



Zoning Board of Adjustment

Minutes of continuation hearing 17 October 2016 held at Town Hall. Approved 01/16/17

- A. Call to order by Chairman Bill Fritz at 7:35 pm
- B. Roll Call: members present – Phil Garside, Bill Fritz, Guy Daniello, Bob Young, Landon Smith. Bob Bergeron was not present at beginning of hearing, Bill Fritz asked Landon Smith to be the 5th member. Bob Bergeron did come in later about 8:13.
(Approximately 35 to 50 people attended the hearing. Some coming in and going out constantly.)
- C. Minutes of 19 September 2016 meeting reviewed with all member before Bob Bergeron came in. There were name corrections & deletions suggested. Phil moved to accept as amended with Guy seconding. Bob Young amended the motion for more discussion. After further discussion the Board did accept the minutes of 9/19/16 as amended unanimously.
- D. Continuation of Hearing is at the request of the following applicant Martin Ruggiero, for the purpose indicated: Special Exception, pursuant to Article V111, Paragraph A.2.C of the Town of Mason Zoning Ordinance. The application identifies the use being proposed as follows: addition of seasonal outdoor entertainment use to the existing use by special exception at 96 Old Turnpike Road and Churchill Rd.
- E. Noted that 2 certified letters had been returned undelivered Kennan and Palmer. Other letters presented to Chairman, not thru clerk.

Chairman Fritz opened the hearing at 8:00 pm stating that issues should be reviewed with facts. He reviewed testimony that the Conservation Com. had brought forth. The Business plan would be outside the #13 standard on the Proposed Conditions of Approval, concerning what if a bankruptcy came up for the property, safety & security issues. Mr Fritz asked who owns the Town of Mason the Emergency Management Emergency Response Plans; response from Mr Moser is the Fire Chief does. Chief Maxwell had not come in yet. Fire Chief Fred Greenwood discussion on NFPA 2007 guidelines stating how many people there could be for a standing crowd. If they could pass an occupancy permit based on 1000 person limit. Chairman asked what the previous maximum attendance had been? Ruggieros stated depending on concert or “cruz night” they would have 300 to 700 people, but would like to have 1000. Atty MacMartin presented a letter from Mathew LeClair (Barrett Hill Farms owner) to the Board stating they would and could accommodate some offsite parking for a total of 272 cars and in support of concerts.

Conservation Com, Bob Dillberger and Bob LaRochelle presented charts and discussed what other towns used for OSHA standards for noise. Guy questioned what did OSHA have to do with noise? Not an industrial noise issue. Mr Fritz reviewed actual regulations in Kingston. Guy & Bill had discussion on those ordinances as read. There are no standard noise ordinances in Mason. They



presented how Hampstead and Kingston NH had addressed noise in their towns. Mr Fritz passed out maps that he designed for actual abutters that support the application. Guy spoke of harmony and

sprit of ordinance. Discussed how other surrounding towns could or would be affected with the noise and traffic issues that they hadn't been asked to accept or discuss. Motion made to suspend discussion or continue to move on by Phil. Mr Fritz seconded motion. All in favor of moving on.

Discussion with Bob Young concerning the noise decibel level that had been suggested at 85 dBa at boundaries and property line. Mr Fritz asked if Ruggieros could accept the 85 dBa, Nicole agreed that would be acceptable 85 dBa at their boundaries limits, as the 2 hiways (Rt 124 & Rt 31) are about 85 dBa recorded. Phil questioned the time frame 8 to 11 pm with ½ hour break, Nichole stated that is what it was before. Past episodes of excess noise were brought up. Mr Fritz & Nicole agreed to no more than 85 dBa with a written sound study performance done and presented to BOA. Nicole said this had not been done yet. Mr Fritz stated that he had been at the driving range when a sound test was done at a cruz night. He discussed the laws of physics making it impossible for the sounds or noise to be heard as far away as was being claimed. The discussion became pretty contentious with Mr Daniello and Mr Fritz and the laws of physics being discussed. Atty Nicosia asked if this is just a debate or if the additional information was present? Mr Fritz asked if the applicants had more information to present. Atty MacMartin presented 9 items to be addressed concerning outdoor live concerts, charitable activities, 3X per week per ordinance with closing during the week not later than 10pm and weekends not later than 11 pm, sound levels on stage ie 85 dBa, sound deadening panels, panels to refocus sound to go forward not surround, to lessen impact on neighbors, improve stage to code with railings as required and electrical to code. Maximum capacity agreed to not exceed 1000. Crowd control was discussed with the use of colored bracelets, staff to have clicker counters. Staff duties would include greeters, parking attendants, check outside food and beverages in the right places. Service people would be responsible for age compliance. They would have private security for larger concerts.

If the BOA approves this application, Mr Fritz suggested weekly / monthly meetings with Mason Police Dept. so that they would be aware of size and be able to react in time of need. Chief Maxwell expressed concerns of slopes around the area of stage; no traffic study done, nothing formal. Barrett Hill Farms parking issues with safety and control parking and walking on hiways to concerts. Shuttle service was issue. Additional letters (4) from neighbors in support acknowledged.

Atty Nicosia stated no formal testing on sound been done, 85 dBa too high and nothing on file; lighting expert what impact at property line. Spoke of Chief being concerned with safety of roads. Very archaic sanitary and health issues; detailed emergency management plans, building codes of stage not available. No plans for traffic issues if Barrett Hill Farm parking is used. No business plans on file, no 3rd party plans to support plans. Bob Young asked Atty Nicosia why he felt the noise issues weren't being addressed ; or address other issues as they come up; had he come into Mason



to tell the BOA how to do their job. Mason knows how to get what we need when we need it. Guy spoke in favor of issues Atty brought up.

Bill Fritz went back to regional impact discussion with ConComm, Bob Dillberger spoke of noise level at his house 1.5 miles away with map to show impact. Mr Fritz stated these were personal reports, no hard data or addresses available or dates for noise issues and sound pressure levels. Bob LaRochelle spoke about outer arch of Mason people (about a dozen) that had complaints to protect peace & quiet. Bill Fritz and Bob Dillberger discussed the noise level potential to travel over 1.5 miles or even 4 miles away probably 50dbs. Mr Fritz spoke in actual balance – property noise at 85 dBa and 1000 people being at a concert. Bob LaRochelle would like to have notices sent to 5 sounding towns as a courtesy to get their input before a decision is reached. Mr Fritz disagreed with doing this, by reducing the sound decibels the potential impact is reduced. Outdoor music coming out of Hippy Hollow in Greenville, as well as other towns (Milford and Townsend) already having outdoor concerts. Tina Brigham called Mr Fritz out on his position questioning neutrality. He counted back that he was looking at facts and only facts. Dan Jameson, sound engineer, spoke about the regional impact circle – discussed what Ruggieros would/could do to stage to reduce noise level.

Ted Hauri, resident of Mason, questioned as a tax payer what will this cost us in taxes. Mr Fritz stated the Ruggieros will absorb all costs and would enforce all sound ordinances – sound engineers will oversee the levels not to exceed agreed upon decibels. Nicole will positively enforce ordinances. Guy pointed out to Mr Hauri, that the special exception stays with the land not the owner, and if the land is sold the special exception stays with land. Deb Lane, Reed Rd spoke in favor and not being bothered by the noise when she shuts her door. Mathew Lane spoke about people being a liar about the distance that the noise can be heard. Mr Fritz stated he was there several times while testing was being done and Phil was there also, to observe & questioned the regional impact issues again. Dotsie Millbrandt spoke about background noise and having sound tests actually done. Mr Fritz spoke about the Laws of physics again stage to up the hill sound tests performed. Regional Impact vote called for. Atty Nicosia talks about sound study that Mr Fritz observed & recorded, questioned Ruggieros doing their own sound study with no written reports concerning readings; nothing put into file. Mr Fritz says he will put a map & recordings into the report that he did. Mr Fritz called for preliminary vote; Guy makes motion there is a potential regional impact on their noise makes motion there is a sound based regional implication to this activity, sound as well as public safety. Bob Young seconds. Now only BOA to deliberate that there is a potential for regional impact at 85 dBa at property boundaries for potential regional impact. Doubts exhibited. Chairman called for vote. Motion failed 3 nays 2 yeas. Motion there is no potential regional impact based on 85 dBa levels limit as agreed to.

Guy Daniello questioned drinking /alcohol consumption area not allow had not been changed per prior agreement , behind stage and suggested fencing be moved to block larger area on sides of



stage on plat that must show before submitting to Planning Board. Exact areas to be front right and left corners of stage to behind at the sloped area, angled outwards. Mr Daniello states the 13 requirements are exact and BOA needs to know exactly what will be done. Wants to be sure that provisions in this ordinance will be covered and understood further down the road. The list of Proposed Conditions of Approval must be met and how they would meet them. Mr Young wants more information, Giving more information to BOA is good. Atty MacMartin presented "Business expansion plan", several pages that appear to explain how the items the BOA was looking for would be attained. Mr Fritz reviewed papers stating they contained most of the information that the BOA was looking for. Mr Fritz, Guy, Bob Young reviewed briefly when given the papers. Mr Young asked if the BOA could review these and come back. (These papers not handed to clerk for submission and only 1 or 2 copies were available at the hearing.)Mr Ruggiero disagreed with the request due to making another delay in his request of a decision being made. Mr Lane asked to speak again under Roberts Rule. He was out of order and fought back, with Chief Maxwell asking if the BOA wanted them removed.

Discussion of fenced area and patrons taking alcohol away from there. Mr Fritz discussed area of consumption with Mr Moser stating the BOA made that decision. BOS are responsible for enforcement of dBa level s. Mr Fritz and other Board members reviewed papers as presented by Atty MacMartin, (the expansion plan) and felt it addressed many issues of their concerns. Deliberation is in session, not for public input. Passing additional information down the table, so everyone looks at it. Deliberations - BOA with directed and focused on questions as board members see fit.

During the brief review Con Com, Bob Dillberger asked to address BOA again, briefly, to discuss OSHA standard not being relevant with noise level and definition of excessive. Questioned if the decision was relative to what was wanted in Mason now and later; rural charm has no definitions with live music being readily available; plenty of places for food or ice cream drive ins – one thing you can get is the peace & tranquility of your own home. Mr Fritz spoke about the town of Mason putting on social outdoor live music & entertainment several times a year, how can the BOA deny Marty's the same thing-form of discrimination.

Bob Bergeron posed the question of having a \$1000 bond by Ruggieros for the sole purpose of paying the police, if they were used and not paid in a timely manner. #1 Bonding would be used to pay MPD and concerts shut down until it was replaced. Ruggieros both agreed to the bonding. #2 Lighting the bathrooms & hillside area be well lit so people can move around safely. #3 The 15 sq ft stage be brought up to standards and electrical grounded properly.

Guy reviewed parking issues -No parking on Churchill Rd or Rt 124 or MPD will be called & vehicles will be towed. Guy reviewed perimeter fencing in liquor consumption area. Nicole says they are inspected by the Liquor Commission to insure their standards are met and maintained yearly. Fencing and signs designed to show liquor area clearly; more lighting shows on plans everywhere



including the porta potty areas (could be 2 areas for porta pottys for bigger crowds) drawn on plans. Discussion on #12 item on plats states maximum employees as 30. Take off #12 concerning max employees. There is no need for an actual number and may be removed. Make it a recommended number not a binding number. Decision to Delete #12 made. Needs to be written down so it could be incorporated #14 should be added for lighting grassy area, walk ways as well as porta pottys .

Lights are on plats. Red Line to change plat, dark area behind stage – relocate fencing so only band is allowed. Done in Red Line. NOT public area. Guy questioned who controls the noise level/output systems? Nicole controls sound system using house sound system –3rd party controls system - asked for that in writing.

Mr Ruggiero and Nicole were questioned whether they would consider a 75 dBa level. Mr Ruggiero not in agreement but did offer a counter proposal at 80 dba.

Large Plan notes making back lot/tree line achieve 75 dba; property line 75 dba in the field max. with controlled measurement points. Steps of process allow the BOA to talk amongst themselves. Chairman Fritz noted at 11:10 late hour, no final decision would be made. Motion made to continue hearing for 1 week. To meet on 24th October 2016 at town hall for continuation. Motion made to adjourn, seconded and unanimously approved.

Respectfully Submitted – 21 October 2016

Constance Lacasse – Clerk

Edited per BOA Review on 01/16/17. approved minutes on January 16,2017.

Constance Lacasse, Clerk

Submitted 01/17/17