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**TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT
NOVEMBER 2, 2016**

DRAFT

MEMBERS PRESENT: Frank Tenney, Chair; Jonathan Fisher, Matt Zucker, Andrew Swayze, Stuart Bennett.

ADMINISTRATION: Daryl Benoit, Town Planner / Zoning Board Staff.

OTHERS PRESENT: Bonnie Hislip, John Hislip, Chris VonTrapp, Courtney Roman, Todd Roman, Scott Hardy, Lila Sunderland, Tena Flood, Tory Arnett, Michael Lazar, Tom McAuliffe, Ted Fisher, Tim Hunt, Bonnie Sogoloff, and others.

Minutes subject to correction by the Charlotte Zoning Board of Adjustment. Changes, if any, will be recorded in the minutes at the next meeting of the Board.

SITE VISITS:

6:30 PM 16-133-CU – 783 Mt. Philo Road, Charlotte, VT – sound test

AGENDA:

- CONTINUATION: ZBA 16-133-CU: Conditional Use/Adaptive Reuse Review for Courtney Roman (representative for Scott Hardy) to reuse the historic barn at 783 Mt. Philo Road for weddings and other events, which would total no more than 60 events per year, and no more than 2 events in a one-week period from May-October. The property is located in the Rural District.

CALL TO ORDER

Mr. Tenney, Chair, called the meeting to order at 7:00 p.m.

CONTINUATION: ZBA 16-133-CU: Conditional Use/Adaptive Reuse Review for Courtney Roman (representative for Scott Hardy) to reuse the historic barn at 783 Mt. Philo Road for weddings and other events, which would total no more than 60 events per year, and no more than 2 events in a one-week period from May-October. The property is located in the Rural District.

Courtney Roman, authorized agent, appeared on behalf of the application.

STAFF NOTES

Mr. Tenney, Chair, reviewed staff notes.

Mr. Fisher reported that a site visit was done for a sound test. Four ZBA members were present: Andrew Swayze, Jonathan Fisher, Frank Tenney, and Stuart Bennett. The sound test was conducted by Top Hat Entertainment. There is a question regarding decibel levels recorded. It is noted that the test was done during high winds and rain, said Mr. Fisher.

Mr. Tenney said that the applicant did a sound test and asked if there is any evidence to submit regarding the test report. Ms. Roman submitted a copy of a sound test report.

48

49 Mr. Tenney explained an oath process for taking testimony. People who were sworn in at
50 the October 12, 2016 ZBA meeting did not need to retake an oath, said Mr. Tenney.

51

52 The following persons were sworn in:

53 Chris VonTrapp, Tena Flood, Tory Arnett, Bonnie Hislip, John Hislip, Tom McAuliffe,
54 Michael Lazar, Tim Hunt, Ted Fisher, Bonnie Susan Sogoloff.

55

56 APPLICANT COMMENTS

57 Ms. Roman explained that primary issues identified have been traffic, noise and
58 neighborhood impacts. A sound test was conducted, said Ms. Roman.

59

60 **EXHIBIT A – the ZBA reviewed and accepted a sound test report conducted by** 61 **Top Hat Entertainment, marked as Exhibit A.**

62

63 Ms. Roman said that state traffic study indicates an 85 percentile rate of 1,500 cars per
64 week for Mt Philo Road. Regarding the number of cars parking at the venue it is
65 estimated at 80 cars per event maximum. A summer seasonal event would increase traffic
66 by 0.05 percent per week, or 0.02 percent increase yearly. Based on the 1,500 per week
67 trips there could be a 0.06 percent yearly increase in traffic, said Ms. Roman. Mr. Benoit
68 clarified that the annual average daily traffic is 1,500 car trips per day on Mt Philo Road.

69

70 Ms. Roman said she would update the traffic report numbers and e-mail a revised traffic
71 impact report to Mr. Benoit the following day.

72

73 Ms. Roman said that Michael Dutch, Top Hat Entertainment, and Derrick Bean, a state
74 Section 8 employee, have said that the dB number percentage would be lowered with a
75 fully insulated building. The dB numbers for the sound test were done in a barn that is not
76 insulated, and has no doors or windows, said Ms. Roman.

77

78 ZBA QUESTIONS/COMMENTS

79 Mr. Swayze asked if the dB numbers would be at percent lower if the barn was
80 renovated. Ms. Roman replied that if the barn was fully insulated with batting, draperies,
81 tables, and table clothes the dB level would be 35 percent lower.

82

83 Mr. Bennett asked if the sound test was done in the un-insulated barn for the purposes of
84 this hearing. Ms. Roman said yes. The barn would not be insulated the first year of
85 operation, said Ms. Roman.

86

87 Mr. Fisher asked if the estimated 15 percent and 35 percent reduced dB levels assumed
88 the doors and windows to be shut. At the site visit the barn doors were open, said Mr.

89 Fisher. Ms. Roman explained yes; the big barn doors were open. The barn windows are
90 gone, said Ms. Roman.

91

92 Mr. Fisher asked what the term ‘street level’ meant. Is that directly in front of the barn,
93 asked Mr. Fisher. Ms. Roman replied that means from a distance, in this case, at Lila and
94 Chance’s driveway across the street.

95

96 Mr. Fisher asked what the dB levels were at the Lazar property. Mr. Hardy said he was
97 up closer to the Lazar house during the sound test.

98

99 Mr. Bennett asked if the music could be heard at the next house to the south. Mr. Tenney
100 said that the home owner said he was unable to detect the music. Does that mean the
101 noise couldn’t be heard, or was too low for an impact, asked Mr. Tenney. (?) said that
102 meant that he couldn’t hear the music.

103

104 Mr. Bennett suggested that if the neighbors wanted to they could run their own sound
105 tests.

106

107 PUBLIC COMMENTS

108 Mr. Lazar asked if the barn would be closed and air conditioned, or open in the summer.

109 Mr. Tenney said that the applicant has said that the events would be in a closed barn.

110

111 Ms. Roman reiterated that a sound test was done with the doors and windows open to get
112 the dB levels.

113

114 Mr. Bennett asked if the plan is to add a porch to the back of the barn. Ms. Roman said
115 that a porch is a ‘down the road’ option. The first three years the events will be held
116 inside the barn, said Ms. Roman.

117

118 Mr. Lazar asked if the applicant was proposing weddings without air conditioning and
119 with the doors and windows closed in the summer – during 95 degree heat. Mr. Bennett
120 said that he could not image not having some kind of air conditioning. Ms. Roman
121 explained that is why we did a sound test with the doors and windows open. The Hay
122 chutes would be open, there will be ceiling fans, and an air circulation system. The barn
123 will have climate control without full air conditioning, said Ms. Roman.

124

125 Mr. Bennett asked if the applicant is saying that the barn would be closed. Ms. Roman
126 said the barn would be partially open, and the big doors closed. The two “hay chutes”
127 would be open and are proposed as either windows or sliders with screens. The hay
128 chutes would act as ventilation, clarified Ms. Roman.

129

130 Ms. Arnett, neighbor, asked if the sound test at the recorded dB levels took into account
131 the amount of noise people make at an event in addition to the music. Ms. Roman replied
132 no. The sound test was done in an empty barn and 20+ people there.

133

134 (?), said he was a professional sound engineer, and noise becomes impossible with 150
135 people in a closed barn. It wouldn’t be functional.

136

137 Mr. Bennett asked if there would be an elevation in dB levels in a closed barn versus an
138 open barn. Ms. Roman said she would get those numbers.

139
140 (?) asked if the ZBA knew about a proposed deck. Mr. Tenney explained that a deck was
141 not being proposed at this time. If a deck is proposed at a future time then the applicant
142 would need to return before the ZBA again, said Mr. Tenney.

143
144 Ms. Hislip said that if the barn doors were closed during an event and it became hot, then
145 someone would be able to open the doors whether it was allowed or not. Mt. Tenney said
146 the ZBA can put conditions that during an event the doors must be closed. If the doors
147 were opened and it is reported then is an enforcement issue, said Mr. Tenney.

148
149 (?) asked if the sound test conditions were done with the doors and windows closed. Ms.
150 Roman said that with the big doors open. There are no windows in the barn. We were
151 trying to present a 'worse case scenario', said Ms. Roman. Mr. Tenney pointed out that it
152 was very windy and rainy during the test.

153
154 In response to a question regarding added ambient noise produced during an event in
155 addition to loud music, and that a sound test was conducted during a rain storm, Mr.
156 Tenney explained that a neighbor said he couldn't hear the music at all and that he was in
157 his car at his house. At that distance there were 50 dBs and the neighbor couldn't hear the
158 music. A question is would the music be heard under 50 dBs, asked Mr. Tenney.

159
160 Mr. Bennett said that the 70 dBs noted in the Town ordinance is not cast in stone. Mr.
161 Bennett read ordinance language into the record that "...or which otherwise represents
162 significant increases in noise level in the vicinity of the use, and is incompatible with the
163 surrounding area." He had wondered what the dB levels would sound like on a calm night
164 versus in the pouring rain, said Mr. Bennett.

165
166 Ms. Flood stated that she can hear the concerts held at the Shelburne Museum. Charlotte
167 has already approved a 125 person venue for 12 months per year located less than one-
168 half mile away. A question is how many of these event venues can be approved in Town.
169 Has the ZBA looked at these projects in relation to the Town Plan, asked Ms. Flood. Mr.
170 Tenney explained that the ZBA reviews each individual project on its own merits. Mr.
171 Zucker added that the ZBA reviews individual cases. The Planning Commission reviews
172 how something fits in to the overall character of the neighborhood, explained Mr. Zucker.

173
174 Mr. Bennett asked for clarification of what can be heard from the Shelburne Museum.
175 Ms. Arnett said that sound travels. She can hear kids in the neighborhood talking on calm
176 summer night, horses neighing, dogs, and cars, said Ms. Arnett.

177
178 There was discussion related to the Leberge shooting range noise, which the neighboring
179 property owners say is a given activity when they moved into the area, and hunting
180 during deer season; and adjacent neighbors concerns that music from an event venue
181 would be allowed in the area. Mr. Tenney said that he didn't disagree there wouldn't be
182 noise similar to the event venues near Route 7. There is a state highway, Route 7, and that

183 Mt Philo Road is different related to the density of the neighborhood. There aren't tractor
184 trailers on this road like there are on Route 7, said Mr. Tenney.

185
186 Ms. Sogoloff, Cedar Spring Morgan Horse Farm owner, explained that the horses at her
187 farm are sensitive and flighty show horses. She trains the horses and they would be hard
188 to deal with if they became spooky with the noise. That just makes her job harder, and
189 impacts the horses' health and welfare. She pastures babies out by the road near the
190 subject property. She is afraid that the young stock will get to running and that is a
191 serious concern for her. Noise levels that affects a human is exasperated for a horse,
192 stated Ms. Sogoloff.

193
194 Mr. Swayze reviewed the ordinance for an adaptive reuse. One piece in the Town
195 regulations is a list of uses that may be allowed in historic structures, said Mr. Swayze.
196 Ms. Roman said that she felt that while a wedding venue is not listed, it can be
197 extrapolated that is like a restaurant/bar, or community space. In terms of traffic, there
198 would be less traffic then for a restaurant/bar. For example, the last paragraph on the
199 application sheet outlines that the events would operate May – October and no more than
200 7 hours average per event. The barn would be dark and empty otherwise. The use comes
201 to only 140 hours in a year, said Ms. Roman. Mr. Swayze said that he sees the point.

202
203 Ms. Hislip pointed out that she is home when she is not working. The weekends are her
204 quiet time. Traffic and speeds on Mt Philo Road is an issue. She is the first house north of
205 the barn, and is only 2/10's of a mile away. She would be most affected by the traffic.
206 This road is dangerous. Her son was riding a bike and was hit by a truck speeding 50
207 mph. Her driveway is used as a turn around all the time, stated Ms. Hislip.

208
209 Mr. Benoit clarified that the average week day traffic is 2,000 cars per week day in the
210 summer. A weekend has a little less traffic. The 85 percentile speed conveys that 85
211 percent of traffic speeds 59 mph on that road, said Mr. Benoit.

212
213 Mr. Tenney said the Zoning Administrator (ZA) is the enforcement officer for the Town.
214 Anyone can report violations to the ZA, said Mr. Tenney

215
216 In response to a question regarding a list of allowed uses in the bylaws, Mr. Tenney said
217 that performance space is included, and number 16 is a combination of the allowed uses.
218 The ZBA issues decisions and conditions. The ZBA can condition approvals that the
219 doors must be closed at all times, or a condition for no more than 500 people per event. If
220 there are violations of the ZBA decisions, or conditions, then complaints should be
221 reported to the ZA, who could issue a violation. The ZBA doesn't write the Zoning
222 Bylaws, only interprets and applies them to the applications, Mr. Tenney explained.

223
224 There was further discussion regarding the character of the neighborhood, what is
225 allowed in the ordinances regarding noise and dB levels and at what distances; neighbors
226 concerns related to the rural and agricultural area and impacts; allowing a parking lot to
227 be built in an agricultural use area that is inconsistent with the area; and adaptive reuse of
228 historic structures and bylaws to preserve those historic structures.

229

230 Mr. Zucker said that at the first hearing there was no discussion regarding agricultural
231 uses on the property. The applicant's intent is to keep the structure as a barn and has
232 stated that the appeal of the property is to keep the nature of the neighborhood because
233 that is what a bride wants, said Mr. Zucker.

234

235 The ZBA took testimony from the public audience related to all the neighbors being in
236 opposition to the proposal, and impacts to the property values of the expensive houses
237 located along Mt Philo Road. Mr. Zucker asked if that was saying that property values
238 would be maintained by keeping it as a barn.

239

240 Mr. Hunt suggested that regarding the neighbors feelings, the applicant could further
241 evaluate traffic and sound studies to better label the impacts to remove the emotional
242 responses. Additional expert studies would be more objective and would gather better
243 data, said Mr. Hunt.

244

245 Mr. Bennett questioned the expertise of the persons that the applicant contracted to do the
246 sound study. The applicant could have a professional sound test and report done, said Mr.
247 Bennett. Mr. Swayze said that there are no specific guidance in the regulations saying
248 that a sound test needed to be done on calm, non-windy day at x distance and that dBs
249 should be x, said Mr. Swayze. Mr. Hunt explained that there is a standard dB level at the
250 property line. Mr. Swayze said that at the subject property the property line is very close.

251

252 There was discussion regarding a specific distance to test for dB levels. Mr. Tenney said
253 that the ordinance addresses 70 dBs levels. A question is what is a significant increase in
254 noise levels in the vicinity, said Mr. Tenney.

255

256 In response to an audience member's suggestion to having multiple sound tests done, Mr.
257 Zucker replied that it is up to the applicant to have a professional engineer study done for
258 the ZBA to consider. Mr. Bennett agreed that a sound test by recognized experts would
259 be better, or the ZBA could go with the study done. It is up to the applicant. The Top Hat
260 sound test doesn't tell him a lot. He was there during the sound test, said Mr. Bennett.

261

262 Mr. Bennett said that for the ZBA to accept additional information the ZBA would need
263 to know that third party evidence was coming in order to keep the application hearing
264 open. A question is what is the dB level beyond the 70 dBs that is an impact on
265 neighbors, asked Mr. Bennett.

266

267 Ms. Flood asked if traffic volume data provided from the Shelburne Police Department
268 would be sufficient. Mr. Tenney explained that a traffic study included more than volume
269 numbers. The traffic volume shifts on Mt Philo Road daily, said Mr. Tenney.

270

271 Mr. Zucker read the zoning bylaws related to traffic impact assessments, which does not
272 talk about motorist's behavior. Letters from neighbors expressing opinions on the project
273 were considered testimony, said Mr. Zucker.

274

275 Mr. Swayze made a motion to close the hearing was not seconded. Following further
276 discussion the ZBA continued the hearing.

277

278 **MOTION by , seconded by , to continue the hearing regarding ZBA 16-133-CU:**
279 **Conditional Use/Adaptive Reuse Review request by Courtney Roman**
280 **(representative for Scott Hardy) to reuse the historic barn at 783 Mt. Philo Road for**
281 **weddings and other events, which would total no more than 60 events per year, and**
282 **no more than 2 events in a one-week period from May-October, to Wednesday,**
283 **November 16, 2016 at 7:00 p.m.**

284 **VOTE: 5 ayes; motion carried.**

285

286 **ADJOURNMENT and DELIBERATIVE SESSION**

287 **MOTION by , seconded by , to adjourn the meeting and enter Deliberative**
288 **Session.**

289 **VOTE:**

290

291 The ZBA meeting was adjourned and the Board entered Deliberative Session at p.m.

292

293 Minutes respectfully submitted, Kathlyn Furr, Recording Secretary.

294