

Conditional Use Amendment  
Highland Center for the Arts  
June 18, 2020

*To consider a request by the Highland Center for the Arts to amend Condition #5 (amplification of sound outside the building) in their Conditional Use permit of 2014.*

The application requires a review under the following sections of the Greensboro Zoning By-Law: 5.4 Conditional Uses.

**Warnings** were posted on June 1, 2020 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, William & Martha Niemi, David Allen, Hardwick Electric Department, Arthur & Julie Brochu, and Brendan & Lindsay Beer on June 1, 2020. It was published in the Hardwick Gazette on Wednesday, June 3, 2020.

**Development Review Board members present:** BJ Gray, Linda Romans, Nat Smith, Jane Woodruff, Lee Wright, Wayne Young, Janet Travers (alternate) and Mike Metcalf (alternate).

**Development Review Board members absent:** MacNeil, recused

**Others present:** Rob Halpert, representative for Highland Center for the Arts, Brett Stanciu, Zoning Administrator; for others see the sign-in sheet.

**Correspondence from interested persons:**

Letter from Maya and Brent McCoy DRB exhibit #1

Letter from Lauren Fidge DRB exhibit #2

Letter from Patricia Sullivan DRB exhibit #3

Letter from Bobbie & Tim Nisbet DRB exhibit #4

Letter from Christine Armstrong DRB exhibit #5

Letter from Lindsay & Brenden Beer DRB exhibit #6

Letter from Mateo Kehler DRB exhibit #7

Letter from Carolyn Kehler DRB exhibit #8

Letter from David Kelley DRB exhibit #9

Letter from David Allen DRB exhibit #10

**During the course of the hearing the following exhibits were submitted:**

- applicant exhibit #1 – updated letter dated June 17, 2020 from Rob Halpert representing HCA
- DRB exhibits are above in Correspondence from interested persons

The hearing was conducted by electronic communication (ZOOM).

**Summary of Discussion**

Ms. Woodruff, chair, began the hearing at 7:05 PM. She noted the hearing was quasi-judicial, explained the procedure for the hearing, and asked the clerk to swear in all those who wished to speak at the hearing. Ms. Woodruff then asked Mr. Halpert to explain what the Highland Center for the Arts wants to do on their property at 2875 Hardwick Street. He noted that in 2014 when their Conditional Use permit was granted, they thought most events would be held indoors. Since then they have noticed how popular the patio has become and how much people enjoy dining there and several times they did have small, non-amplified music groups or solos artists perform on the patio during the evening. Even before the pandemic they had planned to ask for relief from condition #5 which states that performances and events conducted on the site will not use amplified sound outside of the structure. Mr. Halpert's first letter sent to the Board in April asked for an outside stage and stated they would erect and use the previously permitted tent for performances and other events. They felt they would need sound amplification in both venues. As the pandemic progressed and it became clear large gatherings were not appropriate, they revised their request. They no longer include the use of a stage or tent as venues for events this year. They will have small-scale events on and around the patio for a limit of 50 people, including staff, and no full-service dining. They have plans for a small celebration event (40 people) on

July 3<sup>rd</sup> with tables 10 feet apart and spacing marked on the lawn. One, of two small groups being considered, would perform. Both of the groups would like the use of one microphone, although they can perform without it. Food trucks would provide the food. They would like the DRB to at least permit this event even if the Board's final decision is handed down later than July 3<sup>rd</sup>. Ms. Luce, artistic director of HCA, stated that this summer's five proposed performances would begin at 6:30 PM and end about 7:30 PM every other weekend with only enough amplification to be heard by the audience. Mr. Halpert added that their ACT 250 permit requires any outdoor events end by 9:30 PM. In future years they anticipate slightly larger crowds and would like to erect the originally proposed stage and tent for outdoor performances with, at the maximum, one or two microphones and a couple of speakers which are designed to carry sound only a short distance. Neither Mr. Halpert nor Ms. Luce thought the sound would carry much beyond the HCA grounds, if at all.

Ms. Woodruff then opened the meeting for questions and comments from those attending the hearing. One person commented that because of the limits set by the response to the pandemic, it is good to have HCA that can offer outdoor events which would enable people to gather and be safely distanced from one another. Another warned that it seems likely that in future years events at HCA would be larger and require more amplification. Still another thought outdoor amplification would not maintain the rural character of the area.

Mr. Halpert summed up his presentation by saying that it seems that the type and limited number and times of the planned performances would not have an adverse effect on the rural character of the area. In fact, art in general enhances an area and makes it more vibrant. He added that this summer would be a good test of the potential effects of amplified sounds on the area.

The hearing ended at 8:43. The Board went into deliberative session at 8:48. They came back into public session to announce their decision on Saturday, June 20, 2020 at 11:00 AM.

### **Findings of Fact:**

Based on the HCA's letters requesting relief from condition #5, the letters from interested persons, and the testimony given at the hearing, the Development Review Board makes the following findings:

### **5.4 Conditional Uses**

#### *B) General standards*

*The proposed conditional use will not have an adverse effect on:*

- 1. the capacity of existing or planned community facilities.*
- 2. the character of the area. This is an area of concern.*
- 3. traffic in the vicinity.*
- 4. by-laws and ordinances presently in effect.*
- 5. the utilization of renewable energy resources.*

#### *C) Specific Standards:*

- 1. The lot must meet the minimum size required for the district unless other standards are given for conditional use lot size in the district.*
- 2. Setbacks will be the same as for other permitted uses unless other standards are given for conditional use setbacks in the district.*
- 3. Fencing/ landscaping may be required for commercial and industrial uses to provide screening if the Board deems it necessary to protect the character of the area.*
- 4. Exterior signs shall not be internally lit and must be compatible in size, materials and workmanship to the area in which they are located.*
- 5. The proposed structure is compatible with other structures in the area.*
- 6. The proposed structure adheres to the uses allowed in the relevant district.*
- 7. The proposed structure will not affect the noise or air pollution in the area. This is an area of*

concern.

## Decision and Conditions

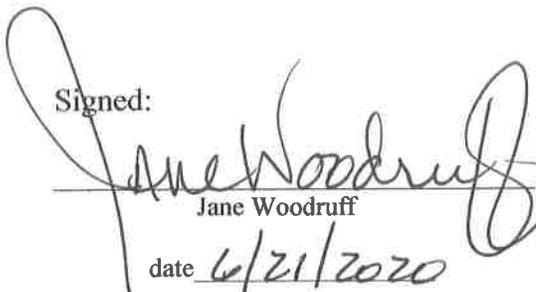
Based on the testimony given at the hearing, the letters from the HCA dated April 22, 2020 and June 17, 2020, and letters from interested parties, the Development Review Board voted unanimously (7 – 0) to deny the request to delete condition #5 in HCA's 2014 Conditional Use permit which denies them use of amplified sound outside the building.

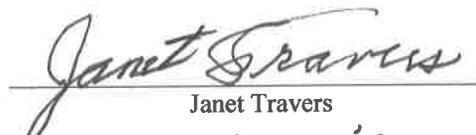
The DRB is not persuaded that by dropping condition #5 in HCA's 2014 permit the HCA's outdoor sound amplified events would meet the general (#2) and specific (#7) standards in by-law 5.4 Conditional Uses.

The DRB subsequently considered its own proposal as follows:

**In recognition of the coronavirus pandemic restrictions currently in place**, the DRB grants the HCA the opportunity to host five or six outdoor sound-amplified events they have "planned" for the 2020 summer with the firm expectation that these events will take place as presented to the DRB at the June 18 hearing, namely that they will each be about an hour in length, ending by 8pm, and that they will have minimal sound amplification that doesn't go much beyond the HCA's grounds. The DRB sees this short term reprieve of Condition #5 as just that, short term; this reprieve should not be interpreted as the beginning of further post-pandemic outdoor amplified sound events at the HCA after the summer of 2020.

After much discussion the Board voted and the proposal was denied by a vote of 6-1.

Signed:  , chair  
Jane Woodruff  
date 6/21/2020

 , clerk  
Janet Travers  
date 6-20-20

### 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.