

# Cazenovia Zoning Board of Appeals

## Meeting Minutes

May 22, 2023

Members present: Thomas Pratt; David Silverman; Gary Mason; David Vredenburgh; Luke Gianforte; Michael Palmer, Alternate Member; Joseph Juskiewicz, Alternate Member

Members absent: None

Others present: John Langey; Chuck Ladd; Michael Basla; Kyle Reger; Robert Ridler;

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T. Pratt called the meeting to order at 7:30 p.m.

Joseph Juskiewicz was introduced as the new Alternate Member.

Roll was taken.

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Motion by G. Mason seconded by L. Gianforte, to approve the March 27, 2023 meeting minutes was carried unanimously.

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The next regularly scheduled meeting will be Monday, June 26, 2023.

There will be a work session Tuesday, June 20, 2023.

All requested information must be received prior to the work session.

T. Pratt asked that the rustling of papers, the clicking of pens, and other background noise be limited for the benefit of the recording.

T. Pratt said regarding public speaking, please come forward, provide one's name and address, present to the Board not the Applicant(s), refrain from asking questions but rather make statements, and refrain from repeating items if they have already been stated once during the time for public comment.



*Peterson, David - #21-1 – Bed & Breakfast Special Use Permit Renewal – 2964 West Lake Road*

T. Pratt said the special use permit renewal was for a Bed & Breakfast (B&B) in the lake watershed. He explained it was originally issued in 2021. He asked if Mr. Ladd had completed a site inspection.

C. Ladd answered that he had.

T. Pratt asked if Mr. Ladd had found any issues.

C. Ladd responded that he had not.

T. Pratt asked if there had been any (signed) complaints.

C. Ladd responded that there had not.

T. Pratt asked if the Board had any issues they would like to address.

D. Silverman said he would like to have a discussion, saying a(n anonymous) letter had been received pointing out some possible issues at the waterfront. He said he himself has witnessed that “it looks like a marina out there.” He said there were also questions regarding the use of the boathouse.

J. Langey clarified that the Board was reviewing the renewal of the B&B enterprise whereas the issues Mr. Silverman mentioned were enforcement matters which Mr. Ladd's office handles. Since there was no one present raising any concerns, the Board needed to divorce those issues from the review of the renewal at hand. He said the Codes Office may investigate the Code items, but the two matters should not be considered as the same.

Motion by G. Mason, seconded by D. Vredenburgh, to renew the special use permit for a B&B with the original terms and conditions was carried as follows:

David Silverman	Voted	No
Gary Mason	Voted	Yes
David Vredenburgh	Voted	Yes
Luke Gianforte	Voted	Yes
Thomas Pratt	Voted	Yes.

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*Maples of Madison County, LLC/Madison County Distillery LLC - #20-1291 – Special Use Permit  
(Thomas Pratt) Amendment - 2415 US Route 20 East, Cazenovia*

Michael Basla was present to represent the file.

L. Gianforte was recused for this file. Michael Palmer acted as a voting member in his stead.

T. Pratt explained this was in the Rural A District with the Wellhead Protection Overlay and the Commercial Overlay, and an amendment to the special use permit was being sought to enlarge a previously approved bandstand that was originally a 6” platform in a slightly different location. He said a letter was requested from a sound engineer which has not been received, and an email was received from a resident from South Village expressing concern regarding the sound. He said the Board had a choice of either continuing the file since requested information had not been provided prior to their last work session (June 16, 2023), or they could ask for Mr. Basla to comment.

D. Silverman asked that Mr. Basla be invited to comment.

M. Palmer invited Mr. Basla to join the Board at the table.

T. Pratt asked Mr. Basla to update the Board regarding the letter from the sound engineer.

M. Basla asked if he could first address some of the comments and questions found in the email from the resident of South Village. He explained that he had taken exception to the request by the Board for a sound engineering test for his amended physical platform. He had informed the Board he had done a sound test for the original platform, which as Mr. Pratt pointed out, was a different configuration. It had

been for a platform that was six (6) inches off the ground, and he recalled it was 12' X 16'. In the email it was asked why was the design changed. He answered when he requested the platform two (2) years ago for outdoor, amplified music, the concerns were regarding sound, and several of those concerns were from residents of South Village. He said they addressed those concerns and they performed a sound test at that time in the open air with several of the ZBA members present and checking decibel (dB) levels. He went to a different configuration because at the time he had not thoroughly considered the adequate size of the platform. He said the email expressed concern that the larger platform would be used by a larger musical group. He asserted he did not intend to have larger groups, but he wanted to give groups the proper space for their instruments and equipment. He elaborated that the other change he made to the design was to put a roof over the platform, a back side, and half sides on each end. He claimed those changes would help direct sound and would further reduce back noise.

T. Pratt asked what Mr. Basla meant by back noise.

M. Basla responded the noise that would project behind the bandstand.

M. Basla said he had spoken to Supervisor Zupan about the request for a letter from a sound engineer which Mr. Basla felt was unfair. Supervisor Zupan suggested Mr. Basla get a quote from a sound engineer. M. Basla explained that business was growing, but he was still not making money, so he is careful how he spends money. He said at times he has had to make a deficit contribution wherein he uses his personal money to pay the business bills. So, he had contacted one of the engineers Mr. Pratt had suggested, Matt Napierala, and he had a great conversation with Mr. Napierela who told him that by putting on the back and the half sides, it would reduce the chance of “noise bleed” from the premises and he was given an estimate of about \$1000. After seeing the email from South Village this “late in the game,” and since it was now the end of May, he made arrangements for Mr. Napierala to perform a sound test May 20, 2023, which was the first available date before this meeting that Mr. Napierala and a DJ could come, but the weather prevented them from being able to do it.

M. Basla stated he still believed a sound test was unnecessary because he was charged with maintaining a certain level of sound at the property lines which he was “well aware of and prepared to do.” He knew he would be held accountable. He said he has heard multiple times about another local enterprise where the sound emissions have been abused, and understood that has affected this proposal, but he said he could only vouch for himself. He asked the Board to approve the proposal this evening, and to let him “keep his end of the bargain” of keeping the sound levels from disturbing the neighbors to the south.

M. Palmer asked if Mr. Basla had a copy of the letter from Mr. Napierala.

M. Basla answered it was in an email, but he could provide it.

M. Palmer asked if Mr. Basla was committed to having a sound test done.

M. Basla said he had considered having it done in response to the possibility that the neighbors were objecting to the changes.

M. Palmer asked if Mr. Basla was committed to following through with the Board's request to have a sound engineer verify that the building will not increase the sound at the property line.

M. Basla answered that he preferred not to do that.

M. Palmer noted Mr. Basla had been "lined up to do that" this past Saturday.

M. Basla answered he had succumbed because he could not wait for another month and the June 26<sup>th</sup> ZBA meeting before beginning construction.

M. Palmer asked when Mr. Napierala would next be available

M. Basla replied he and Mr. Napierala had not discussed that.

T. Pratt wanted to clarify that he was looking for an engineer to look at Mr. Basla's design, not to do a sound test, because it would still be an open-air test and not concentrated as it would be once the bandstand was built. He felt if the sound were tested now, the same results would be gathered that the Board had witnessed for the original design.

M. Basla agreed.

T. Pratt explained that was the reason the engineer would need to model it, not do a physical test.

M. Basla said he misunderstood and apologized, and wondered if anyone else misunderstood what was being requested.

M. Palmer said a sound test was never the intent, and he did not recall that it was "ever portrayed that way." He said the letter was to say that once the building was built it would not negatively affect the sound level at the property line.

D. Silverman thought the Board could have been clearer in that regard.

T. Pratt believed the email he wrote was clear.

M. Palmer agreed with Mr. Pratt, adding he was not holding the misunderstanding against Mr. Basla, but commented that it was unfortunate that Mr. Napierala could not have vouched that the proposed building would not increase the volume at the property line.

M. Basla suggested they move forward with a vote and said he could get the letter as soon as he could. He said he would show Mr. Napierala the design and he would ask him the question the Board was asking. He had been told over the phone that the design would not increase the volume at the property line, but understood the Board might want that in writing.

T. Pratt commented that how Mr. Basla describes the proposal to Mr. Napierala "makes a big difference as to how he answers the question."

M. Palmer suggested that Mr. Napierala and Mr. Pratt have a conversation so it would be clear what is being sought.

M. Basla then began to doubt what Mr. Napierala would be willing to sign in regard to the letter. He said if he was Mr. Napierala, he would not sign his name when the construction was incomplete. He said Mr. Napierala did not mention to him about doing a desktop study.

T. Pratt asked how Mr. Napierala could do a physical test if the building does not exist.

M. Basla said that was “absolutely right.”

T. Pratt said a sound engineer with the skill set to predict the sound was needed.

M. Basla repeated his request for the Board to vote.

M. Palmer said if Mr. Napierala had said verbally that the design was acceptable, perhaps he would be willing to put that in a letter.

M. Basla responded maybe Mr. Napierala would, but he did not want to put words in Mr. Napierala’s mouth.

G. Mason asked if the Board could vote as to whether the members felt Mr. Basla needed a letter. He felt the original approval had many stop gaps – if the sound goes over, they can revoke the permit and cancel events.

T. Pratt countered the renewal is only reviewed annually so the Board would not be able to act for another year.

G. Mason asked if there were complaints, could they stop him.

D. Vredenburg believed if more than 50 dB was heard at the property lines, it would become an enforcement issue, and the event could be shut down.

G. Mason did not think the Board should delay Mr. Basla’s project further when there were already conditions in place to control noise.

D. Silverman agreed.

G. Mason said there had been 18 events last year with no complaints.

M. Palmer asked how many events had outside music.

G. Mason believed 18.

M. Basla said they had not had music at all 18 events, but there had been outside music two (2) weeks ago.

M. Palmer asked if that had been on the stage.

M. Basla said they were not allowed to use the stage, but it was on the porch of the main building.

D. Silverman asked if the Board could vote about the need for a letter from a sound engineer.

J. Langey indicated that would be unconventional but the Board could have a straw poll, non-binding discussion about each member's thoughts on that requirement.

M. Palmer believed the Board needed a letter.

G. Mason did not think the Board needed a letter.

D. Vredenburg did not think a letter was needed.

D. Silverman agreed no letter was needed.

J. Juskiewicz believed the dB level was not the actual sound issue, but the issue will be the low-frequency base that carries, so the dB level might be in compliance, but people may still complain. He said complaints would be about the intensity being too loud.

M. Palmer asked how the base level can be measured.

J. Juskiewicz was unsure, but he repeated the noise level would not be the issue.

M. Basla asked if Mr. Juskiewicz was a voting member.

T. Pratt felt Mr. Juskiewicz raised a valid issue.

Mr. Juskiewicz was not a voting member however for the straw poll tally.

J. Langey agreed Mr. Juskiewicz had valuable information.

M. Basla pointed out that Mr. Juskiewicz had not been present for previous discussions.

J. Juskiewicz stated he had read the minutes and understood the issues.

M. Basla asked if he knew the position of the stage, the location of the closest neighbors, and where the property lines were.

T. Pratt said Mr. Juskiewicz understood that if a band has a base range, the base sound will reverberate into South Village.

M. Basla did not think that will be an issue, saying that was not the type of music that would be played.

T. Pratt said the point was that the sound can measure 50 dB at the property line, but the base will still carry.

G. Mason asked why then were those parameters set.

M. Palmer answered they couldn't quantify the base sound.

T. Pratt believed an engineer could simulate it.

M. Palmer asked Mr. Basla if he would ask Mr. Napierala for the letter.

M. Basla responded that he would like a vote tonight.

M. Palmer repeated his question.

M. Basla said he intended to have another conversation with Mr. Napierala. Whether he thinks it is appropriate to write the letter or not would be Mr. Napierala's decision.

G. Mason believed it would still "boil down to Mike monitoring it." He said every sound system set up would vary throughout the summer. He did not know how it could be predicted to be the same. He said it would have to be enforced by Mr. Basla and Mr. Ladd.

M. Palmer believed the letter would show that the Board had done all they could to protect the neighbors from more sound.

M. Basla believed the Board had done that by placing the original restrictions upon him.

G. Mason commented that he was ready to vote.

D. Silverman said he was also ready to vote.

J. Langey said the Board needed to decide what they were voting on. He said one of the members would make a motion to approve the application readopting the prior conditions, reaffirming the State Environmental Quality Review (SEQR) findings with a Negative Declaration, with the key condition being the 50 dB at the property lines without the letter from a sound engineer Matt Napierala, as requested by the Applicant.

D. Silverman said he would like to make that motion.

T. Pratt asked that a member state the motion so everyone would be very clear about what's being voted on.

D. Silverman believed Mr. Langey had done that.

J. Langey stated this would be a motion to approve the request for an amended special use permit for the property located at 2412 Route 20 with conditions as previously approved and imposed in the prior approval of February 22, 2021, reaffirming the SEQR determination of a Negative Declaration based upon what was submitted.

T. Pratt asked if another condition could be added. In the event that a complaint is received due the base, even though the property line measures 50 dB or less, action will be taken by Mr. Basla to correct it.

M. Basla agreed.

T. Pratt elaborated that if anyone calls with an issue, Mr. Basla will need to take immediate action.

M. Basla said if he receives a complaint, he would address the complaint.

C. Ladd asked if a formal written, signed complaint would need to be filed.

T. Pratt said the original approval required the immediate addressing of verbal complaints regarding sound or music by a person physically present at the Distillery.

G. Mason recalled that requirement.

T. Pratt said the formal complaint process would be after the fact when an event was over, and the Board was seeking a remedy for complaints as they were happening.

D. Vredenburgh was not present during the original approval, and he wondered if the issue of the base sound was raised at that time.

T. Pratt said the issue of the sound came up at that time, and that was why the Board required acoustic information. He said that was why Mr. Basla abandoned the design with walls for a 6" platform.

G. Mason said the Board had requested that in Mr. Basla's absence the attending manager would act to address sound issues by lowering the volume when receiving a phone complaint.

D. Silverman did not anticipate a base issue.

G. Mason felt the base issue would still be addressed by the person on site.

T. Pratt pointed out if the enforcer goes to the property line and the sound is 50 dB there, the Distillery "would be off the hook." He explained that was why he was in favor of this new condition.

M. Basla thought if he received a complaint, he would have to address it immediately. He said he would not be measuring sound at the property lines; he would tell the band to turn their speakers down.

T. Pratt understood that was the action Mr. Basla would take, but the Board did not know who would be policing this in the future.

M. Basla felt the Board had "hammers on that." He said there would be annual reviews and thought if the property changed hands, "it'll all be ground zero anyway."

He was told the special use permit would not cease when the property was sold.

M. Basla said the new owner would then be responsible for maintaining the complaint process.

T. Pratt affirmed that was true, but said the new owner may wait to see how the Town would enforce the conditions.

C. Ladd thought complaints about noise would be subjective.

J. Langey answered that was why a dB level was stated.

C. Ladd said the base level would be subjective, however, and would be hard to adjudicate.

D. Silverman said that was his concern as well.

J. Langey said the annual renewal should help with that, saying if many complaints were received within a year, he could foresee a scenario where those verified complaints would be used to terminate the activity for a year which would force the applicant to file an action against the Board.

D. Vredenburg asked if it would be Mr. Ladd's responsibility to verify complaints.

J. Langey said Mr. Ladd would investigate. He said anonymous complaints "were not a great way to proceed" but if a name were given, Mr. Ladd could talk to those people as well as to other neighbors who were home at the time to verify the complaint was legitimate, and then the complaint would be recorded and tallied for the annual review, allowing the Board to suspend or delete the activity. He admitted it often "ends up in court."

M. Palmer remarked it's not an easy process.

J. Langey spoke about another well-known situation in the Town and its outcome.

C. Ladd repeated the need for a signed, legitimate complaint.

T. Pratt said the problem would then not be addressed when it was happening. He repeated the Board was trying to resolve problems as they were happening.

J. Langey said if the issue were corrected in the moment, it would not be counted as a complaint for consideration upon renewal. He felt the Board was in a good position for non-renewal for unresolved complaints.

M. Palmer believed no other members were present when noise issues arose for the East Lake Road enterprise which created this wariness. He knew members were aware of it, but they had not lived through it as he and Chair Pratt had, receiving complaints late at night on the weekends from unhappy neighbors. He explained that was the reason Chair Pratt was acting with extreme caution for this proposal. He stated Mr. Basla was "a good guy, and he's trustworthy." But the next owner may not be. He felt what the Board asked Mr. Basla to do was not onerous. He said it was unfortunate that Mr. Basla misunderstood what he was being asked to provide, but he felt the Board had been clear. He said he was supportive of the business and frequented it often, but having experienced the problems in

the past has left an impression of what could happen once this business changes hands. He said if Mr. Basla agreed to supply a letter from the sound engineer, he could vote in support of the amendment. He admitted there were no guarantees this would be problem-free, but the Board should make sure they do the best job possible to make it problem-free. He commented that the homeowners of South Village bought their homes not thinking a commercial endeavor would be operating around them. He believed the Board needed to protect the neighbors. He trusted Mr. Basla to remedy a problem as soon as he could, that very night, but the Board does not know what will happen in the future.

T. Pratt asked Mr. Basla if he would be willing to provide the letter.

M. Basla repeated that he was willing to have a conversation with Mr. Napierala, but he would not guarantee Mr. Napierala would write the letter.

M. Basla said he keeps hearing about what will happen after he's gone, and he feels the Board continues to hold him hostage "when who knows what will happen when."

M. Palmer explained that was the Board's responsibility.

M. Basla said the Board made their expectations clear with painstaking discussion for the original approval, and he believed they would with the next owner as well, adding that would be a long time from now.

T. Pratt said there were two (2) conditions being discussed. The first was whether action would need to be taken if there was a report of the base sound being an issue. The second was whether the Board would require the letter from a sound engineer.

D. Silverman said he would not require a letter nor would he add the condition of the base at this late hour. He said the sound level has been set and there have been five (5) years of successful operation. He agreed and believed Mr. Basla would do what's right.

G. Mason agreed the letter was unnecessary and he believed Mr. Basla would address any base issues as he would any other sound issues.

M. Palmer said he was in favor of the letter, but he was not in favor of the base, since the base was so subjective. He said there was no real way to measure it, although he expected that the base will probably be a bigger factor than the dB level, but repeated there was no effective way to quantify it.

J. Juszkievicz repeated the amplitude, the intensity of the base, the low-intensity magnitude, was the bigger factor for him than the dB level, and he felt the letter was inconsequential. He said until something is built and measured, one would not know the result.

D. Vredenburgh agreed the letter was unnecessary, and asked why it was not a concern previously. He asked what has changed to make the base an issue now.

M. Palmer replied, “The building.” He stated originally the proposal and approval was just for a stage, not a building.

T. Pratt said there were reports the base could be sensed in South Village at that time.

T. Pratt believed the Board decided that neither the letter nor the additional criterion other than the dB should be conditions.

Motion by D. Silverman, seconded by T. Pratt, to reaffirm the Type I Action with a Negative Declaration based upon the Full Environmental Assessment Form, to amend the special use permit to reflect the changes to the bandstand including the enlarged size from 12’ X 16’ to 16’ X 25’, the increased height from 6” to 18” - 36”, to be 30’ north of the original location and angled toward the main building’s westward facing porch as most recently submitted, and with all the original conditions of the prior approvals, including the conditions that the sound is not to exceed 50 dB at the property lines, and complaints being addressed by management immediately, was carried as follows:

David Silverman	Voted	Yes
Gary Mason	Voted	Yes
David Vredenburg	Voted	Yes
Michael Palmer	Voted	No
Thomas Pratt	Voted	No..

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Motion by M. Palmer, seconded by D. Vredenburg, to adjourn the meeting at 8:15 p.m. was carried unanimously.

Sue Wightman, Zoning Board of Appeals Secretary – May 22, 2023.