anticipated, when I moved here that there would one day be a year-round commercial event facility essentially next door.

Thank you for your consideration.

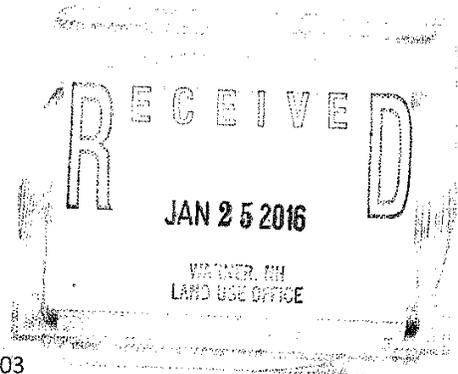
Mary Mead

Carol Zablocki

1/25/2016 (following two pages)

January 19, 2016

Zoning Board of Adjustment
Town of Warner
Land Use Office
PO Box 265
Warner, NH 03278



RE: 393 Pumpkin Hill Road – Map 15, Lot 15 (Biagiotti) Case No. 2015-03

Dear Zoning Board of Adjustment members and alternates:

I am writing as a resident of Pumpkin Hill Road regarding the Special Exception application currently before the board for an “eating and drinking place to host professionally catered events such as wedding receptions, reunions and other gatherings” as applied for Melissa and Michael Biagiotti of Fleming Island, FL and Warner, NH.

Having attended every meeting at which this project has been discussed, I am amazed that as of January 13, 2016 this project is still being discussed as a Special Exception application. It is very clear from the Zoning Ordinances for the Town of Warner, NH adopted March 11, 1969 and amended last March 10, 2015 that what the applicants are requesting falls not under the Special Exception application but under the Variance application. At no point in the Biagiotti’s application dated September 27, 2015 do they meet the conditions or prove the conditions set forth on the second page of the Special Exception application.

Condition A. states that the use is permitted in the district for which the application is made.

While it is true that a Special Exception allows for an eating and drinking place in an R-3 district, the applicants are not asking to open a restaurant on Pumpkin Hill Road. As an eating and drinking place’s principal purpose of business is the sale and service of food and drinks prepared at the eating and drinking place to be consumed on premise. The applicants do not intend to have any food prepared on premise but instead will have a caterer use the facilities to plate food and serve. The persons who will be consuming the food and drink served by the caterers will not be customers of Pumpkin Blossom Farm but instead will be guests of the person or persons renting the private event center the applicants hope to establish under this Special Exception. The applicants have not met Condition A of the Special Exception application.

Condition B. states that the requested use is essential or desirable to the public convenience or welfare.

The applicants in their response to Condition B at no time address either public convenience or welfare but instead are “confident that the requested use will prove desirable...”. Confident and will prove is verbiage that means “we hope that eventually our project will be essential or desirable to the public convenience or welfare”. The applicants have not met Condition B of the Special Exception application as nothing in their application proves that the requested use IS, from the first day, essential or desirable to the public convenience or welfare.

Condition C. states that the requested use will not impair the integrity or character of the district or adjoining district nor be detrimental to the health, morals or welfare.

In the applicants response to Condition C they fail to even address the Pumpkin Hill district or the adjoining district which includes School Street. Their entire response to Condition C is to reply as to what they intend to do at Pumpkin Blossom Farm regarding property improvements. The applicants hope that their improvement plans for at 393 Pumpkin Hill Road will "accentuate and improve upon the character of their property that make Warner look and feel like Warner". There is nothing in the application under Condition C that discusses the Pumpkin Hill district at large or the adjoining district. The applicants have not met Condition C of the Special Exception as they have not addressed how their project will not impair the integrity or character of the Pumpkin Hill district or the adjoining district.

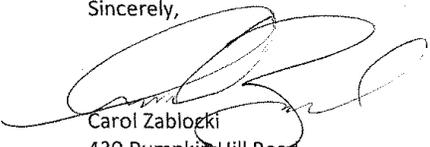
In addition, at the January 13, 2016 Zoning Board of Adjustment meeting, all I heard from the applicant is how their project at Pumpkin Blossom Farm will benefit businesses in Warner and surrounding towns and also how it will help the Biagiotti's maximize their investment in Pumpkin Blossom Farm. What I did not hear at the January meeting is how Pumpkin Blossom Farm and the Biagiotti's will benefit the abutters or concerned neighbors of both Pumpkin Hill district and the adjoining district.

At the January 13, 2016 Zoning Board of Adjustment meeting, the applicant, Melissa Biagiotti stated that she is a real estate agent in Florida and also a real estate investor. She admitted that Pumpkin Blossom Farm is the absolute worst investment she has ever made. Melissa Biagiotti is asking the Zoning Board of Adjustment, the town of Warner, NH and, more importantly, the residents of our district and adjoining district to help her recoup her absolute worst investment ever made.

The Zoning Board of Adjustment should not be asked to assist in making a profit for the Biagiotti's nor should the ZBA be put in a position to help the Biagiotti's make a bad investment sound. The Zoning Board of Adjustment should not be putting the needs of the few before the needs of the many.

I respectfully request that the Zoning Board of Adjustment deny the Biagiotti's Special Exception and, if the Biagiotti's so desire, submit an application for a Variance.

Sincerely,



Carol Zablocki
430 Pumpkin Hill Road
Warner, NH 03278

Rhonda Rood
Steve Brown
(following two pages)

COUNTRY HOUSES REAL ESTATE

603-456-6100
househunter@tds.net

15 East Main St
Warner, NH 03278

January 16, 2016

Warner Zoning Board
Warner, NH 03278

Dear Board Members,

I was requested to give a professional opinion on the effect of neighborhood property values in relationship to creating an event center at 393 Pumpkin Hill Road.

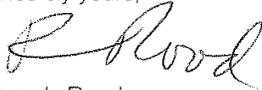
The resale value would be effected in that buyers looking for houses in rural areas usually have several criteria. The first and foremost is peace and quiet including road noise then traffic and privacy. All of these factors could come in to play with an event center in close proximity. These abutting properties would no longer be quiet, private residences due to the proximity to proposed event center.

This would reduce the number of buyers interested in that particular rural neighborhood thus extending the numbers of days on the market and ultimately lowering final sales price.

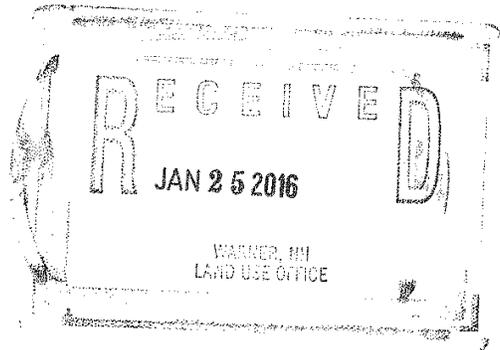
Additionally, the board should consider the impact on side streets leading to Pumpkin Hill Road. Old Denny Hill, Old Main Street and School St are heavily populated and narrow. There is a Dementia center at the crossroads as well as many young children unused to heavy traffic. Safety is a community responsibility.

I have been a resident of Warner of over 37 years and a real estate broker for 15 years.

Sincerely yours,



Rhonda Rood



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Real Estate
15 East Main Street
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www.HouseHunterNH.net

Cell: (603) 491-6447
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Direct Voice & Fax: (603) 676-7557

CHMS
COMMERCIAL REAL ESTATE SERVICE
REALTOR
M.A.S.



Rhonda Rood
Managing Broker
househunter@tds.net

Dear Members of the Warner Zoning Board;

January 18, 2016

I have been a Realtor in Warner for the past 40 years. I have some insight that I would like to share as you consider the Special Exception regarding the use change at Pumpkin Blossom Farm

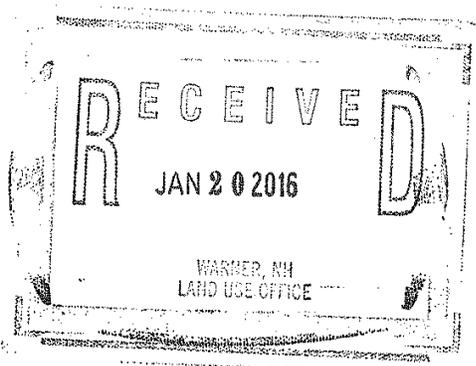
An event destination at Pumpkin Blossom Farm would have a negative impact on property values for homes within earshot of a dance band because of the potentially frequent and repetitive nature of the events. Homes along Pumpkin Hill Rd would also experience negative impacts due to the increased traffic to and from events held there. In my experience, buyers who make the commitment to live in rural areas do so to live in an environment free of excessive noise and light pollution.

Pumpkin Hill Rd and Old Pumpkin Hill Rd has been and continues to be a residential area. In recent years several homes have been built within close proximity of Pumpkin Blossom Farm. Folks that choose to live in this area rely on the residential zoning status to protect the quiet enjoyment of their homes and yards.

Sincerely,



Steve Brown
Brown Family Realty
8 East Main Street
Warner, NH 03278



Mark and Leah Maynard

2/10/2016

To all members of the Zoning Board,

After attending meetings and reading the notes regarding 393 Pumpkin Hill Road, we're still unclear as to whether the Biagotti's should be applying for a Special Exception or a Variance. Regardless, the fact that none of the abutters feel this is desirable should indicate that neither should be passed.

Ms. Biagotti has clearly stated that she can do whatever she "dam" well pleases on her property. (although that part was not recorded in the minutes) She say that this is the "worst real estate investment" she's ever made and an "emotional decision." The fact that she and her husband purchased a house they can't afford to live in should not become the problem of the people already living in the neighborhood. She says that it "will not impair the integrity of character of the district." All of the neighbors feel that it will and who better to know than the people who live there? She states that the "concerns of my immediate neighbors would be of utmost importance" but the fact that she is still proceeding with this Special Exception shows otherwise.

Not only will the immediate neighbors feel the impact of an event center, so will people on the roads leading to the property. School Street will see a growth in traffic, as well as Old Pumpkin Hill Road, with travelers unfamiliar with the area continuing straight, instead of bearing right.

Walkers, cyclists, horses, and dogs would all have to contend with more traffic if this were to go through.

We're concerned about the noise of a band, smell of septic, traffic, and people who've been drinking leaving the event as drivers.

If we had known an event center next door to us was possible, we never would have considered our property.

We specifically chose our lot because of the quiet, low traffic, and privacy. When the Biagotti's bought their house, they purchased the same. To change it after 10 years is unfair to those living there. If they wanted a different type of area, they should have bought in a different area.

The bottom line is that this is NOT desirable for any of the abutters and WILL impair the integrity of character of the district.

Mark and Leigh Maynard

Arne and Christine Daniels

2/10/16

Re: Michael & Melissa Biagotti, Rehearing of Special Exception Case #2015-03 granted October 14, 2015

Dear Members of the Warner Zoning Board,

We are writing to voice our support for Michael & Melissa Biagotti's repeat appearance before the board with regard to the above referenced Special Exception. We wish to make certain that the board understands that we are in complete support of the Biagotti's Special Exception request to operate an "eating and drinking place not including drive-in establishments" at 393 Pumpkin Hill Road, Warner, NH as is out lined in the Zoning Table, Retail and Services Section 3, Page 38.

It is readily apparent that the Table provides an opportunity for the board to grant a Special Exception for uses such as Michael and Melissa are requesting. You've heard first hand accounts that this property has served in a similar function previously, and it is reasonable that the current owners of Pumpkin Blossom Farm should be granted the same opportunities for themselves.

We have every reason to believe our very capable Public Safety officials here in our community can professionally and adequately handle any visitors to Pumpkin Blossom Farm. It is our opinion that the board did their due diligence when they approved the Special Exception in October 2015. The board struck a very reasonable balance with regard to the concerns of the neighbors and abutters by granting the Special Exception with specific guidelines and limitations. We would again ask that as a board, you make the same decision and issue Michael and Melissa Biagotti a special exception to operate an "Eating and Drinking Place" at Pumpkin Blossom Farm.

Thank you for your time and consideration.

Arne and Christine Daniels

Aarika Reynolds Old Pumpkin Hill: Wanted to go back to the vested interpretation and aside from the fact that Mr. Hicks started the restaurant on Main Street, whether or not the business is carried over for the past 33 years with the additional 6 owners. Had it truly been vest and passed with the land and that being the intent on the property, Mrs. Biagotti wouldn't have submitted a new application because she would have been aware from person to person, owner to owner, that this was included on the property and part of the intent of the property.

Joan White 40 Old Pumpkin Hill Road: What we are all saying is that it doesn't belong in the neighborhood, it is wrong for our section which is R3. Were it to be downtown in Warner it would be perfectly fine but we're residential. I don't know where all you people live, but you would not be happy to have such a building and events going on. We live just above the barn and the property and so do the Reynolds. If this were to take place and these events, the music being outside which they certainly would be, would destroy our environment. We came here from a cosmopolitan area because it's peaceful, a beautiful town and we love it here. Now this comes up and it's disastrous to all of us who live here.

Chairwoman Loz brought forth the site walk that had occurred earlier today. Rick suggested she recoup what had transpired. Janice noted the Zoning Board of Adjustment had a site walk at the Biagottis this morning at 10:00 a.m. and it was attended by a few of the public. We looked at the general yard and the surrounding areas, abutters were pointed out. They went into the house where the meeting place would be and saw the bathroom facilities, the kitchen and what used to be a commercial kitchen. They also walked through the barn.

Rick clarified there is nothing remaining of the commercial kitchen, just the space with walls. Andy Bodnarik mentioned there is an electric panel brought up during the site walk which is a subpanel off the main. Andy noted there was a discussion of the situation where there are three different bills issued with separate meters. Chairwoman Loz clarified there are meters for the event space, the house and the barn.

Rick said this will be included in the minutes for the site walk that in the barn there was a discussion that from the outside the windows would stay the same size as is, even if they were replaced. There is the possibility of some type of sliding glass door at the far gable end of the barn away from the house.

Lucinda McQueen: I did look at the home away site and the house has been advertised. The headline is peaceful and serene on Pumpkin Hill Road. At the last meeting Missy said something about it being the worst investment she had ever made and could the Zoning Board help her. I don't think it's your job. To which Chairwoman Loz said "That is not our job".

Steve Hall: Another question would be parking facilities. The land has changed over the years and has been repurchased. Where is all of this stuff going to take place for all of the people to park. Doesn't that go into the mix of things?

Rick Davies: Under the Zoning Board of Adjustment, when considering a special exception our ordinance and State Statute allow us to put conditions which could have either broad or specific requirements for when it gets to the Site Plan Review level. If there is a concern the Zoning Board of Adjustment would indicate that. In general Site Plan Review has requirements that would need to be met.

Caroline Cunningham: I don't live near Pumpkin Hill Road and I stated some concerns in my letter. My main concern is how it's going to change and how everyone is going to perceive where they can do business. I know several people that live over there and it will change, along with the traffic flow. I wonder why official business areas that are zoned for such things have to jump through hoops and what she is proposing is not at all what was. Its thirty years later and there are many more houses up there with increased traffic. I cannot wrap my mind around that this has gone on this long and is even being considered. If it was in all of your backyards you would think twice about it.

Beverly Heaton: I have a sign over my back door that says "Welcome to the most beautiful place on earth". The last thing I want to say is they don't make this anymore, don't destroy it.

Steve Bridgewater: I have one question, in your deliberations are you going to be deciding whether or not you're going to make a judgement on Missy's current application the way it is or are you going to make a decision based on a decision that was made in 1976?

Chairwoman Loz responded that is all part of what the Zoning Board of Adjustment is going to discuss next.

Kimberley: When the public hearing is closed, the question may come up, based on the decision that's made tonight by the Zoning Board of Adjustment, what is the next step that abutters can take if they need to feel like they need to appeal it? Is there another step if nobody's happy?

Gerry Nieder 218 Pumpkin Hill Road: In sitting here listening to this, I went down and chatted with Missy and what everybody is saying she's going to do, I don't get that. She didn't talk about how big she wanted and was telling me about small things she wanted to do. Can she revise her paperwork, does the board have to vote on it tonight because she doesn't really want what everybody's putting in her mouth, and she doesn't want 100 people. She wants to run small things. I'm wondering what is going on, she wants Bridal and Baby Showers and doesn't want wild parties with bands, I might be wrong. Can she revise her paperwork so it will work with the community? I live at 218, my parents live at 223. I walk across the street all the time and I guess I need to tell Clark about George Pellettier's employees because they are not controlled. We do want to have a nice neighborhood and I like to work with people. Maybe we can agree to disagree but I also want people to pass my barn and read my sign, I might get business.

Rick Davies: I'm following up on what the point was in conversation with Missy, is there some latitude we haven't heard here?

Missy replied that I hesitated to bring in a lot of different wording as I seem to get pounced on using the word events instead of dining. I tended to stay away from circumstances and sizes and to stick with exactly what I'd like. The types of things I'm anticipating are generally done in these R3 districts because that's the location of these properties and barns. A lot of times when someone chooses an event in a place like that they have a good deal of restrictions on them and they know that because they're compromising and aren't choosing to go to a Holiday Inn. If I have 120 people in a room for a dinner that doesn't mean for every one person that's there, there is one car. My motivation is not to have as many patrons as possible coming at all hours. My intent is to have a beginning and end time which is the reason I chose the word event. Many of the facilities that do this, if they have a group of say 75 people they may only have parking for a certain number of cars, so the party is responsible for shuttling attendees there. I can put in as many restrictions as I want unlike having an open restaurant. I would assume if an eating and drinking place is allowed in R3 that the ordinance has to assume there is going to be some increased traffic.

Rick Davies: At the last meeting when we discussed some of the limitations on the previous decision, I wrote a note that some of them are problems. Mrs. Biagotti responded, a restriction that puts a lot of pressure on is limiting to three days a week. I didn't understand the purpose of that if I have to maximize those three days as opposed to have smaller events more days. Rick noted the hours on the decision were 9 a.m. to 10 p.m. and Missy said that wasn't anything she had suggested. It was clarified Rick was referring to the special exception that was granted in October of 2015 and he was trying to determine where the applicant was coming from on some of the conditions.

Missy said another concern with the decision was the screening for parking issue which would limit the usage of her driveway and parking area as she's not sure if she could provide reasonable screening for existing places. She asked that condition be specific for future or new parking areas.

Chairwoman Loz asked the applicant how she feels about not having music as part of the application. Missy replied not all of them will have music but many will and the functioning before was primarily for weddings which she doesn't feel she can hold without music. She said people in the town have asked to hold wedding there and asked to give her response to people calling it an investment property. It's her home and she didn't

buy it with the intention of making money or making it a business. People within the town have utilized the property but she has never charged them for that. As far as investment that could not be farther from the truth.

Chairwoman Loz asked how Missy felt about music confined to the annex on the house and not the barn. Missy replied I can understand limiting the times but most events would be held in the barn. There are a lot of things I researched to minimize noise in the barn but having no music at all, I'm not sure that would lend itself to the atmosphere. Janice said one reason she asked this is they did the site walk today and saw the size of the barn which is significant but in the heat of the summer would be hot and stuffy. There might be a benefit to have the dancing portion separate in the confines of the annex and would mitigate the sound. She asked if Missy is thinking of increasing the bathroom facilities as there is only one. Missy replied she has and also additional facilities in the barn and would have to meet certain criteria.

Rick: On that subject, are you planning on winterizing the barn? Missy said she is not and as she understands from the Department of Health and the food prep facilities any caterers would have to use, there are certain guidelines she would have to follow one of those being running water.

Mr. Moeckel: I haven't heard the applicant articulate how the proposal is an eating and drinking place. Everything I've heard is this is an events center, there is factual testimony before the board to that effect. Chairwoman Loz said the applicant did say in a previous hearing that it went hand in hand with eating and drinking. Mr. Moeckel continued, from what I've heard tonight it is catered and discussion has turned away from the three questions the board needs to answer. Look at the application which is the clearest intent of what is proposed, up to 125 people at an event, many days a week, it is for 6-7 months of the year. I haven't heard how this proposal is essential or desirable for Warner. It doesn't make any sense to put this event facility in the barn, it's going to be too hot. The application says outside, not inside. Three questions for special exception; is it a permitted use - no, is it desirable or essential - no, is it going to change the neighborhood - yes. That is the inquiry before the board. You don't get to any of these other conditions of approval unless the board can properly answer those questions based on the evidence before it. What I heard is that you can't answer those questions.

Gerry Neider: That's why I brought up, can she withdraw her original paperwork or is everybody going to vote on this provisional paperwork.

Missy said, to go back to the point of this being an eating and drinking place and I don't know if it's still an issue but my application clearly states we'd like the opportunity for on-site preparations and also provide refrigeration in which case a food service license is required.

Andy Bodnarik made a **MOTION to close the public hearing at 9:07 p.m.** Howard Kirchner seconded. It was discussed that the board has heard a lot from the public in the previous meeting and tonight's meeting and everybody has had an opportunity to speak. **A roll call vote was taken with the result of 5-0-0.**

B. Discussion/Deliberation by the Zoning Board of Adjustment (2:10)

Rick Davies: Point of order to the terms of deliberation in the rules of procedure say deliberation does not include the alternates who haven't been seated. We've clarified over the years our understanding of the word deliberation is only if there is a motion on the floor. If there is a discussion it doesn't apply. He suggested they clarify amongst themselves the status of the 1976 decision and whether or not the special exception is still valid in that there was discussion about whether or not it would be after a 30 year absence.

Chairwoman Loz noted they have an email from Stephen Buckley at the NH Municipal Association regarding special exception which reads as follows:

A special exception, like a variance, is not personal to the applicant and runs with the land. That means that the right to use the property as permitted by the special exception does not expire even though the special exception was originally approved in 1976 and there has been 3-4 intervening owners since that time.

It would be possible for your zoning ordinance to provide that a special exception could be lost by non-use or abandonment. That would depend upon such language being in your zoning ordinance. Does Warner have such language in your zoning ordinance?

The board discussed whether the language Mr. Buckley was referring to exists in the Zoning Ordinance and reached the conclusion that it does not. Andy Bodnarik stated a special exception is different than a variance and there's a reason for that. If you were to try and put a time limit on special exception, then why do you have it in the first place. Rick said Mr. Buckley's point is the town can do that but the town has not per our interpretation.

Rick continued, the one concern I have is this lost document. This document has been archived to microfilm and not in the folder, when that happened I don't know. My thinking is what Andy says, it runs with the land.

Corey Giroux: The critical question is the definition of vesting and the way that language is written it seems to suggest to the extent the approved use is undertaken on the land. The question of lapsing is one where you have approval you don't take advantage of during the period it's required, then you may lose the right to use that in accordance with whatever grant of authority you were given.

Chairwoman Loz: Most of what I read today discussed if it was granted but never used in which case it lapsed after two years or six months.

The board discussed the testimony that was heard that the property was used as per the special exception for 10-12 years after it was initially granted so there is no question that it is vested. Chairwoman Loz questioned how relevant the special exception is to this case. Discussion ensued that it is not relevant to the big picture of what the application is, that there is no question that if the applicant had asked for the special exception as granted in 1976 they would not have denied it, there are significant restrictions, and it might make sense for the board to say this is a valid document.

Chairwoman Loz noted she had gotten something from town counsel who said the document is useful in that the ordinances and use table were created in 1969, and the closer we get to when the special exception was granted which was 1976, the better we get a definition of what the intent was for that special exception eating and drinking place. Andy said that is why he raised the question of there being minutes or an application for when that special exception was granted. Rick said as far as the vesting issue, from the board point of view of what they are looking at, it would behoove them to make a motion to understand this document is a valid special exception from 1976.

Janice read directly from the information mentioned above from town counsel as follows: *The permit does provide some guidance to the board. It seems to me that it pretty definitively indicates a contemplative use in eating and drinking establishment. The closer we get to the time the ordinance was enacted, the better we are able to discern the attention of voters when the provision was enacted. It may be used to illustrate the character of the district.*

Rick Davies made a **MOTION that the Zoning Board of Adjustment accepts the** November 4, 1976 notice of special exception decision as valid for this lot at 393 Pumpkin Hill Road. Howard seconded the motion.

Discussion was had regarding the validity of the special exception, if it was vested and the testimony that was heard on the use of the property after the 1976 special exception was granted.

The board voted on the MOTION which Rick has made. **A roll call vote was taken with the results of 4-1-0** with Gordon voting against.

Rick suggested a discussion on the definition of eating and drinking place, and a restaurant event hall as opposed to a restaurant function hall. He said he was concerned that part of the application was valid with eating and drinking place but as soon as it started to move off into an event description, a variance might be more appropriate. That doesn't mean we still can't approve a different level of eating and drinking place and we

know that there is a special exception in place right now that's restricted to the residence. There's an application before us now to use it as special exception in the residence and in the barn. As soon as the word even gets in there, I'm concerned it's a different category that's not listed as a use.

Rick continued, the reason I say that is because the ordinance allows many things but the zoning ordinance by statute in NH prohibits uses which are not provided by permission. If it doesn't say you can do it, then you can't do it except by variance.

Andy said if he recalls correctly, they had a discussion about the fact there was no definition in our ordinance of the term eating and drinking establishment. I think that we've had a lot of discussion about whether or not food has to be prepared on site and have heard testimony that originally food was prepared on site. We've also heard testimony about looking at standard industrial classification codes and what is included in definitions there. We've discussed state law, Chapter 143-A. The issue of whether or not food is prepared on site I don't believe is pertinent to the definition of an eating and drinking place. Even if it is an issue or a problem, I think that should be left to our partners on the Planning Board to provide us with a definition. Given the fact we don't have a current definition the best we can do is look to see how best we can classify what we have on the table now.

Andy continued, that does not mean that we're not looking at something above and beyond what was originally requested. We know someone in the past has looked at the definition of eating and drinking place and said that this fits. The definition of food service establishment includes catering which we've talked about before.

Chairwoman Loz: I think it's the best definition of what she wants to do and I think because a previous board felt that way, it helps clarify that for me. If they wanted to say restaurant they would have and putting eating and drinking leaves it open.

Beverly: Does this board feel they've answered the three questions required to be answered for a special exception? Chairwoman Loz said we haven't gotten there yet but we will.

The board continued discussing eating and drinking place and arrived at the agreement that where the food is prepared is irrelevant and that beyond that the question is, does the application itself qualify for that particular portion of the zoning ordinance. Andy: If we can't make the decision that is what it is, we are then looking at should this application be covered under a different part of the ordinance.

Rick discussed the addition of the word "event" versus "function" and the fact neither is defined in the ordinance. Andy made the point that we don't have any documentation to substantiate the board's decision in 1976 and that an eating and drinking place includes a dining facility but does it also include events?

Chairwoman Loz: We may be getting too caught up in the word "event". It's just a word to lump together wedding receptions, reunions and other gatherings in the application and the applicant could easily have used another word.

Rick noted the Zoning Board of Adjustment could clarify that in the conditions and it goes back to the point that Beverly made, about the three questions in front of us. To prove a special exception, it needs to be something that's specifically allowed, Retail and Services Item 3 on the Use Table.

Corey: We're shooting in the dark where we have something in front of us that a prior board has said "we have considered this issue" and it doesn't bind us but is the most instructive thing we've heard with respect to our own zoning ordinance. When they considered it, they found a function and dining room facility to fit in the definition of eating and drinking establishment for this purpose on this piece of property. That's the best evidence I have to go on with respect to whether or not that definition is met. And I think when people think of an event center they think of something on a larger scale such as a concert venue.

Andy: We're not making up anything new and are talking about an eating and drinking place where the event will occur which implies to me that food is being served. Rick said the point is, from what he has heard over the

years referring to events in the Planning Boards point of view is it is a big gathering and not just a place to eat and dine or have a meeting..

Rick Davies suggest to Chairwoman Loz that the board move on to question three, is the use essentially and desirable.

Chairwoman Loz noted that last month they had decided to adjourn at 10:00 and did the board want to go later than that this evening. It was decided to wait until 10:00 and see where they were.

Howard: The point was made by the applicant that they were not privy to the decision of November, 1976 when she inquired about all this, worked with the Planning Board and asked for a Site Plan Review and was told they could not proceed with that without a special exception. Now we find there was a special exception. Is it a possibility to dismiss all of this and proceed with a Site Plan Review which isn't necessarily going to be rubber stamped?

Several board members replied there is an application before the board that needs to be dealt with. The board moved on to B/Question 2 on the application. Rick said it's not essential to public convenience or welfare and it might be desirable to the public. The question is, how do you determine what is desirable and to who?

Gordon: It's says desirable to public convenience and we've had a lot of people speak to the negatives of that. It was clarified there were 12 letters from the public against this use and 1 for it. Beverly noted that it doesn't meet the Master Plan.

Rick said I'm hearing from a couple of people they don't think it's desirable and there was testimony of both desirable and not desirable. How do you determine what direction desirable is coming from.

Gordon: We've been sitting in a couple of meetings on this and about 27 people have spoken, at least 23 were against it. There have been some good points about increased traffic flow. It certainly isn't for the public convenience if you count the people who live in the vicinity and it's not essential. 40 years ago nobody would really care what they did there because nobody else lived around there. We represent the people and have got to listen to the neighbors who come out and fill up this place as they have done on two occasions with overwhelming public lack of support. They don't want their neighborhood to go downhill which is what they see is going to happen.

Beverly: The 4 people who spoke in favor of this, none of them are abutters and live a long way so will not hear the noise or anything. I respect their opinions but it doesn't mean much.

Andy: My concern is that we're dealing with one application now in the R-3 Zone and the issue is raised that this might change the character of all R-3 Zones in town, not just the one we're dealing with now. We should be cognizant of the fact that whatever decision we make tonight could be used for further requests in other R-3 Zones.

Chairwoman Loz: I listened to all of the comments of the abutters, those for and against. We do represent Warner as a whole, not just a certain group and we represent the applicant and their right to do what they want within reason in their property. Those are all things I take into consideration.

I had a thought when I was looking through the Master Plan and it said they want to try and bring more traffic up into the village and not have people just stop at Exit 9. We don't have a gathering or event center such as this in Warner. I am a small business owner and I feel strongly small business owners should be supported in our community. If you bring people up through the village and into our countryside that's a good thing for Warner and we're bringing them into the countryside and showing them what we have to offer as a community. You never know if those people going out into the countryside are looking and they want to buy properties here, move here, and live here, that they want to live next to Pumpkin Blossom Farm. Somebody else might not want to but they may want to. And I also think that Pumpkin Blossom Farm, the whole point of having it in this place into the next level to have it in the countryside is because it is in the country, that's the whole point of having a

business model like this out in the countryside, because it is bucolic, quiet and beautiful, all the things that the neighbors love about their properties is why she wants to do this business model on this property.

The purpose of the site walk today is that it's made for this sort of thing and you couldn't have events in the winter unless a lot of remodeling was done. I'm not saying that I've decided this is what I want to do, I just want to bring up another side for us to consider.

The board moved to question C on the application regarding impairing integrity or character, and being detrimental to health, morals or welfare.

Rick: Detrimental to health, morals or welfare might be a little strong. Regarding the character of the district, it kind of goes with desirable and I'm having trouble differentiating between the two. If you look at what's physically there which we have been told won't change, it really looks like a nice country setting. The character of the district is how it's used which we've had plenty of testimony about.

Physically it's consistent with the character of the neighborhood but the implementation might not be, hence the desirable word kicks in. Is it desirable or is it going to overwhelm the district and character with its implementation. We're always talking worse case of how many people are going to be there and probably most functions aren't going to be large but we don't know that.

Chairwoman Loz asked if narrowing down the number of day's events may be held, as was done in the October 2015 decision would play to the integrity and character of the district. Rick replied that's possible, deciding what parameters are acceptable which is up to the Zoning Board of Adjustment to decide.

Andy: There's another issue here in terms of this application being an expansion of the 1976 special exception which confined the use to the present residential structure. The request before us includes holding some food service in the barn. If the board decides it wants to confirm what has already been decided it can say we don't believe it's within the character of the desirability of the neighborhood to use the barn space.

Rick: In which case, it's a little like what Howard brought up. Do we deny the whole application and say there is a special exception in place?

Andy: That is the decision the board has to make. If you ask me about desirability at some point somebody said, 65 people and there was nothing there in terms of discussion as to how many days of the week. I wonder if that wasn't because they felt the 65 limit was good enough which is not to say that the board can't decide whether to approve with conditions or deny outright the application on the table.

Chairwoman Loz asked the board if they wanted to continue the meeting or wrap it up pretty soon. Rick stated he thinks they can make a motion which he can assemble and would like to bounce some things off of the board. We would have to rationalize our decision if we were to deny it because it's undesirable or impairs the character or integrity of the district.

Chairwoman Loz: If we can better define how it's used, I don't think it will impair the integrity of the district. If we put restrictions on the amount of days of the week and the annex to the house no more than 65 people and the annex can be used 3-5 days a week. The barn can only be used on weekends and no music. She stated she was just throwing things out there.

Rick: If it gets to a certain point it's getting bigger than eating and drinking place and is something different.

Gordon Nolen stated he had to leave at 10:14 p.m. The remaining board members agreed to continue on.

Chairwoman Loz asked Beverly Howe to take the place of Gordon Nolen on the voting board.

Rick: The question is can we assemble a good motion at this point? Chairwoman Loz said the board will adjourn without a motion if needed.

Rick said he feels there would be difficulty approving it as requested and asked if any of the other board members agreed that there was good reason to deny it. Howard noted a motion for approval might be made as

approval under certain conditions. Andy said he felt they tried that before and found during testimony that restrictions applied in the decision we're rehearing were causes of concern for the applicant.

Chairwoman Loz noted the applicant didn't bring the application forward for rehearing because she was unhappy with the decision conditions. Andy said if we impose certain restrictions aren't we in fact issuing a de facto denial, it would depend to me on how severe the restrictions would be that were imposed.

Rick said the only motion he would make at this point would be a motion to deny in which case there are a bunch of well worded statements you need to include with that. In theory, you can make a motion, have a vote on it and then have someone write the decision and come back at a subsequent time and vote on the text of the decision. I don't understand how that works and he asked if Corey had seen that done and Corey replied no.

Rick read verbiage for a motion which he had written as follows: Per the town of Warner Zoning Ordinance Article XVII the board denies approval of the application for special exception to the terms of Article VII Section B for an eating and drinking place based on the following; The board finds the use will impair the integrity or character of the district.

He also read a list of facts both in support of and against the motion as follows:

APPROVED

- 1976 Special Exception decision approved use of the existing residence for functions in the dining room facility.
- Use is identified with an S under the R3 Zoning Ordinance Table I Use Regulations under the Retail and Service Eating and Drinking Place not including Drive-in Establishment item.
- The house and barn are observed as typical rural/country design and layout.
- Use was active until late 1980's.
- The facility has not been used as a function and dining facility for around 30 years.
- There currently is no finished commercial kitchen, function room, or toilet room and most likely requires code related upgrades inside and out.
- The applicant wants to expand to include events in the barn.
- The barn was not included in the 1976 decision.
- Many abutters have built or moved into the neighborhood within the last 30 years.
- Some abutter houses are visible from the area of the residence.
- 1976 ZBA decision was not on file in the Land Use Office for public reference.
- Is not considered desirable by many abutters as testified either in public hearing or letter due to noise, traffic and annoyance concerns.
- The use would impair the integrity and character of the district per the abutters due to noise, traffic and annoyance concerns.

Rick noted he did not include property values and asked for comments from the board.

Andy said he didn't think they wanted to include all those facts because they are in the record and suggested it be limited to critical findings related directly to the application that is before us. He said he is having trouble trying to do this on the fly tonight and denying the application is not the problem. The problem is trying to do so with reasons that are pertinent to the application. I believe we need to stick to shorter reasons.

Howard: I think it's important that something is said that a denial does not nullify the decision of November 1976. If we don't put that, legally someone would find something and say this is legal. Rick noted that they cannot nullify the 1976 decision. The rest of the board did not believe it was a concern.

Discussion continued on the wording of the motion, what should and should not be included, that more time was needed to craft the reasons, and when the next meeting was being held.

Andy Bodnarik made a **MOTION to continue this rehearing of ZBA Case No. 2015-03** until the next regular Zoning Board of Adjustment meeting on March 16, 2015 at 7 p.m. in the lower level town hall meeting room. Rick Davies seconded.

Beverly voiced concern she would not be at the March 16th meeting but it was confirmed that if Gordon Nolen is there on March 16th he would be voting. Vice Chairwoman Kimberley Edelmann stated she would not be a member of the Zoning Board of Adjustment as of March 15, 2016.

A roll call vote was taken with the result of 5-0-0.

Vice Chairwoman Kimberley Edelmann returned to the meeting from recusing herself for the continued rehearing of ZBA 2015-03 at 10:36 p.m. Chairwoman Loz noted Kimberley would be voting and Howard Kirchner would now serve as an alternate.

4. OLD BUSINESS

Chairwoman Loz brought forth the Site Walk Visit Procedure document that was on the agenda for first reading. Corey suggested adjourning this meeting and postponing the remainder of the agenda to the next regularly scheduled meeting.

5. COMMUNICATIONS AND MISCELLANEOUS

There was none.

6. ADJOURN

Vice Chairwoman Kimberley Edelman made a **MOTION to ADJOURN at 10:36 p.m.** Rick Davies seconded the motion. **MOTION PASSED by a voice vote of 5-0-0.**

APPROVED