

**HARWINTON ZONING COMMISSION**  
**TUESDAY, OCTOBER 9, 2018**  
**TOWN HALL 7:00 P.M.**

Present: Chairwoman Michelle Rewenko, Cynthia Kasey, Daniel Thurston (arriving at 7:20 p.m.), Matthew Szydlo, Deborah Kovall, Alternate Member Nancy Schnyer (arriving at 7:05 p.m.) and Land Use Coordinator Polly Redmond  
Absent: Alternate Member Don Truskauskas and Alternate Member Theodore Root

**PLEDGE OF ALLEGIANCE**

**1. OPEN MEETING – ESTABLISH QUORUM.**

Chairwoman Rewenko called the meeting to order at 7:00 p.m. All regular members present are seated.

**2. APPROVE MINUTES OF PREVIOUS MEETING: 9/24/18**

D. Kovall **motioned** to approve the minutes of the previous meeting, seconded by M. Szydlo. Motion passed unanimously.

Alternate Member N. Schnyer arrives at 7:05 p.m.

**3. PUBLIC COMMENT.**

None.

**4. DISCUSSION/POSSIBLE DECISION - THE EDISON GRILL, LLC, 178/182 BIRGE PARK ROAD – APPLICATION TO MODIFY A SPECIAL PERMIT GRANTED BY THE ZONING COMMISSION ON APRIL 8, 2013 AND SPECIFICALLY CONDITION (3) IN ORDER TO ALLOW FOR LIVE ENTERTAINMENT.**

Public Hearing closed 8/13/18. 65<sup>th</sup> day to make a decision without extensions: 10/16/18.

At the request of the applicant, Item 4 will be taken up after Items 5 and 6. C. Kasey **motioned** to amend the agenda to take up Item 5 and 6 at this time, seconded by M. Szydlo. Motion passed unanimously.

**5. DISCUSSION/POSSIBLE DECISION – BUMPER BROOK ESTATES, LLC – PETITION TO AMEND ZONING REGULATIONS, DATED 11/20/17, SECTION 2.3 DEFINITION OF ELDERLY HOUSING AND SECTION 9.9 ELDERLY HOUSING.**

Public Hearing closed 9/24/18. 65<sup>th</sup> day to make a decision without extensions: 11/27/18.

D. Thurston states for the record that he has listened to the recording of the 9/24/18 Zoning meeting that he did not attend.

Scott Bayne, S&W Custom Home Builders, Bristol, CT is present.

Chairwoman Rewenko acknowledges amendments made to the proposed text as discussed at the last Zoning meeting. She reviews the proposed amendments line by line starting with Section 2.3 Definitions. It is noted that Atty. Michael Rybak mentioned at the 9/24/18 Zoning meeting that in looking over cases and statutes on age-restricted definitions, he believes it is safest to stay with the federal definition that gives you three options, therefore, the three options were added in.

Section 9.9 is reviewed and there are no questions. There are no concerns on Section 9.9.1, 9.9.2 and 9.9.3.

Section 9.9.4 there is question on the proposed maximum coverage ratio to not exceed 35% whereas the Town Residential space requirement chart in Section 5 of the Zoning Regulations show maximum coverage to be 15%.

Section 9.9.5 there is question on why the word “or” has been added in two places within the first sentence.

There are no concerns on Section 9.9.6.

There is concern with Section 9.9.7 not having a timeframe for maintenance of the vegetation and the connection it may be tied to with Zoning Regulation 1.3.3n Maintenance of improvements for Special Permit uses that states maintenance is for a period of ten years from the date of approval.

There are no concerns on Sections 9.9.8 and 9.9.9.

Section 9.9.10 is questioned as to why a. through k. is not listed. At the 8/27/18 Zoning meeting, Atty. William Tracy stated that the changes were made to tidy up the language because of redundancies. There is question on Section 9.9.10 k. that requires utilities to be installed underground when the existing Zoning Regulation 9.9.10 k. has the additional wording “if required by the Zoning Commission.”

There are no questions on Sections 9.9.11, 9.9.12, 9.9.13, 9.9.14.

Section 9.9.15 1. regarding pitched roofs is questioned as to why it is “required” when the original proposed regulation, states pitched roofs were “encouraged.”

Atty. Michael D. Rybak arrives at this time after attending a Board of Selectman’s meeting and the questionable items are again discussed.

Proposed Section 9.9.4 there is question on the proposed maximum coverage ratio to not exceed 35% whereas the Town Residential space requirement chart in Section 5 of the Zoning Regulations show maximum coverage to be 15%. Commissioners determine that the 35% will only be found under Section 9.9 Elderly Housing. All other projects in Town Residential zones will have maximum lot coverage of 15%.

Proposed Section 9.9.5 there is question on why the word “or” has been added in two places within the first sentence. Commissioners determine that the word “or” found in two places should be omitted so that the regulation reads the same as existing Zoning Regulation 9.9.5.

Proposed Section 9.9.7 does not have a timeframe of maintenance of the vegetation and the Commission has concerns that connection may be connected with Zoning Regulation 1.3.3n Maintenance of improvements for Special Permit uses that states maintenance is for a period of ten years from the date of approval. Commissioners determine that the wording is okay the way it has been presented.

Proposed Section 9.9.10 is questioned as to why a. through k. is not listed. At the 8/27/18 Zoning meeting, Atty. William Tracy stated that the changes were made to tidy up the language because of redundancies. There is question on Section 9.9.10 k. that requires utilities to be installed underground when the existing Zoning Regulation 9.9.10 k. states “if required by the Zoning Commission.” Commissioners wish to have existing Zoning Regulation 9.9.10 a. – k. listed in the proposed regulation. Commissioners have not made any additional comments on Proposed Section 9.9.10k. regarding the underground utilities.

Proposed Section 9.9.15.1. is questioned by Atty. Rybak who asks, “what is the meaning of the word encouraged?” where it reads “pitched roofs shall be encouraged.” He states that if they are to be encouraged, why have a regulation on it at all. Commissioners determine that the word should be reverted back to “required” as it states in the current existing regulation found under the Multi-Family zone 4.7.4.f.

M. Szydlo **motioned** to continue discussion to the next Zoning meeting scheduled for October 22, 2018, seconded by D. Thurston. Motion passed unanimously.



**6. DISCUSSION/POSSIBLE DECISION – BUMPER BROOK ESTATES, LLC - PETITION FOR A ZONE CHANGE FROM LIGHT INDUSTRIAL TO A TOWN RESIDENTIAL ZONE, TWENTY-FOUR BUMPER ROAD, ASSESSORS MAP NOS. A8-03-0003, A8-03-0004 AND A8-03-0006.**

Public Hearing closed 9/24/18. 65<sup>th</sup> day to make a decision without extensions: 11/27/18.

C. Kasey **motioned** to continue discussion to the next Zoning meeting scheduled for 10/22/18 as the application for zone change is tied to the petition to amend the Zoning Regulations.

Atty. Michael D. Rybak questions if Bumper Brook Estates has received all the public utility permits with the sewer connection being the important one. Dennis Baerny, WPCA Chairman, is in the audience and reports, as town staff, that Harwinton WPCA has agreed to expand the sewer zone to include the area for the elderly housing project of Bumper Brook Estates. He states he will be asking for a contract stating Bumper Brook Estates will pay for the extended allotment and that contract will be reviewed by Michael Rybak. M. Szydlo questions if that means other residents won't lose the ability to tie-in with D. Baerny stating, yes. Motion is seconded by M. Szydlo and passed unanimously.

Item 4 is taken up at this time.

**DISCUSSION/POSSIBLE DECISION - THE EDISON GRILL, LLC, 178/182 BIRGE PARK ROAD – APPLICATION TO MODIFY A SPECIAL PERMIT GRANTED BY THE ZONING COMMISSION ON APRIL 8, 2013 AND SPECIFICALLY CONDITION (3) IN ORDER TO ALLOW FOR LIVE ENTERTAINMENT.**

Public Hearing closed 8/13/18. 65<sup>th</sup> day to make a decision without extensions: 10/16/18.

Chairwoman Rewenko states that the Commission has received two draft decisions from LUC Redmond with suggested motions and reasons for a decision. These drafts are based on discussions among Commissioners at previous Zoning meetings and correspondence with town attorney Michael D. Rybak. One is for a decision to approve and one is for a partial approval/partial denial. Copies are available to the public in attendance.

Chairwoman Rewenko states she would like to start with the suggested motion and reasons to approve noting that there is a requirement that music will not exceed 55 db. There is also a suggested motion for a partial approval/partial denial that can be discussed. She notes that this is the last Zoning meeting to be held before the 10/16/18 deadline to make a decision.

M. Szydlo asks if there is any way the town can monitor noise levels with Chairwoman Rewenko referring to the partial approval/partial denial and the last bullet point of the motion that reads, "The Zoning Commission also finds it impossible to monitor the noise levels of the live music and/or entertainment as the town does not own a decibel reader and the Enforcement Officer will be unavailable at times of evening entertainment to monitor the noise levels of activities taking place on the property." C. Kasey states that she remembers discussion on requiring measuring of decibels at the property line and that there should be a requirement for a decibel meter to be on site. Chairwoman Rewenko points out #2 in the suggested motion and reason to approve that states the applicant's attorney submitted a letter from Thomas Stansfield, MPH, R.S., Deputy Director of Health, Torrington Area Health District that specified the 55 decibel level. The Commission did mention that the Enforcement Officer would not be able to monitor the noise level. M. Szydlo asks for clarification in that it is his understanding the Commission can require the noise level to be no more than 55 decibels but has no way to enforce it with Chairwoman Rewenko stating, that is correct. He asks if it was verified that the entertainment be music only with C. Kasey replying, yes. Chairwoman Rewenko states that any approval would be for non-amplified acoustical music. D. Thurston states there was some question to State Statutes in how they classify outdoor live entertainment, which is a fairly broad definition of different types of entertainment. He questions whether the Commission can specifically limit it to music?



Atty. Rybak states that the Commission has to make a finding whether live outdoor music is an accessory use for a low-turnover restaurant, which this is, under the Zoning Regulations. He states that music is music and entertainment is a much broader category with all kinds of things. If it is the intent of the Commission to find that music is an accessory use to the restaurant, then it would be limited to music only and needs to be so specified in a condition.

M. Szydlo states that he can definitely see both sides; the restaurant owners' viewpoint and the viewpoint of the people that live in the area. He states he is just trying to think of what would be a compromise and he thinks that if someone wants to complain, or even if someone doesn't complain, compliance must still be met. If there were to be music, this music must be monitored. When the Commission listened to the recording, provided by the applicant, to what was said to be 55 decibels, it wasn't really that loud, however, if there's acoustical music, one of the points is, it can get loud. He states that he doesn't really want to be the one to knock on the door and say "can you be quiet?" That you just don't want to have to do that, you just want to go home, relax, and not have to worry about that. He states that it seems like there's good intent but still, the one looking for leeway should be responsible for the monitoring and so he asks, is there a way do that that, to have someone sit there and monitor? D. Kovall replies, yes, because now you're asking the fox to monitor the hen house, to use an analogy that's worn out but still holds true. M. Szydlo states that then part of the concern is, the restaurant owner has good intent, it's been heard that he's a good restaurant owner and cares about the community but in ten years he sells the business and the new owner says, "woo-hoo, I can have music" and they know nothing of these proceedings. D. Thurston states that whatever we decide here goes with the property when it's sold. D. Kovall states that we run into the problem of monitoring and that you can have acoustical rap, acoustical classic, acoustical country, etc. She thinks the list of live entertainment reasons is a pretty good synopsis of the Commission's concerns and that in hindsight, this looked very open and shut and 'what's the big deal'? But she feels that it has now turned into a lot more than that. She states that the decision, whatever it is, will be more for the present owner but again, the present owner is amiable to this, unexpected things happen and the plans you've had for 20 years can be uprooted. M. Szydlo states he agrees but he's trying to figure out how to give the restaurant leeway without impacting the surroundings. D. Kovall states that she will go back to pointing out that there is already outdoor music, it comes from a speaker though and not a body. She can't imagine that people would say, "there's a fundraiser that's going on but since there's not going to be somebody playing a guitar...", and that was how this thing started. Having music seems to be an adjunct function to a restaurant, accessory use. However, she questions why live music is necessary. With the discussion on this application over the past few months, it seems the compromise is to allow inside music and not outside music. Chairwoman Rewenko states that based on what she's hearing, she requests that the Commission turn to the suggested motion for partial approval/partial denial which she reads as follows:

To ALLOW indoor live music only until 10:00 p.m., as requested by the applicant and noted to be "normal" business hours even though the restaurant is open until 11:00 p.m.

Noise levels shall not exceed 55 decibels as in compliance with a letter from Thomas Stansfield, MPH, R.S., Deputy Director of Health, Torrington Area Health District that specifies the permitted level of noise on the premises between the hours of 7 a.m. and 10:00 p.m. to be 55 decibels.

To NOT ALLOW OUTDOOR MUSIC OR LIVE ENTERTAINMENT FOR THE FOLLOWING REASONS:

- That the request for outdoor live music and entertainment is a broad request that could involve many types of entertainment that may exceed the noise level of 55 decibels.



- The Zoning Commission finds that the request is not in keeping with Zoning Regulation 1.1 Purpose: to promote health, safety and general welfare.
- The request is not in keeping with Zoning Regulation 9.1.1 General Standards and finds that outdoor live music and entertainment will not be in harmony with the neighborhood of residential properties surrounding the property at 182/178 Birge Park Road.
- The application lacks a proposal and site plan showing the area where music and/or entertainment will be set up.
- The Zoning Commission also finds it impossible to monitor the noise levels of the live music and/or entertainment as the town does not own a decibel reader and the Enforcement Officer will be unavailable at times of evening entertainment to monitor the noise levels of activities taking place on the property.

Chairwoman Rewenko states that this is one of the routes the Commission can take and the other is language provided if the Commission wanted to approve indoor and outdoor music, but whatever decision is made she reminds Commissioners that there must be reasons why they are making that decision.

M. Szydlo states that all things considered, this one seems to make more sense, as a compromise.

D. Kovall states that she remembers some language that had to do with “as measured at the property line” that might be added to the sentence in the first bullet point of the draft to not allow outdoor music. She asks LUC Redmond if she recalls this with LUC Redmond answering, yes, there was some talk of that and that it could be added to the first bullet point of the partial approval/partial denial.

M. Szydlo states if there is a bar there and the music is cranked up, it could very well exceed the 55 decibels so if we wanted to have a compromise, that 55 decibel should be at a specific location. It could have it read, not to exceed 55 decibel as measured from five feet of the building for indoor music. This is if in the future it becomes just a bar. Right now what we have might make sense but the whole point of talking about this is because originally the special permit didn’t allow live music and now we’re saying, let’s try to be a little more flexible, but keep in mind what the original intent was. D. Kovall states that every time the door opens, you’ll get a blast of music, but you still want 55 decibels in accordance with State Statute rather than making it up on our own. LUC Redmond refers to Tom Stansfield’s report that reads: “Based on the information supplied and section 22a-69-1—22a-69-7.4 of the Connecticut General Statutes, the TAHD concurs that the use class for the property occupied by the Edison Grill is a “B” and the neighboring property is a class “A”. That classification limits the Edison Grill to a maximum noise emission of 55dB during the day (7 AM to 10 PM) and a maximum of 45dB at night.” LUC Redmond adds that the use class is a B, which limits the Edison Grill and also limits anyone else that might move in because it’s based on location. M. Szydlo questions if that is at the property line with LUC Redmond stating, the letter doesn’t say. Chairwoman Rewenko states that the point is we want to reference the statute in a motion. She clarifies that by saying this is for discussion for live indoor music only and for the noise decibel to be according to State Statute. M. Szydlo explains that the reason he’s pushing this point is there is still no way the town can enforce this so his thought is, we have the ability to create a means of, it’s not direct enforcement but indirect enforcement, and that is by providing a certain level of restriction.

Chairwoman Rewenko asks Atty. Rybak for guidance in how to word the language in this particular section? Atty. Rybak states that the Commission should go with the State noise regulation, that is the recognized standard, and that there aren’t any standards in the town’s Zoning Regulations.

LUC Redmond questions Atty. Rybak asking, if there's a complaint that the music is over 55 decibels at 9:00 p.m., how do we prove that it is exceeding the limit with Atty. Rybak stating someone will have to go measure at the property with a decibel meter, from the emitter to the receptor, and that it's very difficult but not impossible. If you have to hire someone to do it, you have to hire someone to do it. He advises not to go off the road map in making up our own regulations. He warns that this is a highly technical area where you're not permitted to substitute lay-person judgement for what is the only expert testimony in the record, which is Tom Stansfield's. It's not like you have a staff sound engineer that's giving you an opinion.

Chairwoman Rewenko states that what she's hearing is, it looks like there's some discussion to allow the indoor music only and not allowing outdoor music based upon discussion and there are five bullet points that we can base a decision on. She again reads the draft suggested motions and reasons for a partial approval/partial denial with the addition of the State Statute reference. M. Szydlo states his primary concern is the end result regardless of what the legalities are although second, he is worried about the legalities. He states it is the Commission's goal to get a result while in keeping with the legal requirements. D. Thurston states that the legal requirements are grounded in the State Statutes, those have been determined for better or worse. If they are not exceeding 55 decibels, it's not a health hazard, it's also a reasonable audio indication for people to speak and be heard and have a reasonable conversation. So sticking with the State Statute is what we want to do if we're going to allow music but the question is how we determine that it's being exceeded if someone complains. Chairwoman Rewenko states we have to make a decision that has to be made on indoor or outdoor and the Commission has to base the decision with reasons. If you do want to allow, you do have to reference that and that it is in confines of the State Statute. LUC Redmond states that for the indoor music, she recalls someone saying that the music wasn't going to be blasted because they do want customers to have conversations. M. Szydlo states he believes this but his reason for bringing this up is concern of the next owner. LUC Redmonds states that it will still be limited to 55 decibels because that's the State Statute. If there's a problem with the next owner, the permit is revoked because they don't comply with these conditions.

D. Kovall **motioned** to ALLOW indoor live music only until 10:00 p.m., as requested by the applicant and noted to be "normal" business hours even though the restaurant is open until 11:00 p.m. Noise levels shall not exceed 55 decibels as in compliance with a letter on file from Thomas Stansfield MPH, R.S., Deputy Director of Health, Torrington Area Health District, and CGS 22a-69-1 – 22a-69-7.4 as quoted in his letter, that specifies the permitted level of noise on the premises between the hours of 7:00 a.m. and 10:00 p.m. to be 55 decibels and to NOT ALLOW outdoor music or live entertainment for the following reasons:

- That the request for outdoor live music and entertainment is a broad request that could involve many types of entertainment that may exceed the noise level of 55 decibels.
- The Zoning Commission finds that the request is not in keeping with Zoning Regulation 1.1 Purpose: to promote health, safety and general welfare.
- The request is not in keeping with Zoning Regulation 9.1.1 General Standards and finds that outdoor live music and entertainment will not be in harmony with the neighborhood of residential properties surrounding the property at 182/178 Birge Park Road.
- The application lacks a proposal and site plan showing the area where music and/or entertainment will be set up.
- The Zoning Commission also finds it impossible to monitor the noise levels of the live music and/or entertainment as the town does not own a decibel reader and the Enforcement Officer will be unavailable at times of evening entertainment to monitor the noise levels of activities taking place on the property.

C. Kasey seconded the motion. Those voting in favor of the motion are C. Kasey, D. Kovall and Chairwoman M. Rewenko. D. Thurston and M. Syzdlo oppose the motion. Motion passes 3-2.

**7. COMPLAINTS/ENFORCEMENT ACTIONS.**

Follow up on complaints: Ralph Johnson, 508 Hill Road

Fernando Nieves, 222 Woodchuck Lane

Neighbors of Fernando Nieves are present to state that they continue to believe that a business is being operated out of the Nieves property at 222 Woodchuck Lane. They state that they aren't looking to shut his business down, they just don't want to be able to see his trucks that he parks on his property. Commissioners inform the neighbors that the trucks are not commercial trucks and the Zoning Enforcement Officer in the past has stated that no violations are taking place on the property. Atty. Rybak questions if there is a written report from the Zoning Enforcement Officer on his findings. There is his report of August 13, 2018 that states, "After discussing concerns with Mr. Nieves, there are no current zoning violations at 222 Woodchuck Lane or the lot on Meadowview, adjoining the 222 Woodchuck Lane property." \*The lot is one parcel as confirmed by LUC Redmond. Atty. Rybak states that neighbors, or any aggrieved person, has 30 days from the date of a Zoning Enforcement Officer's decision to file an appeal.

N. Schnyer asks that ZEO Tom Mitchell provide a written report on his findings and actions on her complaint against Ralph Johnson, 508 Hill Road.

**8. ANY OTHER BUSINESS.**

None.

**9. CORRESPONDENCE.**

None.

**10. INVOICES.**

None.

**11. ADJOURN.**

C. Kasey **motioned** to adjourn the meeting at 9:45 p.m., seconded by M. Syzdlo. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT

ON 10-17-18 AT 9:25am

ATTEST TOWN CLERK

*Jan Bryan*