

TOWN OF MASON BOARD OF ADJUSTMENT
18 May 2015
Approved Meeting Minutes

Call to Order at 7:30pm

Tim Kelly, Chairman

Roll Call of Board Members

Vice Chairman Christine Brigham, Bob Bergeron, Bill Rendle

Alternates

Clerk Pat Letourneau, Mike Davieau

Board reviewed 27 April 2015 minutes

Motion: to accept the minutes as modified made by Mike Davieau. Seconded by Tim Kelly. The motion **PASSED** unanimously.

Motion: to nominate Tim Kelly as continued Chairman made by Bob Bergeron. Seconded by Christine Brigham. The motion **PASSED** unanimously.

Mike Davieau recused himself and left the table but stayed to listen to the proceedings.

Hearing of 15-002 J-69-1 Ruggiero started at 8pm.

Martin D. Ruggiero of 20 Bell Lane is requesting a Variance from Article V, Section B. 1, 3 of the Mason Zoning Ordinance for an outdoor concert venue and extend[ed] area to drink alcohol on the property located at 96 Old Turnpike Road of the GRAF zone.

The Chair informed the public of hearing procedures and introduced the **voting members**; Tim Kelly, Christine Brigham, Bob Bergeron, Bill Rendle and Pat Letourneau.

Applicant: Martin D. Ruggiero

Abutters: Claudia Reed, Jeffrey Closson, Derek Mathieu, Emily Sumner, Charles and Karen Countryman, Chris and Michelle Gauthier

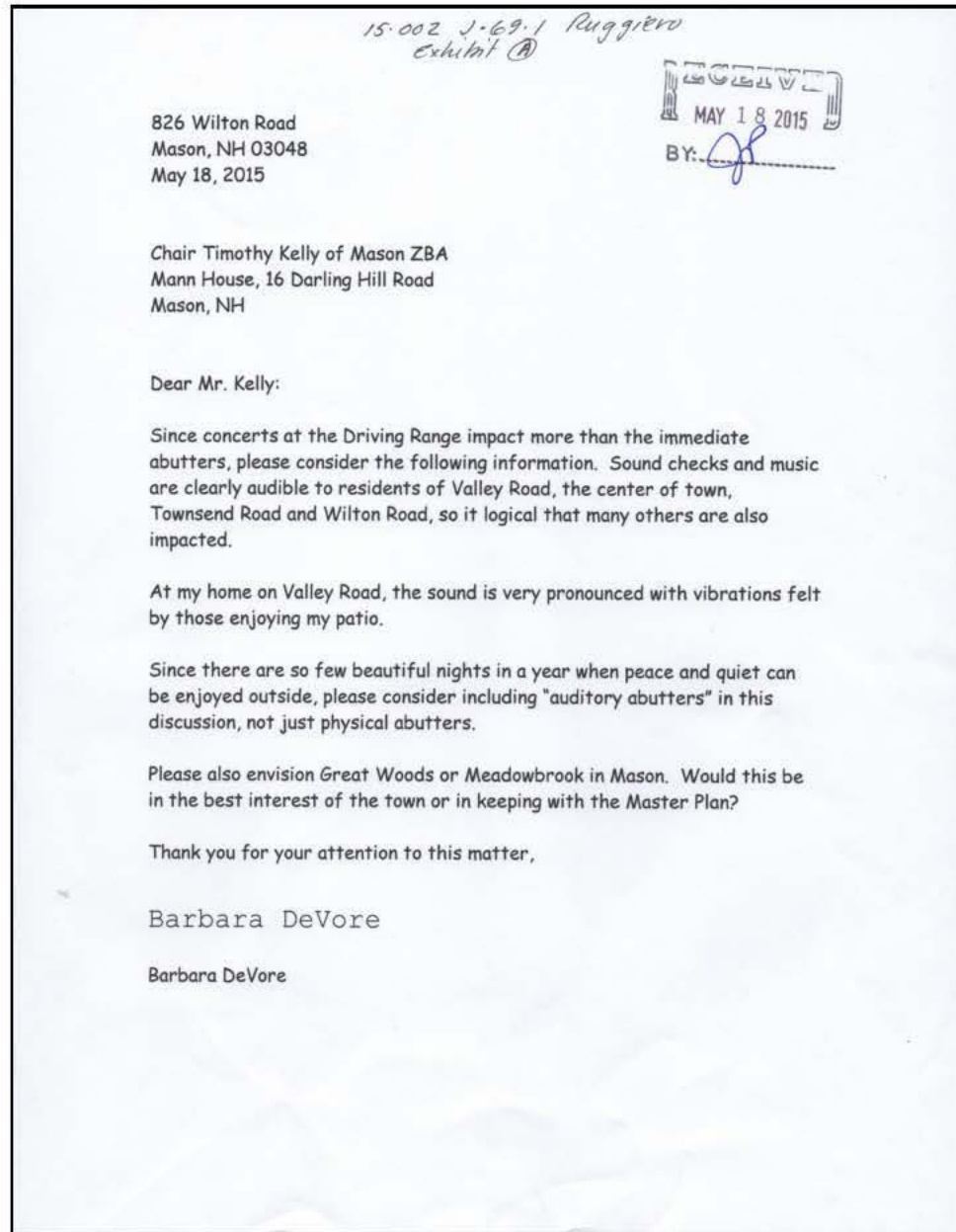
Selectman Charles Moser spoke for the Mason Board of Selectmen.

Chief of Police Kevin Maxwell spoke for the Mason Police Department

Mason citizen Garth Fletcher was also present.

The Clerk read the application and abutters list. All abutters were duly notified by certified letter.

The letter dated April 20, 2015 to the Office of the Board of Adjustment from citizen Barbara DeVore was labeled Exhibit A.



Applicant: [Submits map to Board with proposed changes. Dashed line denotes proposed area of alcohol consumption. Area encompasses entire existing area of use with buildings, stage, tee area and batting cage being inclusive while parking areas are not. Map also shows prospective parking areas; a 127 car lot behind the buildings up on the ball field. Applicant can also expand parking area onto grass as needed.] We are not done with the stage and this year we will be skirting the stage to help direct the sound up towards the back of the property. We operate only June through September, weather permitting, one-two days a week. We have had this property

since 1992 and we like to organize with the community for charity events. Our past record shows that we are growing slowly, one day at a time, and that we don't intend to run until 2-3am nor bring in outside players. We only serve beer and wine, not full liquor. We don't allow shenanigans and are always clean. We pick up all trash and no one complains. We want to expand the area of alcohol consumption for our Cruise Night which is every Thursday and for our bands on Saturday. We run from Memorial Day to Labor Day. We cannot say how much this will grow and we'd like to run more charitable events.

Board: The hours of operation are Thursday until 11pm and Saturday until 12am. Could you stop after 10pm and quiet it down for Thursday?

Applicant: We've been doing this for a couple of years. Nikki. [daughter of applicant] This is her deal. She is not here because she's visiting her ailing grandparents. Spread ourselves thin... Not yet paid admission. We'll charge sometime in the future. Come for free and then charge. We did the Fourth of July fireworks with admission fees...it was rained out.

Board: Parking for how many cars?

Applicant: 127 in big one, 60 in another. We also have all this space [indicates on map the area further behind the proposed parking that's behind the buildings] Porta-toilets [indicates space to left of stage] sit in back...four [of them].

Board: Do you provide security?

Applicant: We've had police details in the past but it worked out pretty good with Mason [Police Department]. Drinking is allowed in outlined area [indicated on map]. No complaints on noise [nor] parking. Hadn't come to me directly. Noise disturbance? Turn it down. Private dispute between people? Call police. We walk around folks...security detail is not needed. If quite a few [people]...?

Board: How many people?

Applicant: At least two hundred people. But I cannot answer how many at any given time. We want to expand parking, expand drinking area...

Board: Do you have anything that says you can have music? You are asking for a concert venue.

Selectmen: [distributes copies] This is a memo, dated September 23, 2014. It is to Marty and Nicole. It explains how the Board of Selectmen told Marty that he needed to file a Variance for change of use...etc. There is also the history of the Driving Range which needed site plan approval but the Planning Board waived the right to file. This was all conditional approval for the restaurant...outside seating. Beer and wine was to be served whenever the kitchen was open. This is a change of use. It draws more traffic. More concerns. Lighting, parking, noise. The Board of Selectmen doesn't have purview but if this Board were to grant the Variance to please do so with appropriate restrictions, site plan approval, etc. Please consider the on street parking.

A police detail is needed for exit and entering. Also, is there a building permit for that stage? Is it properly grounded?

Applicant: We brought it in, Its on skids.

Board: Electricity to it?

Applicant: Electricity is now buried.

Board: By a licensed electrician?

Selectmen: This is a significant change of use and therefore needs a Variance with the Site Plan review process regarding adequate parking, public safety and sanitation, etc.

Board: Does anyone have first hand knowledge of the events?

Police: I'm Kevin Maxwell. I have been to the shows...yes.

Applicant: Isn't this a conflict? He worked the parking detail last year I want the record to show a Conflict of Interest Complaint made by Martin D. Ruggiero.

Board acknowledged Mr Ruggiero's complaint but felt the Chief of the Police Department is a resource that needed to be utilized and would not recuse him.

Police: Nicole has been very good to deal with and they police their trash well. There has not been a lot of fights but we have been a significant presence. Concerns: when parking their cars, people have to cross Rte 124 and at both ends there is a blind spot. The site quickly becomes congested. Legally cars cannot park on sides of state road. MPD has no jurisdiction. There are people walking on that road so parking on both sides is an issue. The designated areas are a concern because with a well attended event, the parking on the side of the road would make fire trucks and/or ambulance to A-1 Towing have to deal with a one lane going up Churchill Road. One hundred cars are too many for that area. There is no lighting for pedestrians. Only one light, maybe, at the Security business [across Rte 124]. It is a dangerous mix with darkness and drinking. Proposed parking would help contain it all. So the amount of cars are an issue. There is no lighting around toilets except on the inside. We need to know: When does the music shut off? At 10pm or 12am? And what if the band doesn't want to stop? It has digressed to having to promise to unplug the sound guy. We need set parameters that can be enforced. What nights they need a detail officer or not is subjective and decided by the Mason Chief of Police. Everything has been ad hoc thus far.

Board: It is difficult to determine adequate sanitary or lighting etc when we don't know the maximum number of people. What if you sold tickets?

Applicant: We haven't yet except for the Fourth of July. It was rained out.

Board: We bought tickets to another venue, Adam Ezra Group.

Applicant: Oh yeah that one too.

Police: Traffic Control Officer is out there start to finish. We do not have a large gathering ordinance. State Statute 47.17 286 is for granting a license. Some say a 'large gathering' is 100, some say 200. Ordinances can get lengthy...decibel levels etc. For subjective situations we need constraints: Is this in compliance with license and BYOB [Bring Your Own Bottle]. They cannot be in violation but they were in violation of their liquor license all last year. The issue was addressed and was tightened up. MPD also needs to be paid for detail. There seems to have been a misunderstanding. At any time, one or two officers were on detail...as a Sergeant I didn't know [the bill] hadn't been paid. I know now that New Ipswich and Greenville also have not been paid.

Applicant: Nicole had Chief Baker, the Fire Chief, outline the area.

Board: The Fire Chief does not have the authority to designate drinking areas.

Applicant: About the paid detail: There have been numerous times when they just showed up. I didn't ask for them. They are not going to be paid just because they showed up. \$60/hr. Who gets this? Barry [Hutchins, Ret. Chief] hasn't returned calls. Retired now. \$60/hr for detail. Why can't I hire somebody else?

Board: Who?

Applicant: Private detail company. Each officer gets \$60/hr. That's ridiculous.

Police: RSA 1059 states that officers are required for these types of situations. The officers don't get the \$60 but that's what the Town charges. MPD has to direct traffic unless its otherwise determined by the Chief.

Board: How much money is owed?

Police: \$3000.00 [Three thousand dollars]

Board: At this time, we'd like to hear from any abutter who is in favor of this application? [No one spoke.] Anyone?

Citizen: Mike Davieau. I am not an abutter but I live very close to the Applicant's place of business. And there are some things in favor. Marty runs a good business that has never been a problem until the stage. He keeps it clean and well run. But there should be no music after 10pm on Thursdays. I have to get up at 4am to work and its annoying trying to sleep with the noise. No music after 11pm on Saturday. I don't care if the business stays open. I like the sound proofing on three sides of the stage. There is supposed to be a designated area for drinking and no alcohol beyond it. The patio and inside area are the designated areas but people roam around the whole property and drink. I am NOT against what he is doing if the noise and hours are controlled. Marty you need control on the bass levels. I can feel it. He should tone it done on Thursdays. I shouldn't have to call over there to tell him to lower the sound. Parking area?

Sounds good but I am dead set against the huge expansion of alcohol drinking area. The folks in that neighborhood are affected.

Abutter: Jeffrey Closson, Abutter. I own behind The Driving Range. I do not live there yet. Opposed? I am coming into this meeting uninformed. [Clerk instructed Abutter regarding information being confidential until hearing.] I am concerned with the ambiguity...Memorial Day and all...not advertised in Boston. Shouldn't have to go see someone to turn it down. It should be controlled. Liquor license violation last year? Details not being paid? These concerns...not his job. One, two, three policeman in this town? On duty? What if a whole lotta people show up? What happens? And with drinking? Ok...enforcement and things getting out of hand. The shit could hit that fan.

Abutter: Derrick Mathieu...Reed Road. Not gonna affect people? When I moved to the farm it was quiet. I didn't move in on the noise. I can hear it like its at my door. We're farmers...up at four everyday. It affects us. Beer bottles up and down the road. For forty years its been a horse farm. No scenario is fine with me. Acoustics engineers move the stage, move curtains. The sound is in a perfect amphitheater...directed right at us.

Abutter: Chris Gauthier...Abutter. Reed Road. Not last year, but the year before last I spoke face to face with Marty. We moved here for the quiet...to get away from loud music and alcohol. Last year there were 22 venues. We are forced to listen to this...no choice. Can't do anything about it. Vehicles park all along [Churchill Road] A1 parking. Won't affect property? Hah! In this day of full disclosure we couldn't sell...it affects our existing lifestyle. Cruise Night ...a school night. My kids go to bed at 8.30pm and it has changed our life. We have to shut windows and turn on the AC [air conditioner] just to hear the TV [television]...we've recorded it. Recorded the noise on our front step. The kids and us can't sleep! No scenario [that the Abutter would like]? Maybe once or twice a year? I don't like Thursdays at all. Marty's on FaceBook [internet social media] Therefore its OUT there.

Abutter: Karen Countryman...Abutter. Both sides [of Churchill Road] would have parked vehicles...we would not be able to get emergency vehicles out there. Very loud!

Board: Did you complain to the Police?

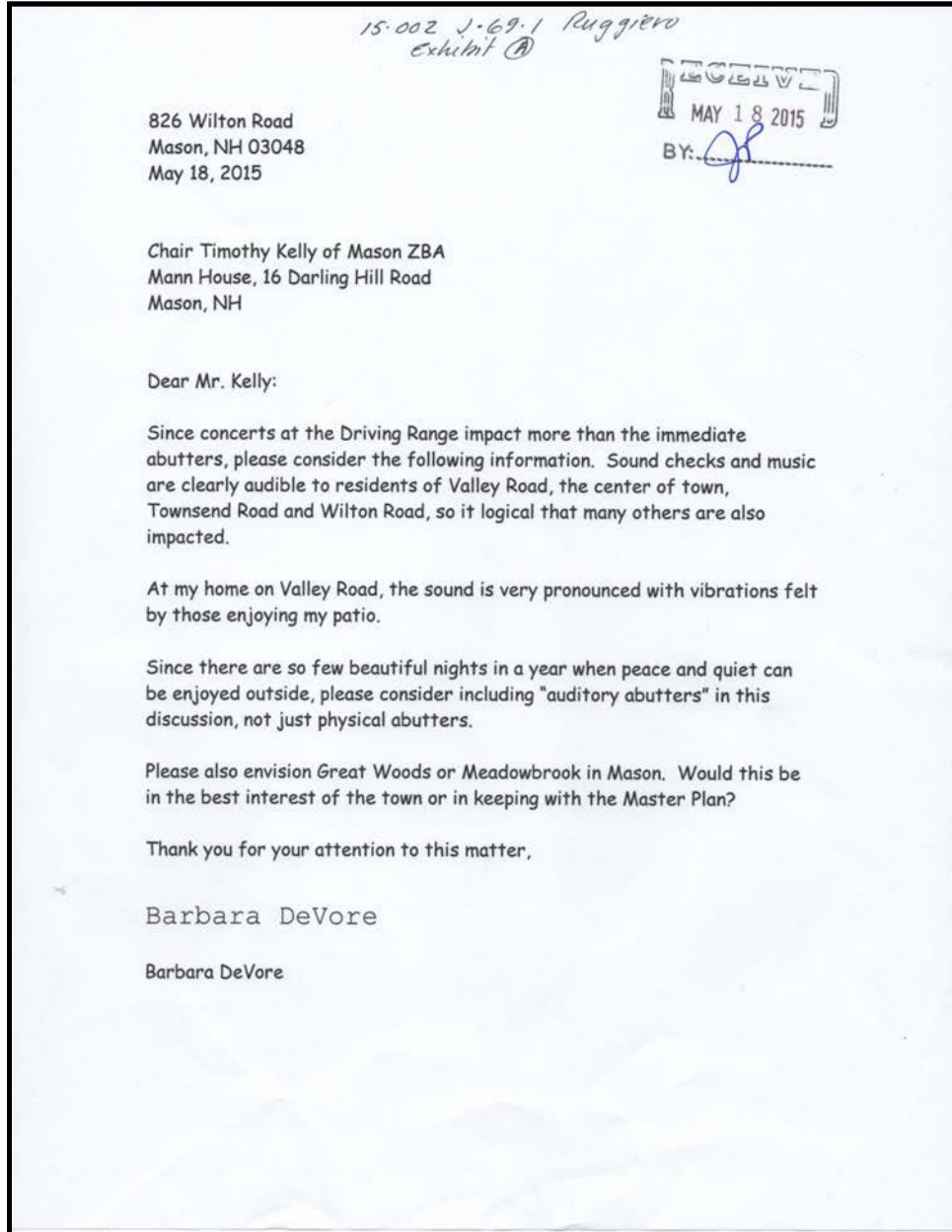
Abutter: I am sure there's a log of the complaint. We went to Marty first. We thought it was the right thing to do.

Board: Outside concert use is not allowed under our Ordinance at this time. We have seen no hardship which is needed for the five criteria of the Variance. We have no noise Ordinance but in Article 4c states that any use that may be obnoxious is prohibited.

Selectmen: There is a lighting and glare Ordinance in the works.

Board: This is not an ongoing use with a private party. Let's review the Variance criteria and remember that even if a Variance is granted it is null after two years if not used. Only a couple

of incidences reported by MPD. Its a huge expansion of the drinking area. We received a letter today from another resident; Barbara DeVore. Please admit as Exhibit A.



Applicant: I understand these concerns. We're picking up trash. One step at a time...low impact ad easy. We can turn down noise. I want to work with the town and do this right. Its a family operation. Its very difficult to make money in Mason. However we can't control what the bands do...

Board: There has to be a great deal of compromise here. What about two Saturdays a month?

Abutters: There is a tremendous overflow because situation is not workable. This is already an issue. The noise is horrendous. We don't know the kind of clientele would be attracted to this area. We don't even know how many!

Board: Perhaps ticket sales? What do you have for insurance?

Applicant: A blanket policy...it covers everything.

Abutters: What if you stopped by nine? All through the summer is too much. The car shows are over by dark. Does the music have to play to eleven..no. Thursdays are out. He has no liquor license.

Board: It normally runs from May to October.

Abutters: He has an event coming up this Thursday [May 21, 2015].

Police: We can give you 30 days to pay the 3K [three thousand dollars]. You have options when hiring an officer.

Board: Parking is okay since you own building and land of A1 [Towing].

Police: If May 21 you have no license? No drinking. You will need a detail by MPD.

Abutters, Board, Citizens and Officials reiterated the unacceptable hours of operation, noise levels, and the immediate need for controls.

Selectmen: The Board of Selectmen state that is a Change of Use and thereby requires a Variance to continue.

Motion: to close meeting to public made by Tim Kelly. Seconded by Pat Letourneau. Motion **PASSED** unanimously.

Board: The audience does not need to leave, but no more input will be accepted.

Hearing closed to public at 10.10pm

Board discussed decibel levels and site plan reviews.

Motion: to end discussion made by Tim Kelly. Seconded by Pat Letourneau. Motion **PASSED** unanimously.

Motion: to vote for the Variance made by Tim Kelly. Seconded by Pat Letourneau.

Bob Bergeron: **NAY**

Pat Letourneau: **NAY**

Christine Brigham: **NAY**

Bill Rendle: **NAY**

Tim Kelly: **NAY**

The Motion has **FAILED**. The Variance is hereby **DENIED**.

The Board discussed the Finding of Facts and decided to have a business meeting at 7.30pm on Monday, June 1, 2015. This meeting will have public notice.

Motion: to adjourn made by Tim Kelly. Seconded by Bob Bergeron. Motion **PASSED** unanimously.

Meeting Adjourned at 10.32pm