

Conditional Use Temporary Waiver
Highland Center for the Arts
August 22, 2022

To consider a request by the Highland Center for the Arts to suspend Condition #5 in their 2014 Conditional Use permit. Condition #5 prohibits amplified sound outside of HCA's physical building.

Warnings were posted on July 27, 2022, at the Greensboro Town Hall, the Greensboro Post Office, the Greensboro Bend Post Office, and Willey's and Smith's Stores. The warning was sent to the applicant and the following abutters and neighboring property owners: Mountain View Country Club; Town of Greensboro; Patricia Mercier; the Bishop Family Trust; NEXT 1, LLC; the Niemi Trust; Brian Niemi; David Allen; Hardwick Electric Department; Arthur and Julie Brochu; Brendan and Lindsay Beer, on July 27, 2022. It was published in the Hardwick Gazette on Wednesday, July 27, 2022.

Development Review Board members present: Nat Smith; Mike Metcalf; Tim Brennan; Lise Armstrong (alternate); and Joann LaCasse (alternate).

Development Review Board members absent: MacNeil recused himself and did not attend; Wayne Young; BJ Gray; Jane Woodruff.

Others present: Jody Austin; Julie Brochu; Brian Niemi; Keisha Luce; David Kelley.

Correspondence from interested persons:

David Kelley, August 16, 2022, Exhibit #1

William and Martha Niemi, August 18, 2022, Exhibit #2

The hearing was conducted by electronic communication (ZOOM).

Summary of Discussion:

Mr. Smith, vice chair, began the hearing at 7:05 p.m. He explained the procedure for the hearing, and asked the clerk to swear in any person who wished to participate in the hearing. The clerk entered two letters into evidence as Exhibit 1 and Exhibit 2 and swore in all participants. Mr. Smith noted Highland Center for the Arts submitted a proposal for a Milk With Dignity fundraising concert and a second concert in lieu of a permitted concert in June that was cancelled due to inclement weather. These concerts propose to have outdoor amplified music and require a temporary relief from Condition #5 of HCA's 2014 Conditional Use permit.

Ms. Luce began by noting the Center had planted forty-seven new trees this spring. Thirty-seven trees are between five and eight feet in height; ten trees are four feet in height. Ms. Luce agreed this has been an ongoing issue and is required by the Center's Act 250 permit. More tree planting is planned for the fall. A few months ago, David Kelley approached the Center about hosting a fundraising concert for a Milk With Dignity fundraising concert, spearheaded by the Migrant Justice program. Hill Farmstead, Barr Hill, and Ben and Jerry's have offered support. Burlington-area Kat Wright will be the main performer.

Mr. Smith inquired about the proposed outdoor noise level. Ms. Luce expects the concert to be similar to the prior Friday concert, although shorter. She expects the folk music and acoustic guitar concert to be about an hour with some speakers involved. Mr. Kelley added he had forwarded YouTube videos to the Board.

Mr. Smith inquired about the proposed second concert. Ms. Luce did not have a band chosen for that date. She offered to rescind that request if it caused hard feelings in the community. The Board questioned why the proposed concerts would be outside. Ms. Luce answered that the trend nationwide is that audiences are not returning to indoor events. As a fundraising event, an outdoor concert could host a greater capacity and raise more money. Some discussion ensued about ticket sales. Mr. Kelley noted that no one will profit from this event. The Board noted that the current temporary waiver for outdoor music stipulates that the sound may be amplified only to the extent that the audience can hear. The Board asked if the recent Haitian music concert that caused complaints from neighbors was a mistake on the part of the Center. Was the volume level misunderstood?

Ms. Luce noted that the Center hadn't received complaints for any other concert. She said she had indicated at the April hearing that this would be an eight-piece Haitian band, and the Center wasn't sure if it could contain the sound bleed. This concert was both amplified and acoustic. The band used drums and horns. The band began at 6:45 p.m. and finished acoustically at 8:25 p.m., for less than two hours on the stage. The Board noted their understanding was that the noise stipulation applied to all five concerts.

Ms. Luce agreed and apologized. She noted the concert was chosen as international music, the time limit was met, and the sound bleed was not contained. Some discussion ensued about the level of noise. Ms. Luce repeated that she did not want to discredit anyone's experience, but HCA staff were not aware of excessive sound levels. The Board inquired if a sound engineer was present. Ms. Luce answered affirmatively.

Mr. Niemi said his family had made a complaint. His parents' windows vibrated, and they had to crate their deaf dog. Some heated discussion ensued about an unidentified woman who had made a complaint in person that night. Mr. Niemi noted the Center has an approved building for concerts. Outdoor amplified music was prohibited at the onset. He believes the Board has a responsibility to balance between the Center and the public.

Ms. Brochu said that all outdoor concerts affect her property. She believes the south wind the night of the Haitian concert was a contributing factor. She wishes the Center the best but this isn't the first time the decibel level has been exceeded. Ms. Luce clarified with Ms. Brochu and Mr. Niemi that this summer's events have been acceptable until the Haitian band concert. Ms. Luce said that she believes two hours of music and 250 people dancing on the lawn are a community benefit. Mr. Smith noted this is not the question. Ms. Luce countered that she believes there is a bigger picture of community balance. Mr. Smith replied that is not in the purview of the Board. The request is for the fundraising concert and a substitute concert for the cancelled event. Ms. Luce retracted the request for the second concert. Mr. Smith confirmed that the Center's request was now only for the Milk With Dignity concert.

Ms. Luce concluded by noting that when she moved to the community two years ago, the community had mixed feelings for HCA. She noted that HCA has endeavored to host a majority of low-key outdoor events, work with neighbors, and conform to the Act 250 permit. She

apologized for the recent sound levels and expressed a wish to return to a collaborative endeavor again.

The hearing ended at 7:46 p.m. The Board entered into deliberative session at 7:48 p.m. and came back into public session to announce their decision at 8 p.m.

Decision and Conditions:

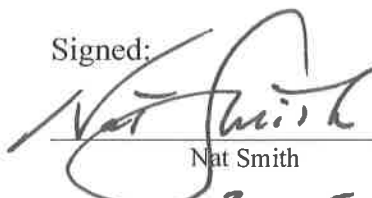
As the direction of the pandemic is still uncertain, the Board granted the Highland Center for the Arts a temporary suspension of Condition #5 to host an outdoor sound-amplified fundraising Milk With Dignity concert. The Board expects this event will take place as presented to the Development Review Board at the August 22, 2022 hearing, and in conformance with the video samples provided to the Board. This event will be at most two hours long, ending by 8:30 p.m. at the latest, and there will be minimal amplification above the ambient sound level. The Board sees this short-term reprieve of Condition #5 as only short-term; this reprieve should not be interpreted as the beginning of outdoor, amplified sound concerts at HCA.


The Board voted unanimously (5-0) to approve a temporary waiver of Condition #5 of Highland Center for the Arts' 2014 Conditional Use permit. Lise Armstrong (alternate) and Joann LaCasse (alternate) voted.

Conditions:

1. The Board approved a concert on September 24, 2022, for a fundraising Milk With Dignity concert, headed by the nonprofit organization Migrant Justice.
2. Any changes in date, time, or performers will be conveyed promptly to abutters.
3. All amplified sound shall end no later than 8:30 p.m.
4. The performance shall employ a sound engineer to control sound levels.
5. HCA shall keep a log of any complaints with name, contact information, and date. HCA will furnish that log, if created, to the zoning administrator by the season's conclusion.

Signed:


_____, vice chair
Nat Smith
date 8-25-22


_____, clerk
Brett Ann Stanciu
date 8-25-2022

NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made within 30 days of the date of this decision, pursuant to 24 V.S.A. #4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

