

FAYSTON DEVELOPMENT REVIEW BOARD
MINUTES
TUESDAY JANUARY 9, 2018
Unapproved

Attending: DRB Members: Jon Shea (Chair), Kevin Wry (Vice-Chair), Shane Mullen, Mike Quenneville. ZA: John Weir. Public: Gunner McCain, Heather Lynds, Andrew Lynds, Ron Shems, Jim Depres, Charlie Gibbons, Jane Gibbons, Ryan Haac, Peter Monahan, Edward Sheehan, Chris Austin

The meeting opened at 6:10 pm.

Jon Shea opened the hearing for application #3449 (parcel ID #05-023.00 and #05-057.001, located off Moulton Road and Hobart Lane, Fayston). Applicants Jared Cadwell and Alfred and Jane Hobart request approval under Article 7 of the Fayston Land Use Regulations for a lot-line adjustment (minor subdivision) of 0.21 acres. The proposed project involves amending the Hobart subdivision (permit #2720), to perform a boundary line adjustment between the Cadwell and Hobart properties. 0.21 acres from the previously-approved Hobart Lot 2 is proposed to be added to the Cadwell property. Waiver of sketch plan review is requested.

Gunner McCain presented the application. Applicants' properties abut and the Hobarts' land extends down into the backyard of the Cadwells. The Hobarts will convey the 0.21 acres to the Cadwells, as the Cadwells have essentially been using this portion as part of their backyard.

Chair Shea inquired about the existing right-of-way (ROW). Gunner stated that it will continue to exist, although ownership of the ROW will change from the Hobarts to the Cadwells. Shane asked what the ROW was associated with. Gunner responded that the ROW is associated as both a driveway to a Green Mountain Valley School building as well as the driveway to the Cadwell house. The ROW was initially created to access the lower portion of the Hobart land. No changes will be made to the ROW, and no new construction will take place. The ROW has a watercourse that cuts through it.

Chair Shea asked John Weir whether proof of abutter notification was on file. It was. Mike moved to find the application complete and Shane seconded. All were in favor and the motion passed.

Kevin moved to declare the application one for a minor subdivision, and Mike seconded. All were in favor and the motion was passed.

Chair Shea let Gunner know that he has the right to a full board, as one member was absent. Gunner wished to proceed with a less than full board.

Kevin moved to approve application #3449 for a lot-line adjustment with the condition that the mylar is submitted within 180 days of approval. Shane seconded. All were in favor and the motion passed.

Chair Shea then opened the hearing for application #3453 (Parcel ID #08-072.009 is located at 2849 Mill Brook Road). Applicants Heather and Andrew Lynds (d/b/a Mad River Barn) request to amend Conditional Use Permit #3394 allowing for 21 amplified special events. Specifically, applicants seek to increase amplified events from the 21 approved by this Board to the 23 permitted by the State in its Act 250 permit. Conditional use approval is required under Section 5 of the Fayston Land Use Regulations, pursuant to Section 4.14 (B) for special events in excess of ten (10) per calendar year.

Chair Shea let the applicants know that they have a right to a full board, as one member was absent. Heather responded that the applicants wish to proceed. Chair Shea requested that members of the public sign in with the zoning administrator. Members of the public were instructed that they must be deemed Interested Parties to this application in order to appeal any decision by this Board to the Environmental Court. Chair Shea asked members of the public to provide their name, whether he or she seeks interested party status and why. Andy Hallam requested interested party status, living about 300 yards from the Barn. Kevin moved to accept Andy Hallam as an interested party. Shane seconded. All were in favor. Charlie and Jane Gibbons requested interested party status. The Gibbons live just up the road from the Barn. Kevin moved to accept Charlie and Jane Gibbons as interested parties. Shane seconded. All were in favor. Ted Sheehan requested interested party status. Ted and his wife live just up the road from the Barn. Ted is an interested party in the Act 250 proceeding and has expressed concerns over the noise in the past. Kevin moved to accept Andy Hallam as an interested party. All were in favor. Shane moved to accept Ted Sheehan as an interested party. Kevin seconded. All were in favor. Jim Depres requested interested party status. Jim lives in the Mansfield Road development near the Barn. Kevin moved to accept Jim Depres as an interested party. Shane seconded. All were in favor. Chris Austin requested interested party status. Chris lives on Sugar Run just up the road from the Barn. Kevin moved to accept Chris Austin as an interested party. Mike seconded. All were in favor and the motion passed.

Heather Lynds, co-owner of the Mad River Barn, explained the application. Heather stated that when the Barn applied for the increase in special events last year, she was quite clear that the Barn needed to host 23 events per year in order for the business model to work. This Board, in granting conditional use approval, permitted the applicants one amplified event per week from Columbus Day to Memorial Day. Mathematics dictates that this totals 21 events only. Applicants are requesting this Board modify the language of the existing conditional use permit to match that of the Act 250 permit. According to the Act 250 permit language, "There shall be a maximum 23 amplified music events per season, which equates roughly one per week from Memorial Day weekend through Columbus Day weekend. Amplified music shall be for a duration of four and ½ hours for any single event and shall cease by 9:30 pm." Heather continued that the word "roughly" modifies both "one per week" and "from Memorial Day weekend through Columbus Day weekend." Heather believes that so long as the maximum 23 events is not exceeded, the Barn could, for example, host an event a couple weekends before Memorial Day, or a couple weekends after Columbus Day. Heather stated that the Barn could host an event on a Sunday and a Saturday of the same week, for example, if circumstances warranted (i.e. Jewish weddings often take place on a Sunday). In other words, the key restriction in the permit according to Heather is the number of events (no more than 23). The

applicant contends that the timeframe and frequency is not significant to the interpretation so long as the maximum number of events is not exceeded.

Chair Shea asked the applicant whether she was contending that the Barn could host a wedding on a Saturday and then also a Sunday. Heather clarified that the example was a Sunday wedding followed by a Saturday wedding the following weekend, not the same weekend.

Shane asked what the applicants were looking for as far time period for these weddings. Heather responded that the time window should be the same, from Columbus Day weekend through Memorial Day weekend, with leeway to have a wedding the weekend before Memorial Day or the weekend after Columbus Day. This leeway, the applicants feel, is provided adequately by the Act 250 permit language modifier “roughly.”

Heather proceeded with a justification for their request. Heather stated that they testified during the initial DRB hearing that 23 events was the break event point. Heather stated that they need the revenue of 23 events to ensure the Barn can stay in business. Heather stated that the applicants underwent substantial due diligence with the state of Vermont during the Act 250 permit application process, providing strong evidence in the form of an engineer’s report that sound levels would not exceed the level at which the average person would be annoyed. A copy of the engineer’s report was provided, as well as a copy of the post-construction certification provided by the same engineer. Heather continued that, based upon the testimony and evidence the applicants provided, the state of Vermont approved the permit language which applicants are now requesting be modified here.

Heather then continued with sound engineering report. The engineer’s report was based on an initial pavilion design that assumed vinyl roll down shades on both the road side and mountain side of the pavilion. Heather stated that, during construction, to achieve better acoustic results, applicants decided to eliminate the shades on the east side and install acoustic glass instead. Heather added that this was done in order to alleviate concerns of their neighbors and to try to exceed the mandates set forth by the State. According to the applicant, inaudibility was the goal. The vinyl roll down shades have a Sound Transmission Class (STC) of 8, whereas the acoustic glass has an STC of 37. This substitution was expected to result a substantial reduction in sound emissions that exceeded what the engineer’s report predicted. Applicants hired sound engineers Dark Star Productions to monitor the events. Sound engineers monitored sound levels on Old Mansfield and Mansfield roads at every event in the 2017 event season. Applicant stated that by keeping the sound levels at or under 87 decibels in the back of the pavilion, they figured out that you would not be able to hear the events in the affected areas. Sound levels were never above background noise levels (42 dB), and in all but one case, were completely inaudible. In the one instance, Heather claims that the noise which could be heard and which was picked up on the sound meters, was from house music and not the Barn event. Heather believes that house music in the area is confused with an event in the Barn.

Charlie Gibbons stated that there it is clear when the noise is coming from a neighboring house as opposed to coming from the Barn, and they are not being misconstrued. Andrew Lynds wanted to clarify that often the Barn is often blamed for noise in the neighborhood when in actuality it is music coming from a house in the area. Andrew believes that this is because there

are people in the area that want to see the Barn fail. The applicants stated that when they first began to hold weddings there under a tent, the noise complaints were warranted. Heather stated that the applicants did not realize how bad the noise was until a neighbor, Jep Peacock, brought this to their attention. Heather continued that, since construction and use of the pavilion for wedding events, Jep Peacock has no complaints. Heather stated that, as part of the application, letters from both Jep Peacock and Howard and Linda Levin were submitted indicating the inaudibility of wedding events at the Barn.

Ron Shems spoke on behalf of the applicants. Ron wanted to focus on the conditional use criteria pursuant to which the Board would base its decision. One is the character of the area affected, and the other was the 70 decibel performance standard that was altered to a 60-decibel standard within a half-mile radius. Ron continued that the Act 250 Commission deemed the area around the Barn as residential, and set a more restrictive noise standard of 50 decibels at any neighbor's house. Ron noted that after the pavilions was built, applicants and their engineers monitored the sound levels at Ted Sheehan's house as well as one other neighbor. Those readings came in at 46 decibels. Ron noted that 45 decibels was equivalent to the background noise of a radiator in a school classroom. Heather added that those measurements were based upon a louder amplification than what is used during an event – specifically, it was measured when the music at the back of the pavilion reached 97 decibels as opposed to the 87 decibel maximum (at the back of the pavilion). Heather added that there is a governor control on the music system that does not permit the user to go louder. Ron provided the Board with a compliance memorandum from Susan Baird which stated that the applicants were in compliance with the permit.

Ryan Haac, sound engineer on behalf of the applicants, wanted to clarify that the 46 decibel-level achieved at neighboring houses should in no way be interpreted as coming from the Barn. Ryan stated that the ambient background noises of the area alone come within a decibel or two of this reading. Ryan stated that the sound level of the pavilion by itself is much lower than the 46 decibel reading cited above.

Ron added that the applicants are well within the performance criteria set forth by both this Board as well as the State in its Act 250 determination. Robe added that the applicants can meet the conditional use standards.

Chair Shea asked Ron whether the applicants would be amenable to the Board modifying the existing conditional use permit to match the performance criteria set forth by the State (i.e. 50 decibels at any house). Ron stated that they have to meet the State criteria anyway so it doesn't really matter. Heather stated that the applicants would be fine with that. Chair Shea noted that such a modification is due to the fact that the Board finds the engineering report very helpful and it was not available at the hearing for application #3394.

Chair Shea then inquired as to the Act 250 permit language restricting the decibel level to 50 decibels outside any *neighbor's* house. Chair Shea wanted to know if there was any further clarification as to which neighbors the permit was referring to. Ron responded that the language is as broad as possible, although meant to deal with the much closer residential area.

Heather stated that the post-construction certification represented a worse-case scenario as the vinyl sides were up and the stereo system was turned up to the maximum level. Andrew added that, at the same time, there were no bodies in the pavilion and no leaves on the trees. Chair Shea then inquired as to the maximum decibel level within the pavilion as testified to at the prior hearing for application #3394. Heather stated that, operationally, the governor control does not allow amplification of music over 87 decibels. The 94-97 decibel range utilized in the post-construction assessment was for testing purposes only. Heather added that there is a sound engineer from Dark Star at every event. The engineer controls the sound levels with an iPad and music cannot exceed 87-88 decibels at the back of the pavilion. Kevin Wry noted that the letter from Susan Baird certifying compliance notes that the average test level was 89 decibels in the back of the pavilion. Ryan Haac clarified that that was an average. Specifically, sound levels change within a song and the variations in testing levels reflect those altering levels within a song.

And Hallam stated that he sleeps with his windows open all summer long and that he did not hear anything from the Barn at all this summer.

Ron stated that there has been much discussion about decibel levels in the post-construction assessment but there should be discussion on the actual observations and readings as they were collected over the course of the 2017 season. Ryan Haac stated he was prepared to discuss the post-construction simulation, which was louder than the event level, but did not himself do any event monitoring. Ryan noted that the monitoring was done at two locations, and the surrounding area was very much alive – the natural area sounds from frogs to trees constituted the ambient noise. Ryan added that the music was heard during this initial simulation, but only as the song began due the beginning distinctive baseline and then it faded into inaudibility. Ryan added that that is important because they were measuring the level and this sound from the event pavilion was inaudible, it had to therefore be several decibels below what they were actually measuring because when you add decibels together in a logarithmic scale they don't just end linearly. Ryan and Heather added that, after the initial simulation monitoring, a carpenter was brought back to add some screws to tighten up the wall facing the road. Heather also added that they chose to reduce the base levels from the treble in order to balance out the sound. Heather stated that she personally monitored every event, with Peter Monhana's sound meter, from areas on Mansfield Road. Some monitoring was done along with Peter Monahan as well, although it was more important that Peter be present at the event to control the software and ensure compliance with sound levels. Heather and Peter testified that the amplified music was completely inaudible when they monitored from locations along Mansfield Road. Shane inquired whether, when monitoring was done, the levels matched those from the post-construction assessment. Heather so affirmed, stating readings of 46-47 decibels. Heather stated the sounds were emanating from frogs, trees and water.

Chair Shea then asked each party requesting interested party status to speak to the application. Chair Shea turned first to Andy Hallam. Andy had already spoken in his support and reiterated he has no issues with the Barn or the present application. Next was Charlie Gibbons. Charlie wanted to compliment the applicants on the applicants' efforts to quite the noise from events as compared to the prior year when events were held under a tent. Charlie reiterated that he wants them to be successful. Charlie stated, however, that all the events are not quite as reported.

Charlie stated that he does not care whether the Barn hosts 20 or 23 events. One of Charlie's concerns is that some events were not cut off at 9:30 p.m. as the permit required. Heather responded that this wasn't true, except for once. Charlie feels like this happened a few times. Charlie also feels like they have held more than 23 events already. Charlie would like to have all the events logged beforehand so neighbors know when they are occurring. Charlie mentioned that he hears voices from the Barn late at night, and this conflicts with condition #14 of the Act 250 permit which requires the applicants to direct loud persons inside for any given event. Chair Shea stated that loud voices from the Barn or its parking lot must happen every night. Charlie responded that he does not know when the voices are coming from an event versus any other night. What Charlie is asking is for the permittees to abide by the restrictions set forth and for the Town to enforce those restrictions. Charlie feels that, absent he bringing litigation against the applicants, there is no recourse for their violations of the permitting conditions. Charlie has purchased a sound meter that he has used this past year. Shane asked Charlie how many events over the past year Charlie measured when he was in town. Charlie responded about 4 or 5. Charlie added that in about 3 of those events the sound level spiked during the event. Heather responded that the Barn hosted only 22 amplified events over the past year, not more. There was one event that was cut off at 10:00 p.m. rather than 9:30 p.m., as this event was contracted for under the original administrative permit issued by John Weir. Heather reiterated that no other event went past 9:30 p.m. Peter Monahan stated that he was hired to be the "bad guy" and sit on the DJ for each event and ensure that the sound levels were kept below the restricted limit and to pull the plug at 9:30 p.m. Ted Sheehan stated that he must have missed two events, which Andrew Lynds denied. Ron Shems stated that Ted had called either the State or John Weir with issues and concerns over the Barn events, yet the State and John had investigated and found no violations. Ron also added that the State reviewed the business records of the applicants in October and also found no deviations from the permit conditions. Charlie reiterated that his concern is with monitoring. Heather responded that one of the conditions on the local permit is that the Barn have a parking lot attendant/monitor. That attendant does stand outside during arrival or departure for the events to ensure people don't hang around outside talking loudly. Heather repeated her assertion that neighbors are confusing other noise from the neighborhood as coming from their establishment. Charlie disagreed. Heather mentioned one time when a neighbor complained about music from the Barn, yet a third party confirmed it was coming from a neighboring house. Heather believes it is easy to get confused given the topography of the area.

Kevin inquired whether it would be a good idea for all interested parties and the Town to get a list of all impending amplified events at the Barn so everyone knows when an event is occurring. Heather responded that would be an undue hardship to put on a business. Heather wondered whether that was a privacy issue. Kevin feels that if people had a list of scheduled events it would make things easier. Heather responded that she feels that such a request is an invasion of business privacy but would comply if that's what the Board wanted.

Chair Shea asked about whether all the amplified events were all weddings. Heather stated they were. Heather added that one of Ted Sheehan's complaints about amplified music was in fact a funeral service. Ted affirmed this. Heather wants clarification as to what "amplified" means, as the funeral service has soft music playing through a radio. Heather added that if music is playing through a speaker yet is below background level, case law is on their side. Heather believes that

background music below the level of conversations could not be what this Board was concerned about regulating. Shane asked what Act 250's take was on that question. Ron responded that the applicants are in the wedding business and that the State is not concerned with music at background levels. Shane asked if that was what the State prescribed. Ted responded that the State permit does not state such. Heather stated that the local permit findings include discussion as to unamplified music at non-wedding events such as yoga retreats etc. Ron and Heather added that it was discussed during the Act 250 proceedings that the Barn does host other events from cocktail receptions, to dinner parties to yoga retreats in the pavilion. Ted disputed these other events were discussed in the State proceedings. Heather stated that other events in the pavilion which are not a designated wedding event with amplified music should not be regulated under this permit. Ron stated that there must be a pragmatic approach to this, as amplified music should not be equated in any way to background music at a conversational level in the pavilion. Ron reiterated that all this has been addressed by the State, especially after all the complaints mainly from one neighbor, and found nothing in violation of the terms of the Act 250 permit.

Chair Shea then requested Ted Sheehan to speak. Ted stated that he hears every event. Ted stated that the post-construction simulation monitoring was supposed to be done at his house and it wasn't, and that it was also done at 11:00 a.m. Ted also disputed the readings of the initial simulation monitoring. Ted added that he hears everything, from the music to the voices to the ceremony. Ted feels he is unjustifiably being painted as the bad guy in this situation. He feels like the events at the Barn continue to impact his and his neighbors' quality of life. Ted stated that he was anticipating one event per week from Columbus Day through Memorial Day. Ted asserted that the applicants had an event prior to Memorial Day, which John had said was a grandfathered event. Ted asserted there were two back to back events in August and that there were two events held after Columbus Day. Ted also added that two events went until 10:00 p.m. Ted feels that the applicants have repeatedly violated the terms of both permits. Ted also purchased a sound meter and believes on many occasions there were spikes well over 50 decibels. Shane asked whether Ted had logged these violations. Ted said he had. Ted also had concerns over the noise from people attending the wedding events, specifically in the parking lot. Ted believes the noise restrictions set forth in the permitting applies to all noise coming from the Barn, not just amplified music.

Shane asked Ted if the post-construction simulation monitoring was not done at his house, than where it was done. Ron and Heather stated that it was done in the right-of-way outside of his house. Heather also added that Ryan testing was not done at 11:00 a.m., but at 6:00 p.m. in the evening. Heather disputed that Ted is hearing any noise at all from the events. Heather added that she had John Weir come up to two events to hear for himself.

Chair Shea then turned to Jim Depres. Jim stated that he was representing his family as well as three other neighboring families – the Bergs, the Fitzgeralds and the Membrinos. Jim said that collectively the families have not heard anything from the amplified events. Nothing has occurred which is adverse to their interests. Jim hears other neighbors in the area, even other concert venues streaming across the Valley (German Flats Road), but he does not hear anything from the Barn. Jim added that the Barn has been such a business for many years, long before many of the neighbors were there. Jim feels the Barn has gone well beyond the extent necessary to cohabitate with the neighbors.

Heather wanted to clarify that Jim Depres, on behalf of three other families, as well as Jep Peacock, Andy Hallam, the Levins, all have stated for the record that they hear nothing from the amplified events at the Barn.

Chair Shea turned to Chris Austin. Chris stated that in the Valley it is tough enough to run a business, and it's hard to make a living in the Valley. Chris feels that the applicants are doing a great job for this Valley, bringing in people and revenue. Chris stated how the Barn used to be in shambles until the Lynds bought it. Chris believes the Barn should not go the route of so many other failed businesses in the Valley.

Chair Shea turned to Ron Shems for final points. Ron reiterated that the applicants are seeking two additional events to be in accord with the Act 250 permit. At the same time, the applicants' events have measured well below the 60 decibel level limit set forth by this Board within a half-mile radius, as well as the 50 decibel level set by the State. Ron believes the applicants have abided by the very restrictive conditions imposed by both this Board as well as the State. With regard to the questions of whether the applicants provide notice of events to interested parties and the Town, Ron stated in all his years litigating Act 250 cases as well as adjudicating them, he has never heard of a condition where local residents monitor the day-to-day business of another. He is not sure how that could be managed. Ron said that this is the enforcement job of the State. Heather reiterated that background music at conversational level is not an amplified event, and that neighbors can assume that there an event every single weekend from Memorial Day weekend through Columbus Day weekend.

Chair Shea entertained a motion to close the hearing and enter into deliberative session. Kevin so moved and Mike seconded. All were in favor.

The Board entered into deliberative session at 7:55 p.m.

The Board came out of deliberative session at 8:30 p.m.

Kevin moved to approve the Minutes of November 14, 2017. Shane seconded. All were in favor and the minutes were approved.

The meeting adjourned at 8:40 p.m.