

Principal
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Town of Orleans
Zoning Board of Appeals
Meeting Minutes – April 20, 2022

This was a virtual meeting on Wednesday, April 20, 2022 of the Orleans Zoning Board of Appeals that convened via remote participation using “Zoom” video technology, with real-time public access provided by Orleans Channel 18 on the Town website and cable television.

Review Remote/Virtual Meeting Protocols:

Mr. Marnik reviewed protocols for the “virtual” meeting. Any Committee votes must be taken by roll-call vote.

In attendance were the Chairman Michael Marnik, Vice Chairperson Lynne Eickholt, Matthew Cole, Emily Van Giezen, Gerald Mulligan, and Bruce Taub, George Waugh as well as Building Commissioner Tom Evers and Mia Baumgarten from MIS. Also in attendance was Board Secretary Stacy Faber. The meeting was duly noticed. The meeting was called to order at 7:07pm.

Case# 2171 – Phil Ruggieri has applied for a special permit in accordance with MGLA Chapter 40A, Section 9, 164-13, use tables adding outdoor entertainment, as amplified entertainment is an intensification of a pre-existing, non-conforming use. Presently, the site is being used as a full service restaurant (The Barley Neck Inn) and is proposing adding outdoor live, amplified music during 3 months out of the year. The property is located at 5 Beach Road, Map# 36, Parcel# 137.

John Kanaga is representing the Barley Neck Inn. Mr. Kanaga describes what transpired at the meeting at the Select Board regarding the pre-existing non-conforming use. Prior to last summer, there was no entertainment license being granted to the Barley Neck Inn. The reason for this, was the town of Orleans was not giving out entertainment licenses. This is a new “outdoor” entertainment license. The first restaurant granted this was just voted at the Select Board meeting on April 20, 2022 for the restaurant Trove. Mr. Kanaga states that this is not a permitting issue, rather an amplified entertainment

Mr. Marnik asks what the Barley Neck Inn is proposing to do with their new permit. Mr. Kanaga states this new permit allows for 4 hours, 4 days per week of outdoor amplification that would be governed by a noise by-law. The music would occur between 11am to 8pm. Mr. Ruggieri states that the previous year, the Barley Neck was doing the music in the previous years Thursday – Sunday for approximately 3 hours. Mr. Kanaga feels this isn’t a zoning issue, that this is a licensing issue.

Mr. Cole states that he does not understand why this matter is coming in front of the Zoning Board, as it is not a zoning issue, rather a licensing issue.

Victoria Dalmas of Seine & Associates represents three abutters in opposition to the case. She asks why the zoning portion of the by-law doesn’t apply to this. Mr. Kanaga states that this is a licensing

issue under a pre-existing non-conforming use, as there is no intensification of use. Ms. Dalmas states that this was under MGL 40A, section 6.

Mr. Taub asks the Board Chair to chase the path as to why this is in front of the Zoning Board. He would also like to ask what is the question stated before us this evening. The Chairman states that his intention based upon the letter from Commissioner Evers.

Mr. Taub makes a motion that the Zoning Board accepts that this has been permitted in front of us this evening, and that the special permit criteria be presented at a later date, second by Mr. Marnik.

Mr. Cole states that the Zoning Board needs to uphold the Building Commissioner's letter that this is an intensification of the current use based on findings, the matter if there's been an intensification of the use, and the determination of this will precede a special permit issuance. The first finding is to affirm the building commissioner's decision, then if so, move into a special permit proceeding if this is an intensification of use. Let the record reflect that the previous motion made by Mr. Taub is amended by this motion made by Mr. Cole. Mr. Mulligan seconds the motion.

The vote was 7-0 with Mmes. Eickholt and Van Giezen and Messrs Cole, Marnik, Mulligan, Taub and Waugh voting aye.

Mr. Marnik asks Attorneys Kanga and Dalmas to propose the findings that can be established by evidence and what they would like the Zoning Board to adopt to obtain the relief they are seeking. This will be continued to May 4, 2022.

PUBLIC COMMENT

The hearing opens for public comment at 8:52pm. Linda Belfort, a non-abutter, however, a resident of Orleans asks a question for clarification. She asks if the non-conforming use is that this is in a rural area, she wonders if the Barley Neck Inn would be able to have sound amplified in a rural area. She voices her support for the outdoor music.

Vincent Ollivier of Great Oak Road in East Orleans, not a direct abutter, comments on the town changing the zoning laws for the business and rural districts, clarifying further, each district. He feels this is a zoning issue.

Steve Simon at 24 Beach Road, states he has lived there for over 30 years and has never had an issue with noise. He states that the Barley Neck Inn has been very receptive of any complaints. They live down the road and can hardly hear any noise. He suggests that this either needs to have a decision made this evening, or after the end of the season, as when this came before the Board of Selectmen, this issue was continued and the Barley Neck Inn never got a chance to deal with this. He voices his support for the case.

Steven Schenfeld, an abutter who lives across the street, who is represented by Atty Dalmas, he states that music and noise was so loud, he could even hear it while inside his house with his air conditioning on. He states that he had to leave his property several times from his property. He states that the abutters need relief. He states that the applicants are propagandizing the issue. He states that the Barley Neck Inn is intimidating the neighbors.

Richard Catania speaks on behalf of the Barley Neck Inn and states that the Barley Neck Inn is a local business, employing local people and what they are imposing is reasonable. He states there were 60 people waiting to speak. He states that Mr. Schenfeld is only a weekend resident. The board asks him to state his final comments.

Rick Francolini, 7 Barney Way, an abutter, wanted to thank Phil Ruggeri and the Barley Neck Inn for bringing the music to the neighborhood and employing people at the restaurant. He says they hear the music and it makes him smile.

Rosemary Nelson, an abutter, who has lived there for 45 years. She says she lives next door to the Barley Neck Inn and she enjoys what the Barley Neck Inn brings to the neighborhood.

Mr. Taub comments that once a special condition is identified and approved, conditions can be attached to this, as that is within the Zoning Board's purview.

Mr. Cole makes a motion to continue the hearing to May 4, 2022, second by Mr. Mulligan. The vote was 7-0 with Mmes. Eickholt and Van Giezen and Messrs Cole, Marnik, Mulligan, Taub and Waugh voting aye.

Mr. Cole makes a motion to adjourn, second by Mr. Mulligan. The vote was 7-0 with Mmes. Eickholt and Van Giezen and Messrs Cole, Marnik, Mulligan, Taub and Waugh voting aye.

Meeting adjourned at 9:24pm

Respectfully submitted,

Stacy Faber, Recording Secretary

Attachments included:

CORRESPONDENCE RECEIVED REGARDING CASE 2171:

1. Email from James Mitola of 178 Pochet Road, dated April 11, 2022, in support of Case 2171
2. Email from Susan Aquino of 15 Seavers, dated April 11, 2022, in support of Case 2171
3. Email from Betsy Bently of 64 Tides End Lane, dated April 8, 2022, in support of Case 2171
4. Email from Stephannie LeBlanc, dated April 9, 2022, in support of Case 2171
5. Email from Ariolaj@comcast.net, dated April 9, 2022, in support of Case 2171
6. Email from Nancy & James Callery, dated April 10, 2022 in support of Case 2171
7. Email from Tom and Yasmine McNellis of Eastham, dated April 12, 2022 in support of Case 2171
8. Email from James Fiala of 12 Grist Road, dated April 8, 2022, in support of Case 2171
9. Email from Nauset Marine, dated April 12, 2022 in support of Case 2171
10. Email from Kim Reilly of 50 Bridge St, dated April 13, 2022 in support of Case 2171
11. Email from Jonathan Stein of 4 Mill Ln, Unit H, dated April 13, 2022 in opposition of Case 2171
12. Email from Ward Ghory of East Orleans dated April 13, 2022 in opposition of Case 2171
13. Email from Christine Cameron of 150 Hopkins Ln dated April 8, 2022, in support of Case 2171
14. Email from Mary Donleavy of 31 Lovell Ln dated April 8, 2022, in support of Case 2171
15. Email from Mary Barry of Orleans, dated April 9, 2022, in support of Case 2171

16. Email from Christina Larson, dated April 9, 2022, in support of Case 2171
17. Email from James Prendergast of 134 Barley Neck Rd, dated April 9, 2022, in support of Case 2171
18. Email from Karen Stack of 16 Pleasant View Dr., dated April 9, 2022, in support of Case 2171
19. Email from Patricia Fitzgerald of 83 Briar Spring Rd., dated April 9, 2022 in support of Case 2171
20. Email from max4e6226@charter.net dated April 9, 2022 in support of Case 2171
21. Email from Martin Freed of 41 Jack Knife Pt Rd & 5 Defiance Ln, dated April 10, 2022, in support of Case 2171
22. Email from Paige Sullivan dated April 10, 2022, in support of Case 2171
23. Email from Scott Goodwin of 4 Walker Rd., dated April 10, 2022 in support of Case 2171
24. Email from Geoffrey Biron dated April 10, 2022 in support of Case 2171
25. Email from David Patterson of 10 Fox Ridge Dr., dated April 10, 2022, in support of Case 2171
26. Email from Jenifer Sant of 30 Barley Neck Rd., dated April 10, 2022, in support of Case 2171
27. Email from Christine Rein of 85 Beach Road, dated April 10, 2022, in support of Case 2171
28. Email from Joan Francolini of 7 Barney Way, dated April 10, 2022, in support of Case 2171
29. Email from Phillis Dima of 60 Daley Terrace, dated April 11, 2022, in support of Case 2171
30. Email from Michelle & John Walsh of 49 Winslow Dr., dated April 11, 2022, in support of Case 2171
31. Email from Christiane Boezio of 8 Sherman Rd., dated April 11, 2022, in support of Case 2171
32. Email from Susan Aquino of 15 Seavers, dated April 11, 2022, in support of Case 2171
33. Email from Jen & Chris Webb of 40 Viking Rd., dated April 11, 2022, in support of Case 2171
34. Email from Kelly & Blair Maddy of Eastham, dated April 11, 2022, in support of Case 2171
35. Email from Kevin Hershberger dated April 11, 2022, in support of Case 2171
36. Email from Courtney Zwirn, dated April 12, 2022, in support of Case 2171
37. Email from Sue & Marty Reynolds of X Country Crossing, dated April 12, 2022, in support of Case 2171
38. Email from Andrew Gere of Eastham, dated April 12, 2022, in support of Case 2171
39. Email from Mark Szymanski of 50 Bridge Rd., dated April 13, 2022, in support of Case 2171
40. Email from Tait & Heather Stamp of Orleans dated April 13, 2022, in support of Case 2171
41. Email from Candice Hammond of Orleans, dated April 13, 2022, in support of Case 2171
42. Email from Janet Lindahl dated April 13, 2022, in support of Case 2171
43. Email from Elizabeth Crowley dated April 14, 2022, in support of Case 2171
44. Email from Ilene Horowitz of 79 Great Oak Road dated April 14, 2022, in support of Case 2171
45. Email from Tony Conte of Wellfleet, dated April 14, 2022, in support of Case 2171
46. Email from Michael Tack of 8 Norseman's Dr., dated April 14, 2022, in support of Case 2171
47. Email from Warren Waugh of 35 High Tide Ln, dated April 14, 2022, in support of Case 2171
48. Email from Julie Doherty of 15 Fisher Way, dated April 14, 2022, in support of Case 2171
49. Email from L. Scott of 8 Tonset Rd, dated April 15, 2022, in opposition of Case 2171
50. Email from Sherri Holden of 14 Deer Run, dated April 15, 2022, in support of Case 2171
51. Email from Bruce Maclean dated April 15, 2022 in support of Case 2171
52. Email from Ashley Ruggieri, dated April 15, 2022, in support of Case 2171
53. Email from Rebecca Leatherman, dated April 15, 2022, in support of Case 2171
54. Email from Judy Bloom, dated April 15, 2022, in support of Case 2171
55. Email from Marietta Nilson of Harwich, dated April 15, 2022, in opposition of Case 2171
56. Email from Anthony Conte of Wellfleet, dated April 15, 2022, in support of Case 2171
57. Email/hand delivery from abutters Sheel, Schenfeld & Stein of 2 & 8 Beach Rd. & 4 Mill Rd. from Atty Victoria Dalmas, in opposition of Case 2171
58. Email from Hope Plavin of 15 Joshuas Way Eastham, dated April 16, 2022 in support of Case 2171
59. Email from Bruce Nosler of 83 Spring Ln, Brewster, dated April 15, 2022 in support of Case 2171
60. Email from Nancy Renn of Beach Road, Orleans, dated April 16, 2022 in support of Case 2171