

**Christiansburg Planning Commission
Minutes of March 19, 2018**

Present: Ashley Briggs
Catherine Clifton
Harry Collins
Mark Curtis
Jessica Davis
Hil Johnson, Vice-Chairperson
Jeananne Knies
Craig Moore
Ann Sandbrook
Jennifer D. Sowers, Chairperson *
Andrew Warren, Secretary ^{Non-Voting}

Absent:

Staff/Visitors: Will Drake, staff
Jared Crews, staff
Theresa Fontana, Town Attorney
Stacy Martin, Adventure Hobbies & Toys, 782 New River Road
Jonathon Taylor, 685 School Lane
Chris Larson, 1167 Brick Road, Elliston, VA
Chris Waltz, 1370 Rigby Street
John Casali, 385 Emerald Boulevard
Eric Roth, 195 Willow Oak Drive

Vice-Chairperson Johnson called the meeting to order at 7:00 p.m. in the Christiansburg Town Hall at 100 E. Main Street, Christiansburg, Virginia. Mr. Warren introduced Ashley Briggs and Jessica Davis as new Planning Commissioners, appointed by Town Council on February 20, 2018.

Public Comment

Vice-Chairperson Johnson opened the floor for public comment. With no comments, Vice-Chairperson Johnson closed the floor for public comment.

Approval of Planning Commission Minutes for February 20, 2018 Meeting

Vice-Chairperson Johnson introduced the discussion. Commissioner Moore made a motion to approve the February 20, 2018 Planning Commission meeting minutes. Commissioner Clifton seconded the motion, which passed 7-0. Commissioners Briggs and Davis abstained as they were not present for the February 20, 2018 meeting.

* Chairperson Sowers arrived at approximately 7:30 p.m.

Public Hearing on an ordinance to amend Chapter 24, "Nuisances," Article II. – Regulation of Noise, of the Christiansburg Town Code for the purpose of regulating loud or intrusive sounds or vibrations, modifying the exemptions to the ordinance, and providing for civil penalties in place of criminal penalties in the Town of Christiansburg.

And-

Public Hearing on an ordinance to amend Chapter 42, "Zoning," of the Christiansburg Town Code to permit a loudspeaker/sound amplification/outdoor sound system to be used in excess of Chapter 24 "Nuisances" Article II. – Regulation of Noise, by Conditional Use Permit in the Agricultural (A), Mixed Use: Residential – Limited Business (MU-1), Mixed Use: Residential – Limited Industrial (MU-2), Limited Business (B-1), Central Business (B-2), General Business (B-3), Limited Industrial (I-1), and General Industrial (I-2) zoning district).

The Commission agreed to hold both public hearings concurrently. Vice-Chairperson Johnson opened the public hearings.

Mr. Warren stated the Planning Commission was scheduled to make a recommendation to Town Council regarding the ordinance amendments on April 2, 2018 and Town Council would hold a public hearing on April 10, 2018 and was scheduled to take action on April 24, 2018.

Mr. Warren provided an overview of the proposed ordinance revision and explained public comments had been received and used to amend the draft ordinance since the public meetings held March 1 and March 8, 2018. Mr. Warren explained two overall ordinance changes are proposed:

1. Amendment of the noise ordinance in order to remove and combine unclear exemptions, change the penalty for violations from criminal to civil, allow the Town to seek an injunction in cases of repeated violation, and clarify definitions pertaining to noise.
2. Introduce a process for the use of Conditional Use Permits for businesses requesting to exceed allowable noise levels.

Mr. Warren highlighted some of the proposed changes to the noise ordinance:

- Clarifying the definition of "plainly audible" and introducing definitions pertaining to a decibel-based system for the measurement of noise.
- Amending the hours of noise restriction on Fridays and Saturdays from 10:00 p.m. - 7:00 a.m. to 11:00 p.m. to 8:00 p.m.
- Defining "Conditional Use Permit," removing the undue hardship waiver, and introducing the process for seeking a Conditional Use Permit.
- Removing unnecessary definitions such as "public property" and "residential areas" and adding definitions for "special events" and "sound level meter".
- Adding a five-minute time period for animal noise and removing the distance requirements for car stereo noise and alarm systems.

Mr. Warren read through the draft ordinance and noted where changes to the current ordinance and earlier drafts of the amendment were proposed, including changes to noises prohibited, exemptions to the ordinance, and penalties for violation.

Mr. Warren reviewed the criteria for the evaluation of Conditional Use Permits currently provided in the Town code. Mr. Warren explained an applicant would need to describe the activities, hours of operation, and location of the use being proposed to the Planning Commission. Mr. Warren stated the Commission would look at factors such as whether the proposed use was in conflict with the Comprehensive Plan, whether there were concerns to public safety and welfare, whether proper utilities were in place, and the nature of surrounding areas and development when considering a recommendation to Town Council.

Stacy Martin, 782 New River Road, asked for clarification on whether the noise limits would apply during both the day and night. Mr. Martin stated an entity called the Noise Police was created in the 1960's and 1970's that developed noise ordinances around the United States. Mr. Martin stated the Noise Police no longer existed and the changes to the noise ordinance would put neighbors at odds. Mr. Martin stated a chart displaying decibel levels of specific noises would be helpful as 65 decibels is not a high level of sound.

Mr. Martin noted the efforts of Town staff in drafting the ordinance amendments but stated the basic rights for businesses and individuals are being threatened by the changes. Mr. Martin stated noise is common in towns and the new ordinance could allow irritable neighbors to call in complaints for as little as children honking a car horn.

Mr. Martin stated Starlite Drive-In has requested there be no decibel level monitoring for the showing of its first movie on Friday and Saturday nights.

Mr. Martin stated he provided Town Council with the noise ordinance of Winchester, Virginia, which uses 65 decibels as its measurement for noise violations. Mr. Martin explained key pieces of this ordinance were not present in the draft ordinance including the requirement that doors and windows of a dwelling be shut before sound levels are measured and the requirement that sound be measured at least six feet from the wall of a building.

Mr. Martin noted he has video footage of a decibel meter measurement taken from the back row of a showing at Starlite Drive-In. Mr. Martin questioned how background noise within a home would be separated from the source of noise being measured for a violation and stated measurements before and after the alleged violation would be necessary.

Mr. Martin stated 70 percent of town revenue comes from taxes on businesses while the average homeowner pays \$250 a year in taxes. Mr. Martin stated it is unfair for businesses to have to pay for a Conditional Use Permit in addition to taxes. Mr. Martin suggested citizens calling in complaints should be given a chance to rescind their complaint.

Jonathon Taylor, 685 School Lane, asked whether he would be fined if his cell phone rang or if he had a conversation on East Main Street. Mr. Taylor stated 60 decibels is the noise level of a normal conversation and he feels it is an absurd level to put in the noise ordinance. Mr. Taylor stated Starlite Drive-In is mentioned by name on two separate documents produced by the Town and he believes they are being targeted by the ordinance change. Mr. Taylor noted retaliation is federally illegal.

Chris Larson, 1167 Brick Road, Elliston, stated he is employed in Christiansburg and contributes to the Town's economy. Mr. Larson stated the 65 decibel limit is ridiculous and Town officials should speak with professors at Virginia Tech or the Berklee College of Music in Massachusetts. Mr. Larson stated he is a musician and knows musicians that perform at Fatback Soul Shack. Mr. Larson noted if the ordinance passes as drafted, he will spread the word to the musicians he knows and they will not perform in Christiansburg.

Chris Waltz, 1370 Rigby Street, stated the Town is damaging itself by becoming involved in a public affair. Mr. Waltz stated Starlite Drive-In has been in Christiansburg since the 1950s and the Town seeks to revitalize the downtown area but pushes away business through restrictive ordinances. Mr. Waltz stated his coworkers in Roanoke have asked what the Town is doing and expressed relief in not being Town residents. Mr. Waltz stated it is illegal to consume any alcoholic beverage other than liquor while playing pool within the Town. Mr. Waltz stated businesses will not want to pay \$750 for the ability to play music within the Town. Mr. Waltz suggested allowing Starlite Drive-In to play their movies unrestricted until midnight and address noise after that point.

Mr. Martin announced Marie March from Fatback Soul Shack texted him stating the decibel level at the restaurant was between 60 and 70 at all times because of its proximity to Interstate 81.

John Casali, 385 Emerald Boulevard, stated he is a professor at Virginia Tech and runs the acoustics and hearing lab. Mr. Casali stated he runs a company called H.E.A.R that has been involved in issues regarding noise, alarms, and litigation support. Mr. Casali stated he has been involved in public hearings and zoning issues related to noise ordinances in the past as well as testifying in civil and criminal court. Mr. Casali stated the Town is attempting to write a comprehensive ordinance that covers what police might deal with outside the scope of issues with Fatback Soul Shack and Starlite Drive-In.

Mr. Casali stated the current draft ordinance needs revision and noted noise restrictions should be based on the land use that is receiving a particular noise. Mr. Casali noted an acceptable level of noise would be lower for a residential use than some other uses. Mr. Casali stated he has offered to help draft the noise ordinance as well as to help select sound measuring devices and train officers to use them. Mr. Casali stated he provided Town officials with the New Jersey Model noise ordinance which displays current thinking on noise regulations.

Mr. Casali suggested limiting the definition of "dwelling" to refer to rigid structures so tents and other non-rigid structures could not be considered dwellings. Mr. Casali stated the Town should not regulate whether windows of dwellings are to be open or closed in the case of a noise complaint. Mr. Casali stated the definition of "hearing aids" would need to be broader as hearing aids are no longer regulated by the United States Food and Drug Administration. Mr. Casali stated there should be separate noise restrictions for day and night time for any source of noise, noting the ordinance should not specify sources such as loudspeakers and music amplification devices.

Mr. Casali stated the ordinance should distinguish between zoning districts. Mr. Casali noted decibels should be measured with both A (dBA) and C (dBC) weighting because in order to capture a wider range of noise. Mr. Casali explained 65 decibels is roughly 5 decibels over the level of a normal face-to-face conversation. Mr. Casali explained speech interference occurs at 65 decibels and sleep can be aroused at 50 decibels. Mr. Casali suggested using a decibel chart in the noise ordinance with varying decibel restrictions for the Town's zoning districts.

Mr. Casali provided the Commission with a copy of his amendments to the draft ordinance. Mr. Casali stated a violation should occur at a level less than 65 decibels in residential areas. Mr. Casali noted objective decibel measurements help with enforcement as 65 decibels of music is different than 65 decibels of industrial noise.

Eric Roth, 195 Willow Oak Drive, suggested the focus of the ordinance should be restitution for injured parties rather than increased revenue for the Town through penalties. Mr. Roth stated the point of the new ordinance is to help injured parties and the current draft ordinance is designed to collect fees and fines. Mr. Roth stated the draft ordinance does not address noise problems and good faith mitigation between the parties involved should be encouraged instead.

With no further comment, Chairperson Sowers closed the public hearings.

Discussion on Public Hearing on an ordinance to amend Chapter 24, "Nuisances," Article II. – Regulation of Noise, of the Christiansburg Town Code for the purpose of regulating loud or intrusive sounds or vibrations, modifying the exemptions to the ordinance, and providing for civil penalties in place of criminal penalties in the Town of Christiansburg.

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Commissioner Sandbrook asked whether current businesses would need to seek a Conditional Use Permit under the new ordinance. Ms. Fontana stated current businesses can continue to operate and a Conditional Use Permit would only be needed if a business were seeking to produce noise above the permitted levels. Ms. Fontana noted no process is in place for grandfathering businesses but the Conditional Use Permit would function similarly to a hardship waiver.

Commissioner Knies stated it would be helpful to understand how the decibel levels used in the draft ordinance were determined. Ms. Fontana stated many municipalities in Virginia use similar decibel levels and Christiansburg is using relatively lenient parameters. Ms. Fontana noted noise levels will be measured on the receiving property in the case of a complaint. Ms. Fontana stated the 'plainly audible' standard will be used while equipment is purchased and training is completed for decibel measurement.

Ms. Fontana stated there will be different requirements for noise levels during the day and night. Ms. Fontana explained the draft ordinance does not differentiate between zoning districts because the allowed decibel level is higher than average for business and residential districts while industrial districts are exempt by state code. Ms. Fontana stated officers would also have to determine the zoning district receiving the noise as well as the zoning district of the source in the case of a violation if districts were differentiated.

Commissioner Briggs asked where the time frame of 10:00 p.m. to 7:00 a.m. for the restrictions on construction noise originated. Ms. Fontana stated the same hours have always been in effect for as long as she was aware.

Commissioner Knies asked whether applicants could request additional decibel level allowances through the Conditional Use Permit process. Ms. Fontana stated a request could be made but conditions would likely still be attached.

Mr. Casali stated hearing can be effected at 75 decibels but noise annoyance begins to occur in residential areas around 55 to 60 decibels and sleeping can be interrupted by 45 to 50 decibels. Mr. Casali noted permitted industrial noise levels nationally are typically 20 decibels above permitted noise levels in residential areas.

Commissioner Sandbrook asked why a specific amount of time before violation would occur for animal noise was named but not a specific amount for general noise. Ms. Fontana noted most ordinances were not drafted to place a time limit on general noise but animal noise was difficult to regulate. Ms. Fontana explained the draft ordinance would not require animal noise to be continuous as it would regulate intermittent and repetitive animal noise as well. Ms. Fontana noted a complaint regarding general noise would require a continuous source of noise for determination and measurement.

Commissioner Moore noted there was no exemption for public roadwork at night. Ms. Fontana stated the roadwork could possibly be considered 'emergency work'. Ms. Fontana noted the Town has no authority to regulate government entities such as the State or itself. Ms. Fontana stated if contractors were doing public roadwork, the contract would specify hours of operation. Commissioner Moore stated some ordinances make allowances for contractors to work on public roads at night to avoid traffic issues during the day. Ms. Fontana stated staff will try to work contractor roadwork into the definitions in the draft ordinance.

Mr. Warren explained special event permits and road closure permits are already in place for one-time events and will continue to exist. Mr. Warren stated Conditional Use Permits would be used for recurring events.

Commissioner Knies asked whether an event such as the Food Truck Rodeo making noise at 2:00 p.m. would be regulated the same way during the day as at night. Mr. Warren stated the event would likely be covered by a Special Event Permit but if no permit was approved or circumstances were altered from the conditions of the permit, a violation could occur.

Commissioner Briggs asked whether a Special Event Permit could be used to host events such as block parties in residential areas. Ms. Fontana stated a Special Event Permit could be sought if the event was on public property such as the public street but could be coordinated between neighbors on private property.

Commissioner Knies asked how officers would determine the base level noise of a receiving residence in comparison to noise from an outside source. Mr. Casali stated a buffer zone needed to be established by the draft ordinance to establish feasible ambience. Mr. Casali stated the level of average sound in an area should be determined and possible violations should be measured in relation to that number. Mr. Casali noted noise is on a logarithmic, not linear, scale and in an instance where the decibel level of an outside noise was 8 decibels above the feasible ambience level, the average noise would not factor into a measurement.

Mr. Warren stated the Commission would be provided the draft ordinance with updated changes before their meeting on April 2, 2018. The Commission decided to have a work session before their April 2, 2018 meeting.

Commissioner Moore suggested a chart comparing decibel levels be provided. Vice-Chairperson Johnson requested the Commission be provided with the New Jersey Model Ordinance.

Commissioner Knies requested information regarding the noise ordinances of other localities in the area and whether those localities had processes available for remediation between parties involved in complaints.

Mr. Warren announced the April 2, 2018 meeting of the Planning Commission would also have a public comment period.

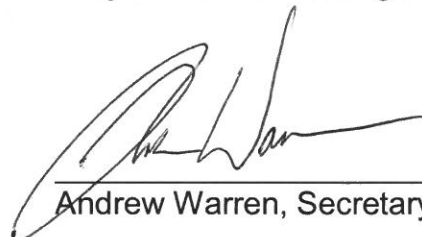
With no further comment, Chairperson Sowers closed the public hearing.

Other business.

Chairperson Sowers opened the discussion.

With no other business, Chairperson Sowers adjourned the meeting at 8:31 p.m.



Jennifer D. Sowers, Chairperson

Andrew Warren, Secretary Non-Voting