

TOWN OF CHARLOTTE
ZONING BOARD OF ADJUSTMENT

In Re: Appeal by Adrian & Alison Wolverton

ZBA 15-09

I. Introduction and Issues Presented

This matter came before the Zoning Board of Adjustment, on November 4, 2015, by the appeal of Adrian & Alison Wolverton (Appellants). The Appellants seek to appeal the decision of the Charlotte Zoning Administrator that the renovations of an existing kitchen at 3260 Greenbush Road (The Old Lantern) to allow for on-site meal preparation, rather than preparation of meals by caterers, does not constitute an alteration of the pre-existing nonconforming use of the event facility.

II. Hearing Participants

The following people participated in the hearing: Liam Murphy, Michael Harris, Lisa Gaujac, Roland Gaujac, Gation Gaujac, Richard Weed, Carrie Fenn, Peter Fenn, Jim Dickerson, Alison Wolverton, Adrian Wolverton, Justin Wygman, Rowan Beck, Nancy Wood, Adam Spell, Jill Spell, Michael Frost, Jill Lowery, Ed Merritt, Patricia Coyle, Dorothy Hill, and Monica Marshall.

III. Exhibits

During the course of the hearing, testimony was taken from the hearing participants listed above, and the following exhibits were entered into the record:

- Exhibit A- A Memo submitted by Maura O’Dea & Justin Wygmans, dated November 3, 2015
- Exhibit B- Comments submitted by Michael & Karen Frost, dated November 4, 2015.
- Exhibit C- Comments submitted by Josh Flore, dated November 4, 2015
- Exhibit D- Comments submitted by Michael Yantachka, dated November 3, 2015
- Exhibit E- Comments submitted by Elizabeth Clark, dated November 4, 2015
- Exhibit F- Comments submitted by Tracie Cassarino, dated November 4, 2015
- Exhibit G- Comments submitted by Steve & Amadee Denton, dated November 3, 2015
- Exhibit H- A compilation of emails containing historic event dates/ support comments, dated November 4, 2015, submitted by Lisa Gaujac.
- Exhibit I- a 1994 aerial photograph of the Old Lantern and Campground, submitted November 4, 2015, by Liam Murphy, Esq.
- Exhibit J- State permitting documentation and Old Lantern website information (labeled exhibit 1-9), submitted November 4, 2015, by Michael Harris, Esq.

IV. Findings of Fact

1. The property in respect to which this appeal is located at 3260 Greenbush Road and is owned by Lisa & Roland Gaujac.
2. The property is located in the West Charlotte Village District.
3. The Old Lantern Barn operates as a commercial event facility under a pre-existing nonconforming use status.
4. On September 11, 2015, the Charlotte Zoning Administrator issued a formal opinion regarding the alleged alteration in the use of the Old Lantern Barn: The Zoning Administrator determined that the renovations to the existing kitchen to enable more extensive preparation of food on-site, in addition to provision of pre-made food by caterers, did not constitute an alteration or expansion of the Old Lantern Barn's pre-existing nonconforming use.
5. The Zoning Administrator based her opinion on information provided by the Vermont Department of Health and from State Wastewater Regulation requirements:
 - The Department of Health confirmed that the Old Lantern facility historically had a full service kitchen, even though generally many events had been catered.
 - The Town's technical wastewater consultant, Brian Tremback, confirmed that there is no difference, in terms of wastewater permitting, between a facility for caterers or a full-service kitchen.
6. As per Section 3.8 of the Charlotte Land Use Regulations, a nonconforming use may be continued indefinitely subject to the following limitations:
 - a. *May not be moved or altered except with the approval of the Board of Adjustment in association with conditional use review under Section 5.4;*
 - b. *Shall not be changed to another nonconforming use without approval under conditional use review under Section 5.4, and a determination by the Board of Adjustment that the proposed nonconforming use is of the same or a more restricted nature as the existing nonconforming use;*
 - c. *Shall not be re-established if such use has been changed to, or replaced by, a conforming use, or if such use has been discontinued for a period of six (6) months, regardless of the intent to resume the prior use;*
 - d. *Shall not be reestablished following abandonment or discontinuance resulting from structural damage from any cause, unless the nonconforming use is carried on uninterrupted in the undamaged part of the structure, or the use is reinstated within one (1) year of such damage. The Board of Adjustment may, on appeal, grant a one*

(1) year extension to reestablish the nonconforming use for situations it determines are beyond the applicant's control.

7. On September 24, 2015, Collins McMahon & Harris, PLLC, as counsel for the Appellants, filed a Notice of Appeal with the Charlotte Planning and Zoning Office.
8. The Appellants' Appeal Notice contends that the Zoning Administrator erred in her determination that the kitchen renovations for on-site food preparation were not an alteration of the existing nonconforming use. In the Notice of Appeal, the Appellants note a significant difference in the presence of smoke and odors emanating from the Old Lantern, where none had existed previously when events had been catered. The Appellants cite the additional odors as evidence of an alteration in use.
9. As part of their Appeal Notice, the Appellants contend that the Old Lantern is now operating as a "restaurant," as defined under the Charlotte Land Use Regulations. (As per Section 3.8 (A) (2), a change in use from an event facility to a restaurant would require Conditional Use approval under Section 5.4.)
10. In the Notice of Appeal, the Appellants additionally assert that the Old Lantern had ceased operation for more than six (6) months, thus losing its nonconforming status.
11. At the Zoning Board hearing held on November 4, 2015, the Gaujacs testified that the kitchen upgrades included replacing the old stove with a new stove of the same size, adding a deeper sink with a trap, and an industrial duct vent system for kitchen use. The renovations took place in 2009, and were required by the Department of Health to obtain licensing.
12. Mr. Dickerson, a former owner of the Old Lantern, testified that he used the kitchen in a full service capacity to serve french fries and hamburgers to 200-300 people who came out to his auction sales. Mr. Dickerson noted that he witnessed the kitchen being used in both a full-service and catered capacity throughout out the history of the facility.

V. Discussion

Procedural Review. As established by Section 9.6 in the Charlotte Land Use Regulations, Title 24 VSA §4466, and Title 24 VSA§4465, the Appellant has met all three of the procedural appeal conditions. The Appellants filed the appeal within the allotted 15 days of the Zoning Administrator's decision. The Zoning Administrator's determination was sent via email on September 11, 2015, and the Appellant filed their appeal on September 24, 2015. The Zoning Board finds that the Appellant meets the definition of an interested person (as defined by 24 VSA § 4465(b) (3), and that the

Appellant has submitted a complete Notice of Appeal (as defined by Section 9.6 (A) (1) and 24 VSA § 4466).

Substantive Review. Having found the procedural requirements were met by the Appellant, the Zoning Board shall determine if the Zoning Administrator properly followed the applicable regulations when rendering her decision.

Section 3.8 Nonconforming Use

1. The Appellants assert that the kitchen renovations that occurred in 2009 constitute an “alteration” of use under Section 3.8 (A) (1). As per Section 3.8 (A) (1), a nonconforming use may be continued indefinitely, but may not be “moved or *altered*” (emphasis added), without approval by the Zoning Board of Adjustment in association with conditional use approval.
 - The Zoning Board does not believe the kitchen renovations constitute an “alteration” under Section 3.8 (A)(1). Additionally, the Department of Health confirmed that Old Lantern historically had a full-service kitchen. The Zoning Board understands that the Gaujacs completed kitchen renovation in 2009 to obtain licensing, but notes that commercial kitchen requirements change, which does not necessarily reflect an “alteration” in the Old Lantern’s use. The State often mandates equipment upgrades so that facilities can remain compliant with evolving safety and health standards.
2. The Appellants assert that the Old Lantern is now operating as a “restaurant” as defined in Chapter X of the Charlotte Land Use Regulations. As per Section 3.8 (A) (2), a nonconforming use may not be changed to another use without conditional use approval.
 - Under Chapter X, a “restaurant” is defined as an establishment of which the *primary* function (*emphasis added*) is to serve food and beverages to the public for consumption primarily at tables or counters on the premises. Testimony provided by the Gaujacs indicated that food and drinks are only served in combination with an event and are not served to members of the public when events are not occurring. The Zoning Board does not believe the Old Lantern meets the complete definition of a restaurant, as its primary function is to host events. (The Zoning Board would like to note that Charlotte Land Use Regulations do not provide a definition for an “event facility”.)
3. The Appellants assert that the Old Lantern ceased operation for more than six months prior to and after its sale to Gaujacs in 2006. As per Section (A) (3), a pre-existing nonconforming use may

not be reestablished if such use has been changed to, or replaced by, a conforming use, or if such use has been discontinued for a period of six (6) months. The Zoning Board received testimony from the Gaujac and prior owners of the Old Lantern that the property was sold with confirmed event reservations during the transition of ownership. The Gaujacs noted that while fewer events occurred when they initially purchased the property, there was never a complete stop of events for a period greater than six months. The Appellants did not refute this testimony.

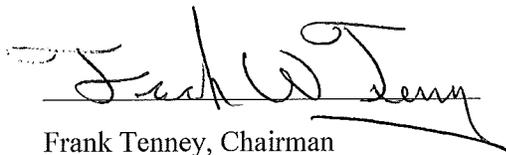
Additionally, the Zoning Board would like to note that the issues of sounds, frequency events, and alleged unpermitted physical improvements to the Old Lantern that were discussed in written submissions and during the hearing were not included in the Zoning Administrator's Opinion, and are outside of the scope of this appeal.

VI. Decision

For the reasons discussed above, the Zoning Board of Adjustment **upholds** the Zoning Administrator's determination that the renovations to the existing kitchen for on-site meal preparation, rather than preparation of meals by caterers, does not constitute an alteration of the pre-existing nonconforming use of the Old Lantern.

Vote: 4 in favor, 0 opposed,

Dated at Charlotte, Vermont, this 4th day of December, 2015.



Frank Tenney, Chairman

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.