

**HARWINTON ZONING COMMISSION**

**MONDAY, AUGUST 13, 2018**

**TOWN HALL 7:00 P.M.**

Present: Chairwoman Michelle Rewenko, Cynthia Kasey, Dan Thurston, Matthew Szydlo, Deborah Kovall,  
Alternate Member Don Truskauskas and Land Use Coordinator Polly Redmond  
Absent: Alternate Member Theodore Root and Alternate Member Nancy Schnyer

PLEDGE OF ALLEGIANCE

**PUBLIC HEARING - continued**

**1. OPEN HEARING – ESTABLISH QUORUM.**

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

**2. THE EDISON GRILL, LLC, 178 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 OPENED 7/23/18. 35<sup>TH</sup> DAY TO KEEP HEARING OPEN IS 8/26/18.)**

Chairwoman Rewenko reads a letter received from Elliot and Janice Cyr, 93 Oakwood Drive, Harwinton, CT, dated 7/31/18 since they are out of town and unable to attend tonight's meeting. The letter states they are still opposed to modifying the special permit to allow live entertainment inside and outside of the Edison Grill. The letter remains on file in the Land Use office. Atty. James Steck, Ebersol, McCormick, Reis & Steck, LLC, Torrington, CT, legal counsel for the applicant, presents a letter dated 8/13/18 and reads from it. The letter states that its purpose is to highlight a few of the things that came out of the last meeting, and to address some of the concerns of the neighbors. It points out that at the last meeting neighbors spoke positively about the Edison Grill and that there's never been a problem there. There was testimony that the neighbors would have no problem with indoor entertainment as long as the doors were shut. Atty. Steck points out that there have been no noise complaints to Torrington Area Health Department as demonstrated by a letter from Thomas Stansfield, MPH R.S., Deputy Director of Health, Torrington Area Health District, dated 7/25/18, submitted for the record. Atty. Steck's letter states that there is law approving noise emissions of 55 Db from this property and that the law recognizes the interest of the neighbors, and does not allow the maximum emissions of 66Db, but also recognizes the interests of the property owner to operate a business on the property. The letter points out that the Edison Grill is in a Retail Service zone and that the building has been on the property since 1966 and always used commercially. It is on one of the busiest state roads in Harwinton and noise is a part of the fabric of this location and that neighbors can hear some noise from the property. Atty. Steck's letter states that Mr. Czyz, one of the owners of Edison Grill, purchased a noise meter and used the meter to monitor the sound on his patio with locations and levels marked on mapping of the areas. It is noted that the noise was well within acceptable limits. Readings are submitted for the record and marked as #1 7-27-19 (\*should read 2018) at 1 p.m. – Sunny Clear Day – with notes by Jeremiah Czyz that read, "These decibel levels are based on how high we play the music on a regular basis meaning we keep it on ½ way. Note the road noise alone is at 78.8 Db. Note – these readings were not taken at property lines, just the outskirts of the patio. Note – depending on how loud the road noise is effect the reading of the Db meter." Reading #2 7-27-19 (\*should read 2018) at 1:15 p.m. – "Note – the music is played at the highest level. Note – the Db reading taken across the street with no road noise 47.4. Note – readings are taken on outskirts of patio, not the property line." Reading #3 7-27-19 (\*should read 2018) – 8 p.m. Patio Closed. "Note – music on half way. Note – road noise none 48.5". With the submission of these readings, Atty. Steck notes that the road noise is nosier than the sound Mr. Czyz conducted and therefore they are not proposing any more noise



than what is on the road. Atty. Steck submits for the record the User's Manual for the Digital Sound Level Meter. Atty. Steck submits for the record copies of Town of Harwinton Assessor Street Cards for every one of the neighbors who testified at the opening of the public hearing and who are in opposition to live entertainment pointing out that they all purchased their property after this property had already been an established business zone for years. He points out in his letter that there is a principal in the law called "coming to the nuisance" and that you cannot move yourself into an existing situation and then complain that the situation exists. That it is not fair to move next door to a retail zone and then complain that it is being used in a manner that is customary for a retail zone and that it is not fair to this Commission to be charged with retroactively applying rules because of neighbors changing proclivities.

Atty. Steck's letter refers to Mr. Czarnecki, 167 Birge Park Road, who submitted into the record a "Noise Log" (a copy has been received in the Land Use office for the record and each Zoning Commissioner and Atty. Steck received a copy) to prove that too much noise comes from the Edison Grill. Atty. Steck believes that the Noise Log shows the exact opposite and that the noises listed in the "Log" did not originate from the Edison Grill and that the "Log" is absent of any mention of music or conversation from the patio. In closing, Atty. Steck's letter states that in consideration of the concerns of the neighbors, he would like to clarify that they are confident that at no time will the volume of the live entertainment exceed the state standards for noise emissions. They have also drafted for the record a proposed modification to the restriction imposed in the 2013 Zoning Commission decision for review by the Commission that will limit the number of instances of live entertainment outdoors on the property, agreeing to a 9 p.m. cut off time, and specifying that they will comply with State noise ordinances adding that should a violation occur of these provisions, the Harwinton Zoning Enforcement Officer could issue a cease and desist order.

Atty. Steck submits to each Commissioner and speaks of a 2014 Traffic Study. (The recording secretary did not receive a copy for the record.)

Martin Connor, AICP, Consulting Planner, speaks on behalf of the applicant reiterating that Mr. Czyz has demonstrated that he wants to work within the limit of 16 occasions for outdoor music. He notes that Mr. Czyz is a responsible property owner and with the noise meter he purchased, he can follow the letter of the law. The inside entertainment should not affect the neighborhood and that Mr. Czyz is operating a restaurant, not an outdoor theatre. Mr. Connor states that this request would be an accessory use and music is typically an accessory form of entertainment inside and outside.

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

Bob Czarnecki, 167 Birge Park Road, acknowledges that he has submitted his "Noise Log" for the record. He points out that on page 5 of the Zoning Regulations it states the purpose of the Zoning Regulations for the Town of Harwinton is to conserve the value of buildings and property and to promote health, safety and general welfare. He believes that the 2013 Zoning Commission decision for no live entertainment at the Edison Grill should be upheld and the neighbors present at these hearings also agree that the condition should stay intact. He refers to Atty. Steck's statement that "no complaints were made" which made him realize what good neighbors they are to make no complaints. He believes that the four events for benefits held at the Edison Grill can be held off-site as other benefits do since The Edison Grill provides for catering.



Joe Martin, 199 Birge Park Road, states that Atty. Steck is right, that no complaints have been made to Torrington Area Health because they stopped accepting complaints and that it is now up to the town to monitor noise. He states that he does hear trucks and Eastside Electric at 5:00 a.m. but they are gone after a half hour. Traffic noise can also be heard but music stays and where he lives, uphill from The Edison Grill, the noise echoes. He doesn't make complaints because it is a business but now adding music, he believes property values of the neighboring resident homes will go down. He states that perhaps he and his neighbors should start making complaints although he doesn't want to. He agrees with what Bob Czarnecki said that the benefits should go off premises. He states that when he gets home from work, he wants peace and quiet and with music coming from The Edison Grill, he won't have that.

Louise Jannetty, 170 Birge Park Road, questions when the studies were done was it during the day or night? Mr. Czyz answers that they were done on the same day, some during the day and some at night, using a radio that is used on the patio and turned to full power. Ms. Jannetty asks whether a study can be done with a live band on the patio. Atty. Steck states that he and his client were looking for a decision tonight and that if music is too loud, there is an enforcement process. If his clients request is granted, a live test could be done and if it is too loud, a cease and desist order can be issued. Ms. Jannetty states that her bedroom is 200 feet from The Edison Grill patio and that asking for outdoor music is now getting into the night life. Atty. Steck states that that is why they are only requesting the music until 9:00 p.m. Ms. Jannetty states that that is all good but what if she is recovering from an ailment and needs rest; that should be taken into consideration. Atty. Steck answers that asking for 16 times is being considerate. Ms. Jannetty states that she believes there are a lot of variables that have not been addressed.

Bob Czarnecki, 167 Birge Park Road, refers to the statement made by Atty. Steck about neighbors "moving into an existing situation". He points out that music at The Edison Grill wasn't existing at the time they moved in to the neighborhood. He plays a recording from his phone of a leaf blower operating at Edison Grill 400 feet away from his home. He states that his wife is off all summer from working as a teacher and she doesn't want to hear music sixteen times over four months.

Gary Arnold, 27 South Road, asks if the sixteen times a year to play music covers all year round or just for the summer with Atty. Steck answering sixteen times a year with music playing mostly in the summer. Mr. Arnold states that he is in favor of music being played once a week at The Edison Grill and adds that from where he lives he hears music from Little League games and music from the Fairgrounds and states that "that's life." Mr. Czyz will probably have a two-piece band or maybe even a one-person band with patrons maybe only staying for a half hour.

Joe Martin, 199 Birge Park Road, states that in 2013 the Zoning Commission put a restriction on music and now this application is for music and he questions what might be asked for next. He states he is opposed to this modification to allow music, even acoustical music.

Bob Czarnecki, 167 Birge Park Road, questions if The Edison Grill were to expand and take over the whole building, would there have to be another public hearing.

Greg Mele, 410 New Harwinton Road, Member of Birge Park Commons, LLC, answers Mr. Czarnecki's question stating that the property is limited to a septic system which dictates what is operating out of what is there. The restaurant will never occupy the whole building.

Atty. Steck addresses the comments made by the neighbors tonight by first stating that Mr. Czarnecki is not an appraiser and therefore can't put value levels on properties. Mr. Czarnecki also stated that you can't turn noise from a band down but, Atty. Steck states, that can be done and that music will be local bands and that they won't be blaring music.

At this time, Mr. Czyz presents a laptop and plays a video along with a recording of the noise level readings he took on 7-27-18 of music from a radio being played. After the video is played, Atty. Steck states that with the Digital Sound Level Meter, Mr. Czyz can monitor the live music. Mr. Czyz also plays a video and recording of people on the patio with music playing from Sunday, 7/29/18 at 11:30 a.m. with a full patio while he stands on the outskirts of the patio, not even close to the property boundaries. In the video, Mr. Czyz is heard saying that music is on half-way.

D. Thurston questions if it is the intent to use their own sound system or someone else's with Mr. Czyz stating it would be someone else's. D. Thurston questions what the power output of the system would be with Mr. Czyz stating he is not sure.

There are no further comments.

**3. CONTINUE OR CLOSE PUBLIC HEARING.**

D. Thurston **motioned** to close the public hearing at 8:07 p.m., seconded by M. Szydlo. Motion passed unanimously.

**REGULAR MEETING**

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

Chairwoman Rewenko called the meeting to order at 8:07 p.m. All regular members present are seated.

**2. APPROVE MINUTES OF PREVIOUS MEETING: 7/9/18 AND 7/23/18**

D. Kovall **motioned** to approve the minutes of 7/9/18, seconded by C. Kasey. Motion passed unanimously with Chairwoman Rewenko refraining from vote due to her absence at the 7/9/18 meeting.

D. Kovall **motioned** to approve the minutes of 7/23/18 with amendment to Page 5, Item 3 to add:

*"D. Kovall seconded the motion. The motion passed unanimously."* D. Truskauskas (seated for approval of these minutes only) seconded the motion and it passed unanimously.

**3. PUBLIC COMMENT.**

None.

**4. DISCUSSION/POSSIBLE DECISION - THE EDISON GRILL, LLC, 178 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.**

Commissioners C. Kasey, D. Thurston and M. Szydlo each state that they have listened to the recording of the July 23, 2018 Zoning public hearing that LUC Redmond sent to them.

M. Szydlo questions if he remembers correctly that the application originally came before them with the applicant stating he was requesting live outdoor music four times a year. C. Kasey agrees stating that it was four times a year and now the presentation of the application is for sixteen times a year. D. Kovall also agrees that it was presented originally as four times a year but states that the Zoning Commission has the



absolute power to grant the application in any configuration that protects both sides of the fence, neighbors and applicant, but that either way it will be unpopular. She speaks of instances in her own neighborhood when she hears noise that her neighbors make with lawn mowers, chainsaws, music and that unfortunately our pristine neighborhoods aren't as pristine as we want them to be. She believes a compromise can be made in this request. Chairwoman Rewenko states that she sees both sides. She agrees that other restaurants have music and agrees that they have to be competitive. If music is indoors, it is not so much of a concern to neighbors but she states she is hearing from the neighbors who spoke that outdoor music is a concern. D. Kovall believes that the most concerning to neighbors is hearing the word "band" and that when she hears the word band she thinks of being at a wedding where you are seated right by a speaker and you can't hold a conversation with the person sitting next to you. She doesn't think any restaurant would want it that loud so that the customers would want to leave. D. Thurston speaks of measurement of sound and that when you're measuring air pressure you have to consider the types of instruments and the number of them. He notes that measuring sound of an acoustic guitar is different than the playing of a bugle. His perception is that Mr. Czyz' sound system is modest and if that were to be used it wouldn't generate enough noise to bother anyone. D. Kovall states that if there's someone to police the noise, it would be the owner and if not the owner, it would be the police. D. Thurston notes that there's an effect of sound hitting objects and that trees can absorb sound and attenuate it and even air temperature and humidity also can affect sound. He notes that there is a maximum decibel level that must be adhered to. D. Thurston refers to the "Noise Log" of Mr. Czarnecki and states that it's the truck and backpack leaf blowers that are even much louder. D. Kovall states that she didn't read the log but it seems that the complaints were mostly back up signals with D. Thurston stating that back up signals are meant to be heard.

Chairwoman Rewenko states that the application is for modification of a Special Permit to allow music sixteen times per year not to go past 9:00 p.m. and that the noise will not exceed state ordinances.

D. Kovall states that she can't say that the request is unreasonable however, she doesn't live next door.

C. Kasey states that she isn't opposed to the request for music; that it would be nice to have live music in town, but would she want to live next door to it, no.

M. Szydlo states that his neighbor has an air conditioner, kids, lights that are on, there's a firehouse in his neighborhood; those are all annoying but he did choose to live on two acres and he is sure he does the annoying things that his neighbor does. He states he also likes to blare his music at times but he does also like silence at times and doesn't like impact from others but he does live in a community. He points out that there is a stipulation that states "no live music" but perhaps a compromise can be made for perhaps music four times a year for benefits.

C. Kasey states that she agrees with four times a year, once a month, with shut off time of 9:00 p.m. and acoustic music only for outside and allowing for indoor live music.

Chairwoman Rewenko states that the maximum decibel levels should be stated and that the Zoning Enforcement Officer could be contacted for complaints.

D. Kovall states that oddly enough, there is already music being played outside and she's unsure of how much louder the music would be.

D. Thurston states that the readings taken picked up more of the background noise which was more prominent than the music.

M. Szydlo states that perhaps the Commission could put a four times a year cap for outside music for fundraisers with another four allowed during the summer only.

D. Kovall **motioned** to continue discussion to the next Zoning meeting on Monday, August 27, 2018, seconded by M. Szydlo. Motion passed unanimously.



C. Kasey **motioned** to add to the agenda **FAUSTINO JANIERO, APPLICATION FOR SINGLE FAMILY DWELLING, 16 WILDCAT HILL ROAD**, seconded by D. Kovall. Motion passed unanimously.

Faustino Janiero is present. Plans by Berkshire Engineering titled Septic System Design, revised 8/3/2018, are reviewed. IWWC and TAHD approvals have been received. The driveway was constructed last year after approvals from IWWC and Zoning and a permit issued by the Highway Department. D. Kovall **motioned** to approve the application with the condition that the as-built provided upon completion shows distance from the house to the north property line corner of Lot B6-05-2101. D. Thurston seconded the motion and it passed unanimously.

M. Szydlo **motioned** to add to the agenda **CHRISTOPHER RELIHAN AND CHELSEA GEDDES FOR CONSTRUCTION OF A 40'X 40' BARN PREVIOUSLY APPROVED UNDER THE NAME OF ERNIE PETROVITS FOR A 120' X 60' BARN, 251 WILDCAT HILL ROAD**, seconded by D. Kovall.

Motion passed unanimously

Christopher Relihan is the new owner of 251 Wildcat Hill Road and is present tonight to ask if a new Zoning application is required to construct a barn that the previous owner applied for but didn't build. Plans by Berkshire Engineering titled Site Plan & B100a Review Plan for Ernie Petrovits is reviewed. The barn will be 40' x 40' instead of 120' x 60' that was previously presented and will still meet the setbacks of the Country Residential zone. The property is a corner lot and meets the two front yard setbacks on Wildcat Hill Road and Mansfield Road. TAHD approval was received for the 120' x 60' barn in 2011. M. Szydlo **motioned** that the application be renewed under the new owner name and no additional fee is required. D. Kovall seconded the motion and it passed unanimously.

## **5. COMPLAINTS/ENFORCEMENT ACTIONS.**

**FOLLOW UP ON COMPLAINTS: RALPH JOHNSON, 508 HILL ROAD**

**FERNANDO NIEVES, 222 WOODCHUCK LANE**

ZEO T. Mitchell has sent a report dated 8/13/18 stating that he has spoken to the occupant of **508 Hill Road**, Ronald Conroy (property owned by Ralph Johnson), but has not been able to coordinate a date to meet at the site. He will follow up to set a date and time.

He reports that that he spoke with Fernando Nieves, **222 Woodchuck Lane**, in regards to removing the sign "Nieves Home Improvement" from the front of his property and Mr. Nieves agreed to do so. ZEO Mitchell states that there are no other current violations on the property. He reports that Mr. Nieves told him that he would like to plant trees along the lot facing Meadowview Drive, the subject of many complaints of what neighbors claim to be commercial vehicles parked there, and that he will check in with the Land Use office before doing anything to ensure that he is doing things correctly.

Six neighbors who live on Meadowview Drive are present and state their belief that the property is being used as a business in a residential zone. They state that there are a number of trucks being kept on the side lot that is corner to Woodchuck Lane and Meadowview Drive but is not a separate lot from 222 Woodchuck Lane. They state that as of 7:00 p.m. tonight, the sign "Nieves Home Improvement" was still in the front yard. They claim that employees of Mr. Nieves sit out on the curb of Meadowview Drive waiting to be picked up after a day of work with Mr. Nieves. The neighbors state that Mr. Nieves has constructed a 30 foot gravel driveway beyond the approved ten foot apron approved by the Highway Department. Commissioners will ask the ZEO to inspect and inform Mr. Nieves that an application is required for driveway construction under Zoning Regulation 6.4

D. Kovall states that more information is needed to be gathered and that ZEO Thomas Mitchell will follow up and report back to this Commission.

ZEO T. Mitchell's report informs the Commission of a possible violation at **179 Woodchuck Lane** for possible illegal accessory apartment on the second floor of the home. He will follow up with the building inspector regarding deck and stairs added to the house.

**6. ANY OTHER BUSINESS.**

LUC Redmond informs the Commission that there is a new owner of 14 Whetstone Road who wishes to store material from his electrical business there and possibly work out of the existing barn. Commissioners agree that the use is the same as what the previous owner did and requires no Change of Use application.

**7. CORRESPONDENCE.**

None.

**8. INVOICES.**

None.

**9. ADJOURN.**

D. Thurston **motioned** to adjourn the meeting at 9:15 p.m., seconded by M. Szydlo. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT  
ON 8-24-18 AT 10:54 AM  
ATTEST NANCY E. ELDRIDGE TOWN CLERK