



**Zoning Board of Adjustment
Town of Mason, NH**

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Board of Adjustment meeting, 19 September 2016 minutes – corrected and amended and approved on 17 October 2016

Mason Zoning Board of Adjustment opened business at 7:30pm 19 Sept 2016 – present” Robert Bergeron (acting Chairman), Bill Fritz (M), Phil Garside (M), Guy Daniello (M), Bob Young (A) and Landon Smith (A). Needing 5 members, Bob Young was made member and discussion to appoint permanent chairman and Vice Chairman. Reading of previous meeting August 15, 2016 minutes approved as written. Approved in affirmative. Bill Fritz was nominated as Chairman by Phil Garside, hearing no others named, motion seconded and carried. Accepted by Bill Fritz, approved by all members present. Asked for nominations for Vice Chairman, Guy Daniello was nominated by Bill Fritz, hearing no others, motions seconded and carried. Guy accepted, vote taken and approved by all members. Board now has 4 permanent and 2 alternate members. Bob Young was asked to be 5th voting member. Landon was asked to remain an alternate and stay at the table, if he wanted during the hearing.

Old Business: Bill Fritz hearing none, vote taken to recess until Ruggiero hearing begins. All approved. Note: Constance Lacasse volunteered to take hand written notes for meeting and Hearing. There will also be a tape recording done. Conservation Committee would like to address Hearing with their issues and concerns. Mason Police will also speak about previous issues and concerns with the Driving Range Concerts. Mason Faire Dept. will address concerns of safety for single ingress and egress in case of emergencies.

Meeting was recessed by Bill Fritz at 7:40pm until the Hearing at 8:00pm.

Constance Lacasse

Public Hearing called to order by the Zoning Board of Adjustment at 8:00pm. Members present: Bill Fritz, Chair, Guy Daniello, Vice Chair, Bob Bergeron, Phil Garside, Bob Young and Landon Smith as alternate. Registered notices to abutters have been returned and verified by Guy Daniello, Charlie Moser and Bob Dillberger. Mr Fritz noted that this is the first hearing created for special exception on amendment at Marty’s Driving Range. The Form that is used was read in its entirety (5 pages) by Constance Lacasse for all to hear. Mr Fritz also

read the “proposed 10 conditions of approval” per BOS requests, should it approve the application for “Special Exception”. Atty Alec MacMartin, representing Martin & Nicole Ruggiero, (father and daughter) owners of Marty’s Driving Range, asked to submit 2 letters left at the Driving Range by abutters that support the Driving Range, but could not be at the Hearing. Mr Fritz asked that they be submitted after presentation when the hearing would be opened to public input. Mr Fritz spoke about the multiuse form used by the Town so there were places left blank that would be filled in later or not pertinent for this issue.

Atty MacMartin outlines his presentation by presenting a plan that was being changed from original plans submitted defining the alcohol consumption areas would be easier to police and manage. Discussion: types of alcohol to be served? Ruggieros responded Beers and wines only. Area allowed would include “Dining Room and Tiki Bar, some grassed area. None in parking lots, no tailgate parties. No coolers or food or additional liquors would be allowed to be brought in. All foods and beverages would be furnished by Marty’s Driving Range employees. Marty’s have had about 12 employees for other concerts, but would probably have to increase up to 30 to manage parking, admittance and service issues. Atty MacMartin presented Mr Ray Shea from Sanford Survey with new plats showing the proposed changes and the impacts on the area for the parking issues. There are about 26 acres involved between Churchill Road and Rt 124 with only one (1) gated driveway into or out of the existing parking lot of approximately 37 parking spaces in 20x224 pattern exist. New plans call for 190 spaces on driving range grassy area behind the building, about 43 more spaces at the A1 building, which is currently used for storage and warehouse as well as a business and office space. Total parking spaces 270. Allowing room for emergency vehicles to access. There would be 5 porta pottys by the parking lot entrance for concert goes to use. This number is based on their research of use per patrons at other venues.

Atty MacMartin reviewed different ordinances that state the BOA will determine the welfare of Mason in regards to existing business to allow it to grow without creating hazard to the people of Mason on the SW corner of town (rt 124 & 31). **#1 & 2** The 2007 Master Plan recognizes the area for growth, commercial development as this area. Currently there exists at least 10 business mixed with residences in the immediate corner and 1200 ft on Churchill Rd. side. **#3 – 4** No new traffic plans because of existing business load. **#5** Off Street parking issue – reviewed approximately 270 possible parking spaces at the Driving Range and A1 buildings. The lighting on pathway between A1 and Driving Range for safely walking thru areas was discussed. Also spoke of additional parking at Barrett Hill Farms with a shuttle service. No Walking on hiways. (Marty’s would be responsible for those issues and the Planning Board). **#6** Porta Pottys – discussion if 5 were enough for between 500 and 800 concert goers that could be expected. Marty’s would address that as needed. **#7 & 8** Pollution and noise – Marty’s would take care of trash, which they currently do. Noise: Bands would NOT be allowed to set up their own sound levels, Excessively loud sound and vibration from speakers that is being corrected. Studies are being done, sound engineers

have been called in, adjustments to volume and vibrations being done. Thursday “Cruz Night” with DJ, no live band did not have any complaints recorded. #9 Marty’s has generated a plan that addresses people moving around that area without being packed in. Main entrance on Rt 124 and second area on Churchill Rd. #10 Overcrowding – moving in an emergency. Police would work those details out. #11 Alcohol area would be separated per Liquor Commission guide lines. (may be Planning Board issue for review) #12 Concerts would not be near any schools, churches or disturbing to public in general. #13 this plan conforms to existing business green areas, etc. and if not allowed , the business in commercial area could fail and become an unduly burden to other property.
Respectfully submitted by Atty MacMartin.

Bob Chairman questioned Mr Ruggiero concerning the expansion of existing alcohol area. Currently allowed in Dining Room and deck area. Mr R informed Mr B that it was he who had ok’d the alcohol area. Discussion followed, but Mr B noted that that was not what had been agreed upon previously (Tiki Bar was built where the deck was) it was only an outside patio. Questioned getting permits for stage that were never applied for, never inspected. Mr R stated it was only a temporary stage and didn’t require permits or inspections> Mr B noted that there were electrical wires into the stage, done by Mr R. Now underground, who wired? Who inspected” Mr R stated it was done by “licensed electrician”. No proof given Guy Daniello noted that “ANY” buildings or structure, anything that would be occupied must have a required permit. Discussion to define “OUTDOOR Entertainment” as written in ordinance, must be defined as “Outdoor LIVE music entertainment”. Guy Daniello did some math and came up with about 270 parking spaces with 2people per vehicle would be about 500 to 800 people or more, could show up for these concerts three (3) days/nights a week or about 54 concerts in 18 weeks. Marty’s is currently opened Memorial Day weekend to Columbus Day weekend (mid October). Discussion on what 3 nights/days would they pick? Nicole stated they have Thursday nights “Cruz Night” with a DJ for music now, she would like to have live music. Crus night starts at 6pm to 9. Other nights Friday or Saturday would be from 8pm to 11pm. Sunday could be an afternoon concert, maybe for a charity. She stated they have to see what would be asked for. Drinking was discussed as to what would be served. Beer & wine would be only alcohol served by Marty’s. Drinking would require more staff to be available and Nicole would have “team members” watching. NOT in uniforms, but be in the crowd checking for problems, ie fights, drunk, driving while drunk issues. Discussed what barriers would be up to prevent cars from driving into building or other cars. (Safety issue for BOA not just Planning Board). Mr Daniello questioned the lighting or lack thereof, Nicole and Marty both spoke of all sides of building lit at night as well as path area. Questioned what if there is someone parked on Churchill Rd or Rt 124 (which is not allowed but had been issue past seasons?) Nicole stated the loudspeaker system or dj or concert folks would announce that they had to move vehicles. Parking lot folks would move them along from the street or be towed) if parked. They would hire more people if needed. What is safe number of people they expect? Marty’s feel they can

sufficiently handle 500/800 people. No written evacuation plan. Only one way out or in driveway from Churchill rd. ((Planning Board issue). Mr Young discussion on how to control crowds. No tickets, no bracelets – can't come in. With 3 different parking lots, 2 places to come in, how would they control that? Police details would be hired for crowd control based on number of tickets sold. Marty's would be responsible for that. Mr B addressed this issue by asking who would pay the police"? Discussion of Mason Police being used who would cover the Town of Mason during concert times? Mr B felt that a bond in case police didn't get paid the same night or a couple days later, as in last year 2015, many months went by without being paid. If they didn't get paid, the bond would be used and the concerts would be done. Sunday night school night, do they plan on staying open until 11pm? The only thing confirmed was "Cruz Night" on Thursday nights – the other 2 day/nights would be dictated by what was playing or available. The last "Cruz night" had about 130 cars with parking lots used. Nicole want to choose 3 night (Thursday & Saturdays) Fridays & Sundays open. Chief Maxwell was asked if he agreed to that? Cruz night was discussed – 2 porta pottys for about 300 guests? Discussion about porta pottys not being handicapped accessible and lit for night time use. Mr R stated they are lit inside when you open or close door. No handicapped parking designated area. Homeland Security requires handicap accessibility. Currently handicap parking is close to the building. Have the Ruggieros talked to Mason PD to write up a contingency plan? Mr B brought up stage safety issue. Current stage size is 20x40 with largest band on stage had 6 members and equipment. How hi off ground? Mr R says 3 ft. How many steps? One or 2? 3 steps require railings. Are there any railings on stairs or stage? Mr R says IF they get permit, they will put up railings on permanent stage. This needs to be modified with risers and insulation, projection sounds. No live fireworks or pyro technics allowed on stage. Bob Young discussed procedure when concerts start at 8 pm. Gates open at 7pm or 6pm with NO tailgate parties or drinking in parking lots. No additional food or alcohol coming into venue. Miss R says this would be controlled by security and ground patrol staff in T shirts. Mr Young spoke of drop off area behind stage, has to be inspected and bonded for safety and only band members allowed back there. NO drinking allowed there either. He was concerned with under estimating crowds and only so many tickets could be sold to control size of crowds. Being careful of the magnitude of attendees to these events. Their liquor license is only valid for when they are opened each year and are inspected before each opening each year they serve liquor by the Liquor Commission.

Mr Fritz opened the hearing to the Conservation Committee Chairman, Bob LaRochelle. He spoke about how noise travels, demonstrated sound from this venue could be heard over 4 miles away, even thou some abutters claimed they were comfortable with the current decibels. He used only Mason for this impact study. There are approximately 425 homes that could hear the music in Mason, but could not speak for or of other towns. Other towns may be able to hear the concerts, but had not checked with them. Mason may have passed this vote, but other towns around did not and what is their impact"? ConCom concern with the peace and quiet that folks have come to Mason to enjoy. Barbara DeVore spoke

about the current RSA36.55 that address issues of light and noise and a potential regional impact. Their concerns were based on what the land and potential regional impact is. Liz Fletcher spoke of a noise ordinance that is being submitted for evaluation for the town of Mason and there is currently none that address this issue.

Fire Chief Dave Baker spoke about his 2 concerns –the drop off area behind the stage – would like fencing from A1 to road area and lighting. Mr Bergeron asked with the increase of events if the fire dept had a plan of any type for an emergency situation that might arise? Mr Baker stated that he had only been there a couple of times and didn't see any problems

Police Chief Maxwell would like more lighting in area where there will be drinking, with NO drinking allowed behind stage area. Chief stated according to State of NHH Laws, the Police have ultimate authority to say you can have x amount of people and would like final say depending on concert venue. Pay the day of service or close of shift or no concerts the following week. More lighting by A1 building and move the line from behind the stage for safety. Questioned if there are 3 men from MPD there, who would cover the town? MPD would need 24 hrs notice to cover any concerts Congestion on roads during the events? They need to have a plan for moving large crowds. Traffic Study advised? Chief says not now. No evacuation plans have been drawn up or agreed upon. When asked if there were any problems this year? His response – “no problems this year – no concerts.”

Selectmen Charlie Moser presented the “Proposed Conditions of Approval as recommended” to the BOA for consideration. #1 applicant must get site plan approved from Planning Board and that the approved plat be recorded in Hillsborough County Registry of Deeds., #2 retroactive inspection of stage including electrical inspection of stage including electrical inspection, #3 outside alcohol sales & consumption limited to defined area and enclosed by a fence. No person under the legal age for consumption of alcohol shall be allowed within such fenced area. #4 No event parking shall be permitted on Churchill Road or Turnpike Road (Rt124). #5 Any paths or trails to parking areas shall be well lit. #6 Event attendance shall be limited to the number of on-site parking space times a factor of 2.5. #7 Lighting shall not result in offsite glare. #8 no information available, #9 Patrons shall not be permitted to bring coolers or alcohol beverages on site, #10 Sound pressure levels shall not exceed ___ decibels at the applicants property lines. Discussion what if there is a change of use, if business gets sold what happens to “special exception” that stays with the land” Mr Moser stated the exception ruling stays with the land and only lasts 6 months after the land or property is sold. (note error in numbering)

Atty Peter Nicosia representing the abutters (8) Michael & Cheryl Davieau, Derek Matthews, Emily Sumner, Christian Gauthier, Michele Gauthier, Charles Countryman and Karen Countryman, presented a motion for preliminary injunction, Superior Court petitioned thus preventing the Town from taking any action. Atty Nicosia recommended deferring the vote tonight until the court reaches a decision. Atty felt that Mr R was looking for special exception and how its a lot of conjuncture right now from Miss R concerning “I think, I hope, I

believe” statements are not a business plan and should not be voted on tonight. Atty suggested that BOA require a business plan be written, not verbal agreements; should state size of bands allowed, start time and finish time, and noise study. No lighting plan addressed, just maybe’s. Occupancy Load, exact parking, egress and ingress driveway. Stage not set to specific size or load capacity. Would the building inspector be looking at this stage and electricity to the area? Traffic study needs to be done and completed for presentation. A lot of traffic and safety issues should be addressed. Questioned how to deal with patrolling the perimeter of 26 acres to keep control of crowds or walkers thru the woods. There needs to be back up plans or some type of emergency plans for fights, security, police coverage. What to do if someone gets hurt, emergency vehicles, fire or ambulance. This should be left up to the Ruggieros to plan. He expressed sanitation issues, 5 porta pottys several hundred feet away from the stage/crowd area where alcohol is involved wouldn’t be enough. Plans are not good enough to have an approval tonight. Atty Nicosia felt the plan to go forward should be on hold based on court decision. BOA well within your rights to get a clear record and clearly address all issues before granting. Suggested a business plan covering size of bands, written stipulations of start times. Hire Noise Engineer and do a professional sound study, Lighting concerns – nothing noted, insufficient plans. Occupancy load – now have approval for 36 parking spaces, going to go to over 800 people. Max occupancy not defined. Building inspector needs to put an actual people count into file. Needs a traffic study included, safety issues, security detail, outside communities can’t deal with a concert bringing in 1000 people.

Mr Fritz opened the hearing to the public. In light of many points and the late hour, Mr Fritz said there would be no approval or denial vote this evening but a continuation of the application. Atty MacMartin presented 2 letters and Mr Fritz read them, in support of Marty’s George Morrison lives 800-900 ft from driving range spoke in support, Shane Fournier spoke in support. Mr Ed Lane and Matthew Lane spoke in support stating they live directly behind the stage area and enjoyed the ”free” music and a beer on their porch on Reed Road. “felt it was too bad that a few neighbors, everyone losses out”, Justin Baer(sp) from Mass spoke of living in Mason and enjoyed the music. Nate Archambault lives on Churchill Road and has a business at A1 building, stated he has 3 children and they were not apparently bothered by the music or noise, no sleeping issues. Mary Pierce of Pierces Orchards, Reed Road spoke in favor. Daniel Jameson, Nashua, old abutter, spoke of only hearing the “loud” music 2 times. Joanne Burman (sp) Bell Lane didn’t find the music disturbing but enjoyable. Theresa Morton spoke in favor, Garth Fletcher spoke as a past Planning Board member and how many years have been spent to maintain the integrity and rural character of Mason Commercial zoning got no support in the past to keep the peace and quiet the residents wanted. When Kinder Morgan tried to bully their way into Mason ,a group formed to preserve and protect our environment by stopping KM from taking the land for private use. The BOA has the right to maintain the P&Q of the community, not for just a few, but for all. Discussion of businesses and low income housing/apartments on Rt 31 now is mixed housing & about 10+ business

on Rt 31 now. There are 3 zones in Mason, GRAF, historical, village. Beth Creighan (sp) spoke of noise from Parkers being an issue for her. Dan Johnson is a sound engineer and has been working with Nichole to fix the sound issues, described readings done last week with DJ and found nothing above 87 db's at tree line. Tina Brigham, Morse Rd hears the music very loudly and urges sound study. Mike Ordway, Mason Brook Nursery owner, direct abutter, sounds were not an issue. Stated the Ruggieros do a lot of charity work as well as offer jobs in the area. Jennifer Schongar stated sounds weren't an issue as much as safety of egress from one outlet, trying to move 200+ cars out of the area easily and safely. Country Hill Farm, horses on Reed Road are bothered by the loud music and have to cancel their horse lessons when the music plays. Discussion on decibel readings being real and verified.

Mr Fritz stated too many issues being unresolved, moved to continue hearing until Oct 17th at 8:00pm Town Hall. Asked that amendments be made to address lighting issues, staffing, stage and to mitigate sounds and light. Designate a sound decibel at tree line, define and clarify "3 times a week" including "Cruz Night" and 2 other times. Define charity promotions in same way.

Motion made to adjourn, seconded by all, adjourned at 10:40pm

Respectfully submitted on 9/22/16
Constance Lacasse

Phil Garside moved to accept the minutes of 9/19/16 as corrected and amended on 10/17/16. All voted and agreed.