

ZBA Meeting June 26, 2017 6:00 PM - Draft

In Attendance Board Members, Richard McClain, Amy Hornblas, Brad Alexander, Chuck Marian, Larry Gochey

ZA – Karen Deasy, Town Attorney Daniel Richardson, and Intern

Members of Public, Sjon and Maria Welters, Judy Pransky, Jaimie Pransky, Richard Rathbone, Ted Domey, Bernie Shatney

1. Review agenda
2. Public comment

Amy had a concern on the recent appointment of Brad Alexander to the board. It was noted that he serves on the Willey building Committee. Dan reviewed with the board the policy for recusal and conflicts when hearing applications. The concern was the Willey Building Committee had a vested interest in one of the applications, Dan indicated that it is up to the individual to indicate if they felt a conflict existed. .

3. Variance application 255 Rhapsody Natural Foods

- a. Open Hearing – advise all parties that all questions are to be directed to the board and the Chair will recognize you prior to having the floor.
- b. Swear in those who wish to speak on application

Sjon and Maria Welters were sworn in and spoke on their application. They previously had applied for an addition to the Rhapsody facility that will allow them to increase on site storage. The Temporary containers will go away. The issue is their Daughter recently constructed a new house and in setting the lot lines they located the line too close to the location of their addition. The board reviewed the building locations and setbacks on the provided site plan.

The cost to survey the lot and relocate the line would cost several thousand dollars and they wanted to request the variance first to see if they could avoid the expense. They intend at some point to remerge the parcels into a single lot down the road after the mortgages are paid off. Larry question on site maintenance and he would like to see it mowed near the road entry. Maria, discussed the variety of wild flowers that grow and the

discussion over mowing and bees in her house, she said they will maintain the entry better but want to keep many of the wildflower areas for the bees. The setback from the lot line was questioned, Sjon indicated they will be no closer than 10-15 feet from the side boundary line. There is sufficient room to meet the requirements if the parcel line was adjusted and that is their intent down the road.

- c. Other comments – no other comments
 - d. Close testimony – testimony closed
4. Notice of Violation Appeal application 256 3075 Main Street, Leonard Spencer
- a. Open Hearing – advise all parties that all questions are to be directed to the board and the Chair will recognize you prior to having the floor.
 - b. Swear in those who wish to speak on application
Karen Deasy ZA was sworn in, Leonard Spencer is not in attendance, the board will move on and return to this application to allow Leonard time to arrive.
5. Conditional Use Amendment application 257 Judy Pransky,
- a. Open Hearing – advise all parties that all questions are to be directed to the Board and the Chair will recognize you prior to having the floor.
 - b. Swear in those who wish to speak on application
Judy Pransky & Jaime Pransky would like to amend their current conditions to allow for amplified music to be played after the current cut off of 12:00 am. Their music festival pays out money to artists and contracts committing to their performance and costs for admissions don't always cover expenses, they feel the event adds to the community and would like to have the hours extended for their event this year. Judy spoke at length on how the volume and amplification can be adjusted to provide additional control of sound. Last year was impacted by bad weather and their main performing acts did not arrive until late. Judy's concern with turning off performances at midnight is that bars stay open until 2 and that their fear is that attendants would leave, not always in an unimpaired condition and be out on the roads driving. She would like to see the sound step down at midnight and then have amplified sound continue until 2:00. They tried silent disco but costs from vendors are excessive. They contract for security services and have

ambulance services located on site. Last year two people were transported. They have offered adjoining landowners time away if they choose and work hard to respond when notified to send security to deal with a landowner. Judy read a brief statement from her son.

Robert Rathbone addressed the board regarding last year's event and wanted additional assurances and signage to try to prevent people from crossing. There were many people last year just cutting across his land and he felt that security was not as responsive to address their situation last year. He is concerned with the noise as last year the music played well into the morning around 4:30. He indicated that he had not been offered a motel room if he wished to leave for the weekend, but commented that he would not as he feels the need to keep his property secure. Robert also submitted a letter from a Hardwick resident who lives on Hay's road who was able to hear the sound last year. He would not mind if the sound level was stepped down at 12 and then discontinued at two for the two nights of the weekend. He also inquired if they intended to hire additional security. Jamie commented on how the music can be adjusted to help control the crowds and that they work hard to respond rapidly when there are issues. Judy mentioned that last year's sound levels were partially her fault as she went to bed prior to the last artist playing.

It was noted that the Cabot store previously had indicated that this was their second biggest weekend of the year for sales and that they work hard to make this a family friendly event. Jamie mentioned that other communities utilize decibel levels for sound control and that this level is measured at the neighboring homes during events. She did note they tune the sound with a meter when they complete their sound checks. Judy again noted that there are ways to control and "dial in the sound" to limit the areas of amplification. Sound echoes and carries in some odd ways however and may affect an area not previously thought of weather also effects how sound carries. Larry stated that he recalls trying to sneak in to events when he was younger

- c. Other comments - none
- d. Close testimony – testimony closed

6. Notice of Violation Appeal application 256 3075 Main Street, Leonard Spencer

Under advisement of the Town Attorney Dan Richardson, Karen Deasy should present the reasons for the violation notice for a determination.

Leonard Spencer was issued the notice of violation letter included in the packet as he is operating apartments in a building that does not have a permit for them. The use of the building for apartments requires a change of use application as the previous uses were voided by the new applications. It's important to remember that the use of the building as permitted runs with the land and does not change when ownership transfers. The building was acquired by Leonard in 2011, previously the Munches in 2001 converted the single family unit to a two family dwelling. Then in 2002 they applied for an application for a lodging room and restaurant, requesting the previous application be voided. (Permit in the packet) Then the lower level space was converted to a retail "thrift store" and restaurant café space (see permit). This change of use was discovered after a notification by a tenant to the Town health officer of a violation in her unit. A trash complaint was also received by the Town regarding this building. During the health officers review and questions I discovered that permits had not been acquired to change the use to add apartments in this building. I notified the Building owner of the violation and notified him that he needed to acquire permits to continue the use. A lodging room under definitions are not an equivalent use to a dwelling unit, a dwelling unit is defined as Building or part thereof used as living quarters for one family. The term dwelling, one family dwelling, two family dwelling or dwelling group shall not include a motel, hotel, tourist home, mobile home or similar structure. .

The letter of May 10th was delivered to the owner notifying him formally of the violation. The landowner appealed my determination requesting the hearing. Letter from Mr. Spenser. He did not indicate why he was appealing and has not applied for permits.

Dan questioned what specifically where areas of violation,

Karen reviewed sections and violations

- 1.3 – no land or structure may be occupied unless in conformance with the regulations
- 2.4 - no land or building development may commence or structure be used unless a permit was issued by the zoning administrator
- 2.7 No permit may be issued for a structure by the ZA which requires a conditional use permit until the Board of adjustment grants approval
- 2.8, No zoning permit may be issued by the Administrative Officer for any use of except for one family two family dwellings, agricultural use or enclosed accessory building use pertaining thereto until the planning commission grants site plan approval.
- 3.6 - offsite parking requirements from prior approved - parking has not been provided or utilized the current site layout requires 8 spaces, Karen presented pictures showing that

unregistered vehicles are being stored in area meant for parking and that tenants/building occupants are parking in the road and in the town parking lot and are a constant problem. .

4.1 Changes to a commercial use require conditional use approval if they vary from the conditions and use approved by the board. Karen reviewed list of permitted and conditional uses permitted in the Medium Density Developed district, While mixed use buildings including apartments are permitted this building would require a new permit to allow them in addition to water and wastewater permits from the Town and state and Permits from the department of public safety fire safety rules would also possibly require modifications.

It was asked if we have seen the apartments to inspect. The landowner or a tenant have to invite us in and we have not been invited. It was questioned as how we know there are apartments. This was reported to the Town. The Health officer was called by a tenant to complain regarding her apartment, Val spoke with her but was not granted access. Leonard also indicated that there are apartments in that building when he came in to discuss the letter and actions he should take. It was noted by Larry that there could be as many as three units upstairs in that building, he was in the building a long time ago. It was noted by Larry that the Munches used the lodging room for family who were in town and that they slept there. It was not used as an apartment. State water and wastewater rules have very different rules for water wastewater use for apartments and lodging rooms, the difference would be approximately 300 gpd in usage on the wastewater system. It was questioned on the voiding of the previous applications in the findings from application 200 that the prior permits were to be voided.

It was mentioned that Leonard is not a very conscientious landlord and has issues with many of his buildings from delayed maintenance.

Dan asked if the Town Health officer worked closely with the Zoning administrator. Karen indicated they had many conversations to discuss the issues and did work together on them. Dan asked when the photos of the parking area were taken, Karen responded approximately two weeks ago, Dan asked did you take the photos, response, yes. A question was asked as to fines and penalties, the fines are 50.00 per day per violation, and it was questioned as to how this was calculated. Dan stipulated this should be discussed in deliberative session.

- a. Other comments
 - b. Close testimony – testimony closed
7. Board will adjourn to deliberative session
 8. Other Business
 9. Adjourn, 8:35 pm