Adopted: August 19, 2009 – As Written

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 15, 2009

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 15, 2009 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Jeana Hale-DeWitt; Sheila Duane; Alternate, Martha Tobin; Alternate, Dana Hylen; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

A public hearing was opened at 7:35 pm to consider a **SPECIAL EXCEPTION** requested by **ROUTE 112 REALTY, LLC/ROZZIE MAY ANIMAL ALLIANCE** in regard to §147.14.1.2 of the Conway Zoning Ordinance to convert an ice cream shop/restaurant to office/spay and neuter clinic at 175 Kancamagus Highway, Conway (PID 264-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 2, 2009.

Roz Manwaring of Rozzie May Animal Alliance appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Manwaring stated they would probably operate one day a week, three days if their lucky. Ms. Manwaring stated that this use would have less traffic as the animals arrive in the morning and leave in the evening by five o'clock.

Ms. Sherman asked for Board comment; there was none. Ms. Sherman stated that this was previously an ice cream shop and restaurant. Mr. Irving stated that the space is not currently occupied, but the last occupant was Sharon's Seafood restaurant. Ms. Sherman asked if there were any comments from the town; there was none.

Ms. Sherman asked for public comment; Kathy Hunter stated if this is allowed how do we know this will not turn into something else. Mr. Colbath stated that this is an office for spaying and neutering only. Ms. Hunter asked if the Board had seen the applicant's website detailing several different steps to this project. Ms. Duane stated if they try to change it to a shelter they would have to come back to this Board for that approval. Ms. Hunter stated that she hopes that it will remain what it is approved for.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Hale-DeWitt, that the proposed use is confined to the same lot to which the original nonconforming use would be confined.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Ms. Duane made a motion, seconded by Mr. Colbath, that the proposed has the same or lesser impact on the neighborhood relative to public health, safety and/or welfare**. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Hale-DeWitt, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to noise.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance nighttime lighting.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.14.1.2 of the Town of Conway Zoning Ordinance to convert an ice cream shop/restaurant to office/spay and neuter clinic be granted. Motion unanimously carried.

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A public hearing was opened at 7:47 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **THE ESTATE OF CLIFFORD JACKSON/ WESTON'S FARM, LLC** in regard to §147.13.1.8.3 of the Conway Zoning Ordinance where the Zoning Officer determined that the subject mural was by definition a sign that would exceed the permitted signage at 635 West Side Road, Conway (PID 262-31). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 2, 2009.

John Weston of Weston's Farm Stand appeared before the Board. James Yeager, Code Enforcement Officer, was in the audience. Mr. Weston stated that they wanted to make the side of the farm stand look nicer and his brother-in-law, an artist, expressed interest in helping. Mr. Weston stated that the mural is what the farm looked like in the 1800's. Mr. Weston stated that this was to compliment and has always been considered artistic as they never intended to violate the sign ordinance.

Mr. Weston stated that they have had many people stop and express their pleasure. Mr. Weston stated when we received the violation they immediately took it down. Mr. Weston stated that the Residential Agricultural District does not specifically limit to one, ten square foot wall sign.

Mr. Yeager stated that the mural fits in the category of a sign under the definition. Mr. Yeager stated that it is aesthetically pleasing, personally, but it exceeds the amount of square footage allowed. Mr. Yeager stated the mural was measured the same way he measures all signs by drawing a square around it, it is about 80 square feet, plus there is a sign on the roof. Mr. Yeager stated based upon those two things it is a sign that unfortunately cannot be there because it is prohibited by the ordinance.

Ms. Duane asked if the mural could be there without the wording. Mr. Yeager stated that this Board would have to answer that. Ms. Duane stated that they do not have a wall sign. Mr. Yeager stated there is a sign on the roof that would be considered their wall sign. Mr. Chalmers asked if the roof sign was less than 10 square feet. Mr. Yeager stated that he thinks so, but there is not a sign permit on file for that sign. Mr. Weston stated that the roof sign was approved under Shawn Bergeron.

Mr. Irving referred the Board to the definition of a sign. Ms. Duane stated that she thinks the mural is art work. Mr. Irving stated that the Board is determining if this is a permissible sign or not. Ms. Duane asked if the writing part was under the allowed square footage. Mr. Yeager stated he thinks there is more than that on the mural.

Mr. Chalmers stated that the Board has visited this before. Mr. Chalmers stated that our definition of a sign is broad, but it is clear. Mr. Chalmers stated that there have been the Joe Jones murals. Mr. Chalmers stated that the Citizen Bank building came in for the weather center and they received a variance for their pictures because we deemed them to be signs. Mr. Chalmers stated that he thinks this is an attractive sign, but it tells you what this building is. Mr. Chalmers stated that it is beautiful artwork, but he doesn't see how we can look at this any other way than as a sign.

Ms. Sherman asked for public comment; Bruce Morgan of Profile Motors stated that he was told he could write on his show room windows, so what is the difference with the mural and the smiley barn on West Side Road. Mr. Chalmers stated that the smiley barn does not tell you what is on the inside. Mr. Irving stated that the ordinance specifically allows window signs. Tom Eastman of the Conway Daily Sun asked if it would be any difference if the words were removed. Mr. Irving referred to the definition of a sign. Ms. Sherman read the definition of a sign.

Mr. Morgan stated taking a sign off a building and putting it onto a box van seems like clutter to him and is sad to see. Mr. Morgan stated that the sign ordinance needs to be looked at. Mr. Morgan stated what he has is very tasteful. Ms. Sherman stated that this Board administers the ordinance and does not write the ordinance. Ms. Sherman stated if you don't agree with it than change the ordinance.

Merle Lowe stated that his best solution is to take it off the side of a building and put it on a truck, which is too bad. Mr. Lowe stated there are ways around this, but it just makes things ugly.

Mr. Colbath made a motion, seconded by Ms. Duane, to uphold the Administrative Decision that the subject mural was by definition a sign. Motion carried with Ms. Duane voting in the negative.

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A public hearing was opened at 8:05 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **ROBERT SCHOR AND MARNI MADNICK REGARDING PETER RATTATY REVOCABLE TRUST OF 2001** in regard to §147.14 of the Conway Zoning Ordinance that the Stonehurst Manor's February 13, 2009 Site Plan constitute a permissible expansion of a nonconforming use at 3351 White Mountain Highway, North Conway (PID 202-182 & 186). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 8, 2009. This hearing was continued from May 20, 2009.

John Colbath and Sheila Duane stepped down at this time. David Hastings, Attorney for the Town, joined the meeting at this time. Ms. Sherman appointed Ms. Tobin and Mr. Hylen as voting members. Robert Schor and Chris Cole, Attorney for Robert Schor and Marni Madnick, appeared before the Board. Peter Rattay and Robert Carey, Attorney for Peter Rattay, were in the audience. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Hastings stated the reason for the hearing tonight is to review the decision made by the Zoning Officer in connection with a site plan review with the Planning Board for an after the fact approval for improvements made to the Stonehurst Manor. Mr. Hastings stated at the time of the Planning Board meeting in March [2009] Mr. Irving made an administrative ruling that the proposed improvements shown on the site plan were non-conforming uses that were in existence before the Zoning Ordinance was enacted and after were a lawful expansion of a non conforming use. Mr. Hastings stated that it was also ruled that it was not dealing with non-conforming structures. Mr. Hastings stated that it is this Boards duty to hear this appeal and are not bound by Mr. Irving's decision as you can make your own decision based on the ordinance.

Mr. Cole stated that the Stonehurst Manor has not, by various actions and activities, conceded the scope of his rights as a non-conforming user. Mr. Cole stated that this was done by the virtue of the approval of a site plan for an after the fact approval for the addition of certain things to an already non-conforming site.

Mr. Cole stated that the non-conformity is first that the Stonehurst Manor is in the Residential Agricultural district; it is a pre-existing commercial enterprise and, second, the Stonehurst is, therefore, non-conformity with the ordinance passed by this Town in 1980 and may continue that use, whatever that use was. Mr. Cole stated that we have a paucity of evidence of exactly what that was.

Mr. Cole stated that they can continue that use indefinitely and only expand it under narrow circumstances for a variety of reasons. Mr. Cole stated that the additions made as part of the site plan include a permanent tent and garden gazebo, 33 parking spaces, a permanent concrete wedding garden structure, one-story wood frame garage and shed, pole mounted commercial lighting to illuminate parts of the grounds including the parking area, commercial generator on a permanent concrete pad and garbage dumpsters that may have been previously on the property to service the hotel, inn and restaurant that certainly pre-exists the promulgation of the ordinance.

Mr. Cole stated that Mr. Schor and Dr. Madnick and their three children reside at 49 Neighbor's Row in North Conway. Mr. Cole stated that they have three children ages 6, 4 and 7 months. Mr. Cole stated that they live directly up against the Stonehurst and are, therefore, directly in the path of the sound generated by wedding receptions that occur, if not every weekend, virtually every weekend that occurs during the summer.

Mr. Cole stated that they are directly in the path of amplified music sometimes DJ driven music, they are directly in the path of live bands, they are directly in the path of sounds generated by up to 150 people dancing and talking and attempting as we all might in such a venue to be heard over one another while the amplified music is playing.

Mr. Cole stated that we submitted sometime ago a detail brief describing exactly how and why this nonconformity has unlawfully expanded and respectfully why your Zoning Administrator's decision was a wrong one. Mr. Cole stated their brief focuses on the change in use and the additions to structures since 1980 by which apparently there were no permits or other regulatory approval until March of this year. Mr. Cole stated that these structures, if you were to conduct an audit of the site you would see numerous structures and that includes concrete pads because they are permanent impervious structures, have no approvals until well after the fact.

Mr. Cole stated that he would like to describe a couple of legal issues. Mr. Cole stated that nonconforming uses are protected by statute, but are not favored under the law. Mr. Cole stated that every single New Hampshire Supreme Court case to address the issue of ethnicity of a nonconforming use, or more importantly it's enlargement, expansion or intensification, which is what you have here, says the following "The policy of zoning laws is to carefully limit the enlargement and extension of nonconforming uses. The ultimate purpose of zoning regulations contemplates that nonconforming uses should be reduced to conformity as completely and rapidly as possible".

Mr. Cole stated in other words nonconformities are not favored and any attempts to expand, enlargement or intensification of these uses, particularly if they reside in residential areas, are to be carefully curtailed. Mr. Cole stated that every New Hampshire Supreme Court case to address this issue has emphasized "any expansion of a nonconforming use must be evaluated in the context of the zone in which it was located". Mr. Cole stated in other words the additional parking spaces, additional seating, the addition of amplified music and parties, and that is what we're talking about, parties for up to 150 people, must be evaluated in the context of a legislative decision that the Town made to make this a residential area.

Mr. Cole stated that when you make a residential area and include within it an existing commercial use it is incumbent on a quasi judicial Board such as this one to look very hard at what the legislative purpose of the Zoning Ordinance is in making it a residential agricultural district not to create a further or exasperated collision between the nonconformity and the surrounding properly or conforming zoned lots such as the residents, but to make sure that it is curtailed if possible and kept cabined in as necessary. Mr. Cole stated every New Hampshire Supreme Court case to address the use has made absolutely clear that "the burden of establishing that the use in question is fundamentally the same and not a new and impermissible use is on the party asserting it".

Mr. Cole stated that means he does not bear the burden of proof, but rather the proffer of the site plan which includes additions, which includes after the fact permitting for things that should have been permitted before the fact, which should have been part of a public record long ago. Mr. Cole stated that they bear the burden of proving that and what they bear the burden of proving is what on earth there nonconforming use was on the date it became nonconforming.

Mr. Cole stated in imposing that burden of proof on a nonconforming user that is the burden of producing evidence of the original nonconforming use, its scope, nature and character. Mr. Cole stated that the burden of persuading this body that is necessary in court is that the enlargement or intensification of that use is not excessive or unreasonable or beyond what is granted by statute and elsewhere.

Mr. Cole stated that the Supreme Court has directed ZBAs to apply a three part test asking 1) whether the challenged activity reflects the nature and purpose of the established nonconforming use; 2) whether the challenged activity is merely a different manner of utilizing the same nonconforming use or is an activity that is different in character and nature in kind; and 3) whether the challenged activity has a substantially different effect on the neighborhood.

Mr. Cole stated in this case the challenged activity is since the promulgation of the ordinance and creation of the nonconformity in 1980 is the things he numerated at the outset, the additional spaces and seating, the reconfigured and expanded parking lot, the addition of outdoor wedding ceremonies and receptions of up to 150 people featuring amplified music, live bands, disc jockeys and the like.

Mr. Cole stated that the Stonehurst Manor fails each of these questions and they need only to fail one to exceed the scope of its nonconforming use. Mr. Cole stated that the question is not whether the Stonehurst Manor performed weddings or had wedding performed, the question is the extent of that. Mr. Cole stated can the Stonehurst Manor show you that they had live disc jockeys and parties for 150 people every weekend in the summer on their site. Mr. Cole stated that is not a wedding ceremony, that is a big big party and they have to show you that that's what they had, something approximating that back in March 1980.

Mr. Cole stated that there is no evidence whatsoever of that and our brief goes into that in some depth. Mr. Cole stated even if we assume that there were weddings performed at the Stonehurst there is no evidence of 150 person amplified parties. Mr. Cole stated that this does not reflect the nature and purpose of the original use of that beautiful beautiful Inn sequestered off of the road just outside of the Intervale.

Mr. Cole stated that the wedding party with 150 guests and their cars, loud music and consumption does not reflect the character and nature of that original use and there is no question, lastly, that the new and expanded intensified use has had a very substantially different effect on the neighborhood in terms of noise, traffic, lights and other related activities.

Mr. Cole stated that he would like to address the Zoning Administrator's memorandum dated April 13, 2009 which Mr. Irving provides his reasoning in his words "additional parking spaces, the construction of a wedding garden and the replacement of a previously existing patio with a larger concrete patio". Mr. Cole stated that none of this apparent written after the fact reasoning appears in this memorandum addresses assertion that there has been a very substantial and neighborhood altering intensification activities of this site on terms of scope and the effect on the neighbors.

Mr. Cole stated he would like to stress that Dr. Madnick and Mr. Schor are the closet abutters. Mr. Cole stated that they live right in the path of all this. Mr. Cole stated that you received submission from opposing counsel that includes letters from other folks but they do not live in the same corridor or sound that Dr. Madnick and Mr. Schor live in.

Mr. Cole stated that the administrator describes the file on the property as "thick". Mr. Cole stated that we can all agree that in respect to its thickness it didn't include any approvals for any of the pre-existing structures. Mr. Cole stated the substantial question in this case is whether this is a pre-existing legal nonconforming use. Mr. Cole stated that Mr. Irving, respectfully, simply states that the property is a legally existing non conforming use, but says so without attaching any documenting foundation in the way of permits for structures built since 1980 or any path through property regulatory authority to have allowed these things.

Mr. Cole stated that he thinks the Board should push back on this and ask if all the structures built since the promulgation of the ordinance were permitted, whether the activities, including the erection of tents and serving of liquor, were in specific locations of the premises were permitted. Mr. Cole stated there is history that is understood by the owner of this property that he must seek approval to serve liquor at specific sites and locations on this property and he has forgotten to do so in the past because they think it is unclear from their review of the Town records that any such permitting existed or exists.

Mr. Cole stated thirdly, Mr. Irving asserts that the nonconforming use is "weddings". Mr. Cole stated even assuming this true it is only to a point and it is to a point that leaves many many questions that we're trying to have raised and answered. Mr. Cole stated there are absolutely no evidence that the wedding business conducted here, assuming it pre-existed the promulgation of the ordinance, included amplified music and big parties for 150 people.

Mr. Cole stated one of the issues raised then and now is whether this nonconforming user can be allowed to very substantially intensify his use in terms of the number of events every weekend of the summer in terms of the number people at these events. Mr. Cole stated that he understands that the site plan approval would give them adequate density for up to 175 people. Mr. Cole stated in terms of off-site sound generating activities we have provided a report from an Acoustical Scientist that indicates these are very profound noise at the Schor/Madnick property.

Mr. Cole stated lastly, the Administrator's principal reason for permitting the expansion and activities, facilities and structures to the site is that long ago the Planning Board conditionally approved what would have been a bigger expansion of the nonconforming nature of the property. Mr. Cole stated that he thinks, respectfully, that this is irrelevant.

Mr. Cole stated that the conditional approval was never carried out, never challenged by anybody, which resulted in no further, or other activities, is not a basis to say this is smaller than what was approved in 1989. Mr. Cole stated that it is not a responsible or proper way to come to a conclusion. Mr. Cole stated that the Zoning Officer cannot condone the expansion of the structural footprint based on a 20-year old conditional elapsed plan that was never undertaken and therefore never challenged.

Mr. Cole stated one case in point from Mr. Irving's memorandum he states "the wedding garden concrete patio was constructed (and Mr. Cole would add without a permit) in what was previously a patio area, this structure, albeit larger, replaces the previously existing patio". Mr. Cole stated so it is that Mr. Irving concedes that this footprint expansion to the existing nonconforming structure, but then uses the 1989 conditional approval as justification to allow this enlargement because it is presumably smaller than what might have happened had the owner of this property carried out the 1989 conditional approval.

Mr. Cole stated that the question before the Board today is only whether the plan then in front of the Administrator and now in front of this Board applies to the local ordinance and the law developed by the Supreme Court of this State. Mr. Cole stated the fact that some earlier conditionally approved plan, which was never carried out and approval of which is surely lapsed, is simply irrelevant to this analysis. Mr. Cole stated that, respectfully, the Administrator simply approved an expanded footprint in violation of the ordinance and New Hampshire law.

Mr. Cole stated lastly, he would like to address submissions made by the Stonehurst Manor Counsel. Mr. Cole stated first the facts, you will notice there is nowhere, not in any document not in any photograph, not in any so called affidavit, and the affidavits here are not affidavits, they are unsworn, any affidavits in our business are things made under oath in front of a notary, these are just statements of people, is no documentation that in 1980 the Stonehurst Manor every weekend of the summer threw an outdoor party for up to 150 people with amplified bands, disc jockeys lasting four to six hours.

Mr. Cole stated looking at the submissions next to Attorney Carey's memorandum, there are Planning Board minutes for April 20, 1989. Mr. Cole stated that this is a preliminary review of a site plan application which was never undertaken. Mr. Cole stated there is no mention of wedding parties or amplified music anywhere in this document that he can see.

Mr. Cole stated there is a transcript of the Planning Board meeting March 12, 2009 and this apparently is proffered for the proposition that Mr. Porter remembers weddings when he was a boy and apparently Mr. Porter develops to all of us how he scampered onto the property as a young boy and crashed the weddings.

Mr. Cole stated that Mr. Porter recalls "the Stonehurst as granted on a much smaller scale back then, but they still had weddings". Mr. Cole stated that is exactly the point, the Stonehurst was a much smaller scale back then and then pre-existed the ordinance and in fact the only evidence we can credit Mr. Porter's statement is that the Stonehurst was on a much smaller scale back then and much smaller back then than what it threatens to become. Mr. Cole stated Mr. Porter encourages the scale of whatever was happening as at least much smaller.

Mr. Cole stated there are affidavits of Ernest Mallett, Wally Campbell, Kenneth Moldow and Sally Davis. Mr. Cole stated that they have two things in common, they are not affidavits they are statements, essentially unsigned letters to the Board, which is fine, but more importantly none of these describe the date of any wedding observed or perhaps attended, the scope of the wedding in terms of the number of people, the hours which they occurred, the scope or extent of any party that took place afterward, the number of people at the wedding reception or whether there was amplified music or disc jockeys hired to carry out these things.

Mr. Cole stated in fact these letters are unsigned statements are really remarkable in light of the fact that they are proffered as evidence of the existence of the scope of certain crucial nonconforming activities, their remarkable for what they don't say. Mr. Cole stated that there is further a letter from Kenneth Moldow and Alan Haddad. Mr. Cole stated that these letters likewise do not provide any specific details with respect to the scope of the nonconforming activities before 1980 or after 1980.

Mr. Cole stated that there is a letter from Kathy Brassill which she says she is located "directly across the street". Mr. Cole stated that Ms. Brassill states that her hotel and residence has the benefit of a significant larger distance from the 150 person parties and a hotel structure to help deflect the noise. Mr. Cole stated that Ms. Brassill more specifically does not provide any specific information on the size or frequency of the wedding parties.

Mr. Cole stated not surprisingly given the paucity of detail, the Stonehurst memorandum urges you to ask two questions, 1) did the Stonehurst Manor hold outdoor events before March 1980 when the Zoning Ordinance was adopted; and 2) were the changes to the Stonehurst Manor made in the normal course of business. Mr. Cole stated that it is not in the normal course of business in any Town in New Hampshire that he knows of to erect structures and put in permanent things without seeking permits.

Mr. Cole stated that the questions the Board must ask or rather mandated by the Supreme Court of New Hampshire are 1) does an outdoor party of up to 150 people with amplified music every weekend of the summer reflect the nature and purpose of the established nonconforming use whatever that is; 2) is an outdoor party with up to 150 people with amplified music every weekend of the summer merely a different manner of utilizing the same use or is it an activity that is different in character, nature and in kind with whatever the nonconforming use was in March 1980; and 3) does the outdoor party with amplified music every weekend have a substantially different effect on the neighborhood.

Mr. Cole stated that they would ask the Board to countermand the finding of the Zoning Administrator and determine that the addition of the tent garden patio, wedding patio, the additional parking, commercial lighting, commercial generator and its permanent concrete pad are an unlawful expansion of the nonconforming use.

Mr. Schor stated that we actually are seeking relief from the noise and relief from the nuisance. Mr. Schor stated that they are not trying to maintain the ability to make extra profit of a commercial use. Mr. Schor stated that we don't have an incentive but to come out with anything but the truthful information. Mr. Schor stated that this has been a long haul for them and it has been very frustrating. Mr. Schor stated that they are doing this on their own as they are basically the only full time residential abutters to this property and they are directly in line.

Mr. Schor aside if the Town is saying it is okay if we are subjected to the nuisance because we are the only ones. Mr. Schor stated that that seems to be the argument Attorney Carey was trying to make in one of his letters to the Planning Board. Mr. Schor stated that as far as the letters submitted, if you give us the courtesy of looking at these letters that were submitted and really see what they are saying none of them are talking necessarily about amplified music, DJs and bands.

Mr. Schor stated that none of them established a starting date for those and from what we have learned about the past history of the Stonehurst, he thinks there have been a lot of revisionist history going on out there and a lot of people think this has been going on for a long long time and it really hasn't been the case. Mr. Schor stated that the changes have come about over time and they have really increased since they purchased their property in 2003 with the developments undertaking and he thinks they have been taken advantage of.

Mr. Schor stated that the elderly residents who lived in their home prior to them and the one next to them were home bound and confined to their houses. Mr. Schor stated if they wanted to go out onto their porches and maybe enjoy the music then maybe Sally Davis is correct about Connie that could have occurred. Mr. Schor stated that she has been known to go outside on her porch once in a blue moon in the past 10 years of her life, otherwise she didn't out anywhere. Mr. Schor stated that her husband, Colonial Watson, didn't have any hearing and he knows Helen next door was confined to her house for a number of years before she passed away. Mr. Schor stated that he would ask the Board to give this serious thought.

Mr. Cole stated that one of the reasons that the site plan applicant and the nonconforming user is the bearer of proof because 29 years later they are the only ones in the position to demonstrate what the nonconformity was in 1980. Mr. Cole stated that one question for the Board is, were they conducting parties for 150 people with amplified music in March 1980 less one day. Mr. Cole stated there is no evidence to suggest that was the case. Mr. Cole stated that they are entitled to have weddings on the property, but they are not entitled to expand their nonconforming use particularly without any base line understanding of what was there.

Mr. Cole stated 29 years ago he was a happily much younger man then he is now and he doesn't remember what was going on then but he also was not running a commercial enterprise that is now before you asking you after the fact to permit to expand.

Mr. Schor stated keep in mind that Marni and he did not complain about this until he put in his improvements in 2007. Mr. Schor stated that the noise is a problem and we need to know when these are going on. Mr. Schor stated that they didn't realize at that time, sort of had an idea that it meant more weddings, but we didn't realize there would be an increase.

Mr. Schor stated that Mr. Rattay has represented that he had three in 2005 and three in 2006 and by the time three had occurred in 2007 we did call the police and then there was no help there so we wrote a letter to the Town. Mr. Schor stated that was a long time ago and we are asking for help on this.

Mr. Schor stated that the Zoning Ordinance specifically and inherently defines this type of use as a nuisance when it limits commercial amusement facilities access to a structure for an entertainment within 300 feet of a residential use due to unconfined noise and light. Mr. Schor stated it inherently defines as a nuisance and we ask for help and got nothing.

Mr. Schor stated that he sees from Mr. Irving's decision that his ruling typically seems to be more restrictive and allows you to overturn decisions to deny expansions of nonconforming structures and uses and that did not happen in this case and now we have been through a lot of weddings since then.

Ms. Sherman asked for public comment; there was none. Mr. Hastings stated that the applicant has made a point that there is a burden of proof on the owner of the property to establish facts for this Board and he thinks that owner should be given the opportunity to do so. Ms. Sherman agreed. Mr. Hastings stated that we talk about the improvements and the use and they are not necessarily interchangeable. Mr. Hastings stated from the Board's point of view this is about use.

Mr. Carey stated listening to Chris Cole's presentation he was thinking back and how he said it's a paucity of evidence and all we have are these affidavits. Mr. Carey stated when he was a boy the thing he liked most was to go fishing, now he knows it happened and his mom and dad knows it happened, could he get affidavits that he went out on April 10, 1979 or August 11, 1980, probably not but these weddings and that experience was lived history and is something that was common to everyone here.

Mr. Carey stated that these weddings have been the fabric of the community for more than three decades; they have been part of the Stonehurst Manor for more than three decades before March 1980. Mr. Carey stated what we are dealing with here are weddings in the same location and the same nature and at the same place that they have been before 1980.

Mr. Carey stated that he brought a visual just to help the members of the Board in case you are not familiar with the area. Mr. Carey stated that the main objective they have are the weddings. Mr. Carey stated that weddings take place in the tent garden. Mr. Carey stated that it is a concrete slab approximately 40' x 60' and there is a 40' x 60' tent. Mr. Carey stated that it has always been a 40' x 60' tent. Mr. Carey stated that the weddings have always been held there. Mr. Carey stated they have been held with music, live bands and they always end before supper time on Saturday or Sunday.

Mr. Carey stated he heard the word party emphasized. Mr. Carey stated that party connotes maybe 19 year olds on a college campus going to all hours of the night. Mr. Carey stated that these are weddings that end by 7:00 pm and on the one their sound expert measured it ended by 6:00 pm. Mr. Carey stated that these weddings have been going on here for three decades before March 1980. Mr. Carey stated that they haven't been moved, they haven't gotten closer to the Schor/Madnick property, which is 250 feet away and their house is 300 feet away, a football field.

Mr. Carey stated that the issue before this Board is, was this a nonconforming use before March 1980. Mr. Carey stated that they did submit affidavits and they did submit Mr. Porter's recollection, no he wasn't under oath either, he said he remembers going up to the weddings to listen to the music when he was a kid in the sixties. Mr. Carey stated just because he didn't have a notary in front of him doesn't leave him to question his credibility. Mr. Carey stated that these statements are signed by people who have knowledge as best as they can recreate it this many years, this many decades later of what happened.

Mr. Carey stated that Mr. Mallett owned the property and leased it to Mr. Rattay in the 1970's before Peter bought it and he says under the pains and perils of perjury, yes there were weddings with music and dancing before 1980, back in the 1970's. Mr. Carey stated that Mr. Moldow remembers a wedding in 1979 by a friend who was married there in 1979 with 100 people and with music. Mr. Carey stated that Wally Campbell remembers weddings with music and people back in the 1970's.

Mr. Carey stated for a number of years he was a criminal prosecutor and he is familiar with the arguments where the defense attorney takes the worst facts against them and tries to embrace them as it is the best thing he has going for him and that is a little of what we saw with these affidavits here tonight when they said these affidavits prove their case. Mr. Carey stated that they don't, they are sincere truthful affidavits, statements from people who remember these weddings, these events being held before March 1980 that establish this as a prior nonconforming use.

Mr. Carey stated that the second question for this Board is whether there was an expansion of this use, whether putting a slab down is an expansion. Mr. Carey stated that expansion is permissible under the law and under the Zoning Ordinance and under other New Hampshire law that has been laid down by the New Hampshire Supreme Court. Mr. Carey stated that the only thing that is different, the only expansion we have really, is the surface that these events are on. Mr. Carey stated that they were on flagstone in the 1970's and early 1980's and then they were on grass and now they are on a concrete slab.

Mr. Carey stated that they are under the same tent, they run approximately the same time and they are in the same location. Mr. Carey stated that they did not move closer to the Schor/Madnick residence and they did not move closer to the property line. Mr. Carey stated that we are not taking some sort of structure that's dimensions have to accord with some sort of specific rule or ordinance. Mr. Carey stated that under the law, under the ordinance a prior nonconforming use may be expanded in the normal course of business.

Mr. Carey stated that they have sworn affidavits that say there were weddings going on there before 1980. Mr. Carey stated that Peter Rattay will tell you the same thing, too. Mr. Carey stated he is here and you can question him. Mr. Carey stated that he would swear him in as a witness if you want, if that would satisfy Mr. Cole. Mr. Carey stated that he will tell you the same thing that these weddings have been a part of the Stonehurst Manor.

Mr. Cary stated that you can expand the use; you can have more weddings if it is an expansion in the normal course of business and if it is accessory to the existing nonconformity and we state that it is, it absolutely is. Mr. Carey stated that he agrees with Mr. Cole about the test the Supreme Court has laid down. Mr. Carey stated that the case has emphasized, has always emphasized, is the sacred rights to the property owner to use their property as they have always used it and that is where the Court gets into balancing. Mr. Carey stated that you can expand the nonconforming use under certain conditions.

Mr. Carey stated that there is a three part legal test, the first part is whether the use in question, here the weddings, reflects the nature and purpose of the nonconforming use. Mr. Carey stated if you were to consider the concrete slab a change in surface perhaps the increase in weddings to be the use in question it's consistent with how that property was used before. Mr. Carey stated that it is under the same tent, the same location, the same type of event.

Mr. Carey stated that it is an event, not a party. Mr. Carey stated that it is where fathers give away their daughters and mothers dance with their sons. Mr. Carey stated that it is where people dance after they have exchanged vows. Mr. Carey stated that so the extent that this use in question reflects the nature and purpose of the prior nonconforming use it is consistent with, it grows out of it, it is accessory, which is the language that is in your ordinance.

Mr. Carey stated that the second question is whether the use is really a different manner of the original nonconforming use or if it is a different use. Mr. Carey stated that this is a different manner and how it is different is the surface that these events are held on. Mr. Carey stated that they didn't start to do weddings all of the sudden in 2007 and they didn't all of the sudden start to do weddings in 2004. Mr. Carey stated that weddings have always been going on at the Stonehurst Manor. Mr. Carey stated that the different manner here is that they are on a concrete pad under the same 40' x 60' tent. Mr. Carey stated that they actually satisfy the second test.

Mr. Carey stated that the third factor that the Courts look at and this Board should look at is whether the use or issue will have a substantially different effect on the neighborhood. Mr. Carey stated that he thinks this Board can consider and think is part of the record, you can certainly take what is judicial notice of this, that there are no other neighbors or abutters that objected to the site plan application before the Planning Board.

Mr. Carey stated that there are no other neighbors or abutters who are here appealing Mr. Irving's decision that these are a prior nonconforming use. Mr. Carey stated that there are no other neighbors or abutters who sued Peter Rattay to try to stop the weddings for the summer. Mr. Carey stated so the effect on the neighborhood, were really dealing with the effect on one couple.

Mr. Carey stated that he submitted last time a copy of his Bench Memorandum which followed two full days of hearings on the injunction the Schor/Madnick's tried to get to stop the weddings. Mr. Carey stated that the Court denied that injunction. Mr. Carey stated the reason he submitted that Bench Memorandum was to give the Board some context of the impact that in very real practical terms that these weddings may or may not have on the Schor/Madnick's.

Mr. Carey stated under sworn testimony of their expert under oath at trial he said under his best case it is 70 minutes of music that is objectionable. Mr. Carey stated that he extrapolates his Bench Memorandum, he doesn't read it as 70 minutes of objectionable music, but if you take 14 events and you do the math in terms of daylight hours for the season or the year it comes up to less than half of a percent of daylight hours that those weddings under the Schor/Madnick best case interfere with the use of their property.

Mr. Carey stated that it is not a substantial effect on the neighborhood; it's not even a substantial effect on the Schor/Madnick's. Mr. Carey stated that they meet that third part of the test that the New Hampshire Supreme Court has laid down. Mr. Carey stated under their expert's best case we meet that test. Mr. Carey stated that under the facts that this Board can take notice of there is no other neighbor. Mr. Carey stated that these events end by 7:00 pm and sometimes as early as 6:00 pm, before dinner time.

Mr. Carey stated that these events in comparison to other data that annoys us in the neighborhood such as people mowing lawns, chopping trees and using snow blowers, in the context of the type of life we all have to live as members of a community as members of a neighborhood these weddings absolutely do not have a substantial effect upon the use of their property.

Mr. Cary stated that the law permits, Mr. Cole and he agree on this, intensification of a use. Mr. Carey stated so the law does allow you to take an existing nonconforming and increase it if it naturally out grows your prior nonconforming use. Mr. Carey stated that the law permits exactly what Peter Rattay has done and he has done it in a manner that is sensitive to the neighbors, to the Schor/Madnick's. Mr. Carey stated that it ends before supper time and is limited to in season, from May to September, and in number, twelve to fourteen, and the duration of these weddings. Mr. Carey stated that these are not parties, these are weddings. Mr. Carey stated that they end at a certain time; they are a celebration.

Mr. Carey stated that he wanted to mention some of the arguments that are made in Mr. Schor's lawyer's submission to this Board. Mr. Carey stated that the one thing repeated here tonight is the liquor license. Mr. Carey stated that the Supreme Court has answered that question, whether Mr. Rattay needed a liquor license or not and that is a jump ball in terms of the law, the New Hampshire Supreme Court has said that these types of requirements have nothing to do with the Zoning Board's review of a decision. Mr. Carey stated whether a license was needed or not the Supreme Court has said, as recently as last year, it is a non-issue; it is a red herring.

Mr. Carey stated that another thing that is in their appeal brief, that is another red herring, is the issue of a deed. Mr. Carey stated that you didn't hear about that tonight because the law is very clear on that, too. Mr. Carey stated that a deed, if there is a covenant restriction covenant, binds

two people and the Courts have said that it does not enter into zoning considerations. Mr. Carey stated that the deed we attached, and Mr. Mallett references in his affidavit, were for mobile homes and trailers because they were doing condominium development there. Mr. Carey stated that it wasn't meant for short term wedding celebrations, which were ongoing when Mr. Mallett owned the property. Mr. Carey stated that this was going on when Mr. Rattay leased the property and has been going on since Mr. Rattay has owned and run the property. Mr. Carey stated that the deed argument is another red herring.

Mr. Carey stated that this is a nonconforming use under the evidence they have presented. Mr. Carey stated that the Courts take into consideration how life is lived. Mr. Carey stated that he probably could not provide any affidavit that gives any detail on the fish he caught when he was eleven years old; the details, the dates, the time or the type of fish, but the law lets you use your common sense and the law also gives you some factors for guidance, the three factors he discussed that they absolutely meet that this is a reasonable expansion of a nonconforming use.

Mr. Carey stated if the Board is interested and if they would like or feels concerned about Mr. Cole's argument that these were unsworn affidavits, Mr. Rattay will answer your questions about how long weddings have been going on with amplified music and live bands under a 40' x 60' tent for the decades that he has owned and leased the property. Mr. Carey stated that he is here and you can ask him those questions if you want.

Mr. Carey stated that the additional arguments that were made about whether this is a nuisance and the impact it had on the Schors/Madnick's are arguments for the Superior Court. Mr. Carey stated for the time being those arguments are on hold because the injunction was denied after a full blown hearing. Mr. Carey stated that we are attempting to work with the Schor/Madnick's to resolve this issue because it is in every body's best interest. Mr. Carey stated that we are doing that because we are good neighbors and we want to resolve it.

Mr. Carey stated that we assert ourselves here because we don't want to roll over. Mr. Carey stated that the facts are on our side, the law is on our side and we believe Mr. Irving's decision was fully supported by the fact records he had and fully supported by the additional facts we have given this Board. Mr. Carey stated that he would ask the Board to affirm or uphold Mr. Irving's decision that this was a prior non-conforming use and if it was expanded it was permissibly expanded under Conway's ordinance and under the law of the State.

Mr. Chalmers asked if there were permits obtained for the work on this site. Mr. Irving stated that the slab under the wedding tent, the pavement and parking area and the wedding garden area were not approved nor were there permits granted. Mr. Irving stated when it was brought to the Town's attention the Town indicated to Mr. Rattay that these needed to get permits and approvals.

Mr. Irving stated that he initiated the process and applied to the Planning Board for a site plan review to have the wedding garden, the tent garden slab and the parking area approved. Mr. Irving stated at that time the applicant in this case brought appeal to the Zoning Board of Adjustment. Mr. Irving stated that they were in the process of securing their permits, but they have not been granted and the work was done without a permit. Mr. Chalmers asked of this was an after the fact. Mr. Irving answered in the affirmative.

Mr. Chalmers stated we are not talking about a boy going fishing, were talking about a business. Mr. Chalmers asked if Mr. Rattay could provide dates, times and number of people attending weddings. Mr. Rattay stated that he could not go back that far with his records, but they can go back with his recollection and they had several gatherings one being the Volvo functions that went until 1:00 am.

Mr. Chalmers asked if there were permits of assembly as that would give us dates and number of people for the tent. Mr. Rattay stated that he thought he was grandfathered and did not think he needed them. Mr. Carey stated that those types of permits are not required under the ZBA. Mr. Chalmers stated that it would help his case if you had those. Mr. Chalmers asked if he had any more documentation. Mr. Carey stated that we have done the best we could with the documentation we have and the best we can do are affidavits of those with a memory.

Mr. Carey stated that he thinks the law does allow this board to apply its common sense and the standard we have to meet. Mr. Carey stated being 30 to 40 years later we are doing the best we can. Mr. Chalmers stated even history of the past five years would be helpful. Mr. Rattay stated that would not a problem. Mr. Carey stated that was submitted to the Court and he could provide that to the Board.

Ms. Tobin stated that part of the law is that any lawful nonconforming use, is this a lawful nonconforming use. Mr. Irving stated that the definition of a lawful nonconforming use is a use that existed lawfully prior to the adoption of the regulation that would make it illegal that is why they keep referring back to 1980 when the Zoning Ordinance was adopted.

Ms. Hale-DeWitt stated what the Board is determining here has nothing to do with the slab; it has to do with the permitting. Mr. Irving stated that the reason they are going to the Planning Board is to get approval for the slab. Mr. Irving stated it is the physical changes to the site that is what the Planning Board is addressing. Ms. Hale-Dewitt stated that is really not a part of our decision whether there is a slab there or not.

Mr. Hastings stated that Ms. Hale-DeWitt is correct that it is the use that this Board is concerned with, not whether it was grass, wood or concrete. Mr. Hastings stated that whether or not it was an existing use at the time of the ordinance which then became a lawful nonconforming use and whether or not under your ordinance it had been expanded and, if so, was it in the normal course of business and under the provisions of the ordinance.

Mr. Cole stated this is not fishing, when he goes to an organization for my daughter's wedding what's the first thing they ask, how many meals are we going to have to prepare. Mr. Cole stated there are no invoices showing the upward arc, which is astonishing. Mr. Cole stated that they keep calling it receptions, but he has been to weddings and they are parties, doesn't mind father's giving their daughters away, what he minds is 150 people hooting and hollering over the happy event.

Mr. Cole stated that there is not a single invoice as to the number of guests, how many dinners were served or how many cars were parked. Mr. Cole stated that is where the rubber meets the road; there is no proof of a nonconforming use that your Zoning Administrator just defined.

Mr. Cole asked what was going on in 1980 in specifics, not fishing, not in how many fish you may have caught in your recollection of 29 years ago, but how many guests did you have, how many meals you served, how many cars you parked, what kind of noise they made. Mr. Cole stated that these questions are totally unanswered.

Mr. Hylen asked if it was reasonable to assume the increase in use based on the growth of the Town of Conway since 1980, and how much common sense do we use or do we have to go by specific facts. Mr. Hastings stated that the guidance in the ordinance is short and straightforward. Mr. Hastings stated first, a lawful nonconforming use became nonconforming because of the ordinance and may continue indefinitely.

Mr. Hastings stated that a lawful nonconforming use may be expanded in the normal course of business if granted approval by the Zoning Officer based on conditions that the expansion is accessory to the existing nonconforming use and the expansion is limited to the original lot of record, which he does not believe has changed. Mr. Cole stated that it has changed, but it is minor.

Mr. Hastings stated that these are the two conditions of the Zoning Officer and yes, you have to base it on the evidence before you, but there is not a test of what is enough evidence and what is not enough evidence. Mr. Hastings stated that you have to listen to the facts as submitted to you and make a decision. Ms. Sherman asked if the lot of record has changed since 1980. Mr. Carey stated that he doesn't think it has except for maybe the property line around the Schor/Madnick garage, but the perimeters and acreage have not changed.

Mr. Carey stated what we have here is there insisting on a standard that almost nobody can meet and it is not a standard that has any foundation in the law. Mr. Carey stated that were dealing with not a business that can go back and produce checks from 1979. Mr. Carey stated it is not realistic for this type of business. Mr. Carey stated that he accepts that Mr. Cole is astounded that there wasn't an invoice or a check from 1977, but he is not so astounded by that given the nature of the business.

Mr. Carey stated that the reason he gave the fishing analogy and maybe nobody liked it, but it is the best we can do and those affidavits establish the use that was before March 1980. Mr. Carey stated that is what the Board can be guided by, that's the evidence this Board has before them. Mr. Carey stated it is not a standard that the impellent is urging of this court with precision show me January 3, 1979 how many people, how many meals, what date, how many cars. Mr. Carey stated that is impossible to meet and the law acknowledges that and doesn't require us to jump that high because we are human and we run a business, a mom and pop business.

Mr. Carey stated if the Board wants to disregard those sworn affidavits you can, but don't think you should, it is good evidence and the law lets it be good evidence. Mr. Carey stated they are trying to turn it around and say you need to go further.

Mr. Carey stated that we are dealing with the use, which is a broad term. Mr. Carey stated that they don't have the burden, but if they had the ammunition they would have an affidavit or a witness of their own that says no way no how they didn't start to do weddings until April 1980.

Mr. Carey stated you think they would produce that person because it would be great evidence, but they cannot. Mr. Carey stated we have the burden and we provided this Board with ample information from these people who remember certain dates remember certain activities. Mr. Carey stated that they would ask the Board to consider these affidavits and the common sense application of the law to these facts, to this type of business, to this community.

Ms. Sherman asked for public comment; there was none. Mr. Cole stated if he understood the question earlier, can we contrivance intensification or the increase of use by extrapolating to the enlargement of the Town, its intensification of the Town, what he meant when he said a while ago "that any expansion of a nonconforming use must be evaluated in the context of the zone in which it is located", that is the legislative decision that this Town made to say that this is a residential area.

Mr. Cole stated that he can tell you anecdotally that he has been on that side of the table representing a summer camp in the North Country and we have to prove the extent of the nonconforming use prior to 1971. Mr. Cole stated that they provided the camp routine; they provided the pamphlet for the counselors on how to run the camp, they provided data that showed how the camp operated then and now. Mr. Cole stated that there is none of that here, that is why they bear the burden of proof. Mr. Cole stated to put the burden of proof back on him and his client by saying where's their stuff that is not what the law conferences.

Mr. Schor reviewed the abutter's list and stated that most of them live out of Town. Mr. Schor stated that a number of condominiums are rented through the Stonehurst Manor. Mr. Schor stated he wanted to point out that that Mr. Irving's requirement for their garage that they built was to require substantiation in an email to their agent said something to the effect that we don't normally accept affidavits without substantiating documentation and when there is substantiation like that we don't even need affidavits. Mr. Schor stated so Mr. Irving's own standard is to require more documentation then what we are seeing here now.

Mr. Schor submitted a history of the Stonehurst Manor to the Board. Mr. Carey stated he does not know where this time line came from. Mr. Schor stated that it was compiled from his sources. Mr. Carey stated that he would object to this submission as it has not been submitted seven days prior to the meeting.

Mr. Hastings stated that Mr. Schor could have read it into the record. Mr. Hastings stated that the Board can give it as much weight as they wish. Mr. Hastings stated that he is not familiar with the Board's rules and regulations, but if the regulations require seven days then the Board should give Mr. Rattay's attorney the chance to review the document. Mr. Hastings stated that the Board can use their common sense.

Heidi Shellmer stated that she worked at the Stonehurst Manor in high school and they had weddings then. Ms. Shellmer stated that she got married there and has been there the last fifteen years. Mr. Chalmers asked how many weddings there were. Ms. Shellmer stated that they came in cycles, there were some good years and there were some bad years.

Mr. Chalmers asked if they were prior to 1980. Ms. Shellmer stated they were there during Volvo. Ms. Shellmer stated that she doesn't have any specific dates, but she has been there since she was 13 years old, and the weddings have been in the same spot and she is responsible for shutting down those weddings now.

Mr. Chalmers asked when the Town has looked at this would the permit have required a review by the Zoning Board. Mr. Irving asked what permit. Mr. Chalmers stated if the Town had received a building permit application is that something the Town would have approved. Mr. Irving stated that it depends on the content of the building permit application. Mr. Irving stated there are provisions where the Zoning Officer can approve an expansion to a nonconforming use or nonconforming structure that doesn't require a trip to the Zoning Board of Adjustment.

Mr. Chalmers stated but there was no application to the Town for any type of expansion. Mr. Irving asked for the slab under the tent garden, the wedding garden and the parking. Mr. Chalmers agreed. Mr. Irving stated there was not an application. Mr. Hastings stated not until recently. Mr. Irving agreed and stated the application is the one the Planning Board is currently considering.

Mr. Hastings stated that he would like to clarify one thing on the law. Mr. Hasting stated whether or not done with permits or without permits, the question is really whether or not this is an expansion of a legally existing non conforming use. Mr. Hastings stated that the bearing of a permit has more to do with the Planning Board; it is irrelevant whether or not it has permits.

Mr. Hastings stated that the question is whether or not it is an expansion in the normal course of business of a lawful nonconforming use. Mr. Hastings stated that the word lawful doesn't entail that they had all necessary permits. Mr. Hastings stated that it is a lawful nonconforming use because of its existence of a use at the time of the enactment of the ordinance in 1980; that is what lawful refers to. Mr. Hastings reviewed the law of what the ZBA is supposed to do in regard to a decision.

Ms. Hale-DeWitt made a motion, seconded by Mr. Chalmers, to grant the appeal from the administrative decision as requested by Robert Schor and Marni Madnick regarding Peter Rattay Revocable Trust of 2001. Motion defeated with Ms. Hale-DeWitt, Mr. Hylen and Ms. Sherman voting in the negative and Ms. Tobin and Mr. Chalmers voting in the affirmative.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Hale-DeWitt made a motion, seconded by Ms. Tobin, to approve the Minutes of June 17, 2009 as written. Motion carried with Mr. Hylen abstaining from voting.

Meeting adjourned at 9:30 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant