

**Development Review Board Minutes  
Town Office New Haven, Vermont  
August 5, 2019**

Members Present: Paul Audy, Kathy Barrett, Carol Charbonneau, Tom Fyles, Donald Johnston, Susan Smiley

Members Absent: Charlie Roy

Staff: Aaron Brown, Zoning Administrator

Guests: Paul Bolduc, Rita Booska, Steven Dellefratte, Steven Delphia, Roger Hamilton, Lonie Parker (representing Porky's Barbecue), and John Van Hosen

Kathy Barrett, Chair called the Development Review Board (DRB) meeting to order at 7:00 PM.

**Adjustments to the agenda** - none

**Visitors Business** – none

**Introduction of Zoning Administrator/Town Administrator – Aaron Brown**

Kathy Barrett introduced Aaron Brown, who said he is excited to be working for the Town of New Haven, where he is also a resident.

**Public Hearings** – none

**DRB Business**

**1. Informational discussion of Conditions from 2019-DRB-02 Conditional Use Approval for Porky's Barbecue**

Brown provided an overview of complaints he's received regarding Porky's. The day he started, July 9, he had a note saying Rita Booska was concerned about lighting running past hours at Porky's. He checked the lighting twice the following week and confirmed lights were turned off by the required 9:00 PM condition. Noise complaints followed activities held the weekend of July 20. Brown made Lonie Parker aware of the complaints, and Parker asked to have a meeting to discuss areas of disagreement concerning the DRB decision of April 15. While the appeal period had passed, Brown thought it was fair to afford Parker the opportunity to meet with the board.

Brown checked the noise levels at the northerly boundary and the Booska residence using an iPhone app called dBmeter. It indicated that Porky's exceed the allowed 70 dB established by the noise standards: 79 dB at the Booska property and low 80s at the northerly boundary.

However, Brown and Lonie Parker both expressed doubts about the accuracy of the iPhone app. Parker said he purchased a decibel reader and he's always found his property to comply. Booska said the drums were louder after Brown left her property. John Van Hosen asked if a measurement was done at the easterly boundary. Brown responded no. He thought the northerly boundary reading established enough concern about the noise.

Kathy Barrett asked what time Brown visited. He responded approximately 9:30.

Barrett asked Parker to explain questions or concerns he has regarding his permit. Parker said he wonders about the enclosure of the building. His understanding is that he was to enclose the western side and “wrap around” the northerly and southerly sides. He said the decision calls for the north and south to be enclosed. Barrett said Parker planned to enclose the northerly and southerly sides.

Barrett asked Parker if he thought the decision was incorrect. Parker said he didn’t read the decision after it was filed. Barrett replied that he received a copy by certified mail. Parker again said he didn’t read it, and Barrett responded that a 30-day appeal period was available to him. Parker reiterated he thought the decision mischaracterized his plans. He never wanted the westerly side open. Hamilton asked why the board would have allowed the westerly side to be open. Brown clarified that the decision says the easterly and westerly sides would have the “ability to be enclosed.”

Parker said he presented a plan to enclose the westerly wall and wrap siding around the northerly and southerly sides. Tom Fyles asked what it means to wrap around and whether Parker enclosed the north and south ends. Parker said not completely. They are partially enclosed.

Don Johnston asked if Parker could temporarily enclose the east side. Parker said he doesn’t have any curtain or pull-down installed, but he has the ability to install one. Johnston asked if the board has the ability to change the enclosure conditions.

Parker reiterated that phone decibel readers are not accurate. They can be too high or too low compared to more professional equipment. Johnston asked if the town owns a decibel meter, and Barrett responded no. Parker said he walks the property every day when a sound check is needed, and his decibel reader has not indicated a violation. Fyles suggested that the Town might hire an independent engineer for a sound study. Members agreed that had been done before, and Barrett added that it’s at the applicant’s expense. Susan Smiley said the board might want to do something in the interim. Carol Charbonneau asked if this would be a one-time reading or done over several times. Barrett responded that a reading could occur over several hours on multiple boundary lines.

Booska said the bands shouldn’t play as loudly. A discussion about the use of a phone app continued. Johnston said a phone is not the same as a decibel meter. Hamilton said a truck going by could exceed the decibel limit. Brown turned on the app he used to check the sound at Porky’s, and the conversation in the room exceeded the performance standards.

Booska asked when the Town would require Porky’s to fix its lighting (i.e., comply with the downshielded lighting requirement). Barrett asked the group to focus on the noise and asked Brown to investigate costs for a third-party evaluation. Hamilton asked if the town might instead buy a decibel meter and have Brown measure the sound. The board mentioned two previous sound readings related to Pike and Phoenix Feeds. Parker expressed concerns about the cost of hiring an engineer, particularly if one or two neighbors keep complaining after a sound hearing finds no problems. Hamilton said there has to be a point when the issue is considered final.

Johnston said the performance standards must be met, even years later.

John Van Hoesen addressed several items. He said the Zoning Administrator should be trusted to use sound testing equipment. He added that the meeting tonight seems intended to memorialize a problem. Van Hoesen said Parker, in his April 2019 testimony, said he would direct noise to the east, and he, Van Hoesen, is now

experiencing that noise. He played a recording he claimed he made from his dining room over a mile from Porky's. He said a business should not have that level of impact on neighbors.

Steven Dellefratte said New Haven needs growth. He said he lives less than a quarter mile from Porky's and truck traffic on Route 7 is louder.

Booska complained that a tractor trailer truck parked at Porky's overnight. Parker responded that he gave permission to the driver to stay there overnight because he had reached the limits on the hours he was allowed to drive. After some discussion, Barrett suggested that in future incidents like this one, Parker request the trucks park near the pavilion.

Fyles asked if an engineering certifies the noise whether the that engineer could advise on a meter the Town could buy for its own use.

Smiley responded that variables such as wind velocity would complicate testing by town staff. Johnston said that's why an independent professional would be helpful.

After some discussion of how neighbors in this vicinity have talked with one another about problems, Van Hoesen said the town has regulations for a reason and the board should uphold its decisions. Parker responded he's bought his own decibel reader and checked levels at every show. He said he is not sure why the Town should hire an engineer to ensure compliance when the Town has a Zoning Administrator. Johnston said the Zoning Administrator is not a sound engineer.

Paul Audy added that it doesn't matter if a band or another entity violates the performance standards. It's just whether 70 decibels are exceeded.

Van Hoesen added that hard alcohol is being served at the pavilion. Parker said at the time of the April hearing, he had a license for just beer and wine. He has since gotten a liquor license. Brown said he thought Porky's has some sort of approval for liquor – perhaps a catering license – which would require state and town clerk approval.

Hamilton asked if state approval supersedes any town restriction. Fyles and Barrett said no.

Fyles asked if the board should make a motion about the noise. Brown asked whether he would just seek out engineering estimates or do a proper solicitation. Barrett said to get estimates. Barrett motioned that Brown contact sound engineers to get at least rough price estimates. Don seconded. He reiterated that the motion is to get an estimate.

Yes – 6

No – 0

Absent – 1

Charbonneau added that if the board is going to check on the compliance of Porky's, it will need to discuss other businesses in town and not single out one. Fyles said that the Town's enforcement is complaint driven.

Barrett asked the group to move onto the issue of lighting. Parker said they are shutting off lights at closing, as required. Barrett asked when Parker could replace the existing lights with downshielded lights. Parker agreed he could have the lights changed by October 1.

Fyles read the lighting conditions from the April 15 decision. Booska says the lights from Porky's emit into her house. Barrett said she thought Parker would replace the front lighting on the restaurant at the same time he had an electrician wire the pavilion. Parker said the pavilion currently has temporary lighting – string lights that receive power from the main building via an extension cord.

Van Hoesen said lights in the back of the building have not been downshielded. The group discussed the conditions and agreed to keep an October 1 deadline for compliance.

Van Hoesen then said the DRB required removing the portable toilets after events. Parker said he has not been doing so due to cost. Barrett said the condition is to remove the toilets the first business day after an event. She added that Parker has not built the required parking lot. Parker said he hasn't needed additional parking.

## **2. Minutes of July 8, 2019**

- a. Smiley made the motion to approve the DRB minutes of July 8, 2019 as presented.
- b. Fyles seconded
- c. Discussion – Audy said he was present but isn't listed as such.
- d. Vote: Yes – 5 (Audy, Barrett, Charonneau Fyles, Smiley)
  - i. No – 0
  - ii. Abstention – 1 (Johnston)
- e. Motion carries

## **3. Review decision and/or sign final plats – none**

**4. Correspondence** – Brown said an application for a two-lot subdivision on East Street might come in soon. Johnston said he is also working on either a boundary line adjustment, subdivision, or both for the Farnsworth property on North Street. He asked if the board had decided what the charge would be. Barrett said it's been difficult to write one decision when it involves both a boundary line adjustment and subdivision. It's sometimes easier to separate the two issues. She said it's better done as two separate applications. Johnston said this situation is different because a boundary line adjustment isn't needed to subdivide.

## **5. Old Business – none**

## **6. New Business**

Charbonneau advised that future meetings not have members of the public seated with the board. Brown apologized that he didn't arrange the room in the customary manner.

Charbonneau made the motion to adjourn

Fyles seconded

Discussion – none

Vote: Yes 6 (Audy, Barrett, Charbonneau, Fyles, Johnston, Smiley)

No -0

Abstention – 0

Motion carries and the meeting was adjourned at 8:30 PM

Respectfully Submitted By  
Aaron Brown

Kathy Barrett, Chair

Tom Fyles, Vice Chair

Donald Johnston, Clerk

Paul Audy

Carol Charbonneau

Susan Smiley