TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT
MINUTES
Public Meeting
February 3, 2011

Approved as amended 3/3/11

I. CALL TO ORDER

Paul Monzione, Chairman, called the meeting to order at 7:03 p.m. and requested that all members of the public sign in. Additionally, he announced that regular member Timothy Kinnon would not be attending this meeting. The meeting will proceed with the four members present as that does constitute a quorum.

II. INTRODUCTION OF PLANNING DEPARTMENT AND ZONING BOARD MEMBERS

Paul Monzione, Chair, introduced himself, the Planning Department Representative, and the members of the Zoning Board of Adjustment:

John Dever, Building Inspector and Code Enforcement Officer
Lou LaCourse, Clerk
Tim Morgan, Member
Steve Miller, Member

III. APPOINTMENT OF ALTERNATES

There are no alternates to appoint.

IV. STATEMENT OF THE APPEAL PROCESS

The purpose of this hearing is to allow anyone concerned with an Appeal to the Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds which the Board must consider when making a determination. The purpose of the hearing is not to gauge the sentiment of the public or to hear personal reasons why individuals are for or against an appeal but all facts and opinions based on reasonable assumptions will be considered. In the case of an appeal for a variance, the Board must determine facts bearing upon the five criteria as set forth in the State's Statutes. For a special exception, the Board must ascertain whether each of the standards set forth in the Zoning Ordinance has been or will be met.

V. APPROVAL OF THE AGENDA

S. Miller made a motion to approve the agenda as presented. Lou LaCourse seconded the motion which passed with four votes in favor and none opposed.

VI. CONTINUANCE

Case #Z10-25 **Richard and Nancy Coskren**	**Map 20 Lot 3**	**Variance** **1683 Mount Major Highway**

Application submitted by Attorney Catherine Broderick on behalf of applicant Richard and Nancy Coskren to request a variance from Article 400 Section 420B Required Frontage; to provide the ability to subdivide into 2 lots. This parcel is located in the Rural Zone.

The case was read into the record by Chairman Monzione. As he has done in the past for reasons previously stated on the record, P. Monzione recused himself from this case and appointed T. Morgan as acting Chair. Attorney Catherine Broderick and Mr. Richard Coskren came to the table to present. These applicants were here last month; they have been trying to get at least a four member Board to hear this case since September. Attorney Broderick stated that she appreciates that the members present are here. This evening, her client took the risk of paying his experts to testify on some important issues. However, it is this Board's policy to allow the applicant to continue if there is not a full Board present; all they are asking for is four. She understands that Mr. Kinnon signed up for another term; she is happy about that and hopes that his schedule will allow him to come to hearings and hear their case. It is also her understanding that an alternate is in the pipeline, so it is possible that by March there could be an alternate appointed to hear their case. She would make sure that alternate had all of the documents that have been submitted. Again, she appreciates this Board; it is extra driving in the winter for her, but that is her job. She asked that the Board members who will not be present try to let John Dever know so they can call off their experts.

Attorney Broderick asked for a continuance to March 3, 2011; she also asked that the Board be prepared when she comes to present and that the members have a chance to review filings and any responses to those filings. She requested of the Chair that he consider some filing deadlines; the 17th of February for any filings and the 24th of February for any responses. That will give 1 – 2 weeks for review of materials before the meeting on March 3. This would apply to both the applicant and the objectors unless something unusual comes up. T. Morgan clarified that any objections to the application would be filed by the 17th, and the applicant would have until the 24th to respond. Attorney Nix was consulted for his opinion on this; he thinks it is completely reasonable. There was no discussion from the Board members.

L. LaCourse made a motion to grant the continuance to March 3, 2011 with February 17, 2011 for filings and responses by February 24, 2011. S. Miller seconded the motion which passed with three votes in favor and none opposed.

T. Morgan apologized to the applicant for not having a full Board this evening. Attorney Steve Nix asked if they file and then there is a responsive pleading, they will still have an opportunity at Public Hearing to submit any additional information they have at that time. T. Morgan was of that assumption but did state that to the best of their ability, everything should be submitted to the Board ahead of time so there is ample time to review it. All parties agreed.

Attorney Broderick asked for confirmation that there is in fact an alternate in the pipeline. J. Dever answered that there is, but he is unable to sit on the Board until he has been appointed. Attorney Broderick asked that the alternate be prepared to sit on their case in March and also that he have all the materials that have been made available to the Board. Attorney Nix pointed out that there could be a problem with the alternate sitting on this case as well; he is Attorney Nix's client's sister's boyfriend. T. Morgan stated that they would try to impress on Mr. Kinnon the importance of attending the March meeting. Attorney Broderick added that the alternate has a jurist standard and ultimately it is his judgment call what he discloses and whether he decides to sit.

VII. REHEARING

P. Monzione returned to the table and resumed his position as Chair.

Case #Z10-26 **Michael and Kathleen Currier**	**Map 2 Lot 19**	**Rehearing of a Variance** **55 Prospect Mountain Highway**

Rehearing by request for the Variance granted on October 7, 2010, to Article 400, Section 401, Table of Uses, to allow an onsite, seasonal Function Facility.

At the previous hearing on this case, it was decided that the Board would proceed with hearing first from the party requesting the rehearing. There were no objections from the public or from the Board as it makes the most sense. Unless there is any objection or reason not to the Board will proceed that way this evening as well.

The moving parties, Attorney Brandon Giuda and his clients Cynthia Balcius and Richard and Carol Locke came forward to present.

Attorney Giuda stated that in the original brief he had cited some cases; he made copies of those cases available to the members. There is also an article about noise effects. P. Monzione asked if the case provided was Garrison v. Town of Henniker; Attorney Giuda answered that it is. He also provided Daniels v. Town of Londonderry.

Attorney Giuda stated that he would like to go through each element of the variance and expound on each element, then take questions on each one.

The first is whether the variance is contrary to public interest. He would say that the Board should have found the variance contrary to public interest, not in harmony with the intent of the Master Plan, and not in the spirit of the Zoning Ordinance because it violates the zoning ordinance objectives. It would alter the essential character of the locality and it would threaten the public health, safety, and welfare. He referred back to the Alton Master Plan and Survey which the zoning is derived from. In the Alton Master Plan, the Alton citizens clearly expressed the intent to keep the town and rural zone quiet. The small town atmosphere and un-crowded and quiet living conditions were two of the top five responses when citizens valued their lifestyle in Alton. He thinks everyone can relate to that; when you live in a rural zone people like his clients who have been there for a number of years and want to retire in their house are direct abutters to the proposed facility. Based on the noise they have heard so far, it is disturbing to them.

The citizens also wanted more done to protect the quality of Alton's lakes, ponds, and streams. The citizens also indentified two of the top five problems as lack of land use control and traffic on the roads. The most important issue on the survey regarding future land use and development was for Alton to remain primarily a rural residential community. The majority of citizens did not approve of any commercial development in an area relating to this. On another note, they gave zoning enforcement a very low mark; they obviously thought there were some problems somewhere.

Based on the survey results, there is little question that the citizens of Alton want their rural zone to remain quiet and residential. There is a noise ordinance in town which would prohibit noise such as this in the rural zone. There is also the *Noise Effects Handbook* (available online). On page 47 of 58 there is a section concerned with at what degree noise causes neighborhood dissatisfaction. The annual survey by Housing and Urban Development indicates that noise is the most frequently cited undesirable neighborhood condition, surprisingly ranking higher than crime. Noise is often given as the reason for residents wanting to move from their neighborhoods. His clients would attest to the fact that while the Curriers have lived in town for a while, his clients have lived here longer. They moved here to retire, and of the many citizens who would be impacted by this sound, it's just not fair.

When one looks at the zoning survey, the Master Plan, and the complaints, needs and wants of the citizens, and the *Noise Effects Handbook*, they would say that it is contrary to the public interest.

When talking about significantly altering a community's character and the health, safety, and welfare of the community, this is an intensive use. Ironically, Attorney Giuda owns a function hall; it is an enclosed function hall and the noise is contained because of that. There is a lot of noise to the neighbors; it is in the middle of a larger parcel than the Curriers' but the fact is that without walls any noise from a party significantly alters a residential community. He would be the first to say that not only is the noise a significant effect, but the parking

will also be a significant effect. One hundred to one hundred fifty cars going to and from a function, if it is damp or wet, will make a tremendous impact if it is a dirt surface.

The analogy the Board made with regard to analogizing this use to other uses in the rural zone was not a good one. Attorney Giuda went on to explain that every one of the uses allowed in the rural zone that the Board referred to was an inside use with people connected to the community, like a lodge. A function hall is quite distinct in that the people who come do not care at all about the community, or about the function hall, or about anything else. They're there to have a good time. If they're from the community they might care somewhat; generally after a few drinks they don't. Many of them will not be from they community, and they don't care. They're going to be loud, there is going to be noise, there is going to be trespassing, and there are going to be people urinating out in the woods. That is a significant distinction. The analogy that was made was to lodges and private clubs. Those are inside events where the sound is contained by the walls and lodges and private clubs are generally made up of people in the community.

Attorney Giuda suggested that a better analogy is retail business and service. When you look at amusement use indoor and amusement use outdoor, those are both prohibited in the rural zone. When you look at the definition in the zoning ordinance of amusement use indoor you see pinball video arcade, and the next one is right on – dance hall – bowling alley, movie theater, tennis center, and gymnasium. Amusement use outdoor has even banned miniature golf, drive-in theater, and circus/carnival. He would argue that the closest analogy is the amusement use indoor which is banned in the rural zone, because in that definition is dance hall. Even in the rural an indoor dance hall is banned. That is the closest analogy he can come to an outdoor function facility where you would have people dancing and music and whatever. The banned amusement uses indoor and outdoor that are listed are less intensive because they are enclosed. The dance hall is enclosed whereas an unenclosed dance hall or music is more intensive. Certainly, if the table of uses prohibits an indoor dance hall in the rural zone, it meant to prohibit an outdoor function facility.

Attorney Giuda invited questions from the Board members. P. Monzione asked about recreational uses not for profit and asked if Attorney Giuda had interpreted those as also including outside type activities such as children running around, games being played, and noise being made. He is looking at the table of uses and the argument was that when the Board analogized the use that the applicant was applying for with some of the uses that are permitted in the rural zone, the argument is that this was a bad analogy because all of the uses permitted in the rural zone are inside uses, at least according to Attorney Giuda's argument. P. Monzione asked if he had taken into consideration use #36, which is recreational uses not for profit, which are permitted in the rural zone, and does Attorney Giuda understand that could include outdoor activities that could perhaps be noisy. Attorney Giuda responded that he had only done one page of the definitions. P. Monzione stated that he would represent to Attorney Giuda that the Table of Uses, Use #36, includes recreational uses not for profit and according to the Table of Uses that is a use permitted in the rural zone. Attorney Giuda responded that he would have to look at the definition of recreational uses; he asked if there is one. P. Monzione answered that there is not one in the notes. Attorney Giuda stated that he would argue that not for profits generally do not include alcohol, or if they do they don't continuously involve alcohol. He went on to say that the analogy that was used for what is allowed is indoor and when it comes to the dance hall, that is not allowed; he thinks that is the best analogy you can get for the function facility.

S. Miller stated that he had not had a chance to read the *Noise Effects Handbook*; is there any reference to a dB level per a certain number of people at a function, or what a band generally plays at? Attorney Giuda responded that he had not read it to that depth; he also thinks it depends on the band. He did get an e-mail from someone who lives across the lake who complained about it. The Board also heard testimony from people in support of this project; when they heard the music it did not offend them. However, those people are .9 miles and 1.2 miles away, which means it is pretty loud. Inside that 1.2 miles there are other residents like his clients who mind the music. They're in a residential zone. Attorney Giuda went on to say that he honestly believes that if any of us lived next door, and there was a loud party, and not just every weekend because it is not unlimited. If there was a loud party two or three times a week during the summer and it went on and there was drinking, he thinks they

would think twice about that. S. Miller asked about tractors; they generally run early in the morning at around daylight and roosters wake up at four in the morning. He asked if there is any comparison between the dB level there and that of a function. Attorney Giuda guaranteed that there was not; he has tractors and excavators and 250 acres that they work on, and he has a function hall. The function hall is much, much louder. It is actually even louder if it is 150 – 180 people within the function hall if people open the doors. The other thing he would say is that if agriculture is allowed in the zone, there were no complaints about agriculture in the survey. It is not necessarily continuous noise, and he does not think you can hear a tractor from a mile away.

P. Monzione asked Attorney Giuda how close his clients are to the site. Attorney Giuda answered that one family abuts the site and another is about .8 miles away, and they hear it. S. Miller asked if the band at a function is much louder in an enclosed space or in an open space. Attorney Giuda stated that it would depend on where you are measuring it from. S. Miller responded that Attorney Giuda had said that he has an enclosed facility and it gets loud as the alcohol flows; he is asking if in an open space with no enclosed walls and no insulation, he would guess that sound does not travel, it gets dispersed when it is outdoors. He asked Attorney Giuda if he thinks it is significantly less outdoors than indoors. Attorney Giuda answered that with no walls there, it is much louder than with walls there.

L. LaCourse asked if in any of the cases cited the dB level had been measured. Attorney Giuda answered no; the point is that it should not have to be measured. If you are living next door to it in a residential zone where noise is a factor based on the Master Plan and the zoning and the noise ordinance, it should not have to be measured. If the noise is loud enough to be heard 1.2 miles away, as admitted by someone who supports the project, he thinks they should all admit that it is too loud. L. LaCourse pointed out that Attorney Giuda's explanation has a 55 dB level on it as acceptable noise in a neighborhood; he did not know if someone might have measured to see if it broke that 55 dB, although he is sure that it does.

P. Monzione addressed Attorney Giuda; for purposes of getting a rehearing on the decision the Board made in granting the variance, the noise ordinance is an enforcement issue. He asked if Attorney Giuda would agree with that. Attorney Giuda responded that he would not with an unpermitted use. With an unpermitted use, you have to take all of these into effect to see whether it flies in the face of the ordinance or not. P. Monzione went on to say that the variance that was granted by the Board to the applicant did not give the applicant a variance on the noise ordinance. The applicant got a variance for this use but did not get a variance or any excuse from the noise ordinance. Right now, as it stands, the applicant is subject to compliance with the noise ordinance. Attorney Giuda explained that he thinks P. Monzione is putting the cart ahead of the horse. P. Monzione responded that he is just asking Attorney Giuda for his understanding of how the variance now stands from which he is trying to seek a different decision from this Board. As he makes his arguments, does he understand that when the Board granted the variance, the Board did not grant any variance from the noise requirements and therefore, whatever this facility is going to do, is going to be subject to the noise ordinances as they currently exist in the Town of Alton?

Richard Locke, one of Attorney Giuda's clients spoke up. He sees where P. Monzione is going with this, but asked to put it in perspective. When the people 1.5 miles away were bothered, members of the Alton Police Force were at the party. Now it is being suggested that they are the ones to go to for enforcement; he would like to see it done here.

P. Monzione responded that this is precisely his point. In other words, this is being done on rehearing. The burden for someone seeking to change the decision of this Board is to demonstrate that there was an error in what the Board did. He can say that when the variance was granted in this case and the noise issue was taken into consideration, it was mentioned as part of the deliberation and part of the discussion that noise was something the town would have to enforce, not this Board. When the Board grants a variance, they don't grant it with an understanding that police are going to be at a party. They grant it with an understanding that if the criteria are met, the applicant goes away with the variance but still is subject to all of the laws in Alton that would regulate that. For example, if people are being rowdy and there is conduct going on that is unlawful, the

police would have to come up and enforce it. If the noise was getting too loud, those ordinances would have to be enforced. The Board did not make any decision with regard to that; they didn't grant anybody a variance from the noise. All he is asking, because it is a point they are trying to make now that one of the reasons the Board should change their decision is because somehow they overlooked or made error with regard to how noise factors into whether the variance should have been granted, what he is saying is that the Board took that into consideration and specifically understood, as did the applicant, that the variance was granted subject to all of the same laws and restrictions regarding noise that anyone else operating a business are subject to.

Attorney Guida answered that he understands that, and he believes that is an error because the Board cannot abrogate its responsibility to find just because there is an ordinance that can be enforced that this business isn't contrary or not in harmony with the intent of the Master Plan or the intent of the zoning ordinance. If the Master Plan clearly states that the rural community is not to have noise and the zoning ordinance and the town's people clearly say that's a problem and they want to keep the rural zone quiet, then the Board has to consider that. They can not say there is an ordinance in effect so this is in harmony. It is either in harmony or it's not. In the rural zone, he thinks it is clearly not, especially with the evidence the Board had that this noise is travelling over a mile, and with the evidence his clients gave that it is extremely loud and disturbing to them. Even though there is a supplemental ordinance, he does not think you even get there.

P. Monzione asked if the functions were being carried on within the requirements of the noise ordinance, then at least the variance would be appropriate, at least within that one criterion. Attorney Guida answered no. P. Monzione responded that he saw Attorney Giuda's point, but he disagrees with it.

Attorney Giuda moved on to the hardship issue, which to him is the big issue. What the Board said in its analysis is that they tried to interpret the drafters' intent and said that "they have neglected in include this particular use in the rural zone. It is probably appropriate but was overlooked. Unnecessary hardship in this case would be that the Table of Uses did not specifically include this particular activity although it includes a number of other similar ones permitted by Special Exception." The analogy, as already argued, he does not think is correct and there is no evidence that the proposed use was overlooked. You have an ordinance; the hardship has to apply to the land. Otherwise, anyone could say that something was overlooked, so it is a hardship. This is really the big nugget; there is no hardship with the land. The NH Supreme Court has made it clear that the size of the land does not matter; in one of the cases, it was a 1,600 acre parcel where they wanted to do something with firearms in the middle of it, and they were given a variance just because of the size of the parcel. The court said that is not right.

To show uniqueness, they must show that the property is unique for zoning purposes by proving a special condition of the property. They did not prove any special condition; special condition is not location or size. It is something about the property that makes it unique. Because they didn't prove a special condition, and they can't prove a special condition, they can't prove a hardship. This is what the applicant gave the Board. "This lot has special conditions of a large lot size. It is over 100 acres; much bigger than any around it. It has a lot of frontage and is located near Route 28 so the traffic does not have to travel far on Prospect Mountain Road. It has a natural buffer on the property." These were all unique conditions; in fact, according to the NH Supreme Court, they are not unique conditions. Under well settled law, and this is a quote, "the fact that land is well suited to a particular use, given its size, topography, and location, does not alone distinguish the land from any other land in the area." That is shown in the two cases Attorney Giuda gave to the Board. One of them is pretty similar; similar arguments were made. The NH Supreme Court made it clear that the size of the property is not considered a unique characteristic. Because there is no special condition to this property, there is no unique characteristic, therefore there just cannot be a hardship. Because there can't be a hardship, there can't be a variance.

Attorney Giuda invited response to that; that is really the strongest and irrefutable point. S. Miller asked if to have a function with a farm theme, you need a piece of property that is in fact a farm. Attorney Giuda answered that is irrelevant to the Supreme Court decision concerning the size of property. The property has to be unique;

in other words, can they only use it for a function with a farm theme? They can use it for many other uses. A property is considered unique when you can't have reasonable use of the property. That is one way to come at it – to say that if you want a function with a farm theme, then you need a large piece of property. That doesn't make the property unique; that just makes the want unique. He and the Supreme Court would say that has nothing to do with whether the property is unique. He could say, if you had a very small property, you could say you need a very small property. It's not what they want to put on it; it is that the property itself is so restrictive that they can't reasonably use it. In this case, there are plenty of other uses for the property.

T. Morgan referred to the cases Attorney Giuda had provided and asked if they are all pre-recodification of the statutes. Attorney Guida answered that they are. T. Morgan asked if Attorney Giuda is aware of any cases that have addressed these issues since the statute was recodified. Attorney Guida answered no; he does not think the statute was materially changed. T. Morgan commented that there definitely are some changes in the language that the legislature has introduced; he wonders how Attorney Giuda would tell the Board they affect the prong of the Simplex test that had to do with consideration of the surrounding environment of the property. These are decided under the Simplex case prior to the recodification; Attorney Giuda agreed with that. T. Morgan continued; now that this has been recodified, how does the recodification affect the three prongs to the Simplex, the third one being the surrounding environment. He asked how that was affected by the recodification. Attorney Giuda responded that he does not think the recodification affected it at all; he thought it was simply codifying where they had progressed through the case law to that point. He does not see any affect. Also, he still does not see a hardship; the recodification did not change the two cases he has given them in any event. There still has to be a hardship with the land, and the only hardship argument that was made was size and frontage. Recodification didn't change that condition.

P. Monzione thinks that the recodification actually makes the hardship criterion harder to meet. For example, in the Daniels case Attorney Giuda had provided, they reiterate the Bocchia v. City of Portsmouth standard where the area variance distinction between the area and use has virtually gone away with the new statue. Under Bocchia, it was a lot easier to meet the hardship standard. Now, with the codification, he thinks that the hardship standard has become more difficult. This Board had grown used to the Bocchia standard of hardship, which is pretty easy to meet. Now with the codification, it has gone back to imposing a much harder standard of hardship. Attorney Giuda voiced appreciation for that input.

Attorney Giuda continued; regarding the fair and substantial relationship between the general purposes of the zoning ordinance and the specific restrictions of the property – some of these issues will be rehashed as he goes section by section. He did not see the ZBA specifically address this, though he is sure they addressed it in discussion, but they believe that the substantial fair relationship is established by the citizens in the survey and in the Master Plan and the zoning. Again, going back to the analogy of an indoor dance hall which is prohibited in this zone; there is a reason for that. They believe that a fair and substantial relationship does exist between the general purposes of the rural zone and the specific restrictions on any property in the rural zone for a function hall. Noise has been discussed; he is not going to reiterate that, but it does also affect this element.

P. Monzione requested that Attorney Giuda please go back to what he is relying on for the indoor dance hall being specifically prohibited. Attorney Giuda explained that it is under amusement use; it is in Section 200 Amusement Use Indoor and Amusement Use Outdoor. Under indoor, the first is arcade/pinball, the second is dance hall, the third is bowling alley, the fourth is movie theater, the fifth is indoor tennis center, and the sixth is gymnasium.

S. Miller asked if something the nature of a farm café would be prohibited under the amusement use. In other words if you X'd out the noise and it is a facility for coffee and… on a farm, would that still fall under this amusement use. Attorney Giuda answered that he has not evaluated that because that is not what is requested or what is happening. S. Miller explained that he is just trying to get back to see if it is based 100% on the noise issue; if you X'd out all the noise and liquor, would there still be an issue. Attorney Giuda asked if he was talking about a restaurant; S. Miller answered that he was. Attorney Giuda answered that he would have to look

to the Table of Uses, but there is a big difference. A restaurant or drive-in restaurant would need a Special Exception in the Rural Zone. Once you add in the noise and the size and the music and the drinking, then they said no.

P. Monzione asked about the dance hall analogy, specifically by use #2 and by the definitions in section 200 being prohibited in the rural zone where it says no under that use – there are two ways a use is prohibited under the Alton Zoning Regs. One is by specifically listing "no" on the Table of Uses, and the other is by not being on the Table of Uses at all. Really, it almost makes no difference; what this application was dealing with was a prohibited use because of a failure to include it in the Table of Uses, or by an analogy to specifically say no to it. That is why this applicant required the variance. Attorney Giuda agreed; he just thought that was a much better analogy and fits the reason. When you look at the restaurant or the function hall, it fits a reason why one is by Special Exception and one is "No". It fits the survey and the Master Plan as it should.

Attorney Giuda continued to "injuring the private rights of others." He feels they have made their argument clear that it would injure the private rights of others. He did speak about another case he is involved in; it is quite ironic that he has these two cases at once. This case involves a similar thing in a northern town. He represents a client, and is soon to represent numerous clients whose assessment has been reduced $60,000 out of a $320,000 assessment because things that were allowed, and started out as an innocuous little thing has grown to something that is impacting the rural neighborhood so much that the town actually saw fit to decrease the assessments which leaves them open to some litigation. He has seen this in several cases, but that is the most direct one. It started out with a campground just holding a couple of weekend dances, then grew to the point where the surrounding landowners now have huge markdowns on their property. This has been confirmed by real estate brokers also, but the actual town assessments have decreased the property values significantly because of these events. As far as the private rights of others, he thinks that considering that there is evidence of noise going at least a mile away that is just too much for this zone. It is injuring; not only is it injuring, but there is a good point to be brought up that if this is approved and his clients now don't want to retire here, which they have been planning for many years, 23 to be exact, then how is it injuring their rights when they go to sell their house knowing that there are these loud functions going on next door. It always starts out innocuously, and he is sure the Board knows that. It starts out as just this or that. There are no limitations on time; there is no limitation on number; there are no limitations on any of that, and a successful business grows.

The substantial justice portion, they believe that the ZBA should have found that substantial justice would not be done by granting the variance. The reason is that the test is whether the gain to the general public by denying the variance would outweigh any loss to the applicants. Again, it is back to the issues of loud noise and alcohol, the detriment of the parking lot which flows downhill into a wetland; they believe that the loss to the general public if approved would be significant. Everybody living at least within a mile of this will hear or could hear it. The issue of the parking lot getting rutted up, which will happen quickly any time it is after a rain or damp, and flowing downstream into a wetland and ultimately into the lake is an issue also. If the ZBA denied the variance, there are many other uses for this property. Again, it goes back to the hardship issue of whether this is one of the only uses you have. If the ZBA denies the variance you will have a couple of individuals who will not be able to use their property for this purpose only, but you will also have all the neighbors within a mile who will not have to contend with noise and the closest neighbor with noise, trespassing, drinking or whatever.

Traffic is also an issue; it is relatively close to Route 28. When functions come and go, there is a lot of traffic, and especially when there is alcohol involved, there can be a lot of issues. Every function facility he knows of has had issues at one time or another.

As far as the value of surrounding properties, he has relayed that already. It has happened, and it will happen. That is a litigation breeder, as the Board knows.

For all of those reasons, they would ask that the ZBA reverse its decision and not grant the variance for the open air function facility that was previously granted.

He invited any further questions. P. Monzione asked Attorney Giuda if it is his understanding that he is here de novo on this hearing. In trying to demonstrate that there was an error made by the Board, are we confining ourselves to looking at the evidence that was presented the first time, or is it his understanding that during this rehearing, they get to go de novo and start from scratch and bring in all kinds of additional evidence that could have been presented and wasn't presented when there was a publically noticed hearing. Attorney Giuda answered that at the rehearing, they (the applicants) get to represent also. P. Monzione stated that they are going to hear from the applicant and also from any members of the public. He questioned Attorney Giuda, asking if he is saying that when you bring a motion to the Board for rehearing and the rehearing is granted, which in this case it was, is it his understanding that at that hearing it's all from scratch; they start de novo or are they confined to the argument of whether based on the evidence that was before the Board after everyone was given their due process rights by duly noticed hearing and opportunity to come before the Board and present all evidence, that they confine themselves to that? He asked Attorney Giuda what his position is with regard to how the Board should view this in making this decision tonight. He explained the reason he is asking that; he asked Attorney Giuda if he has read the minutes of the hearing where this was granted. They are almost verbatim minutes; as compared to other towns, Alton has almost verbatim transcripts. There was no evidence presented by any objector at the time of surrounding property values being diminished in terms of any kind of expert testimony on that subject. Runoff of wetlands into the lake and a number of things that are being raised now; people coming forward with concrete evidence the Board could rely on. His recollection is after review of the minutes that no one came in and presented on that. His question is does the Board now get to take that into consideration when they decide this evening, as far as Attorney Giuda is concerned.

Attorney Giuda answered that some of those things were brought up, but they were not as precise. They were mentioned; the wetland was mentioned but it obviously was not as intense a presentation as has been provided tonight.

S. Miller asked Attorney Giuda if in his experience he has found any cases that are right on point; where a farm in a rural zone was turned into a commercial activity. Attorney Giuda answered that the cases he has provided as far as hardship goes are right on point because they have to show that this land is unique in some way that there is a hardship. If the land can be used for many other uses, then there is no hardship. What you can't consider is what they brought forward – that it is large, has a lot of frontage, and located just off 28. The Supreme Court has said that those things don't make it any different than any other land around. Size, frontage, and proximity to Route 28 cannot be considered; there has to be something about the land that restricts its use and makes a unique condition. S. Miller asked if the land, as Attorney Giuda stated, has other economic uses. If the owners are limited in either economic resources or knowledge or talent so this makes the only other alternative, does this make the economic use question still valid? Attorney Giuda answered that it does not; the limitations of the owners cannot provide hardship on a piece of land. It could be, although a small consideration, but the land has to have a hardship. Otherwise, anybody could come before the Board and say they have a hardship because they can't afford to do something. They could subdivide or sell the land, but the land itself has to have some type of hardship on it.

There were no further questions for the requesting party.

The applicants, Kathleen and Michael Currier, came forward to present.

Mrs. Currier stated that they are not represented by an attorney; she would appreciate guidance and will answer any questions. She has heard about uses; there are many uses that property could have been. She has a list which includes manufactured home park, elderly housing, a nursing home, utilities, gift shops, hotel/motel, which they thought were very intensive.

She went on to say that you would think they were going to have wild parties, and they're not. What they asked for was a very simple family oriented function facility, under a tent. They do not want over 150 people. They

are only asking for two events/parties – this could be a wedding, a child's party, a family reunion, and none of those have music – twice a month from May to September/October. They would do everything in their power to make it the highest quality possible. This is their home; they respect their land. They are just trying to give a service to the community that they feel is right.

Mrs. Currier stated that she has looked at the Master Plan that is constantly referred to. What she found in goal #3 is "to encourage small-scale commercial and light industrial development consistent with the town's current land use and development pattern; to assess and plan for home occupations and their possible expansion. Alton seeks to maintain and improve its rural and resort qualities; maintaining that balance is crucial to Alton's future success."

The Master Plan is not a zoning ordinance; it is a foundation and a guide. From all that she has seen this fits into what the people are looking for. It is a farm; to have people come to your farm and enjoy the scenery; they are very fortunate to be able to share it.

As to hardship – they were originally given, as she knows the Board is aware, a minor site review in 2007. Their attorney at the original meeting pointed that out; she has all that paperwork if the Board would like to see it. She keeps hearing that they have operated illegally; they have never operated illegally. There was a decision of a legal board of a minor site review that consisted of all department heads at that time. This was in May, 2007. This was a Board that was set up to help the Planning Board because at that time there were a lot of subdivisions coming through and she believes even the cell tower. To help alleviate this, the planner, who was also part time, Peercraft Lund, would choose the cases that did not involve heavy usage and then he would decide that was a minor site review. This is how they came upon this. The function facility is not her main business; her main business is event planner. She does this out of her home. She goes other places and helps people create their dream party, whatever that is. Occasionally, she wanted to be able to do this on her property; she was granted that in 2007.

This is what she has been working from. Nothing has changed. In those 3 – 4 years, she has only had five events. She and her husband can't possibly do what it sounds like, nor do they want to. This is their neighborhood that they respect; they respect all of their neighbors and will gladly work with the Locke's to see what they can do with the noise issue. She understands there are decibels; she has talked to DJ's. There are different ways to handle this, and they are willing to do that. That is important to them.

She has letters from neighbors she is willing to share if time permits. She has a letter from a realtor who says there is no way that the property values would diminish. They live near the YMCA; Mr. Currier researched this and found that there are 200 children every day; parents are in and out all day; counselors and staff are in and out. The Locke's live 200 yards from busy Route 28; if there is going to be any noise, they are going to hear it from 28. He's sorry they can't shut 28 down on Bike Week because it is noisy, but he doesn't think that is going to happen.

Mrs. Currier spoke about the Lockes' retirement; she does respect that. This is her retirement; she is into her retirement years and by the time Carol Locke retires, she will be too old to do this. She will be well into her 70's. They want to enjoy their family and friends, and what they have to offer to the community. It will also help the other businesses.

The Lockes moved there 23 years ago; Mrs. Currier stated that she moved there 20 years ago. There was a grocery store right next door, and they sold alcohol. There was a restaurant; a fast food; a gas station. That still has a viable option to reopen, as far as she knows. What they are doing is very quiet and respectful.

She has more information, but she does not want to take up the Board's time if she is just repeating herself. She believes there are some abutters who would like to express their opinions as well, and take those into consideration. P. Monzione addressed the letters from abutters and the letter from a realtor. He asked if she

would like to submit those and make them part of the record. Mrs. Currier answered that she would, but she would like to read one part of a letter. An abutter, Sharon Gillen, wrote in part "personally, we have never been interrupted or irritated by any loud music, or too much traffic, or chaos, although if we were, I know that we could phone Kathy and Mike and they would correct the situation immediately." Mrs. Currier stated that to her, that speaks a lot. P. Monzione asked where she is located in regards to the Currier site; Mr. Currier answered that she is the next abutter heading south on Prospect.

Mrs. Currier has a letter addressed to both the Planning and Zoning Board from Keith Dube; he was referenced as the person who was .9 miles away. "I am writing this letter to show support again for Mike and Kathy." He is confused as to why there is a variance when they already received it. He asked if "there is any other way to waste taxpayer's time" and he is "surprised there are any small businesses in town." Mrs. Currier felt this is probably an angry letter in response to what is going on, which she will leave for the Board to read. He also says that he "will definitely go back with his family to the maze, and maybe even a party at the Country Event. To deny this business would be a great disservice to the community and the neighborhood."

There is a letter sent from another neighbor who lives across from the Lockes who is in support of what they are doing. She does not know if the Board has received this letter; he says it would "be no detriment to the neighborhood, and their event and hosting facility is positive growth for Alton, its business, and its people." He is also aware that they (the Curriers) are very community service oriented; they host the autumn corn maze, provide temporary employment for the teens, they donate to child advocacy centers and they have hosted events at no charge for benefits for people who need the money far more than they do. That letter was written by Michael Raymond.

Mrs. Currier has a letter from Amilyn's Corner Market; they are not an abutter. This is purely business. The letter says "I am writing this letter in regards to the business A Country Event owned by Kathy and Michael Currier. I am Amy Mitchell. Support this business. They are a locally run business that supports their neighboring business. Kathy would display my business cards along with others on her front desk where she would hold meeting for prospective events to be held at the Lake Knoll Farm. She would recommend my bakery, Amilyn's Corner Market, for deserts and cakes for the events she was hoping to host at the farm. Kathy and Michael use local companies whenever possible while bringing together the parties and events. They strive to promote community in every way possible. I feel that if they can't run a country event business, it will only hinder the progress all the Alton businesses are trying to make in keeping their small businesses afloat. We all need to work together and network our companies; together this is exactly what Kathy and Mike want to do, and their events company will only help the Alton community."

The last letter is from a real estate agent from Prudential Real Estate. "Dear Michael and Kathy, this letter is in regards to you property located at 55 Prospect Mountain Road in Alton, NH, describes as Tax Map 2, Lot 19 and said to contain 102 +/- acres, with improvements to include a four bedroom, three bath colonial home. You asked my professional opinion in regard to the impact on neighboring values with respect to running a seasonal function facility. My interpretation of this is that the facility is one that provides an open area for weddings, private parties, and similar outdoor events. After reviewing your location, the proximity of neighboring homes, parking accommodations, and the area in which the proposed open air tent will be erected, I personally feel there will be no adverse affect to neighboring property values. In looking at this as a real estate professional, the alternative to operating a seasonal function facility on the Currier property would be to do a road front subdivision, thus losing more pristine land to future development. I believe it would be in everyone's best interest to keep the Curriers' property as is, operating a seasonal operation which will have a minimal impact on both the land and the neighborhood. Please do not hesitate to contact me with any questions or concerns." The realtor is Chris Johnson of Prudential Realty.

Mrs. Currier gave the letters to J. Dever for the record. P. Monzione invited questions for the Curriers from the Board. T. Morgan asked when they were given that minor site plan review, what was that called. What did they call what had been applied for? Mrs. Currier answered that she actually has a copy of that for the Board, if they

would like it. She has a copy of the entire packet of May 16, 2007 for each member of the Board, and how this came to be. This was decided by Peercraft Lund; it was a minor site plan committee. There is an overall test for minor site review, which is there (in the packet). In their notes it states that no variance or special exception is needed for this proposal. She did ask for related activities; they did say that a vendor's license should be considered if required; when she called Town Hall she did not fit the Vendors and Hawkers description so they told her it was not needed. In the application, "this will be done by on or off site functions" is in there. The motion passed with all in favor on May 16, 2007. No one has complained for the three years she has been doing this until now. In her original application it says that "the applicant proposes to establish a combined business and dwelling for home occupation that will involve event planning and may include onsite functions." P. Monzione asked who the planner was; Mrs. Currier answered that it was Peercraft Lund; he was a part-time or interim planner at that time. Mrs. Currier has a copy of the original application packet to submit to the record; J. Dever pointed out that it is already part of the record.

P. Monzione stated that in regard to that, unless there is any objection from either the moving party or any members of the public, he is going to recommend that the Board take into consideration the entire record, all of which is being presented here this evening as well as all that has been previously submitted to the Board, including the original application and all of the presentations at the previous hearing. He believes the Board should have all of that information as a basis for their decision this evening, unless there is any objection. Attorney Giuda asked if he could get a copy of everything; P. Monzione told him that anything that is submitted to the Board as part of the application or otherwise is part of the public record and is to be made available. The Planning Office will make sure he gets copies.

T. Morgan asked P. Monzione if he intends this to be a de novo review, based on the appellants' application. P. Monzione answered that what he would suggest they do, whether that is true or not, he thinks it would be better to take into consideration all that is being presented here tonight as if it is de novo, as well as look at the previous record that was already before them, including the input of the pubic, the application itself, and all of the input they have previously received in making their decision tonight.

P. Monzione invited Board questions for the applicant. S. Miller estimated that the applicant is about ½ mile from the YMCA camp; Mr. Currier confirmed that it is close to that distance. S. Miller asked if they can hear the camp from where they are. Mrs. Currier answered that they hear the music; they hear the boys playing. They are having a good time; there are football games, etc. S. Miller asked if the applicant could give him the names of the abutters that spoke in favor. P. Monzione answered that they are on the letters turned in. S. Miller asked if the business plan is to limit to 150 people or less – does that include staff. Mrs. Currier answered that they do not have staff at this time; the addition of staff would be an additional 5 – 10. S. Miller asked if the business plan is also to limit to 2 parties per month, realizing that is a moving bar. Mrs. Currier answered that is what they can reasonably handle, and they don't feel that would be a detriment to the neighborhood, as they live there as well. S. Miller asked how many events they have averaged per year for the last three years. Mrs. Currier answered that this year was the best; she had four scheduled but had to give up two of them. Previous years were one or two per year. S. Miller asked if the approval received from the minor site plan was for an event planner working from home, or specifically having a facility on site, doing events. Mrs. Currier answered that it was as an event planner being able to have events on the property. S. Miller clarified through questioning that the intent was not just to be working as an administrator from home; Mrs. Currier agreed.

L. LaCourse asked what the largest number of people they have had at an event; Mr. Currier answered 150.

P. Monzione invited further questions from the Board; there were none. He invited further comment from the applicant, informing them also that they will have an opportunity for further input after public input. They had nothing further at this time.

P. Monzione opened the floor to public input in favor of the application being granted.

Joe DePopolo came forward; he is one of the abutters just the other side of the Gillen property. They hear the noise from the YMCA, and they don't mind it. The thing about where they live – it is actually a great neighborhood. All the neighbors are real nice. Being where they live, it is also a tourist community, and in the summer there are more people and there is more noise pretty much no matter where you go. A little of that is to be expected, being a seasonal operation. Their belief, although they have only been in the neighborhood for three years, is that they are good people just trying to make a living, as all the neighbors are. They echo the feelings of the Gillen letter.

Dave Bubar lives .2 miles from the property; they have no issues with the noise and in fact never hear it. They hear the boys' camp or the YMCA; they hear the boats on Half Moon Lake and the traffic on Route 28. For the Curriers' noise, he has no complaints as he never hears it. He is in favor of them to succeed.

Judy Hillsgrove, 50 Prospect Mountain Road, lives directly across from the Curriers; she has lived there for 30 years. They have seen businesses come and go, and this is just the same; it is just another business to them. She also abuts the boy's camp; they do hear the noise, but it is good noise, just a Kathy and Mike's is. They have had windows and doors open in the summer time and she respectfully disagrees with what the Lockes' lawyer has to say that the noise is offensive. She just wanted to put that in and say that she is here to support Kathy and Mike and she would like to see their business go forward.

Aramis Assyan lives at 102 Prospect Mountain Road, .2 miles from Mike and Kathy. He believes he owes the Board a favor because they have done him a favor this evening. He believes he needs to see an audiologist; there is a message there. If noise is the problem, he does not experience that. If you are trying to get a user friendly community together, they will consider this more than has been demonstrated tonight. He urged the Board to look at the situation for what it is; the growth of a community that needs some growth. It needs some more culture to it and in his opinion, in the five years he has lived here, he hasn't had any problems with anybody, including Mike and Kathy. He urged the Board to take this very seriously; they will set a trend and a tone here and he has been to almost every meeting and session with the Planning and Zoning Boards and he finds that there is a lot of overlap and duplicity and not much happening in terms of a decision. He urged the Board to make a positive decision about the outcome of this situation.

Michael Raymond lives right across from the Lockes at 16 Prospect Mountain Road. He agrees that there is a lot of repeating stuff. The Board has his letter; he is not going to take up a lot of time. He is good friends with the Curriers; he thinks he also has a good relationship with the Lockes. They agree to disagree. If anyone is loud in that neighborhood, he is the loudest one. He thanked his neighbors for not making complaints to the police. The Curriers do things for the school and they are only going to be doing it for a short time (referring to Mrs. Currier's comment about being in her retirement years). The business is good; if you live next to 28, since they paved Hollywood Beach that is a racecourse now. He thinks the Board should get it moving and make a decision and be over with it.

Bill Manion of 33 Rustic Shores is here with his wife, Pat. They are about .8 miles away as the crow flies. They can hear the YMCA camp; it is a wonderful noise and very beneficial. He has never heard of the activities at A Country Event. They live on Half Moon Lake; they are very concerned – he is a member of the Board of Half Moon Lake. They are very concerned about pollution; there is no evidence of pollution. The attorney has raised the issue of runoff; there is absolutely no evidence of excess runoff. They are not talking about a parking lot; they are talking about cars parked on a grassy area. That does not increase runoff; if rain falls on a car, it falls to the side of the car it will drift and perk underneath the next car. It does not increase runoff when you have cars parked on a grassy area versus a parking lot. It is very important as the Town Master Plan says to preserve the rural nature of the community. In order to preserve the rural area, there has to be a viable economic use of the land. Without that, what are they going to have? Condos, motels, night clubs, maybe even function halls with paved parking lots. What could be more wonderful than a corn maze in a rural area as an economic, viable activity and an occasional country event? The attorney mentioned 2 or 3 events a week; nothing like that has happened or is planned for. Kathy said that at the most 2 events per month with 150 people. What a

wonderful way to spend a day. What a wonderful asset to the community. Wedding parties, reunions, class reunions, and the corn maze – it blends in perfectly with the desire of the Master Plan to maintain economical, viable, rural land. He urges, like so many other residents, please approve this measure; let's keep the land viable and this is a wonderful credit to the town to have these activities.

Fred Polsner lives at 167 Prospect Mountain Road and is a direct abutter. As far as noise goes, he doesn't hear anything. He is .4 miles from it. They have found out that they have had functions after the fact; they have never heard anything up there. He is retired; he has been here 35 years and he built his house there for retirement purposes. He enjoys it and he is for Mike and Kathy 100%.

Stacey Smith supports the Curriers; she is one of the functions they did have. They followed the rules and regulations; the noise ordinance covers the noise issue. That's why it's there. The DJ turned the lights off at 10:00 and everyone went home. The Lockes' attorney seems to dwell on alcohol; she has been to other functions such as birthday parties; unless there was vodka in the apple juice, these little five year old girls certainly were not drinking. Not every function has alcohol; she thinks it is important to understand that because it really seemed to be one of the issues the Lockes' attorney was referring to. He also commented on the impact on a dirt surface if it is wet. The Curriers' parking area is naturally vegetated; it is pasture for their horses. When the cars aren't parked there, the horses are. There is no runoff concern if you ask her; she is not a wetlands scientist, however if it is a naturally vegetated area erosion is minimal if at all and the runoff will be absorbed by the stuff that is growing. What is the problem? Unless they actually provide factual evidence that these cars are causing erosion and runoff, it should not even be spoken of. These are supposed to be facts, not opinions. Also, she has a question about the *Noise Effect Handbook*; where does that come from and is it relevant to the Town of Alton? Again, we have our own noise ordinance and that is what matters. She noticed that Mr. Locke had made a comment that a member of the Alton Police Department was present at a party at the Curriers; he was concerned that the Police Department would not respond to any issues that might arise. Again, is there proof of this, or is it just hearsay. Unless he has proof that actual police department members were there and if they are there they are off duty, so it is irrelevant. In retrospect of the whole thing, there are other possible uses for the Curriers' land. They utilize it very well; they have pastures, corn fields, horses, chickens, and they have even had some goats there. They also have woodland which no one wants to see go away. However, if this variance is not granted, what is their option? Bye-bye woods, hello 40 lot subdivision? Would you rather that? You want to talk about noise and cars? That's what you are going to get and as much as she enjoys the Curriers and their company, she does not want to see another 40 lot subdivision affect the rural area, which is exactly the only possibility or their last ditch effort to survive and maintain their livelihood. Unless you want to see the rural agriculture go away and have more neighbors, more cars, more traffic, which is going to far exceed what you have on the occasional function, that is for the Board to decide.

Peter LaPenta lives about 1 ½ mile up the street from the Curriers. Most of these people have eloquently stated what he thought he was going to say. He would start by saying he is amazed at how patient they have been. If he received a letter from the State of NH saying that he can't drive his car anymore because for no reason at all his driving privileges are suspended, he would probably read the letter and drive anyway. These two received such a letter from the Town of Alton, and they had relied on a letter they received from the Town of Alton that said they could do this. To suddenly pull the rug out after they have spent money and effort – he would have probably just done it anyway. He appreciates that they have made the effort to comply. Mr. LaPenta went on to wonder why they are even here; they have a letter that says they can do this. He understands that people have a right to subdivide their property. However, living in the rural zone, the beauty of it is that 100 acres, 200 acres, 300 acres – it's marvelous. The minute he hears anybody say, as the attorney did tonight "they can always subdivide" you talk about throwing a match in a gallon of gasoline. In any event, he would be very upset; he spoke before this or a similar board back in the 80's against 103 houses going in behind him on the 210 acre parcel that abuts his. He did the math then; if you figure three car trips per lot, you are talking about permanent traffic. You're going to have to pave every road here like they do in Lynn, Mass. You need to give people with large parcels of property; they don't raise cows anymore, they don't raise pigs – you want to raise pigs, that'll get the neighbors talking! They don't do that as a means of supporting themselves and using their land as a

means to do it. Otherwise their land will be subdivided; that is the way it is going to go. It is in the Board's hands; to him it has already been granted but he hopes for those reasons – it is paradise up there. Yes, he occasionally hears the YMCA camp, yes he occasionally hears the tractors doing the blueberry fields up on Prospect Mountain, yes, and he can occasionally hear tractor trailers on Route 28. Sound travels well. Yes, he can hear his neighbor shooting target practice with guns – that is a country sound also. There is a concept of good noise versus bad noise; he thought he was going to be the only one to raise that issue. In the country, strains of music coming from somebody's celebratory time are not bothersome. He was relieved when there was a motor cross down on Route 28 that was put down because he really didn't want to hear the roar of motorcycles whining away; that's what they do in Loudon, and that's good for Loudon. Anyway, those are the points he wanted to make, and other folks have more eloquently made them. He thinks you have to give people a reasonable means of running their land; people don't do cows anymore, and they don't do pigs or horses the way we did in this town 200 years ago or even 100 years ago. He has owned his property for 30 years and has lived up there for most of that time and non-stop for the last 10 years. He considers himself a long-timer. He would respectfully request that this be the end of this, and to let these people go forward with their business.

There were no other members of the public who wished to speak in favor of the application.

P. Monzione invited members of the public who wished to speak in opposition to the application being granted.

Cindy Balcius came forward; she is a resident living at 229 Prospect Mountain Road. She is a state certified soil scientist and a certified professional in sediment and erosion control. She is also a certified wetlands scientist. She would like to speak as an expert regarding potential issues with the un-engineered parking area that could possibly handle 100 – 150 cars. P. Monzione asked that she also state for the record that she is one of the moving parties represented by Attorney Giuda; Ms. Balcius so stated.

Ms. Balcius continued; she is also a farm owner and she also has draft horses that she raises. She also raises riding horses and beef cattle. She has a lot of pasture; her property is over 100 acres. She realizes what animals do to a pasture; when you use a pasture with animals you are literally sacrificing a good piece of ground. It is not like a hay field. Horses eat right down to the roots. Going back to her expertise, when she works with clients and the DOT and developers and regular homeowners in developing sediment and erosion control plans one of the first things she would say is "don't pasture your animals on top of that – they are going to pull all of the grass you want to maintain in order for it to be stable." According to US EPA and the state Alteration of Terrain rules, you have to maintain 90% vegetative cover to be called stable.

You put horses out in that environment; it rains and gets mucky; you have mud season. Even if you're dry and you pull in your vehicle, you still have residual moisture in that soil that causes rutting and potential for runoff. These are issues that she thinks maybe are not happening yet because they have only had five events over the past three years, and they only go their horses last year. Given time, as we move forward, it definitely will happen in those conditions.

She believes there was a letter submitted from the DES – both from the Water Quality Department and somebody who does their sediment and erosion control that point to those same factors. They also are experts. She thinks this is something that the Board needs to realize – they are looking down the road as well, not just right now. Initially, at the first hearing, as she was at that meeting and has looked back at the minutes, the Curriers were proposing that they were looking to have something every weekend, not just twice a month. That is where they were at, but they said every weekend with a goal of having more than one thing per weekend. When she puts that load of cars in that situation and given the slopes out there, she is very concerned with the runoff and the impact on that wetland down there. The state has what is known as permit by rule – they may not have jurisdiction right now but if there is any kind of runoff, and it is not protected and it happens, they can fine them because it is assumed you are going to protect that area prior to getting any type of permit.

P. Monzione asked Ms. Balcius about her comment that when they first applied they talked about every weekend. If a condition were imposed on the granting of the variance to limit it to twice a month would that cause her to withdraw her objection. Ms. Balcius answered that it would not; there is much more information that has come along in the last couple of months.

T. Morgan asked for clarification on the point Ms. Balcius made about horses also using the property. She answered that when it is not being used to park on, the horses are grazing on it. T. Morgan asked how many horses they have currently; Ms. Balcius answered that they have two Norwegian Fords. T. Morgan asked how big the area is; Ms. Balcius answered that she does not have the site plan in front of her, but she believes it is an acre to an acre and a half. T. Morgan asked if an acre to an acre and a half could support those horses; Ms. Balcius answered that it is generally considered for pasture that you want at least an acre for a riding horse. Work horses are much more hungry animals. You should be rotating pasture constantly.

P. Monzione asked Ms. Balcius if it is her understanding that if this application were to be granted, the applicant would still have to go present to the Planning Board for ultimate approval of the facility. Ms. Balcius answered that it is her understanding that they need to go through site plan review as well. P. Monzione continued, saying that all of the issues about runoff and environmental impact and any other number of issues would still have to be dealt with and would not be in the province of this Board; Ms. Balcius agreed. P. Monzione explained that the ZBA may grant a variance and then turn it over to the Planning Board to make the ultimate determination of how it gets set up. Ms. Balcius stated that she had been merely presenting her expert testimony based on some of what she was listening to out there; she deals with this daily. P. Monzione thanked her for that; he wants to make sure, particularly given her position with the town, but he wanted it verified on the record that as the ZBA makes their decision here, it is not the final determining factor of whether the facility actually gets to operate. They simply focus on whether the criteria for variance have been met, and then many of the concerns that people are objecting will also be raised at the Planning Board level, and they will have to receive approval. Ms. Balcius agreed that was correct.

Carol Locke, the abutter next door, has been embroiled in this since October; this is not her choice of evening meetings, but it is what it is. First of all, the corn maze has already been given conditional approval by the Planning Board; they have never had any objections to that. They are already using the farm for that purpose, so that shouldn't even be mixed in at this point. She did hear clearly through all these proceedings because she has attended all but one, that they are planning to do one a week from May to September; they made that very clear, and that they wanted to have 200 cars; the latest site plan shows 100 cars.

At the Planning Board she objected to the erosion factors; they had a letter from DES but they still approved the waiver for the parking lot for the corn maze. In five years it may be an issue, or it may not be. She will be objecting then, obviously. You have to understand that what she is trying to do here is to protect her rights as a property owner; she is not doing this out of vindictiveness or anything else. There are pieces here that they have submitted tonight.

For example, that minor site plan review; the Town Attorney said that is null and void and is no longer a factor. When they went before the Planning Board that minor site plan was thrown away, and they started over again. It is really important to say that out loud so this Board understands that too, because it was said at the Planning Board. She looked to J. Dever for confirmation; J. Dever confirmed that it had been discussed that part of it was valid and part of it should have been presented to the Planning Board in the beginning. P. Monzione stated that there may be some legal impact that the town, having issued this, may have on the applicant; he is not so sure that he will view this as being entirely null and void or having no role to play in this entire process. He does not know that he would completely accept it being described that way. He does understand how it does or doesn't fit in with what they have to do here this evening, and he thinks the other members of the Board do as well.

Mrs. Locke went on to say that they had been noticed at the time and her husband did attend the meeting and objected to it; he was assured that it was just an in home business with two parking spaces and if they were going to have any events, they would have to go through the town and get permits.

Mrs. Locke commented that she had been laughing; they must think she is very young, but she plans to retire in four or five years. That is a short time away, and she works in a pretty high stress job.

The real estate agent; she appreciates and likes Chris Johnson. He was one of her students years ago. He is a personal friend of the Curriers; she wants that on the record that he is a personal friend of theirs. She would like to have a more objective assessment; she would love the fact if her real estate did not drop in value, but she doubts it very much. Also, the five hours of focused wedding music is not the same as Mi-Te-Na. It is not the same as the rural sounds they hear. You have five hours of focused, very loud wedding music; it is a totally different sound in a rural area than all of the other sounds people have mentioned tonight. It simply does not apply to a rural area. The sounds of Mi-Te-Na are fun to listen to; they're kids playing. It is not five hours of the Funky Chicken playing next door to her. She recognizes that the Hillsgrove's are closer; there is a slant up to the fields and the parking lot. Their music comes right across to her bedroom; that is a concern of hers. She keeps reiterating that and she hates to keep reiterating it, but if it were you living next door, you would feel the same way.

P. Monzione asked, for the record, if she is also one of the moving parties on the rehearing. Mrs. Locke stated that she is.

P. Monzione stated that she had referenced the idea of having a more objective realtor; has she consulted a realtor on the issue of property value diminution? Mrs. Locke stated that she has not yet; she had been thinking to hire an appraiser as she did not think the Board would take the word of a realtor. P. Monzione stated that he had just asked if she had and perhaps got a similar opinion or completely different opinion. Mrs. Locke answered that she had thought the board would not accept a realtor, and at the time, she did not want to spend the money on an appraiser.

There were no other speakers in opposition to the application being granted. Public input was closed.

P. Monzione asked the applicant about the uses she had stated at the beginning of her presentation this evening and asked her to repeat them. He also asked if she had taken those from the table of uses; Mrs. Currier answered that she had. P. Monzione asked her what she had found that is permitted in the rural zone. Mrs. Currier answered that she was looking at the table for the rural zone; a manufactured home park is by Special Exception, dwellings to elderly is an allowable use; nursing home is an allowable use; public recreation is an allowable use; utilities is an allowable use; barber shop/beauty shop is an allowable use. P. Monzione interrupted and asked her to simply give the same ones she had given earlier. She added gift/antique shop and hotel/motel. P. Monzione explained that the rest of them are there in the table for the Board to see, but she had pointed out some, and he did not catch them all.

P. Monzione asked if J. Dever had any comment. J. Dever stated that any comment has been provided; there was an approval from the Minor Site Plan Committee for the home occupation of event planning, and it was mentioned in the decision to possibly include onsite functions. That was beyond the purview of the Minor Site Plan Review Committee, which was set up to handle the minor things, and that is where the problem has come in.

P. Monzione stated that he is recommending that the Board take into consideration all of the information that they have previously been given, as well as the information they received tonight. If there was any input from any of the town department heads, that would have already been made part of the record; J. Dever confirmed that it was all previously submitted. P. Monzione stated that he is going to recommend that the Board consider that as they did in the first hearing.

P. Monzione asked the moving party if they wished to respond or rebut anything they heard. Attorney Giuda stated that he would like to reiterate that there is one solid point, and that is the hardship point. There has been emotional testimony that may affect some factors, but the hardship test still has not been met.

Mr. Currier stated that on the hardship, the land may not be unique. The hardship is what they have put into the land from the original permission from the town. They have put a lot of time and money into it to get the function facility area. There was quite a slope there; they graded that out and put a lot of railroad ties back in there. They tried to make the house and everything else look nice. P. Monzione asked if he is talking about, from the time they received, as has been submitted on the record from the Minor Site Plan Committee public hearing of May 16, 2007; since receiving that, they have made certain investments and improvements into the property in order to carry out this approved plan. Mr. Currier agreed that the statement was correct. P. Monzione asked whatever that approval is, that they were approved to do, they understood because the document listed what they were approved for. Mr. Currier agreed.

The Board members deliberated; S. Miller spoke to P. Monzione's point as to how they should focus their decision. Whether it is de novo or why they are here tonight. He is a layperson; he is not an attorney and asked for correction if he is wrong. His understanding is that they are only to address those issues that are in conflict and brought them to the table today. As a person you can't help but understand the full flavor of all the testimony over a number of days. As a matter of legal procedure, are they only required to address only those issues that brought them to the table today?

P. Monzione answered that when the motion to request a rehearing was before the Board, he thinks that they found several grounds in that motion that, according to the moving party, would justify or require that the Board rehear this. It is his understanding that if any one of those grounds was correct, then the moving party was entitled to the rehearing. The Board did indeed find that at least one of the arguments was valid and on that basis, the rehearing was granted. Now that they are in the rehearing, it is his understanding that in making the decision tonight they should take into consideration all of what they have heard this evening, all of the evidence and arguments that were presented tonight and that they should also take into consideration all of what was previously provided that is in the record. The testimonies and arguments, as well as the written submissions; the application itself, for example, that was originally submitted to the Board. What he is suggesting that they do tonight and base their decision on, and he has raised it to the public, the applicant, and the moving parties, and nobody has objected to the Board proceeding that way, so what he would recommend they do is consider everything. All the stuff they had before them the first time, as well as everything they have heard this evening, and as they go through the criteria, make their decision based on all of what they know. They were all here, and they have all had a chance to review the minutes so he thinks what came before them is still part of the record. P. Monzione asked the Board members their thoughts; all agreed with his statement.

P. Monzione went on to point out that the corn field variance was granted separately; this deliberation and application does not apply to that, so they need not concern themselves with any issues of the corn field; they were two separate applications and the rehearing was only for the one. T. Morgan corrected, for the record, that the corn maze was by Special Exception. P. Monzione agreed; that Special Exception was granted separately. The focus is on the facility issue.

He added, as general comment, that even taking into consideration all they have heard this evening and considering it de novo, that he thinks they did get it correct the first time with regard to intent and spirit of the Master Plan. This kind of activity on land like this is well within the intent and spirit of the Master Plan which, as he understands it, seeks not only to protect the rural nature of the town but at the same time to promote business and the balancing act there is to promote businesses that are appropriate and that don't in any way destroy the rural nature. If they are using a large multi-acre parcel or farm in the manner that is being proposed, that proposed use is a good balance between those two goals of keeping the rural character but at the same time

permitting business to function on a rural piece of land. He does not think the Board was wrong when they decided that criterion had been met.

He also thinks that with regard to noise, the Board understood when the variance was granted the first time that the variance would be subject to Planning Board Site Plan review, and that the activity would be subject to all of the laws of the Town of Alton, including noise ordinances, and that the Board's job is not enforcement but rather to determine whether the variance is appropriate. Once the applicant has the variance, the applicant then has to go further and receive approval from the Planning Board, and carry on the activity in accordance with the law. If it is too noisy or they are doing things that are unlawful, that is why we have code enforcement officers and policemen; it is not this Board's job to make decisions on that. He thinks they were correct when they took that into consideration.

Parking is a separate issue regulated by our zoning. P. Monzione went on to say that he also thinks that in looking at this as an appropriate use, they knew that lodging activities were permitted with all the outdoor activities that come with that, recreational uses and so forth, and then a number of others in Special Exception. He thinks they got it right with that. They received no reliable evidence of devaluation of properties and the best evidence they received was from witnesses who had an opportunity to experience this activity given that it had been up and running based on the minor site review. These folks have testified both tonight and previously that they didn't do it on the basis of speculation or what they thought it would be, they actually did it on what it had been and how it had been operating. There was good, reliable evidence, and there are an overwhelming number of witnesses who testified that there really isn't a noise, parking, traffic, or runoff problem, even though some testified that there were; the evidence weighed in favor.

He is still concerned about the hardship decision after the Bocchia Decision of the Supreme Court of NH has been codified by the State Legislature. In so doing, it has become a much stricter test and a much more difficult test to meet by any applicant. It was on that basis that he voted to have this matter reheard. At least tonight, that is the one criterion that gives him the most concern. He thinks this is a wonderful activity that is well within all of the things they decided it was within when they granted it. But, the hardship criterion is what gives him a problem, given what the NH Legislature has done with that; that is the reason he thought it was entitled to rehearing.

P. Monzione stated those are his concerns as they go through the worksheet and the criteria. He asked the members for their thoughts and opinions.

L. LaCourse stated that based on previous discussions and all the information they had, he would agree with what P. Monzione had said. His decision to look at this a second time was also based on hardship and because of the codification when hardship is being evaluated.

S. Miller stated that he is familiar with the situation because he lives pretty close as well. He hears the camp and he hears Route 28. He tries to take copious notes; the Attorney seems to always come back to the noise issue. His feeling is that if the noise issue were somehow totally X'd out, we wouldn't be sitting here. He did take a look at the public interest, the hardship issue, the spirit of the Master Plan and the zoning ordinance, and the value of the surrounding properties. To make a long story short, the hardship issue is the most significant issue. If a facility is to exist with a farm theme, the only place it can exist is on a farm unless you want to have cardboard cutouts. There just is no other way to have that at all; to prevent somebody from having a facility with a farm theme in the rural area means that we are taking the stand that none will exist in Alton going forward because there is no alternative. Going to all of the five issues as they go around, he would stand in favor of granting the variance in this issue.

T. Morgan stated that he has been looking at the minutes from the last meeting and he thinks that on most of the criteria, they did not make a mistake; he wondered if it was necessary to go through all of them again on the worksheet unless that makes the Board more comfortable. He thinks Attorney Giuda's comment when he

introduced himself a month ago that this is an ugly case is a point well taken. He heard something tonight that for him made it even uglier; that is that the Curriers relied on the Minor Site Plan Review they were given and made improvements to the land, which constitutes an unusual and perhaps first view kind of additional hardship. He agrees with the rest of the Board; it is the hardship that is the difficult issue here. He does not believe, frankly, that the opinion given by the Department Heads at the Minor Site Plan Review has been extinguished or gone away; it was granted by a part of the governmental body of this town that had apparent authority to grant it, and they did so. You can't just wish that away. He thinks the town has dug themselves a pretty deep hole with this one, but he shares the concern, particularly with the re-codification of the statutes as to whether there is a hardship here. In view of their reliance, he is inclined to find that additional element does create a hardship that would warrant granting of the variance.

P. Monzione stated that he is going to recommend that they do the worksheet to provide everyone with an appropriate record; it would be a good idea to do that.

VARIANCE WORKSHEET

1 – T. Morgan stated that the variance **will not** be contrary to the public interest. He participated in the drafting of the Master Plan, and the redrafting of the Master Plan a few years ago, and in the Town surveys. He thinks what the townspeople were telling them was that they did want to preserve the rural nature; they didn't want strip malls and shops and stores and miracle miles along Route 28 or Route 11. They didn't want heavy industry in the center of town. They did want businesses that would support a rural nature and rural lifestyle, and he thinks this is one of those businesses and it fits well within the public interest. P. Monzione agreed; the variance will not be contrary to the public interest for all of those reasons. He thinks this type of business in a rural setting balances the two things that the Master Plan and the town surveys determined that the people of the Town of Alton want, and that is they want to maintain the beautiful rural character and farmlands and so forth, but at the same time they want to allow people who own such lands to be able to use them in a business way and to do so in a way that is consistent with that. He thinks this type of activity is consistent with that. L. LaCourse also agreed for all the reasons already mentioned. S. Miller stated that it will not be contrary with the public interest; it is in keeping with the rural character of the town. Even the tent itself will be torn down periodically and the land returned close to if not exactly to its original condition. It is in the public interest that jobs and businesses be created in Alton; this fits with the rural character.

2 – P. Monzione stated that the request **is** in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. This isn't as though they are asking to set up a factory up there or manufacturing plant; this is something that is consistent with a rural property. That and for the other reasons he has stated, he thinks the request is in harmony. L. LaCourse, S. Miller, and T. Morgan all voiced agreement.

3 – L. LaCourse stated that by granting the variance, substantial justice **will** be done. He thinks again for the reasons mentioned above, it is keeping the property whole and also allowing for and providing a means for making a living on the property. S. Miller, T. Morgan, and P. Monzione all voiced agreement.

4 – S. Miller stated that the request **will not** diminish the value of the surrounding properties. There has been no expert testimony to justify any other decision. Everyone has an intuitive valuation of what could happen, but in the absence of facts and being familiar with the area, he feels comfortable that the value of the properties will not be diminished. T. Morgan agreed that values would not be diminished; he would note for the record that there was conflicting testimony on both sides of this particular issue, but none was convincing. P. Monzione stated that the weight of the evidence, as he mentioned earlier in his deliberative statements, is that people who have had a chance to experience what this facility does, and a number of people testified who are around it who said that it does not have a negative impact on them supports a finding that the property values will not be diminished. L. LaCourse agreed.

5 – T. Morgan stated that for the purpose of this sub-paragraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area; there is a hardship and there is no fair and substantial relationship existing between the general public purpose of the ordinance provision and the specific application of that provision to the property, and the purpose of the proposed use is a reasonable one. T. Morgan worked this out backwards; he thinks first of all that the proposed use **is** a reasonable one; it is for a rural activity in the rural area; a tent on a farm for special functions. There **is no** fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property. At their public and deliberative sessions over the past several months since the fall, the Planning Board has been proposing that a use like this be put before the voters of this town in a Warrant Article in March. Unfortunately that Warrant Article will not appear because of a notice oversight and has been withdrawn from the ballot. The Planning Board and the people who have appeared before the Planning Board realize that there is a fair and substantial relationship between the general purposes of the provisions of the ordinance and what was being proposed. The difficult part of this is the first of the criteria, and that is whether an unnecessary hardship owing to the special conditions of the property distinguishes it from other properties in the area. As counsel to the parties appealing the prior decision has pointed out, some of the criteria the Board viewed earlier, specifically size and so on, are not in and of themselves sufficient to warrant a hardship. He, however, having heard that the applicant has relied on permits previously granted by the town and made changes to the property, he is going to fall on the side that there **is** unnecessary hardship owing to the special condition of what they have done on the property in reliance of what the town has told them they can do.

P. Monzione agreed that the proposed use is a reasonable one; he is working backwards as well. He also agreed that no fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property. He is going to disagree that unnecessary hardship has been demonstrated in this case because unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area, these other things exist. He knows that under the Bocchia decision, there was a different test; the proposed use of the applicant was being prevented for one thing, but there are other differences as well. He just does not think there is a demonstration of special conditions of the property that distinguish it from other properties. Therefore, the hardship criterion is not satisfied in this case. Mr. Morgan is referencing the fact that there was reliance on the previous Minor Site Plan Review, but he has heard from Mr. Dever and his own brief review of this, and it described the limits of what this minor site review was for. With that in mind, he does not agree that the hardship criterion has been met in this case.

L. LaCourse agreed that the proposed use is a reasonable one, for all the reasons previously mentioned, and that no fair and substantial relationship exists between the general public purpose of the ordinance and what the Board is trying to do. On the part B, he does not feel that special circumstances exist or that there is anything unique about the property that makes it any different than any other property in the surrounding area. There are other properties surrounding the applicant that are about the same size. As hard as this may seem, he just does not see the property passing this test.

S. Miller agreed that the proposed use is a reasonable one; a farm theme business on a farm. No fair and substantial relationship exists between the general public purpose of the ordinance, etc. – he agrees. He does not believe that in terms of the hardship ordinance, just because the Table of Uses does not include this specific business that does not immediately eliminate it. Quiet frankly, in this day and age that is always a moving bar.

P. Monzione stated that based on the above analysis, special conditions do not exist such that the literal enforcement of the Zoning Ordinance results in an unnecessary hardship. Given that, there is no vote necessary. In order for the variance to be granted, there would have to be at least three in favor on all three criteria; as there were not three in favor on the unnecessary hardship criterion, in fact there were three findings that the unnecessary hardship criterion had not been met, therefore the application for the variance has to be denied.

Mrs. Currier thanked the Board for their time.

IX. OTHER BUSINESS

1 – Previous Business

There was none.

2 – New Business

a. Reading **of proposed ZBA By-law amendments**

Some of the members had not reviewed the proposed ZBA By-law amendments; J. Dever thought he had attached and sent them via e-mail but the attachment failed. Board members did not receive them nor did Attorney Sessler. References have been updated. The by-laws, which are essentially the operating procedures, have to be read at two consecutive meetings and then voted on. The by-laws have been reviewed by the Town Planner. After discussion, it was decided that the first of two readings would take place at the meeting on March 3, 2011.

The members spoke about some outdated publications they have; J. Dever will print and distribute as necessary.

L. LaCourse made a motion to have the first reading of the proposed ZBA By-laws placed on the agenda for the meeting on March 3, 2011. S. Miller seconded the motion which passed with four votes in favor and none opposed.

b. Appointment of new alternate

J. Dever introduced Paul Larochelle; Paul is a local businessman interested in sitting as an alternate on the ZBA. S. Miller asked how terms run; both members who are eligible to run this year are running. P. Monzione asked for a copy of RSA 673:6 II which has to do with appointment of an alternate member.

The Board took a break while Mr. Dever obtains a copy of the requested RSA.

The statute has been reviewed; this is RSA 673:6 II. The appointment would be for three years staggered the same as regular members. Under section 4.3 of the ZBA By-laws, it states that "the Zoning Board shall appoint alternate members to the ZBA in accordance with RSE 673:6 II."

J. Dever asked if the effective date on the certification could be changed to reflect February 4, 2014; he will be sworn in tomorrow for a three year term. The oath will be administered by the Town Clerk; she will also complete the certification.

P. Monzione confirmed through question that Paul Larochelle would accept the position as alternate on the ZBA.

L. LaCourse made a motion to accept Paul Larochelle as an alternate member of the Zoning Board of Adjustment for Alton. S. Miller seconded the motion.

S. Miller asked for the record if there was any conflict of interest within the Board; Mr. Larochelle stated that he does not know any of the present members of the Board.

The vote on the above motion was four in favor and none opposed.

The Board requested a brief time off the record.

There was discussion concerning notification; the statute states that the alternate gets 48 hours notice when he is needed. P. Monzione asked him also to come up and attend meetings whenever he is available.

There was further discussion concerning the issue that this alternate is unavailable for the Coskren case; there is a conflict of interest as the abutter opposing it is his future brother in law.

J. Dever informed the Board that he is in the process of updating the instructions for the variance application. One of the things he is going to incorporate into that is that any information from a continuance shall have a submission deadline of at least a week prior to the meeting.

L. LaCourse requested that J. Dever e-mail as much information as possible prior to meetings; J. Dever answered that he would make an effort to do that.

3 – Minutes of January 6, 2011

On page 2 of 6, in the large paragraph beginning "T. Morgan…" the word "forth" on the second line should be "fourth."

On page 4 of 6, the last paragraph on the page, the word "The" in the second line should be "They."

On Page 5 of 6, in the last line of the first paragraph, where it reads, "nor Tim Morgan were not aware…" should be "nor Tim Morgan were aware." The word *not* should be removed.

T. Morgan made a motion to approve the minutes of January 6, 2011 as amended. L. LaCourse seconded the motion which passed with three votes in favor; S. Miller abstained.

3 – Correspondence

There was none.

X. ADJOURNMENT

L. LaCourse made a motion to adjourn. T. Morgan seconded the motion which passed with four votes in favor and no opposition.

The meeting adjourned at 9:55 p.m.

The next regular ZBA meeting will be held on March 3, 2011, at 7:00 p.m.

Respectfully submitted,

Mary L. Tetreau
Recorder, Public Session