

HARWINTON ZONING COMMISSION

MONDAY, JULY 23, 2018

TOWN HALL 7:00 P.M.

Present: Chairwoman Michelle Rewenko, Deborah Koval, Alternate Member Don Truskauskas, Alternate Member Theodore Root, Land Use Coordinator Polly Redmond and Zoning Enforcement Officer Thomas Mitchell
Absent: Cynthia Kasey, Daniel Thurston, Matthew Szydlo and Alternate Member Nancy Schnyer

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

1. OPEN HEARING – ESTABLISH QUORUM.

Chairwoman Rewenko called the hearing to order at 7:00 p.m. All members present are seated. Legal noticing of this public hearing is acknowledged as being published in the Republican American on 7/13/18 and 7/20/18. The meeting is being recorded on audio.

2. THE EDISON GRILL, LLC – 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.

Atty. James Steck, Ebersol, McCormick, Reis & Steck, LLC is present to represent his clients and applicants, Jeremiah & Michelle Czyz, owners of the Edison Grill, LLC, who are present tonight. He acknowledges that Greg Mele, Member of Birge Park Commons, LLC, owner of the property, and Martin Connor, AICP, Planning Consultant are also present. Atty. Steck submits and reads his letter for the record dated 7/23/18 with copies given to all Commissioners. He states that his clients are not seeking changes to hours of operation but do wish to modify and remove Condition #3 placed on a Special Permit that the Zoning Commission granted back in 2013 that prohibited live entertainment. His clients have been in business for five years now and are seeking permission to have live entertainment inside and outside the restaurant during normal business hours up until 9:00 p.m. Torrington Area Health rules for noise will be adhered to with Atty. Steck submitting a letter for the record from Thomas Stansfield MPH R.S., Deputy Director of Health, Registered Sanitarian, dated 7/23/18. The letter states he has “reviewed the Edison Grill’s application for special permit to allow for live music/entertainment at their location on Birge Park Road. Specifically, it was asked to verify the emitter classification of the Edison Grill and the neighboring properties. 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 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 a.m. to 10 p.m.) and a maximum of 45dB at night.” Atty. Steck states for a point of reference that the level of conversation right now is higher than 55 decibels. Atty. Steck submits for the record the noise ordinance titled *Regulations of Connecticut State Agencies* Title 22a. Environmental Protection, DEEP Control of Noise, §§22a-69-1 – 22a-69-7.4). Atty. Steck states that the Edison Grill has been operating without incident and has a proven record of responsible ownership. At this time, his clients find it necessary to have live entertainment, both inside and outside of the restaurant, in order to stay relevant as a restaurant. They are not asking for carte blanche with their request and are mindful of the State noise regulations and the restrictions that they impose and will comply with all State laws regarding noise.

Martin Connor submits and reads his letter dated July 22, 2018 with copies given to all Commissioners along with his qualifications. The letter states he is in support of the Edison Grill, LLC application to modify their Special Permit to allow for live entertainment. It has been his experience as a Planner and a Certified Member of the American Institute of Certified Planners that a restaurant that allows sales/consumption of alcoholic liquor and includes a full-service bar such as the Edison Grill often offers live entertainment as a customary/accessory use. The letter goes on to state that in cities and towns where he advises Commissions, such as Torrington and Goshen, live entertainment would be considered a customary/accessory use to a full-service restaurant such as the Edison Grill. They would not be required to seek additional approvals to provide entertainment to their restaurant patrons during their regular hours of operation and that any potential noise issues are addressed by the local or State's noise ordinance. Mr. Connor's letter states that the Edison Grill is seeking permission to provide entertainment to their patrons during their hours of operation in order to remain competitive with other area restaurants and that they will abide with Harwinton's Performance Standards – Noise per Section 4.5.7 of the Zoning Regulations and the noise regulations of the State of CT administered by the Torrington Area Health District. In closing, the letter notes that charity benefits are held at the restaurant to support the community and points out the contributions they make to local charities.

Greg Mele submits and reads his letter dated July 23, 2018 with copies given to all Commissioners. The letter states that Birge Park Commons, LLC is the property owner of 178 and 182 Birge Park Road in Harwinton, CT and that The Edison Grill is a tenant at Birge Park Commons at Unit 178-3 and currently has a ten year lease with Birge Park Commons. The Edison Grill has been an excellent addition to Harwinton and an excellent tenant and there has never been any problems or disturbances generated from the restaurant. He and his wife, Janet Mele (present), both members of Birge Park Commons, LLC endorse and recommend that live entertainment be allowed in the restaurant and outside on the patio.

Atty. James Steck concludes the presentation by stating that restriction on outside entertainment can be so that it ends at 9:00 p.m. while the restaurant remains open until 11:00 p.m. and that enforcement mechanisms are in place to make certain of this.

Chairwoman Rewenko opens the floor to public comment at this time.

Bob Czarnecki, 167 Birge Park Road, states he lives directly across the street and uphill from the Edison Grill and questions whether the entertainment will be inside the building with the doors closed or outside on the patio. Atty. Steck answers stating the entertainment will be inside and/or outside. Mr. Czarnecki states he is strongly opposed to this and that there is an abundance of noise already coming from the property at 178 and 182 Birge Park Road from early in the morning backup signals coming from Eastside Electric trucks and continuing throughout the day with dumpsters being emptied, deliveries, propane fillings, car alarms and building alarms going off to name a few. He has kept a daily journal since January 2017 of every noise coming from the plaza. He states he can hear people talking on the property and that music would be unacceptable. He also has concerns of resale value of his house being lowered due to activities across the street. D. Truskauskas asks if Mr. Czarnecki could submit his journal for the record with Mr. Czarnecki agreeing to making a copy and submitting it.

Elliot Cyr, 93 Oakwood Drive, states that he and his wife (present) border the backside of the plaza that houses Eastside Electric and the Edison Grill. He has had no problems with the activities taking place on the property and states that the restaurant is a nice establishment that is doing well. His house is 1500 feet from the back of the restaurant and he states that he can hear people that are outside on the patio of the restaurant and believes that with the addition of live music, the noise would increase dramatically. He notes that with the requirement to only send notice of this application and hearing to the neighbors within 200 feet of the Edison Grill property lines, there are other people on Oakwood Drive who he believes would also be affected by the noise of music. He states that the Harwinton Zoning Commission approved the Special Permit with the stipulation of no live entertainment and he believes they should be held to that restriction. He states that it appears that the Edison Grill wants to have entertainment whenever they want and he thought at first it was to be only three times a year. If the owner does say only three times a year, he believes it to be just a stepping stone of wanting more and that it could then become a daily thing. He states that the Zoning Commission has to realize that the permit will follow the land and he asks that the Zoning Commission keep the original approval intact as he sees the addition of live entertainment only becoming a nuisance to neighbors.

Louise Jannetty, 170 Birge Park Road, states that she lives 200 feet from The Edison Grill and has never had a problem with the plaza being next door, even with the addition of the restaurant, until the patio was placed outside. She states she can now hear conversations and sounds of dishes echoing and the iHeartRadio playing. She notes that if the restaurant has 20 seats does that mean they are looking for more patronage which means more alcohol being served? She believes this may lead to someone stumbling into her yard. She states that she gets up for work at 4:30 a.m. and goes to bed early finding it hard to fall asleep with the patio patronage and she can't imagine what having music playing would be like.

Joe Martin, 199 Birge Park Road, states that he also opposes the addition of music. He states that there is noise from Eastside Electric from trucks and he understands that is a business. He has a buffer from the road and he states that he still hears people talking on the restaurant's patio. He states that Harwinton is not Torrington. He has lived in Torrington and moved to Harwinton to not hear music from a bar.

Evelyn Perran, 199 Birge Park Road, states that she lives across the street from the plaza and questions what the expectation of the number of patrons being increased to with the addition of live music. Atty. Steck states that the restaurant will seat the same current capacity and the only addition will be the offering of music to patrons. E. Perran questions whether there will be consideration of curbing the number of days that live entertainment will be provided since it sounds like the applicant is asking for whenever. Atty. Steck states that there will be no restrictions but explains that the Zoning Commission can place a limit on times. E. Perran states that she has no real concern with noise inside the restaurant but definitely does for outside noise.

Jeremiah Czyz states that outside seating is 40 seats and inside the restaurant there are 60 seats. That cannot be increased as that is the maximum capacity per Fire Marshal. Whether the patio is filled or it's not, that's the maximum capacity unless there are events such as the YMCA fundraiser, which brings in more people who will be walking around.

Bob Czarnecki, 167 Birge Park Road, states that when the restaurant patio opened then the events held at the plaza began including a Summerfest, Octoberfest, a car show and a pig roast. He states that you can't tell him that there won't be live music at these four events in addition to their weekly music. He also notes that he has seen numerous accidents and an increase in traffic on Birge Park Road and that Mr. Czyz himself even documented his own accident in this area. He believes this request will only result in more traffic and more people.

Atty. James Steck wishes to address some comments made and also to further discuss the application, stating this is the first time he's heard complaints of noise. They have not heard of Mr. Czarnecki's journals before tonight. He explains that there are remedies for individuals who believe the noise is too loud; that they could go to the Torrington Area Health District for noise measurement. He's also heard from the neighbors that "it's a good restaurant" and a "great addition to the neighborhood". Jerry is a responsible owner and a good neighbor and he is willing to accept limits on how often he would be allowed to have outside live music. Certainly for charity events mentioned he would like to have live music on those nights and also on some other nights and it can be agreed upon to stop the music at 9:00 p.m.

Martin Connor states that it is reasonable for consideration on limits for outside noise but for inside noise, he doesn't see why there can't be entertainment inside.

Greg Mele states that one of the components of live entertainment is that, if that word is put out there, he believes everyone thinks of music. As being a grandfather now he looks at live entertainment as possibly a magician or a clown at a birthday party. With live entertainment, there is no limitation. He states he would hope the Harwinton Zoning Commission would look favorably on the big picture of this.

Elliot Cyr, 93 Oakwood Drive, states that yes, they are responsible owners but if they sell the restaurant and this is allowed, the new owners may not be as responsible. Atty. Steck states that any restrictions placed on the special permit will run with the land and also the state laws will be there.

Evelyn Perran, 199 Birge Park Road, asks for an explanation on what the process of complaints would be with Chairwoman Rewenko stating that complaints of noise go to the Torrington Area Health District. Ms. Perran questions what the town would do with D. Truskauskas stating that there is no town ordinance on noise restrictions so it would only go to the Torrington Area Health District. D. Truskauskas reads the Noise Regulation from the TAHD and submits it for the record. The regulation states that TAHD will assist residents of the member towns (which Harwinton is) with permanent stationary sources of noise that can be measured, controlled, and reduced using modern acoustical engineering. Ms. Perran questions what the process is of a decision tonight with Chairwoman Rewenko explaining that there will be a vote on whether to continue or close this public hearing. If the hearing is continued, it will be continued to another Zoning meeting. If and when the hearing is closed, the Commission has a number of days to make a decision on the application and any discussion or decision on the application will be done at posted Zoning meetings. There will be no further noticing sent to neighbors. D. Truskauskas adds that once the public hearing is closed, no further input can be received from neighbors or the applicant. He states it is his intention to make a motion to keep the hearing open tonight in order to receive a copy of Mr. Czarnecki's journal but the Commission will vote on that motion when the time comes.

Louise Jannetty, 170 Birge Park Road, questions that if Torrington Area Health District says 50 decibels is the allowable sound level, which Atty. Steck said was at conversational decibel level, she has never heard a live band play at conversational level. Atty. Steck states that that is measuring at the property line so it would be at her property line.

Mary Lou Czarnecki, 167 Birge Park Road, states that she has lived in town for 37 years, 27 years at her Birge Park Road address right across the street from the plaza. She states that Edison Grill has done a wonderful job with the property. The restaurant is always busy, which is good, and they have always been good neighbors. She states that she and her husband have also been good neighbors and considerate of when they chop wood, mow the lawn or cut trees on their property so as to not create too much noise that might interfere with people at the restaurant during fundraisers. While the noise coming from the plaza in connection with the business is expected, with the live music she believes the noise would be amplified, especially from where they live uphill of the plaza.

Proof of certified mailings to neighbors within 200 feet of the property lines of the subject property giving notice of this application and public hearing have been collected and remain on file in the Land Use office.

3. CONTINUE OR CLOSE PUBLIC HEARING.

D. Truskauskas **motioned** to continue the public hearing to **Monday, August 13, 2018** at 7:00 p.m. in the town hall.

REGULAR MEETING

1. OPEN MEETING – ESTABLISH QUORUM.

Chairwoman Rewenko called the meeting to order at 7:52 p.m. All members present are seated.

2. APPROVE MINUTES OF PREVIOUS MEETING: 7/9/18

Tabled to next Zoning meeting to be held on 8/13/18 due to lack of a voting quorum.

3. PUBLIC COMMENT. None.

4. DISCUSSION/POSSIBLE DECISION - THE EDISON GRILL, LLC – 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.
No discussion.

5. JOHN DUCCI – APPLICATION FOR 64' X 60' AGRICULTURAL BARN, MANSFIELD ROAD, ASSESSORS MAP NO. A5-03-01.

Mr. Ducci is present. A Topographic Survey dated November 2017 by Timothy Wyllie Jr. L.S., is reviewed. The property contains 213 acres and the barn will be 1000 feet from any property line. There is an existing logging driveway permitted through the Highway Department. No TAHD approval is required. IWWC approval has been received. D. Truskauskas **motioned** to approve the application, seconded by T. Root. Motion passed unanimously.

6. WILLIAM HEKELER – APPLICATION FOR 20' X 30' PAVILION, 201 HARMONY HILL ROAD. REQUEST FOR WAIVER OF ENGINEERED PLAN.

Jared Braddock, Supreme Industries, is present to represent. A Property Survey of the 19 acres dated 11/22/99 prepared for previous owners William Stephenson and Estate of Susan Stephenson with the location of the proposed pavilion shown is reviewed. The pavilion will be approximately 100 feet from the front yard property line and approximately 190 feet from the south side property line. The pavilion will be constructed on concrete piers with six posts, open on all sides. IWWC approval has been received. TAHD approval is outstanding. D. Truskauskas **motioned** to grant the waiver request for an engineered plan, seconded by T. Root. D. Truskauskas **motioned** to approve the application pending TAHD approval, seconded by D. Kovall. Both motions passed unanimously.

7. COMPLAINTS/ENFORCEMENT ACTIONS.

Complaints have been received regarding activities at 222 Woodchuck Lane, property owned by Theresa Nieves, a corner lot with Meadowview Drive and located in the Country Residential zone. Complaints are of dirt in the road from a cut-in driveway off Meadowview Drive and commercial vehicles being parked on the property and viewable from Meadowview Drive. A business sign is positioned in the front yard facing Woodchuck Lane. ZEO T. Mitchell states that he has driven by the property and saw an unmarked trailer and pickup truck on the side of the lot that is not in violation of any Zoning Regulation and notes that a 10 foot paved apron was put in with a permit granted through the Highway Department. Complainants are in the audience and question if the property owner can go in with a driveway as far in as he wants with Commissioners stating, yes. It is said that a large pile of dirt remains on the property without proper E&S Control measures. The complainants also state that there is other equipment brought on to the property at different times and there is a utility truck parked on the lot that has a business name (Nieves Home Improvement) on it. D. Truskauskas states that commercial vehicles having a gross vehicle weight less than 19,500 pounds are permitted. Another complaint is that of men, perhaps employees of the property owner, sitting on the curb off Meadowview Drive appearing to be waiting to be picked up by a driver. D. Truskauskas asks that ZEO Mitchell question the property owner, Fernando Nieves, to find out if he has employees working for him that get dropped off and picked up on the roadside. Question is posed as to whether Zoning Regulation 6.19 Use of Home for Personal Business applies in this case and that the regulation states "...no employees other than the occupants, no signs...and a reasonable neighbor would not know that such an operation is taking place." Neighbors in attendance who are the complainants believe that their property values will decrease with this activity taking place. ZEO T. Mitchell is instructed to contact Mr. Nieves to inform him that the sign in front of the house at 222 Woodchuck Lane must be removed, erosion control measures must be in place where needed, and that there is to be no employees arriving or departing from the property. The Commission also asks that Mr. Nieves attend the next Zoning meeting on Monday, August 13, 2018.

A complaint has been received for activities taking place at 508 Hill Road, property owned by Ralph Johnson, for activities involving commercial vehicles remaining on the Country Residential property. Trucks are being worked on at the property and are started up and left idling for over an hour in the morning. The trucks return to the property at the end of the day. A large gravel parking lot has been added to the rear of the property which has encroached on wetlands. The complaint includes information that a shed has been dropped onto the property that appears to be in violation of setbacks on the north side for which there are no permits for. ZEO T. Mitchell states that he has driven past the house and saw on numerous occasions back hoes, utility trucks, a large dump truck among other commercial vehicles. Zoning Regulation 6.20 allows for one commercial truck to be kept on the property if it is providing a service related to the property, are in conjunction with the need for emergency repair or is an on-call vehicle. ZEO T. Mitchell is instructed to look into the unpermitted shed-type building and the number of trucks being kept on the property. This matter will be addressed again at the next Zoning meeting 8/13/18.

Commissioners have been informed that a house being built at 221 Bogue Road looks to be a two family duplex. Only single family dwellings are permitted in town. The Building Inspector has been in touch with the property owners, B&R Corporation, and informed LUC Redmond that changes are being made to the structure. LUC Redmond will keep the Commission informed.

8. ANY OTHER BUSINESS.

None.

9. CORRESPONDENCE.

Notice from the Town of Plymouth on proposing a seven month moratorium from 7/30/18 to 2/28/19 in order to study designations on their Zoning Map has been received and that the Town of Plymouth shall not accept, process, consider, hear, or act upon any application/petition submitted to change the zoning designation of any parcel for that time.

10. INVOICES.

None.

11. ADJOURN.

D. Truskauskas **motioned** to adjourn the meeting at 8:45 p.m., seconded by D. Kovall. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 07/26/18 AT 2:44PM
ATTEST NANCY E. ELDRIDGE TOWN CLERK