

**Christiansburg Planning Commission
Minutes of May 29, 2018**

Present:

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

Absent: Jeananne Knies

Staff/Visitors: Will Drake, staff
Jared Crews, staff
Mark Sisson, staff
Peggy Beasley, Starlite Drive-In
Jonathon Taylor, Starlite Drive-In
Chris Waltz, 1370 Rigby Street
Jared March, Big Bear Properties LLC
Marie March, Big Bear Properties LLC
Edward Gust, 1110 Crosscreek Drive
Patricia Sorey, 495 Houchins Road

Work Session

The Planning Commission met at 6:00 p.m. in the Christiansburg Town Hall at 100 E. Main Street, Christiansburg, Virginia for a work session pertaining to the Conditional Use Permit request by Starlite Drive-In.

Mr. Warren and Chief Sisson explained that rattling windows in surrounding residences due to sound levels from the theater were never recorded in police reports or witnessed by officers but some residents maintain it has occurred. Mr. Drake presented information regarding the sound level at which sleep arousal can occur.

The Commission and Ms. Beasley discussed the showing season for the theater and the start and finish times of movies, with Vice-Chairperson Johnson noting the difference in the time of sunset over the showing season.

The Commission discussed their site visit to Starlite Drive-In and surrounding areas to test noise levels. The Commission agreed the visit was helpful and noted readings on site were generally between 60 and 65 decibels with loud bursts registering at 68 or 69 decibels while readings off site registered around 49 decibels. The Commission made note that the sound meter used during the site visit was not calibrated in accordance with the reader purchased by the Town and suggested Chief Sisson meet with Mr. Taylor to ensure readings taken during the site visit were consistent with Town equipment. Mr. Warren stated the Commission could wait to take action on the Conditional Use Permit request until this meeting occurred.

The Commission discussed the proposed condition requesting short bursts of loud noise not exceeding 65 decibels in volume and 60 seconds in duration and Chief Sisson noted this condition would be hard to enforce. Vice-Chairperson Johnson suggested amending the condition to state that 65 decibels would not be exceeded on a receiving property at any time.

The Commission and Mr. Taylor discussed the consistency of volume levels during movies and Mr. Taylor explained a controller attached to the loudspeaker equalizes sound to compensate for large spikes in volume.

Regular Meeting

Chairperson Sowers called the meeting to order at 7:02 p.m. in the Christiansburg Town Hall at 100 E. Main Street, Christiansburg, Virginia.

Public Comment

Chairperson Sowers opened the floor for public comment.

Chris Waltz, 1370 Rigby Street, stated he attended the work session prior to the meeting and felt that topics covered during the meeting could have been handled earlier. Mr. Waltz stated he feels research and effort from the Planning Commission related to the Noise Ordinance was not evident in the emails he has read due to a Freedom of Information Act request. Mr. Waltz stated no substantive changes were made to the draft of the Noise Ordinance by the Commission.

Mr. Waltz expressed concern that the Conditional Use Permit process was being used to account for mistakes in the Noise Ordinance and pointed out residential areas are allowed to project more noise onto industrial and business districts than those districts are allowed to project into residential districts. Mr. Waltz stated police have no authority in civil matters according to the Town Charter.

With no further comments, Chairperson Sowers closed the floor for public comment.

Approval of Planning Commission Minutes for May 14, 2018 Meeting

Chairperson Sowers introduced the discussion. Commissioner Moore made a motion to approve the May 14, 2018 Planning Commission meeting minutes. Commissioner Clifton seconded the motion, which passed 7-0. Chairperson Sowers and Commissioner Curtis abstained as they were not present for the May 14, 2018 meeting.

Public Hearing on a Conditional Use Permit request by Marie E. March, agent for Big Bear Properties LLC/Fatback Soul Shack LLC for a loudspeaker/sound amplification/outdoor sound system to be used in excess of the Town of Christiansburg's Noise Ordinance at 2440 Roanoke Street (Tax map nos. 500 - A - 8A; 500 - A - 8; and 500 - A - 9B, 9C, 9D) in the B-3, General Business zoning district.

Chairperson Sowers opened the public hearing.

Jared March, Big Bear Properties LLC, stated Fatback Soul Shack is requesting the Conditional Use Permit due to difficulty compensating for ambient noise from Roanoke Street and Interstate 81, noting the sound level varies between 65 and 90 decibels. Mr. March stated the business is trying to provide for patrons, citizens, and tourists.

Mr. March explained Fatback Soul Shack held an outdoor concert attended by 400-500 people including members of Town administration. Mr. March stated a Town Police Sergeant came out before 10:00 p.m. on the night of the concert, showing aggression and halting the concert by threatening criminal charges.

Mr. March stated he and his wife have taken multiple blighted structures and properties within the Town and made them profitable sources of revenue, noting they were planning to open and operate a homeless shelter. Mr. March stated his family's investment in Christiansburg is tenuous at this point. Mr. March stated Due South BBQ had received a letter from the Town regarding a painting of a pig on its wall.

Mr. March explained they were requesting a noise allowance of 85 decibels on receiving properties so that patrons can hear the music without the noise disturbing neighbors. Mr. March added the Econo Lodge hotel behind Fatback Soul Shack is supportive of their request and is informally partnering with Fatback Soul Shack for promotion. Mr. March noted Fatback Soul Shack is surrounded by businesses as well as I-81 and noted he feels 85 decibels will not be an issue.

Mr. March stated Fatback Soul Shack is also requesting there be no maximum noise allowance level for receiving properties in business or industrial districts. Mr. March stated most businesses around Fatback Soul Shack are not open when concerts are held. Mr. March explained he can hear music from Shelor as clearly as music from his own establishment when standing on his property. Mr. March stated if people do not approve of what a business is doing, they will stop supporting that business.

Mr. March stated Fatback Soul Shack is proposing noise levels on receiving properties be measured indoors when complaints are received as opposed to testing whether the noise is plainly audible. Mr. March added they are requesting that dwellings only be considered enclosed if windows and doors are closed.

Mr. March stated his business has a high turnover rate and disgruntled former employees often issue complaints about the business in attempts at retaliation. Mrs. March added that their businesses have experienced issues with racist neighbors who may complain to cause trouble. Mr. March stated Fatback Soul Shack is requesting enforcement of the Noise Ordinance be complaint-based and the name and address of anyone who makes a complaint about noise levels be considered public record to ensure legitimacy. Mr. March stated the business would be unable to rectify any noise-based issue if they are not aware of where complaints come from.

Edward Gust, 1110 Crosscreek Drive, stated he is not opposed to someone trying to run a business but he is concerned with the level of noise that could reach his home. Mr. Gust asked what recourse would be available if the Conditional Use Permit is granted and noise becomes an issue for neighbors. Mr. Gust stated people may be afraid to complain if their name is revealed when a complaint is made but added it is helpful to be aware of where the complaint came from. Mr. Gust noted he has not heard any noise from Fatback Soul Shack at his home in the past

Patricia Sorey, 495 Houchins Road, stated her family has not been affected by noise from Fatback Soul Shack in the past but she is worried that her neighborhood may be affected in the future. Ms. Sorey asked how late music would be played into the night. Ms. Sorey stated the business was aware of the ambient noise of the interstate when it chose its location. Ms. Sorey added she would also like to know what recourse is available if the Conditional Use Permit is approved. Ms. Sorey explained that she is not familiar with decibel levels and is unsure what effect additional noise allowances for Fatback Soul Shack may have, but noted she wanted to speak at the public hearing to voice concerns in case they are warranted. With no further comments, Chairperson Sowers closed the public hearing.

Public Hearing on a Conditional Use Permit request by Marie E. March, agent for Big Bear Properties LLC/Due South BBQ LLC for a loudspeaker/sound amplification/outdoor sound system to be used in excess of the Town of Christiansburg's Noise Ordinance at 1465 and 1495 Roanoke Street (Tax Map No. 529 – 8 – 27) in the B-3, General Business zoning district.

Chairperson Sowers opened the Public Hearing.

Mr. March explained the same conditions discussed in the previous public hearing were being requested for Due South BBQ.

Mrs. March stated the conditions requested would apply Thursday, Friday, Saturday, and Sunday until Midnight and Mr. March stated music at the venues will not be any louder than it has been at events held in the past.

With no further comments, Chairperson Sowers closed the Public Hearing.

Discussion on a Conditional Use Permit request by Peggy Beasley for a loudspeaker/sound amplification/outdoor sound system to be used in excess of the Town of Christiansburg's Noise Ordinance at 255, 275, and 365 Starlight Drive, S.E., (Tax map nos. 529 - A - 12; 529 - A - 13; and 529 - A - 14) in the B-3, General Business zoning district.

Mr. Warren explained the Planning Commission had discussed two possible conditions during their work session earlier in the evening:

1. Allow for sounds for the full run on the first movie on Thursday, Friday, Saturday, and Sunday nights during the months of April through October to not exceed 65 dB(A) in residential zoning districts and 65 dB(A) in business zoning districts. The permitted C-weighted decibels shall not exceed 70dB(C) during the first full run of the movie.
2. Allow for up to five concerts per year not to exceed the noise standards detailed in condition #1 and ending by 11:00 p.m.

Commissioner Moore asked whether some sort of indicator could be put in place to signify whether the first or second movie of the night was currently playing at Starlite Drive-In. Mr. Taylor stated the operation of the ticket booth is generally an indication as the booth closes early into the second movie. Vice-Chairperson Johnson suggested putting the approximate time of the second movie on Starlite Drive-In's billboard.

Vice-Chairperson Johnson stated he felt the work session prior to the meeting was successful and noted the Noise Ordinance was designed in the interest of the entire Town and did not target any specific businesses. Vice-Chairperson Johnson stated the Commission worked hard on the ordinance and is using the Conditional Use Permit process to work with both residents and businesses.

Vice-Chairperson Johnson noted the sound meter used during the Commission's site visit to Starlite Drive-In was not calibrated and suggested the Commission wait to make a recommendation on the Conditional Use Permit until Chief Sisson was able to take readings with the Town-owned meter. Ms. Beasley stated she would like the Town meter readings to be taken before agreeing to the conditions drafted.

Vice-Chairperson Johnson made a motion to postpone taking action on the Conditional Use Permit until the June 18, 2018 meeting. Commissioner Moore seconded the motion, which passed 9-0.

Discussion on a Conditional Use Permit request by Marie E. March, agent for Big Bear Properties LLC/Fatback Soul Shack LLC for a loudspeaker/sound amplification/outdoor sound system to be used in excess of the Town of Christiansburg's Noise Ordinance at 2440 Roanoke Street (Tax map nos. 500 - A - 8A; 500 - A - 8; and 500 - A - 9B, 9C, 9D) in the B-3, General Business zoning district.

Commissioner Briggs inquired about the distance between Fatback Soul Shack and the nearest residential properties. Mr. Warren stated the nearest residences are approximately half a mile from Fatback Soul Shack. Commissioner Briggs stated sound coming from an amplification device registering at 100 decibels one meter away from that device registers at 58 decibels a quarter of a mile away. Commissioner Briggs suggested a site visit to measure sound at the residential areas closest to Fatback Soul Shack. Vice-Chairperson Johnson suggested doing multiple tests of sound levels at various areas and times.

Vice-Chairperson Johnson stated he felt the business could be told where complaints came from but the names and addresses of complainants should not become public record. Mr. March pointed out multiple factors change the readings of sound meters. Mr. March stated subjectivity will still be used to determine the source of and level of noise.

Mrs. March stated their business would be held accountable to the Conditional Use Permit and questioned why a complainant would not be held accountable as well. Mr. March stated he would prefer complainants to address issues face-to-face with himself or Mrs. March.

Mark Sisson, Christiansburg Police Chief, stated he would not tolerate officers targeting and negatively affecting citizens or businesses in the Town. Chief Sisson stated the role of the Police Department in the case of a complaint would be to go to the scene where the complaint originated and take a reading of the noise levels. Chief Sisson explained complaints alone will not result in charges.

Commissioner Clifton expressed concern with the possibility of Walnut Creek residences being affected by noise from Fatback Soul Shack but not being protected by the Conditional Use Permit regulations as the community is outside of Town limits. Commissioner Clifton stated Walnut Creek should be considered when levels are determined and suggested taking readings from that area during a site visit. Chief Sisson stated there may be jurisdictional issues between Town and County law enforcement due to a portion of Walnut Creek property lying outside the Town. Commissioner Briggs asked staff to contact Montgomery County in regards to the properties outside Christiansburg that may be affected by noise from Fatback Soul Shack.

Commissioner Clifton asked what steps had been taken to mitigate noise from I-81. Mrs. March stated VDOT owns the fence line along Roanoke Street and noted Fatback Soul Shack was planning a fencing project but is awaiting VDOT approval.

Mrs. March explained there is concern that heavier fencing may cause noise to reflect behind the restaurant and towards the Econo Lodge hotel. Mrs. March added another fence may be run along the rear of the property once determinations are made regarding the reflection of noise.

Mrs. March stated information about fencing was not included in their Conditional Use Permit application because they did not want to be held to set standards before the impacts of the fence installation were determined. Mrs. March stated she believes the business was exempt under the Town's former Noise Ordinance and stated the stage for outside music was approved by the Town. Mr. March stated the outdoor stage is oriented away from residences and towards the Shelor Motor Mile.

Vice-Chairperson Johnson suggested a site visit to Fatback Soul Shack and surrounding areas while music is being played to determine the level of sound. Vice-Chairperson Johnson also suggested a work session prior to the June 18, 2018 Planning Commission meeting. Vice-Chairperson Johnson acknowledged it may be difficult to test the noise levels before a Conditional Use Permit was granted to allow for noise above levels permitted by the Noise Ordinance. Commissioner Briggs asked whether any assurance could be given to Fatback Soul Shack so that noise levels could be measured without the threat of a violation. Chief Sisson explained violations would be complaint based and no violation would be issued while tests on noise were conducted by Town officials.

Mrs. March stated there have been outdoor music events held at Fatback Soul Shack that have not resulted in any noise complaints. Mrs. March stated there are outdoor events scheduled that the Commission could attend and test noise levels. Mr. Warren stated June 18 would be the next Planning Commission meeting.

Commissioner Clifton stated it would be more useful to conduct the site visit at night as concerns are generally focused on nighttime noise levels.

Discussion a Conditional Use Permit request by Marie E. March, agent for Big Bear Properties LLC/Due South BBQ LLC for a loudspeaker/sound amplification/outdoor sound system to be used in excess of the Town of Christiansburg's Noise Ordinance at 1465 and 1495 Roanoke Street (Tax Map No. 529 – 8 – 27) in the B-3, General Business Zoning district

Commissioner Sandbrook expressed concern with the request for allowance of sounds up to 85 decibels as hearing damage can be caused at 80 decibels according to the National Health Association. Mrs. March provided the Commission with information from the National Institute of Health stating that hearing damage begins at 85 decibels. Commissioner Sandbrook asked staff for information regarding the duration of sound at certain levels and its effect.

Mrs. March explained music is played at Due South BBQ Wednesday, Thursday, Friday, Saturday and Sunday of most weeks. Mrs. March stated music is usually

played indoors but during the summer music is played in the "pig pen" area. Mrs. March stated the performances are generally acoustic and amplification equipment is rarely used.

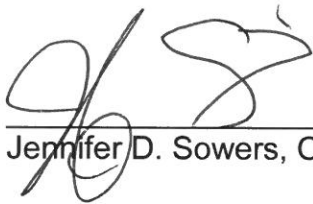
Mrs. March stated there have been no complaints regarding noise at Due South BBQ up to this point. Mrs. March stated the Conditional Use Permit would provide for legal protection against people wishing to harm the business through complaints. Mrs. March added musicians usually play until around 9:00 to 9:30 p.m.

Commissioner Moore noted Conditional Use Permits are granted to a property rather than a business and therefore remain in place if tenants change. Commissioner Moore stated the Commission must be cautious that conditions are designed so that potential future tenants cannot abuse them and cause adverse effects. Mr. March stated the market will determine what businesses are viable in certain areas. Mrs. March stated she hopes the Commission will be considerate of the needs of her businesses because she feels their rights were infringed upon by the new Noise Ordinance.

Other business.

Mr. Warren announced that a work session would be held prior to the June 18, 2018 Planning Commission meeting.

With no other business, Chairperson Sowers adjourned the meeting at 8:16 p.m.



Jennifer D. Sowers, Chairperson



Andrew Warren, Secretary Non-Voting