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Walter F. McKee • James A. Billings • Matthew D. Morgan

April 9, 2015

Corey Vose, Chair
City of Augusta Planning Board
City Center Plaza
16 Cony St.
Augusta, ME. 04330

RE: Red Barn, Inc., LLC/Laura Benedict Conditional Use Application

Dear Mr. Vose and Members of the Planning Board:

I represent Roger Carrier and Brian King. Roger and Brian live near the Red Barn and I understand that the Red Barn, through its owner, Laura Benedict, has filed a conditional use application to host 22 separate outdoor events that will exceed the 60 decibel limit provided for in the noise ordinance. For a number of significant reasons, we object.

History

This is not the first time that the Red Barn has sought a conditional use permit to exceed the noise ordinance. The Red Barn filed a similar request in 2013. That request was denied after the Red Barn failed, among other things, to comply with the plain language of the waiver provisions of the noise ordinance. The 2013 application followed a series of events in 2012 that exceeded the noise limits. The Red Barn was informed throughout 2012 about the violations and completely ignored them, despite Code Enforcement Officer warnings throughout that summer. I have enclosed a copy of the memo that addressed the multiple violations throughout 2012 which, among other things, caused the Planning Board to reject the permit.

In 2014 the Red Barn avoided the conditional use permit entirely by using the legal loophole of applying for a mass gathering permit for each event. The Red Barn has chosen not to do so this year because of alleged concerns about cost. Nonetheless, the Red Barn did in fact have multiple events all throughout last summer which were all loud and extraordinarily disruptive to the neighborhood and especially to Roger and Brian who had to suffer through weekly, multi-hour events that were held without any regard whatsoever to their simple desire to have peace in the summer evenings at their homes.

The Standard

In order to be granted a waiver from the sound level limits the noise ordinance has a strict 3-part test. A waiver may only be granted where there is:

1. A showing by the applicant that a comprehensive assessment has been made of the available technologies for the development, expansion or modification and that the sound level limits cannot practicably be met with any of these available technologies; and
2. A showing by the applicant that noise easements for the affected premises are either not practical or not available; and
3. A finding by the Planning Board that proposed development will not be excessively incompatible with the surrounding neighborhood, will not unduly interfere with the normal enjoyment of abutting property, and will not create excessive noise at unreasonable hours.

The Application

As a preliminary matter, it is difficult to determine exactly what is going to be happening at the Red Barn over the course of the next many months. In the amendment to the March 20, 2015 conditional use application narrative the Red Barn indicates that it “wishes to host a car show with a DJ that may exceed the 60 decibel allowable limit.” The narrative goes on to indicate that it is anticipated that there will be 22 car show events and also that events will occur “beginning May 5, 2015 to September 29, 2015 from 5:00 p.m. to 8:00 p.m.”

The reality, though, is that the Red Barn is planning to do a lot more than just having car shows this summer. According to their own Facebook page, the Red Barn is planning on having concerts on Thursday nights throughout the summer as part of their “free summer concert series.” These loud, ruckus concerts are the same concerts involving many of the same entertainers that were the problem back in 2012. As such we now know that there will be no peace this summer for Roger and Brian as there are going to be loud concerts on Thursday nights as well as loud DJ music on Tuesday nights.

Additionally, the conditional use application narrative indicates that there are 3 delivery vehicles going in and out of the Red Barn and the “customer/employee vehicles” will amount to 300. This is a significant amount of traffic and number of people to say the least.

The Application Should be Denied

The application does not address in any way the requirements to obtain the waiver from the sound level limits. There has been no showing that any “comprehensive assessment has been made of the available technologies” and that the “sound level limits cannot practicably be met with any of these available technologies.” This issue came up in 2013 and the Red Barn was asked very specifically about what it was going to do to try to limit the noise and the Red Barn simply indicated that there was nothing that they could do. That is completely unacceptable.

Additionally, the Planning Board cannot make the necessary finding that this activity is not going to “unduly interfere with the normal enjoyment of abutting property, and will not create excessive noise at unreasonable hours.” This car show with the loud music and DJ is going to be every single Tuesday night for the entire summer. It will take place at a time when people are presumably home from work in the early evening and want to rest and relax. There will be no resting and relaxing because it will be too loud to do so. In 2012 and in 2014 Roger and Brian had to literally close their windows every evening when there was an event at the Red Barn because the noise came right into and through their homes. They could not enjoy being outside without having the equivalent of somebody parked right in front of their house with loud music going. They deserve to have the peaceful and quiet enjoyment of their homes during these important hours and the fact that there are apparently going to be additional events on Thursday nights as well, events that will be even louder, makes this permit for what appears to be Tuesday night events that much more unreasonable.

Do not grant this application. The Red Barn has not met the waiver requirements and neighbors deserve to be able to have peace and quiet in their neighborhood without interference from unnecessary and loud commercial activities.

Sincerely,



Walter F. McKee
wmckee@mckeebillings.com

WFM/rp
enc.

cc: Roger Carrier
Brian King

City of Augusta, Maine

DEPARTMENT OF CITY SERVICES

BUREAUS:

Code Enforcement (207) 626-2368
Facilities & Buildings (207) 626-2365

(207) 626-2365

BUREAUS:

Engineering (207) 626-2367
Planning (207) 626-2366



July 23, 2012

Red Barn, Inc.
455 Riverside Dr.
Augusta, ME 04330

To Whom It May Concern:

On June 12, 2012, and June 19, 2012, the Code Enforcement Office was asked to take sound level measurements during the concerts the Red Barn hosted on those days. As you are aware from our conversations, both of these concerts created noise that exceeded the maximum levels that are allowed by the City of Augusta Noise Ordinance section (B)2(ii) which states:

- (ii) Restaurant. In the Kennebec Business District 1 (KBD1) zone, speakers used only to provide background ambience music for outdoor seating are permitted, provided the sound is not audible at distances greater than 100 feet from the exterior wall of the business.

In all other zoning districts speakers used to provide background ambience music, either live or recorded, for outdoor seating are permitted, provided the sound from the speaker is 60 dB at the property line of the business using the speaker.

On July 18, 2012, the Code Enforcement Office was again asked to take sound level measurements during the concert at your property. The sound levels during this concert exceeded the 60 dB limit at your property line.

You are hereby ordered to not allow speaker sound levels to exceed 60 dB at your property line.

Failure to comply with this order will result in legal action against you which may include fines. If you have any questions regarding this matter, please do not hesitate to contact me. Thank you for your anticipated cooperation.

Sincerely,

Robert Overton, Jr.
Code Enforcement Officer

Robert Overton

From: Robert Overton
Sent: Wednesday, August 22, 2012 9:06 AM
To: Matt Nazar
Subject: Red Barn

Matt,

I attended the 'Elvis' concert yesterday evening at the Red Barn. Once again they violated the noise ordinance. It is clear that they have no intention of complying with the 60dB standard. Each concert has produced similar noise levels (70 to 80dB) despite my verbal warnings and a written notice of violation.

As I have stated in the past, I do not believe that they will be able to comply with the 60dB maximum if they are using amplifiers. The property is just too narrow for the stage to be an adequate distance from a property line.

The management at the Red Barn indicated that they would be seeking a Conditional Use approval from the Planning Board to continue having these events, but that has not happened.

I feel the best course of action is to ask Steve Langsdorf to seek an injunction preventing these concerts. How would you like to proceed with this?

FYI - There are no more scheduled concerts this year.

Rob

Robert Overton
Code Enforcement Officer
City of Augusta
16 Cony Street
Augusta, Maine 04330

ph: (207) 626-2365
fax: (207) 626-2520

From: Matt Nazar
Sent: Tuesday, June 12, 2012 5:27 PM
To: William Bridgeo; Mike Duguay
Subject: FW: Red Barn Concert

FYI. Red Barn had their first summer concert today and the noise levels were above the ordinance standard.

Matthew Nazar
Deputy Director of Development Services
City of Augusta
16 Cony Street
Augusta, ME 04330

ph: (207) 626-2366
fax:(207) 626-2520
web: www.augustamaine.gov

From: Robert Overton
Sent: Tuesday, June 12, 2012 5:06 PM
To: Matt Nazar
Subject: Red Barn Concert

Matt,

I took some measurements from Roger Carrier's property. The music was 65-70 dB, the ambient noise level was reading 53-56dB. This was approximately 10 feet into Mr. Carrier's property. From his deck (approx 75 feet from the property line) I could clearly hear the music and lyrics over the traffic noise, the noise from the pool equipment, and Mr. Carrier speaking to me.

I will draft a letter to the Red Barns owners and deliver it to them tomorrow.

Rob

Robert Overton
Code Enforcement Officer
City of Augusta
16 Cony Street
Augusta, Maine 04330

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Memo

To: File

From: Rob Overton

Date: August 22, 2012

Re: Sound Levels during Red Barn concerts

Measurements taken with Simpson 897 Dosimeter Sound Measuring System. Equipment was calibrated to 94 dB per manufacturer instructions approximately 30 to 60 minutes prior to use each day.

June 12, 2012

Sound level measurement taken from Roze Carrier property, approx 10 feet from Red Barn property line, approx 200 feet from Riverside Drive, and approx 200 feet from the speakers used by the performer.

Ambient sound levels range from 53 to 56 dB

Music from Red Barn range from 65 to 70 dB (peaked at 70.1 dB)

Sound level measurement taken from King property, approx 10 feet from Red Barn property line, approx 200 feet from Riverside Drive, and approx 75 feet from the speakers used by the performer.

Ambient sound levels range from 54 to 58 dB (this location is not as protected from traffic noise as the testing location on the Carrier property)

Music from Red Barn range from 68 to 74 dB

June 19, 2012

Sound level measurements taken in same locations as June 12, 2012.

Carrier property:

Ambient sound levels range from 51 to 54 dB
Red Barn concert sound levels range from 63 to 72 dB.

King property:

Ambient sound levels range from 54 to 56 dB.
Red Barn concert sound levels range from 65 to 78 dB.

July 18, 2012

Sound level measurements taken from same locations as on June 12 and June 19.

Carrier property:

Ambient sound levels range from 50 to 56 dB.
Red Barn concert sound levels range from 64 to 74 dB.

King property:

Ambient sound levels range from 53 to 57 dB.
Red Barn concert sound levels range from 65 to 80 dB.

August 21, 2012

Sound level measurements taken from same locations as on previous dates.

Carrier Property:

Ambient sound levels range from 52 to 58 dB.
Red Barn concert sound levels range from 62 to 67 dB
(recorded music played prior to live performance was 70 dB)

King Property:

Ambient sound levels range from 54 to 60 dB.
Red Barn concert sound levels range from 64 to 70 dB.

7/9/13 - KJ

Augusta planners turn away Red Barn's noise waiver request

The Augusta Planning Board Tuesday dismissed The Red Barn Restaurant's request to exceed the city's 60-decibel noise limit during a weekly summer series of outdoor concerts.

BY KEITH EDWARDS STAFF WRITER
kedwards@centralmaine.com | 207-621-5647

AUGUSTA — The Planning Board dismissed a busy local restaurant's request to exceed the city's 60-decibel noise limit during a weekly summer series of outdoor concerts.

But planners told representatives of The Red Barn restaurant Tuesday they can resubmit their request if they can show they've tried to address neighbors' concerns by limiting noise from the hour-long concerts.

Last summer noise from the concerts at the restaurant on Riverside Drive drew complaints from two of its neighbors, Brian King and Ron Carrier, who complained to the city that noise from the concerts was making it difficult for them to enjoy their own homes and that it violated the city's noise rules.

Code Enforcement Officer Robert Overton took property line decibel meter readings at some of the concerts and agreed they all exceeded the 60 decibel limit and he ordered the concerts to stop.

So The Red Barn's owner sought permission from the Planning Board, under noise rules adopted last year, to exceed the city's decibel limits for the free concerts. Alicia Barnes, business manager of The Red Barn, said crowds at the concerts are about 90 percent families.

Planners voted 5–1 to dismiss the request because, some board members said, the restaurant hadn't tried to reduce the impact of the noise on its neighbors, by doing things like installing sound barriers or changing the location of the stage, before requesting a waiver to the city's rules.

“I think everyone in the community is supportive of The Red Barn and what they're doing with these concerts, they are a fixture here in Augusta,” said board member A. Delaine Nye. “But I don't believe The Red Barn has taken any kind of reasonable initiative to contain the noise.”

The noise rules adopted by city councilors last year limit the sound coming from outdoor speakers at businesses to a maximum of 60 decibels at their property lines. At the time, city officials said that is about as loud as a normal face-to-face conversation.

Barnes said just the ambient noise from traffic on Riverside Drive registers higher than 60 decibels on a decibel meter on her cell phone. She said even acoustic performers wouldn't be able to play without exceeding that limit. Barnes said she's a member of the Waterville Planning Board, and the noise limit in that city is 70 decibels, until after 10 p.m., when it decreases.

She said the hour-long concerts bring families together to enjoy music outdoors.

“We don't want to decrease the quality of anyone's life, we're about building community,” Barnes said. “That's what we do. And that's what happens at these events.”

Carrier, who has lived just to the south of The Red Barn for 15 years, said an hour may not seem that long to have to hear a concert next door, but told planners they'd surely be annoyed if someone parked outside their homes and played loud music for an hour straight, once a week, every week, all summer.

“Her genre of music might not be my genre, but I have no choice, it's being forced upon me, I'm the one that has to close the windows and doors that hour,” Carrier said. “I like to come home and relax and be able to dictate what I have to listen to.”

Board Chairman Corey Vose read a letter from Peter and Kathy Tozier which said they live three houses north of The Red Barn and “we have no objection to these events and often attend the concerts ourselves. The events are well organized and good family entertainment.”

Overton took sound level measurements at King’s property line to the north and Carriers to the south of the restaurant at four concerts last summer. The music exceeded the 60-decibel limit at both property lines on all four occasions while music was playing, ranging from a low of 62 decibels to a high of 80 decibels, according to a memo from Matthew Nazar, director of development services, and Susan Redmond, assistant planner, to the Planning Board.

Walter McKee, an attorney representing Carrier and King, said The Red Barn held two more concerts after the city ordered them to stop.

Nazar said The Red Barn application was the first request for a waiver since the city adopted the noise limit last year.

- (i) Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.43-1997 (R2007))
- (ii) If the use proposed is nonresidential, the noise impact study, if required, may utilize data from one (1) or more existing sources which roughly correspond (density, existing traffic volume, location of neighborhood, type of equipment used, and other similar noise generators) with the proposed use.
- (iii) If no meters are at hand, a rough survey can be conducted without special equipment by two (2) people of normal hearing and average voice. A. It is based on the fact that the point at which conversation just becomes impossible to understand is rather sharply defined. One person stands and reads something unfamiliar to both parties in a normal voice. The other gradually backs away and notes the distance at which he/she just no longer understands the gist of what is being read to him/her, that is, when he/she catches a scattered word or two in a ten-second period.
 - a) The trial is repeated rotating reader and listener, and the distances averaged.
 - b) If the distance is over twenty (20) m (65 feet), the noise level is less than forty-five (45) dBA and the site is good for housing and outdoor use.
 - c) If it lies between eight (8) and twenty (20) m (25 and 65 feet), the noise lies between forty-five (45) and sixty (60) dBA, and so the location is acceptable for housing.
 - d) Distances between two (2) and eight (8) m (7 and 25 feet) indicate levels of sixty (60 to seventy-five (75) dBA, and the site can only be used for housing if the latter will have special insulation.
 - e) Distances under two (2) m (7 feet) means levels over seventy-five (75) dBA, and the location is simply unusable for residence.

(D) WAIVER FROM SOUND LEVEL LIMITS

- 1. The City recognizes that there are certain developments or activities associated with development for which noise control measures are not reasonably available. Therefore, the Planning Board, as part of the Public Hearing via the conditional use application as outlined in this section and process or as part of any project that is before the Board for approval, may grant a waiver from any of the sound level

limits, or other limitation or prohibition, contained in this regulation to some other limit upon:



- (i) A showing by the applicant that a comprehensive assessment has been made of the available technologies for the development, expansion or modification and that the sound level limits cannot practicably be met with any of these available technologies; and
- (ii) A showing by the applicant that noise easements for the affected premises are either not practical or not available; and
- (iii) A finding by the Planning Board that the proposed development will be not excessively incompatible with the surrounding neighborhood, will not unduly interfere with the normal enjoyment of abutting property, and will not create excessive noise at unreasonable hours.



2. In addition, a waiver may be granted by the Planning Board if:

- (i) A development is deemed necessary in the interest of public safety and the applicant has shown that the sound level cannot practicably be reduced or mitigated without unduly limiting the development's intended function; and
- (ii) A finding by the Planning Board that the proposed development will not be incompatible with the surrounding neighborhood, will not unduly interfere with the normal enjoyment of abutting property, and will not create excessive noise at unreasonable hours.



3. The Planning Board shall consider the request for a waiver after the review of a completed development application by the Planning Board. In granting a waiver, the Planning Board may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.

(E) MAXIMUM NOISE LEVELS (7am to 10pm/10pm to 7am)

1. Noise levels will not be specifically measured unless a request for a noise impact study is made by the Planning Board in the application phase, or unless a complaint is registered against a use. Measurements shall be made at the property line of the use generating the noise.

- (i) Rural Districts 60/60
- (ii) Residential and Capitol-Commerce Districts 60/60
- (iii) Planned Development, Civic Center, Medical, and Government Services Districts 60/60
- (iv) Business and Industrial District 60/60

2. Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.