

Christiansburg Planning Commission
Minutes of June 18, 2018

Present: Catherine Clifton
Mark Curtis
Jessica Davis
Hil Johnson, Vice-Chairperson
Jeananne Kries
Craig Moore
Ann Sandbrook
Jennifer D. Sowers, Chairperson
Andrew Warren, Secretary Non-Voting

Absent: Ashley Briggs
Harry Collins

Staff/Visitors: Will Drake, staff
Jared Crews, staff
Mark Sisson, staff
Ted Aaron, 1280 Flint Drive
Peggy Beasley, Starlite Drive-In
Jonathon Taylor, Starlite Drive-In
Jared March, Big Bear Properties LLC
Marie March, Big Bear Properties LLC
Christopher Larson, Elliston, Virginia
Eric Roth, 195 Willow Oak Drive

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 requests by Starlite Drive-In, Fatback Soul Shack, and Due South BBQ.

The Commission discussed recent noise level readings taken in residential areas surrounding Starlite Drive-In. Mr. Warren and Chief Sisson noted the dB(C) levels were higher than expected based on the prior site visit. Mr. Taylor stated the dB(C) levels were likely generated by car speakers from the audience of the movie and not the theater's outdoor speaker system.

The Commission agreed the theater's outdoor speaker system should be operated no later than 12:00 a.m. during the first movie showing of a given night, though the

movie could continue to be played through car radios or window speakers. The Commission discussed clarifying that concerts were allowed to occur throughout the year and not just during the movie season.

The Commission discussed Due South BBQ's proposed requirement for windows to be closed when noise level measurements are taken and determined closed windows should not be required as some residents do not have air conditioning in their homes.

The Commission discussed the sound level allowances requested by Due South BBQ and if they were appropriate given the generally acoustic nature of the music. The Commission discussed amending the conditions so that the time of additional noise allowance coincides with Due South BBQ's operating hours.

The Commission discussed taking noise level readings from areas surrounding Due South BBQ.

The Commission discussed adding a condition to require a one-year review of the Conditional Use Permits.

Regular Meeting

Chairperson Sowers called the meeting to order at 7:06 p.m. in the Christiansburg Town Hall at 100 E. Main Street, Christiansburg, Virginia.

Public Comment

Chairperson Sowers opened the floor for public comment.

Ted Aaron, 1280 Flint Drive, presented the Commission with graphs depicting decibel levels he measured on his property during different showings at Starlite Drive-In. Mr. Aaron stated sound doubles at every 10 decibels and, therefore, a request for 92 decibels would be 8 times louder than the noise level allowed by Town Code.

Mr. Aaron stated he felt the Conditional Use Permit requests by Starlite Drive-In, Due South BBQ, and Fatback Soul Shack would adversely affect adjoining properties without presenting a clear need to exceed the noise ordinance and without permission from adjoining property owners. Mr. Aaron stated the conditions proposed by the applicants were unfair to adjoining property owners and in opposition to the Town Noise Ordinance. Mr. Aaron stated Conditional Use Permits should be used to mitigate adverse consequences for properties surrounding the applicants.

Mr. Aaron stated he believes the applicants should be able to work within the confines of the Noise Ordinance and noted most drive-in theaters require their patrons to listen to movies through FM radio. Mr. Aaron stated he felt outdoor speakers were not appropriate for areas near residential areas and questioned whether concerts were allowed as a "by-right" use in the B-3 zoning district. Mr. Aaron noted there has been controversy concerning the applicants and the Town regarding the Noise Ordinance.

Jonathon Taylor, 685 School Lane, stated residential development occurred around Starlite Drive-In after the theater had been operating for decades. Mr. Taylor suggested Town officials take noise level readings in areas behind Hubbell Lighting Inc. as there have been complaints regarding noise in that area. Mr. Taylor asked the Commissioners to review the Town's Facebook page to observe negative comments from citizens regarding Town actions relating to Starlite Drive-In and the Noise Ordinance.

Jared March, Big Bear Properties LLC, stated he and his wife consider the profitability of their businesses to be an indication of approval from Town citizens. Mr. March noted sales at Fatback Soul Shack were tripled on the night their outdoor concert was shut down due to alleged Noise Ordinance violations. Mr. March stated his businesses have gotten positive reviews online for the music provided. Mr. March stated 70 percent of Town revenue comes from taxes on businesses and explained he feels businesses will leave Christiansburg if the Town does not work with Big Bear Properties LLC in approving their Conditional Use Permit requests.

Mr. March suggested the Commission look for creative solutions to dealing with businesses instead of relying on the Town Code. Mr. March stated he believed his business was exempt from noise regulation by the Town's former Noise Ordinance. Mr. March stated Big Bear Properties LLC is requesting conditions lenient enough to allow its businesses to be run and to benefit the Town, its residents, and its businesses.

Marie March, Big Bear Properties LLC, stated she has invested a great deal of money in her businesses. Mrs. March stated Downtown Christiansburg Inc. is exempt from regulations on its noise levels and noted she feels this has created unfair competition. Mrs. March noted her employees are paid well and her businesses have been successful in the Town. Mr. March added he and Mrs. March have taken blighted structures and turned them into sources of revenue for the Town.

Christopher Larson, Elliston, Virginia, stated he works and pays taxes in Christiansburg. Mr. Larson pointed out the negative reviews on the Town's Facebook page and noted the importance of Starlite Drive-In to the Town. Mr. Larson stated he believes the Planning Commissioners created the animosity of Town citizens by playing a role in passing the Noise Ordinance. Mr. Larson stated he feels the requirement for licenses, regulations, and permits are opposed to the

principle of freedom. Mr. Larson stated industrious businesses are vital to a community and noted he feels the Town is encroaching on the rights of businesses.

Eric Roth, 195 Willow Oak Drive, stated he feels the Town has set a double standard for their enforcement of the Noise Ordinance as Christiansburg High School is allowed to make noise that exceeds the levels outlined in the ordinance. Mr. Roth noted he can hear noise from the high school stadium inside his house and questioned why the Town would ask businesses to follow guidelines it does not follow itself. Mr. Roth asked the Commission to consider providing the same leeway to commercial properties as what is granted to the high school

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

Approval of Planning Commission Minutes for May 29, 2018 Meeting

Chairperson Sowers introduced the discussion. Commissioner Moore made a motion to approve the May 29, 2018 Planning Commission meeting minutes. Commissioner Sandbrook seconded the motion, which passed 7-0. Commissioner Knies abstained as she was not present for the May 29, 2018 meeting.

Discussion/Action 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.

Chairperson Sowers opened the discussion.

The following conditions were drafted:

1. Allow for sounds for the full run of 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 70 dB(C) during the first full run of the movie. This allowance shall permit the first movie to use the outside sound system no later than 12:00 a.m. to the standards stated above.
2. Allow for up to five concerts from January to December not to exceed the noise standards detailed in condition #1 and ending by 11:00 p.m.

Commissioner Moore made a motion to recommend Town Council approve the Conditional Use Permit with the conditions as drafted. Commissioner Sandbrook seconded the motion, which passed 8-0.

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.

Chairperson Sowers opened discussion.

The following conditions were drafted and discussed:

1. The maximum noise measurements shall be 80 dB(A) and 85 dB(C) from a receiving residential use property for amplified music in order to be heard above the ambient noise level of traffic on Interstate 81 on Thursday, Friday, Saturday, and Sunday nights until midnight.
2. The noise ordinance shall not apply to any receiving property of loudspeaker, sound amplification, and outdoor sound system noise for business or industrial uses within industrial or business zoning districts (B-1, B-2, B-3, I-1, or I-2 Zoning districts).
3. In lieu of measuring the sound indoors with the plainly audible measurement, sound measurements taken indoors shall not exceed a measurement of 80 dB(A) and 85 dB(C) on residential property.
4. Any noise measurement within an enclosed dwelling unit shall also require the windows of the dwelling unit to be closed.
5. Complaint-based enforcement only.
6. Name and address of complainer needs to be public record (not anonymous) – police should follow up with us the next business day so we can discuss any current employee issues and see if there is a retaliatory issue at play.
7. This permit shall be subject to review by the Planning Commission in one year. The Planning Commission shall only consider citizen-based complaints which result in a documented violation.

Commissioner Knies noted the noise allowance discussed for conditions 1 and 3 had been dropped from 85 dB(A) and 90dB(C) to 80 dB(A) and 85 dB(C). Commissioner Knies pointed out the Commission had decided to strike condition 4 from the proposed conditions so as not to create undue hardship on residents who may not have access to air conditioning in their homes.

Chief Sisson explained citizens who file complaints do not often allow officers inside their homes. Chief Sisson explained it would be difficult to measure noise levels if this occurred in the context of noise complaints. Chief Sisson acknowledged that

arbitrary or retaliatory complaints could be made but noted a violation would have to occur for enforcement to take place. Chief Sisson stated the Police Department is not currently proactive in enforcement of the Noise Ordinance, which is complaint-based. Chief Sisson stated the Police Department will seek to work with businesses and complainants to find a compromise if violations occur.

Commissioner Moore suggested the Commission only consider verified citizen-based complaints in its one-year review of the Conditional Use Permit.

Commissioner Moore stated citizen complaints would be useful to the Planning Commission while violations noted by police or given anonymously could be enforced but not considered by the Commission. Commissioner Moore stated the Commission should be focused on the validity of complaints as opposed to the volume. Commissioner Davis added the Noise Ordinance was meant to take into account the complaints of citizens and, therefore, citizens' complaints should be the focus of a one-year review.

Commissioner Clifton stated a complaint should not be disregarded if a complainant does not provide their name and address and noted personal information is not necessary for enforcement of the Conditional Use Permit. Commissioner Clifton stated she feels this would place an extra burden on adjacent property owners and suggested the Commission review the number of complaints made compared to number of documented violations in its one-year review.

Mr. Warren explained Town Staff currently reviews properties with Conditional Use Permits to check for compliance and noted violations could serve as cause to bring those permits before the Planning Commission or Town Council prior to the one-year review.

Mrs. March stated she is asking for accountability to be placed on those that complain. Mr. March stated frivolous complaints would consume the time of the Planning Commission and noted information on complainants could be obtained through a Freedom of Information Act request.

Chief Sisson stated citizens should be able to make complaints without having their personal information released but added frivolous complaints can be an issue for officers. Chief Sisson stated officers document unsubstantiated complaints and explained businesses could be made aware of complaints even if there is no violation present for the sake of communication. Chief Sisson explained there is a State Code section that addresses filing false police reports.

Commissioner Davis suggested enforcement be based only on complaints. Commissioner Clifton stated a violation is a violation regardless of the context of its documentation. Chief Sisson stated an officer has a duty to respond to his or her environment and law enforcement cannot operate if officers are not allowed to address a violation without a complaint. The Commission decided to strike conditions 5 and 6.

Chief Sisson stated the Police Department has not been involved in the Conditional Use Permit process prior to the Noise Ordinance and noted the data regarding complaints could be collected and provided to the Planning Commission at the one-year review. Chief Sisson explained the data could be presented to show which complaints were citizen-based. Chief Sisson added officers do not target businesses and any issue of this sort would be addressed if it arose.

Mr. Warren noted the one-year review of the Conditional Use Permit would not allow the Commission to amend the conditions of the permit and explained a new Public Hearing process would be needed for any amendments to the conditions. Mr. Warren stated it would be at Town Council's discretion whether that process would require a fee.

Mr. Warren stated noise level readings were taken from properties adjacent to Fatback Soul Shack, and noted most reading took place at commercial properties. Mr. Warren noted one measurement was taken from a residential property on Houchins Road. Chief Sisson explained the Christiansburg Police Department has jurisdiction one mile into the County but issues with sound reaching County residents would be handled through cooperation between the Christiansburg Police Department and the County Sheriff's Office.

Mr. Warren explained there are four residential areas in the Town near Fatback Soul Shack: two approximately a quarter of a mile away across Interstate 81 and two further down Roanoke Street. Chairperson Sowers noted a sound wall is in place shielding the properties across I-81.

Vice-Chairperson Johnson suggested more tests of noise levels on residential properties near Fatback Soul Shack be taken before the Planning Commission takes action on the Conditional Use Permit request.

Mr. Warren stated an outdoor concert was scheduled at Fatback Soul Shack on June 30 and Mrs. March noted an indoor concert in the meantime could possibly be moved outside depending on weather. Chief Sisson stated ambient noise level readings could be taken at any time.

Vice-Chairperson Johnson made a motion to postpone taking action on the Conditional Use Permit request until the Planning Commission's July 2, 2018 meeting. Commissioner Curtis seconded the motion, which passed 8-0.

With no further comment, Chairperson Sowers closed the discussion.

Discussion 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 discussion.

The following conditions were discussed:

1. The maximum noise measurements shall be 80 dB(A) and 85 dB(C) from a receiving property for amplified music in order to be heard above the ambient noise level of traffic on Interstate 81 on Thursday, Friday, Saturday, and Sunday nights until close of business or midnight, whichever comes earlier.
2. The noise ordinance shall not apply to any receiving property of loudspeaker, sound amplification, and outdoor sound system noise for business or industrial uses within industrial or business zoning districts (B-1, B-2, B-3, I-1, or I-2 Zoning districts).
3. In lieu of measuring the sound indoors with the plainly audible measurement, sound measurements taken indoors shall not exceed a measurement of 80 dB(A) and 85 dB(C) on residential property.
4. This permit shall be subject to review by the Planning Commission in one year. The Planning Commission shall only consider citizen-based complaints which result in a documented violation.

Commissioner Sandbrook suggested waiting until sound levels are measured at properties adjacent to Due South BBQ to determine decibel levels allowed by the Conditional Use Permit.

The Commission discussed whether residential uses in business or industrial districts should be exempt from enforcement of the noise levels allowed by the Conditional Use Permit. Mr. Warren explained there are residential uses established in the B-3 district surrounding Due South BBQ, including the mobile homes directly behind the restaurant. Mr. Warren added any new residential use in the B-3 district would require a Conditional Use Permit.

Commissioner Moore pointed out the residential uses surrounding Due South BBQ were established in the B-3 district and stated residents should have been aware of business uses and possible noise levels around them. Commissioner Clifton noted most residents in the area surrounding Due South BBQ would not be able to complain about noise levels if the Conditional Use Permit exempted residential uses in business districts from enforcement.

Mrs. March stated the property manager for the mobile homes behind Due South BBQ generally handles and discourages complaints from residents regarding the restaurant.

Commissioner Sandbrook stated Due South BBQ should be able to avoid noise violations on any receiving properties, regardless of zoning, based on the level of noise being proposed in the drafted conditions. The Commission decided to strike condition 2 from proposed conditions.

Vice-Chairperson Johnson made a motion to postpone taking action on the Conditional Use Permit request until the Planning Commission's July 2, 2018 meeting. Commissioner Davis seconded the motion, which passed 8-0.

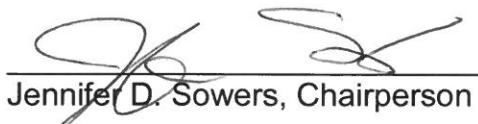
With no further comments, Chairperson Sowers closed the discussion.

Other business.

Chairperson Sowers opened the discussion.

Mr. Warren announced the Planning Commission would need to review security measures for their Town email accounts.

With no other business, Chairperson Sowers adjourned the meeting at 8:47 p.m.



Jennifer D. Sowers, Chairperson



Andrew Warren, Secretary Non-Voting