

MORRIS PLANNING & ZONING COMMISSION
COMMUNITY HALL • 3 EAST STREET • MORRIS, CONNECTICUT 06763

Regular Meeting Morris Town Hall and Live on Zoom

August 7th, 2024 at 7:00 pm

Call in # 1-929-205-6099

<https://us02web.zoom.us/j/85920958912?pwd=MzVMMeHhodEhuejZkZks5OEJPeWV0dz09>

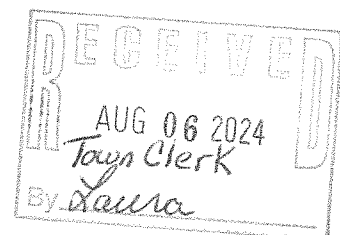
Meeting ID: 859 2095 8912

Passcode: 027946

David Wiig Chairman		
Barbara Bongolotti	Dylan Hovey	Alternates:
Helen White	William Ayles Jr. (Vice-Chairman)	Marc Petzold
Veronica Florio	David Geremia Jr.	Geoff Paletsky
Douglas Barnes (Secretary)	Kim Dore	Erika Leone
	Staff: ZEO Tony Adili	
	Planner: Janell Mullen	

Agenda

- 1. Call to Order**
- 2. Agenda Review**
- 3. Old Business**
- 4. New Business**
- 5. Complaints**
 - a. 95 Thomaston Rd**
 - b. 7 Benton Rd**
 - c. 150 Bantam Lake Rd**
 - d. Questions Received about 21 Higbie Road**
 - e. Clothing Bin at 159 Watertown Road**
- 6. Other Business**
 - a. Meeting Decorum**
- 7. Communications and Bills**
 - a. ZEO Report**
- 8. Adjourn**



To: Joel Skilton
Subject: RE: Outdoor Concert Venue approval

Hi Joel

There has been no new Site Plan submitted to the Planning and Zoning Commission. There is also no current approvals for an outdoor concert venue.

South farm s continues to use his property as an event space with music as an accessory to those events. That approval was given to him over 10 years ago. Also in terms of outdoor lighting he got approval for his site plan before we had implemented dark sky and I remember during the Site Plan review discussions about lights. As you know conditions cannot be placed on Site Plan Applications, it is either approved or denied. In terms of the public walkway that would be an issue that you could bring up to Wetlands and the Building Official. This item will be on the agenda at our August 7th meeting.

Thank You, Tony Adili ZEO

-----Original Message-----

From: Joel Skilton <joel.helpfulguy@gmail.com>
Sent: Sunday, June 30, 2024 3:21 PM
To: Planning & Zoning <planningandzoning@townofmorrisct.com>
Subject: Outdoor Concert Venue approval

I am requesting a copy of Land Use Attorney Steve Burns newest legal opinion that the outdoor stand-alone concerts in Morris are allowed. The concert venue was determined to be in VIOLATION with the COVID concerts, by attorneys involved. The previously NOT approved opinion of Attorney Burns is in Planning and Zoning records.

I am also interested in the NEWEST site plan approval for the Higbie Road / Watertown Road Food truck park. The approval, dated in January 2023, was to have the hot dog shed removed and 3 trailers set up. The hot dog trailer has been updated and there has been lights added to the site.

I am requesting to view the Zoning Commission's updated and approved site plan for these new modifications. The previous approval was given with no outdoors lights. I presume that the illumination plan was included in the newest Site Plan approval and are noted on the public records.

I also understand that there have been new Raised Public Walkways installed across the wetlands. These wetlands were clearly marked on the January 2023 APPROVED Site Plan. The Raised Public Walkways are NOT marked on the Site Plan that was approved on that date. I have read the recent minutes for Zoning and I failed to locate when the Site Plan readjustment meeting occurred. I have checked the last 3 months of Wetlands minutes and fail to locate a Wetlands permit for the crossing (s). I would anticipate that ANY work in a regulated area would have a permit, erecting a structure, such as a raised public walkway. I am requesting the date when the approval for said work was given and forwarded to the Zoning Office. I have heard of no meetings that involved the wetlands approval.

If there is a Raised Public Walkway that has gone through Wetlands and has obtained a Zoning Permit I would anticipate that there would also be a Building Permit required. There could be a rather extensive amount of people on a Raised Public Walkway and I would think there probably is some engineering involved for live loads and any special loads involved for lateral movement.

The June 5, 2024 Planning and Zoning minutes are still not posted, however the video is available. The Morris Bluegrass CONCERT VENUE was discussed and there was mention that the outdoor concert was "all over facebook". I am requesting the section of the Town of Morris Zoning Regulations where Facebook approval is an approval for the outdoor amplified concert. I have gone through the regulations and have failed to find that section. I am also requesting the motion to approve the Outdoor Concert Venue during the June 5, 2024 Planning and Zoning and what the vote for that

approval was. It is still my understanding that in permissive zoning if an activity or use is not specifically approved then it is not permitted.

The COVID concert discussion in 2020 involved a question of IF there was a traffic study required and IF there was a waiver given by the Board of Selectmen, June 2020. If there is a recent traffic study I would like to view this document. I am looking forward to seeing the CORRECT approvals in place PRIOR to an Outdoor Concert Venue starting in Town.

Thank you for your assistance in viewing / obtaining this public information.
Joel Skilton

ATTORNEY STEVEN E. BYRNE

2B Farmington Commons, 790 Farmington Ave., Farmington, CT 06032
(860) 677-7355 (860) 677-5262 fax

To: Morris Planning & Zoning Commission
From: Steven E. Byrne Esq.
Date: November 3, 2021
Re: Outdoor Music as an Accessory Use

A Zoning Violation Complaint was filed with the Zoning Enforcement Officer requesting that a cease-and-desist order be issued against 21 Higbie Road and 5 Watertown Road due to outdoor music at these properties. According to the complainant, outdoor music is not a permitted use either as a primary or accessory use. This is based upon his reading of the zoning regulations which provide in part that:

1. Sec. 6 “Any use not specified as permitted in a district is prohibited.”
2. Sec. 8 “Accessory uses shall not include uses which are otherwise not permitted or specifically prohibited in the district.”

Approvals for 21 Higbie Road – South Farm LLC

The 2014 Approval: This was an application for a zoning permit and site plan approval that would allow for the change of use of a barn on this property. The new use would permit a portion of a barn to be used as a farm market and also to rent space for indoor and outdoor events. A parking area would be created on site with 53 spaces. The Commission approved the application at its May 12, 2014 meeting. The approval was done pursuant to the statement of use contained in the application together with general standards. The only general standards in the zoning regulations appear in Sec. 52 ‘Special Exceptions’.

The 2017 Approval: Identified on the agenda as a site plan approval/zoning permit application to allow interior modifications to existing buildings and uses. Six uses were applied for, all of which the applicant believes are permitted by the zoning regulations: Commercial Kitchen, Restaurant, Commercial Production, Farm Brewery/Distillery, Lodging and Theater/Auditorium. The Commission, at its January 8, 2018 meeting, approved the commercial kitchen and restaurant uses pursuant to sec. 51 of the regulations. All other uses were denied.

Questions on 21 Higbie Road – South Farm LLC

Outdoor Music as Accessory Use – The zoning violation complaint raises the issue whether a use that is not specifically permitted in the zoning regulations can be allowed as an accessory use. The issue implicates Sec. 8 of the regulations which specifically states that accessory uses cannot

be a use which is not permitted or is listed as a prohibited use. The only specific mentions of music in the regulations are in Sec. 31 and it appears to be limited to indoor music and in the Winvian PDD which allows outdoor music as an accessory use “providing it does not migrate off the property”.

When a zoning regulation is interpreted, it must be done so as to avoid bizarre or unreasonable results. The interpretation put forth in the complaint would mean that no music is permitted outdoors in the town of Morris. Thus, playing a radio outside or practicing on a musical instrument in one’s backyard would be a zoning violation under this interpretation – an unreasonable result. Thus, another interpretation is merited.

A reasonable interpretation would be to follow past practices as well as the Winvian PDD regulation and allow outdoor music as an accessory use with conditions attached that limit any harm to neighboring properties.

Municipal Estoppel – This legal doctrine prevents a zoning authority from enforcing its regulations against a zoning violation under certain circumstances. These circumstances were set forth by our State Court of Appeals in Crisman v. Zoning Board of Appeals, 137 Conn. App. 61 (2012). A finding of municipal estoppel is appropriate when:

“the party claiming estoppel would be subjected to substantial loss if the municipality were permitted to negate the acts of its agents ... and may be invoked against the enforcement of zoning regulations (1) only with great caution, (2) only when the resulting violation has been unjustifiably induced by an agent having authority in such matters and (3) only when special circumstances make it highly inequitable or oppressive to enforce the regulations.”

Part (3) of the above test has been further elaborated as follows:

- The party had changed its position in reliance on those facts; and
- The aggrieved party would be subjected to substantial loss if the municipality were permitted to negate the acts of its agents.

In the Crisman case, while the court found that a garage had been constructed in violation of the zoning regulations, the regulations could not be enforced because a zoning permit had been issued and the property owner had expended over \$100,000 in constructing the garage.

Thus, care must be taken were approval for a use has been given by the Commission or its agent and the applicant has taken steps to implement that use.

Approval for 5 Watertown Road – The Barn Restaurant

At its May 13, 2019 meeting, the Commission approved a special exception application to allow outdoor dining subject to several conditions one of which was “Only acoustic, non-amplified music shall be outside.”

Questions Regarding 5 Watertown Road – The Barn Restaurant

Do Conditions of Approval Need to Be a Permitted Use – The approval for outdoor dining at the Barn restaurant allows, as a condition of approval, outdoor acoustic music. A zoning commission can only approve those uses permitted by the zoning regulations. Thus, any use allowed as a condition to an approval must be in compliance with the regulations. Whether outdoor music is permitted by the regulations, I rely on my answer provided for 21 Higbie Road.

Municipal Estoppel – The same discussion set forth for 21 Higbie Road applies here as well. The Barn was approved for outdoor music and likely expended funds to accommodate this use. Revoking this approval now probably raises a valid municipal estoppel defense.

Amplified Music – Whether the use of a microphone qualifies as amplified music can be answered by looking for a definition of amplified music. Since the zoning regulations contain no such definition, the Commission can look to other sources for one. Collins On-Line Dictionary provides the following definitions:

Music is the pattern of sounds produced by people singing or playing instruments.
If you amplify a sound, you make it louder, usually by using electronic equipment

Based on these definitions, the use of a microphone could qualify as amplified music.

From: 'Mr. David Wiig' <wiig@optonline.net>
Sent: Monday, July 1, 2024 10:45 AM
To: Planning & Zoning
Subject: re: FW: Outdoor Concert Venue approval

Jeton

We should just add it to the agenda under complaints and discuss it. I would suggest the August meeting. July 17th is for Planning.

Your response to Joel would be to show up at that meeting. He can present his letter at that time. Then board will then evaluate it.

We also should state that we don't manage wetlands issues. At first blush, I see the walkways across wetlands to be akin to Docks. We don't regulate Docks, Wetlands does. He should direct that part of the letter to Wetlands.

In the meantime, send it to Steve. Determine what the latest opinion letter would be. Although, the latest opinion would likely have been his statements in a meeting when we discussed the outdoor music at South Farms.

Dave

----- Original Message -----

From: <planningandzoning@townofmorrisct.com>
To: "Mr. David Wiig" <wiig@optonline.net>
Date: Mon, 1 Jul 2024 09:01:56 -0400
Subject: **FW: Outdoor Concert Venue approval**

Hi David

I received this email from Joel. I want to get your opinion before I write anything. I have a few answers for a response I can give him right away, but I would rather wait for what you have to say and wait a couple days.

Thank You, Tony Adili ZEO

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