

East Hampton Zoning Board of Appeals
Regular Meeting
July 12, 2010
Town Hall Meeting Room
7:00 P.M.

Approved Minutes

1. **Call to Order:** Chairman Nichols called the ZBA Meeting of June 14, 2010 to order at 7:00PM.

Members Present: Chairman Charles Nichols, Linda Dart, and Don Martin

Alternate Members Present: Lori Wilcox, Robert Hines, Tom Keegan, and Vincent Jacobson

Absent: Brendan Flannery

Staff Present: Planning, Zoning & Building Administrator James Carey.

2. **Seating of the Alternates:** Tom Keegan was seated
3. **Legal Notice:** Mr. Carey read the legal in for the record.
4. **Approval of Minutes.**

- a. **June 14, 2010 Regular Meeting:**

Chairman Nichols moved and Mr. Hines seconded, to approve the minutes of June 14, 2010 regular meeting. The motion carried unanimously.

5. **Notice of Appeal the decision of Zoning Enforcement Officer dated May 2, 2010 regarding outside noise at 81 N Main Street, - M04A/B45A/L20 & 21 in a C Zone.**

Mr. Carey reported Attorney D'Aquila was present on behalf of the Zoning Board of Appeals to set procedure and advise the board on any legal questions they may have regarding this matter.

Attorney D'Aquila stated her sole roll tonight before the commission is as advisor to the Zoning Board of Appeals if questions arise. Attorney D'Aquila is not able to make the decision for the ZBA, but can assist procedurally and legally when asked to. The matter before the ZBA is an appeal from a decision of the Zoning Enforcement Officer. Attorney D'Aquila suggested having the Zoning Enforcement Officer explain what the decision was, and then call upon the appellant to put their case forward.

Mr. Carey, Zoning Enforcement Officer stated to the agency back in late April 2010, Mr. Carey was asked by the town manager, Mr. O'Keefe, to make an opinion about whether or not the use of outdoor entertainment at Angelico's Lakehouse was prohibited by the fact that it was not specifically permitted by regulations. On May 2nd, 2010, Mr. Carey responded to Mr. O'Keefe via email a response. (See Attached)

Attorney Eric Rothhauser, representing Francis Klein, was before the commission and provided members of the agency copies of the following:

1. Photograph

Attorney Rothhauser stated his client is directly affected by the outside entertainment at Angelicos. They have reviewed Mr. Carey's decision and they disagree with his conclusions that were made, as the Zoning Regulations state in two parts both in Section 4 and Section 11.3 the permitted uses that are permissive zoning. No place in the zoning

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regulations is outdoor entertainment a permitted use. The main issue with Mr. Careys decision is it is an accessory use, accessory use being defined as an incidental and subordinate use. There was discussion of the location of the accessory structure and outdoor entertainment. Attorney Rothhauser state they are not begrudging Angelico's success, what is important to Mrs. Klein is desiring quietness while she is at her home, which is why the law is in place, and when you apply the law that is written there is no way this use can be deemed accessory. Mr. Rothhauser is requesting simple fairness in applying the law and that the Zoning Enforcement Officers decision be reversed with the direction that enforcement action be taken on the Angelico's property. The items that were distributed to the ZBA members and for the record:

- Photograph of a billboard taken in Newington Ct, on the Berlin Turnpike
- Newsletter printed from Angelico's website for July 2010
- Calendar of events from Angelico's Lakehouse from their website dated July 2010
- Brief drafted by Attorney Rothhauser, submitted in support of the appeal
- Map of Angelico's property both 81 and 83 N Main Street, dated August 7th, 2009

Attorney Dowley, attorney for Paul Angelico and Angelico's Lakehouse was before the agency. Attorney Dowley stated this is a dispute between the appellant and Mr. Carey, with notice given to Mr. Angelico because it involves his property. Attorney Dowley recited some important pieces of Mr. Carey's email, some of which states "historically the town has been well known for festive community with many mixed musical restaurant venues of which the subject property as the Hathaway Inn was one." And "the particular establishment actually submitted its intention to resume outdoor entertainment by an application for an approval of the site plan by the P&Z" Attorney Dowley stated it could be argued that the applicant could have resumed the use claiming grandfathered rights.

Attorney Dowley read into the record a letter received from Kathy Erlandsun in support of Angelico's Lakehouse.

Attorney Dowley read into the record a clip from an article dated July 9th, 1999, Hometown Newspaper, regarding a story discussing the sale of The Hathaway Inn stating that in the 1940's and 50's popular bands who played outside in the Summer. "When the bands played outside, neighboring homeowners would get together and have big house parties with dance music provided by The Hathaway" Attorney Dowley went onto say the use of outside entertainment has been going on at this location long before the zoning laws existed in this town, therefore makes the use a grandfathers use. In order to take an appeal, you need to have an aggrieved party, and Attorney Dowley stated there is not aggrieved party.

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Attorney Rothhauser stated he does not feel this is a grandfather issued, as the Tiki Hut, Beer Garden, and the outdoor entertainment all came in after Mr. Angelico purchased the property.

Mr. Carey commented on the statement of Angelico's never sought a special permit. Mr. Carey is not at all in disagreement with that comment, the establishment of a restaurant in a commercial zone is a special permit use, but what has been left out of the discussion is this was an existing restaurant which already operated as a restaurant for many years, therefore that use was established upon that property, no additional special permitting was deemed to be necessary. What was deemed to be necessary was site plan for changes, improvements, additions, and changes of views, therefore when you go through the record and review the site plan review, absent special permitting is due to the use was already established.

Mr. Carey asked Attorney Rothhauser what form of enforcement is his client looking for? Attorney Rothhauser replied they are seeking the outdoor entertainment since it is not a permitted use, the outdoor entertainment not be permitted to continue to occur on the property until such time that the Town of East Hampton takes whatever regulatory changes to their zoning laws to reflect that.

Mr. Nichols asked if there was anyone present to speak in favor or against this application.

Angelo Tammaro, 27 Lake Blvd, stated the plan that was presented to the ZBA considering the two lots, if you review the minutes and go back, Mr. Tammaro raised the issue, that there was 2 separate lots and they should have been joined before anything happened. Mr. Tammaro stated the music is excessive, and the neighbors are fed up with the noise.

Ann Garwood, 2 Barbara Avenue, stated she is 100ft from the restaurant. Ms. Garwood stated it has been better lately, some of the microphones are turned off, however when the microphones are on. The last 2 Friday's were very loud, but other times it has been less. Ms. Garwood stated it is very difficult to have a stage 100ft from your home. Ms. Garwood closed with stating that Mr. Angelico is trying.

Beverly Blau, Meeks Point Road, stated she has lived in East Hampton since 1921 and they couldn't wait until they grew up to be 16 could go to the location to have parties and enjoy the entertainment. They have been entertaining there only louder and no one ever complained before. Ms. Blau stated when you buy property you should research what is there. They have always been there, only louder.

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Fran Klein, 12 Bellevue Street, stated the reason she has presented this appeal is they have tried numerous avenues and once she reviewed Mr. Carey's response, she felt she needed to respond. Ms. Klein stated their environment has been jeopardized and their quality of life has truly been affected. Ms. Klein stated she was around when the Hathaway had its restaurant and the music was downstairs and inside.

Phil Wielgosh, 79 North Main Street, stated the reason the music at Angelico's has been quieter is the restaurant knows they are being monitored by the town council. Mr. Wielgosh is not looking for Mr. Angelico to loose any money or business, just put the bands indoors.

Nikki O'Neil, 53 Meeks Point, stated her husband owned O'Neil's Tavern for 50 years, he added a patio outside and he had music there. Mrs. O'Neil recalled years ago dancing at the Kay Rock Inn dancing on the porch to the outside music. Mrs. O'Neil also recalled outside music at the Hathaway. Mrs. O'Neil added that Mr. Angelico is very generous to the town of East Hampton and very generous to numerous organizations throughout the town. The music is there for the summer and then it's gone.

Gladys Yeager, 70 N Main Street, stated she lives very close to Angelico's Lakehouse with the music facing her home and she does not have a problem with the noise. Mr. Angelico brings a lot of people to this town. Mrs. Yeager stated she is in favor of the music and what Mr. Angelico brings to this town.

Mary Ann Dostaler, 56 William Drive stated the contributions that Angelico's makes as a business to the community are a wonderful thing, but what is before here and what is being appealed is a regulatory decision, this is not a matter of whether the music is liked or not, this is not subjective, it is a black and white issue of what is a matter of the regulation, and Mrs. Dostaler hopes the commission will focus on what is the true issue.

Jim Morris, Spellman Point Road, stated the long history in East Hampton of restaurant type establishments having music and entertainment is quite indisputable. It is not part of the issue except for the grandfather concept definitely comes into play This community has gained a lot over the years by having these kinds of establishments and Paul Angelico has turned around a restaurant that was failing. Mr. Morris asked the members of this commission to be very mindful of the implications of the decision and the interpretation of the appeal and the regulation, as this could carry with these some implications for other restaurants that offer entertainment and music outside.

John Mohr, 16 Lake Boulevard, neighbor to Mr. Angelico, and does not consider the noise coming from Angelico's a problem. Mr. Mohr stated the discussion of regulations and how that should be followed. Mr. Angelico runs the business 364 days a year, with 12 or so hours a week outside, 3 months a year, your talking about 3 ½% of the time that there is outdoor entertainment which falls under the area of incidental and small usage.

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Chairman Nichols made a motion to continue this public hearing until the next regular scheduled meeting of August 9th, 2010 to allow for each of the parties to produce whatever briefs and further arguments they wish to make. The Zoning Board of Appeals requested of the parties what ever further information they would like to provide be provided no later than August 2nd in order to allow enough time for all parties and members of the agency to review submissions. Motion was seconded by Mr. Keegan. The motion passed unanimously.

6. Old Business: None

7. Communications: None.

8. New Business: None

9. Adjournment

Ms. Dart moved to adjourn the ZBA meeting. The motion was seconded by Mr. Martin. The motion carried unanimously. Meeting Adjourned: 8:02PM

Respectfully Submitted

**Kamey Peterson
Recording Secretary**