

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT & NOTICE OF DECISION
#2008-02-CU EDGCOMB / PHANTOM THEATER
AMENDMENT OF CU PERMIT #2001-19-MM

Received for Record 6/5 2008
at 8:30 o'clock A M and Received in
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Ruth Robbins
TOWN CLERK

In 2001 Mr. Edgcomb received a Conditional Use permit for Cottage Industry and Adaptive Reuse use designations for an architectural office in his residence and a summer theater in his barn. The Adaptive Re-Use of the barn was appealed and the resulting conditions from that appeal became a part of the Town permit. Mr. Edgcomb and Mr. Sanford representing the Phantom Theater are now seeking to modify the conditions in that permit.

A duly warned hearing was held on Wednesday April 23, 2008 and attended by DRB members Peter Monte, David Markolf, Virginia Roth and Lenord Robinson. Also in attendance were: Mark Grosby, Cathleen Miller, Catherine Dillon, Alan Keefe, Jackie Coates, Linda Lloyd, Jim Sanford, Karen Salvatore, Jim Edgcomb, Miron Malboeuf and Ruth Robbins.

Findings of Fact and Conclusions of Law:

1. The applicant submitted a completed application, notice to abutters, certificate of service and a narrative of the proposed changes requested.
2. The list of proposed changes had been modified following conversations with some of the abutting neighbors.
3. Phantom Theater requested that their season be extended by one month [June] for greater flexibility in scheduling performances but with the neighbor's concern about it being in a residential area reduced the request to an additional two weeks.
4. The applicant had originally hoped to extend the hours of operation by thirty minutes, but have withdrawn this request after speaking with the neighbors.
5. A "private event" is defined as one that is held for the personal and household use of James Edgcomb to which the general public is not invited. Currently the permit allows for no more than 3 "private events" in the barn during the prescribed season. With the proposed extension of the season it was felt only fair to increase the allowable "private events". The request was for a total of 5 and was subsequently reduced to 4.
6. The permit does not allow fundraising activities on the premises at any time. The Phantom Theater is requesting that this stipulation be deleted. The applicant explained that fundraising was essential to the success of Phantom Theater and that to be able to do so in the Theater itself was important to them. It was clarified that any proposed fundraising would be as one of the 24 allowed "events" and would be limited to the same time / hours of operation as any of the theater events.
7. Acoustic barriers were required for the north entrance as well as the south entrance under the current permit. Phantom Theater has complied with the sound barriers for the two exits on the north side. The main entrance to the theater is on the south side and the only "sound barrier" that has been used is that of a heavy curtain. The current permit also provides for this condition to be amended should there be no objections from the neighbors.
8. There have been no known complaints to date of excessive noise associated with the operation of the Phantom Theater.
9. The designated areas for parking were not an issue and there had been no problems to date with patrons parking in the right locations.

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10. To keep the theater patrons from going down the Dump Road and to instead stay on the paved road all of the programs and mailings state what the required access and exit is to be utilized. In addition they also make announcements at the performances and have a new sign that will be utilized at the exit. As such, the applicant is requesting that the requirement for a parking attendant be removed as it does not increase compliance.
11. The requirement for access directions on the show announcement signs is confusing and possibly a traffic hazard as it requires too much information for this type of signage.
12. In addition to a parking attendant there also is a requirement for a sheriff, Town constable or employee of a private security firm to direct cars away from the dirt roads. As for the requirement for a parking attendant, the applicant felt it was not necessary especially with the addition of a new, large, clear sign showing which way the attendants must exit.
13. The requirement for the use of port-o-lets is no longer necessary since there is now a public toilet facility for theater goers.
14. The DRB found that the use of heavy curtains satisfies the requirement of an "acoustic barrier" as long as it is effective to avoid violation of Sec. 3.11 (A) (1).

Notice of Decision:

The Development Review Board finds that the applicant's request to amend the Conditional Use permit meets the standards under Section 5.3 Conditional Use Review Standards of the Warren Land Use and Development Regulations and hereby approves the following changes:

- 1) The Performance Season shall be from June 16th through Labor Day
- 2) Under Maximum Number of Events delete "no fundraising activities shall be permitted on the premises as any time" with the understanding that any fundraising event will be considered an "event" and subject to the same conditions as events are and that private events will be increased from three (3) to four (4)
- 3) under Parking and Access the requirement for a "parking attendant" is to be deleted
- 4) under Signage the requirement for access/exit directions be included on the event notice signs be deleted and add the requirement for an exit sign directing patrons to use the paved road to the right
- 5) under Traffic delete the requirement for a sheriff, Town Constable or employee of a private security firm to direct traffic
- 6) under Waste delete the requirement for port-o-lets

All other Findings of Fact and Notice of Decision requirements from Conditional Use permit # 2001-19-MM, as amended by the State environmental Court in May 2002, that are not amended as listed above remain in force. That decision [Town of Warren #2001-19-MM] is restated below. The subsequent Court decision follows.

**TOWN OF WARREN
 DEVELOPEMNT REVIEW BOARD
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 EDGCOMB – ADAPTIVE REUSE & COTTAGE INDUSTRY
 CONDITIONAL USE REVIEW
 #2001-19-MM**

Jim Edgcomb seeks approval for Cottage Industry and Adaptive Reuse use designations for an architectural office in his residence and a summer theater in his barn. The project is located on 7.3 +/- acres at the corner of Airport Road and Dump Road in the Rural Residential District. The project requires review under Article 5 – Development Review in accordance with Article 4. §4.2 – Adaptive Reuse and §4.8 – Home Based Businesses of the Warren Land Use and Development Regulations.

A public hearing was convened April 4, 2001 and continued April 11, 2001. At the above referenced meetings the Warren Development Review Board reviewed Permit Application No. 2001-19-MM along with supporting documents and plans.

Members Present April 4, 2001: Eric Brattstrom, David Markolf, Peter Monte, Chair; Lenord Robinson, Virginia Roth.

Others Present: Jim Edgcomb, applicant; Mary Moffroid, Annie Wattles, Phantom Theater representatives; Ron Majorell, Jessalyn Della Vecchio, Donald Ritchie, James Salvatore, Brian Prager, Cathleen Miller, Dot Hines, Beth Schoellkopf, Carl Bates, Alexis Leacock, Heidi Darr, Patrisha Hays, Peter Hays, Michael Levengood, Neal Harrington, Kristen & Robert Stillwell, Burgi von Trapp, Betsy LaFlame, Art Bennett, Mark Bennett, Richard Denby, Edgcomb neighbors & abutters; Margo Wade, DRB/PC Assistant.

Members Present April 11, 2001: Eric Brattstrom, David Markolf, Peter Monte, Chair; Lenord Robinson, Virginia Roth.

Others Present: Mary Moffroid, Annie Wattles, Tracy Martin, Phantom Theater Representatives; Jim Edgcomb, Applicant; Carl Bates, Marybeth Prager, Richard Denby, Alexis Leacock, James Salvatore, Burgi von Trapp, Michael Snyder, Heidi Darr, Nancy Wilson, Diana Pikulski, Mark Bennett, Don Ritchie, Kevin Ritchie, Cathleen Miller, MC Malboeuf, Beth & Jeff Schoellkopf, Edgcomb neighbors & abutters; Margo Wade, DRB/PC Assistant.

FINDINGS OF FACTS and CONCLUSIONS OF LAW:

1. Submittal material includes: Complete Application; Abutter Notification and proof of mailing; Project Narrative; Edgcomb Property Site Plan, dated April 1, 2001; letter sent to Neighbors, dated March 16, 2001; and Proposed Theater Conditions.
2. Letters submitted pertaining to this application by the following people include: Catherine Dillon, Kristen von Summer, Rural Resource Commission, Bob Messner, Corinne Kremer & Alvin Roth, Wesley & Charles Porter, Anthony & Andrea Della Vecchio, VT Division of Historic Preservation, Nancy Wilson, and Dorothy Hines.
3. The Phantom Theater use of the barn entails a June through September season with approximately 12 two-day events, with no more than three performances in any given week. These events will include daytime and evening functions. Daytime events include children's functions and workshops. Evening events include theatrical performances, dances, and acoustic musical performances. Other events held at the barn include: fundraiser dance; puppet show; dance performance; hosting local musicians; and public auction. Rehearsals are usually scheduled during the day.
4. The VT Department of Labor and Industry had come and inspected the barn the first year it was used for the theater. At that time, they found the egress acceptable and required that all new electrical wiring is placed in conduit.
5. The barn qualifies for listing with Historic Preservation, but is not listed with the VT Division of Historic Preservation at this time. There would be an increase of traffic during the performances, which some neighbors will find objectionable, but proper conditions can mitigate the impact and the ordinance includes a mechanism to preserve historic structures.
6. The traffic impacts produced by the proposed adaptive reuse are less than the traffic impacts produced by the airport and cross-country ski center and occur at different times of the years.

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In addition, the proposed hours of operation will not coincide significantly with the airport traffic times.

7. Barn – Adaptive Reuse
 - The Edgcomb barn is eligible for listing on the historic register and therefore is a structure eligible for adaptive reuse as specified under the Land Use Regulations.
 - The evidence before the Board shows there are two reactions among the neighbors to the theater use of the barn. There are neighbors nearby who have legitimate concerns about noise, traffic, and other effects that flow from the use, and there are other neighbors equally close that do not find the off property impacts to be objectionable.
 - Pursuant to §5.3(A) (1), the proposed adaptive reuse of the barn will not adversely affect the capacity of existing and planned community facilities or services.
 - Pursuant to §5.3(A) (2), based on and subject to the conditions contained herein the proposed adaptive reuse of the barn will not adversely affect the character of the area.
 - Pursuant to §5.3(A) (3), given the conditions the proposed adaptive reuse of the barn will not adversely affect the traffic on roads and highways in the vicinity.
 - Pursuant to §5.3(A)(4), the proposed adaptive reuse of the barn will not adversely affect bylaws in effect and in fact complies with the Warren Town Plan.
 - §5.3(A) (5) was deemed not applicable.
 - §5.3(B) (1) – Building Design was deemed not applicable.
 - §5.3(B)(2), Traffic, Circulation and Access, (3) – Bicycle and Pedestrian Access, (4) – Parking and Service Areas, (5) – Outdoor Storage and Display, and (6) – Landscaping and Screening, (7) – Protection of Natural Resources, (8) – Erosion Control and (9) – Surface Water Protection, (10) – Lighting and (11) – Performance Standards were deemed satisfied given the conditions contained herein.
8. The home office has been an existing use since Mr. Edgcomb purchased the property in the late 1980s. The application for a cottage industry use designation is confirming the existing use of the property.
9. The proposed overflow parking area for the home office will be plowed in the winter as necessitated by the business load.
10. The septic system was upgraded in 1990 to 600 gallon capacity per day. The allocation is calculated as follows - two bedrooms with a 250gal/day allocation and six employees with 15 gal/day/employee totaling 590gal/day. The capacity of the well is adequate.
11. Home Office – Cottage Industry
 - Pursuant to §4.8(B) – Cottage Industry, criteria (1) through (7) were deemed satisfied by the terms of the application, (8) and (9) were deemed satisfied, (10) was deemed not applicable, (11) was deemed satisfied, and (12) specifically recited at a permit condition.
 - Pursuant to §5.3(A) (1), the proposed cottage industry use of the residence will not adversely affect the capacity of existing and planned community facilities or services.
 - Pursuant to §5.3(A) (2), the proposed cottage industry use of the residence will not adversely affect the character of the area.
 - Pursuant to §5.3(A) (3), the proposed cottage industry use of the residence will not adversely affect the traffic on roads and highways in the vicinity.
 - Pursuant to §5.3(A) (4), the proposed cottage industry use of the residence will not adversely affect bylaws in effect.
 - §5.3(A) (5) was deemed not applicable.
 - Pursuant to §5.3(B), no additional conditions are imposed under the Specific Standards section.

NOTICE OF DECISION

Based on the forgoing Findings of Facts and Conclusions of Law, the application #2001-19-MM submitted by Jim Edgcomb seeking approval for Cottage Industry and Adaptive Reuse use designations for an architectural office in his residence and a summer theater in his barn is hereby approved with the following conditions:

Barn – Adaptive Reuse

- 1) Conditions of Operation

Production: Phantom Theater Productions will produce and/or approve all of the public events at the Barn.

Permit status: The permit for the adaptive reuse of the barn will expire if Phantom Theater Productions ceases to exist.

Neighborhood oversight: A neighbor will be invited to sit on the advisory board to provide feedback on neighbors concerns.

The Season: June through September

Hours of Operation: Friday and Saturday and days prior to a holiday performances will end by 10:30 P.M., exterior lights out and public gone by 11:00 P.M. Sunday through Thursday performances will end by 10:00 P.M., exterior lights out and public gone 10:30 P.M.

Additionally on Sunday through Thursday if the use of the barn is not a performance or dress rehearsal exterior lights out and everyone gone by 10:00 P.M.

Maximum Number of Events: 24, including no more than three (3) private events in the barn during the June – September season (with no restriction of private use outside of the designated season). An event is an activity in which either, a) more than 15 cars are parked on site, or b) the public is invited. A private event will not be subject to the other conditions in this permit. A private event is one held for household use to which the general public is not invited (e.g. a birthday party). Jim Edgcomb agrees to limit the number of private events in the barn as stated above during the time covered by the permit.

Frequency of Events: Not more than three (3) public events in any one-week.

Capacity: 120 or less if required by state regulations.

Sound: Music concerts will not violate §3.11(A) (1) with regard to noise level. No outdoor speakers. Acoustic barriers will be installed over the north entrance for the 2001 season, and remain there after, and installed over the southern and other openings for the 2002 season, and remain there after. The applicant may apply to amend this condition after the first year if the neighbors agree that the southern barriers are not necessary.

Interior Lighting: House lights to provide full interior illumination of all public space during facility use. This lighting will be turned off during performances, but must be able to be switched on immediately in case of emergency.

Exterior Lighting: Lighting on pathways and exit doors will be low level and downward facing. Tiki lights will not be used to illuminate pathways.

Exits: Three main level exits will be maintained and lighted at all times. Fire extinguishers will be visibly stored at all exits and at lighting controls. A public announcement of exit locations will be made before all performances.

Parking and Access: Parking will be accessed from existing drive at the intersection of Airport Road and Dump Road. Parking will be in the hay field east and south of the barn. This area will be mowed and clearly marked. Access and parking for handicapped persons and service staff can be made through the Edgcomb driveway. A parking attendant will direct patrons while arriving and departing all events.

Emergency Access: A sixteen-foot wide access route for emergency vehicles will be maintained to the front and back of the barn, and parking area at all times.

Signage: Show announcements will be posted on temporary signs. Signs will be put up the day of the show and taken down the day after the last show.

Traffic: Public announcement prior to each show will ask patrons to leave by paved roads. The parking attendant will direct cars away from dirt roads after the event is over.

Waste: A port-o-let will be present at all performances. To be cleaned weekly. The port-o-let will be discretely lighted during public performances and properly screened from neighbors. All garbage will be picked up daily and taken to appropriate depository on a weekly basis.

Children: All children under age of twelve must be accompanied by adult supervisor at all times.

- 2) Before July 1, 2001 the applicant shall request an inspection of the project and building plans by the VT Department of Labor and Industry for building approval and the VT Agency of Natural Resources for any septic disposal requirements that may apply and will submit copies of the requests to the DRB. The applicant will diligently pursue these applications to obtain all lawfully required approvals.

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3) Before the first event, the applicant shall obtain a curb cut permit from the Selectboard.

Home Office – Cottage Industry

4) The residents of the dwelling unit and no more than six (6) non-resident employees may be employed on-site at any one time.

5) The proposed overflow parking area for the home office will be plowed in the winter as necessitated by the business load.

6) The cottage industry is a home-based business, which is accessory to the principal residential use, and shall be retained in common ownership and management. The cottage industry may be subdivided and/or converted for sale or use apart from the residential use only if it meets all current municipal and state regulations pertaining to such use, including density, dimensional, and other requirements for the district in which it is located. Separate permits shall be required as appropriate prior to subdivision, sale and/or conversion.

[above signed by the DRB April 18, 2001 and recorded in the Warren Land Records Vol 136, pages 429-433, on April 19, 2001]

The above decision was appealed in the Vermont Environmental Court and the following is a recounting of the agreed upon stipulation which is now amended by the current decision of the Development Review Board.

State of Vermont
 Vermont Environmental Court

In re: Appeal of Wesley and Charles Porter

Vermont Environmental Court
 Docket No. 71-5-01Vtec

Based upon a Stipulation executed by the parties and filed with this Court, it is hereby Ordered as follows:

1. Cottage Industry Use: The Appellants have withdrawn their appeal of the Conditional Use Permit granted to James Edgcomb with regard to the Cottage Industry use of his property for his architectural offices. The Town of Warren permit for the Cottage Industry use, which issued on April 18, 2001, shall remain in full force and effect.
2. Adaptive Re-Use of the Edgcomb Barn: The Findings of Fact as determined by the Development Review Board of the Town of Warren are hereby approved. Subject to the following conditions, James Edgcomb is hereby granted a Permit for summer theater use of the Edgcomb Barn located on his property pursuant to Article 5, Development Review in accordance with Sec. 4.2 of the Town of Warren Land Use and Development Regulations adopted on March 6, 2001, and currently in effect. The following conditions shall be applicable to this permitted use:
 - (A.) Production: Phantom Theater Productions will produce and/or perform at all of the public events at the Barn;
 - (B.) Permit Status: The permit for the adaptive reuse of the barn will expire if Phantom Theater Productions ceases to exist. Any sale by Phantom Theater Productions or its trade name to an unaffiliated person or organization shall constitute a cessation, and this Permit shall expire;
 - (C.) Neighborhood Oversight: A neighbor will be invited to sit on the advisory board to provide feedback on neighbors' concerns. Kate Dillon shall be the initial member of the advisory board;
 - (D.) The Season: Performance Season shall be July 1 through Labor Day;

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- (E.) Hours of Operation: All performances will end by 10:00 P.M., exterior lights out and public gone by 10:30 P.M. Phantom Theater staff and cast members shall be allowed to remain at the Theater after a performance for a reasonable time for the sole purpose of cleaning up or breaking down of the sets, if necessary. There will be no cast parties at the Theater after performances. Additionally on Sunday through Thursday if the use of the Barn is not a performance or dress rehearsal exterior lights out and everyone gone by 10:00 P.M.;
- (F.) Maximum Number of Events: Twenty-four (24) events, including no more than three (3) private events in the Barn during the July through Labor Day season (with no restriction of private use outside of the designated season). An event is an activity in which either, a) more than fifteen (15) cars are parked on site, or b) the public is invited. A private event will not be subject to the other conditions in this permit. A private event is one held for the personal household use of James Edgcomb to which the general public is not invited (e.g. a birthday party). James Edgcomb agrees to limit the number of private events in the Barn as stated above during the time covered by the permit. All public events shall be associated with local arts, crafts or theatrical performances only. No fundraising activities shall be permitted on the premises at any time;
- (G.) Frequency of Events: Not more than three (3) public events in any one week;
- (H.) Capacity: One hundred twenty (12) or less if requires by state regulations;
- (I.) Sound: Sound associated with any events will not violate Sec. 3.11 (A) (1) with regard to noise level. No outdoor speakers shall be employed. Acoustic barriers will be installed over the north entrance for the 2002 season and remain there after, and installed over the southern and other openings for the 2003 season and remain there after. The Applicant may apply to amend this condition after the first year in the event the neighbors to the south of the Applicant's property agree that the southern barriers are not necessary;
- (J.) Interior Lighting: House lights to provide full interior illumination of all public space during facility use. This lighting will be turned off during performances, but must be able to be switched on immediately in case of emergency;
- (K.) Exterior Lighting: Lighting on pathways and exit doors will be low level and downward facing. Tiki lights will not be used to illuminate pathways;
- (L.) Exits: Three (3) main level exits will be maintained and lighted at all times. Fire extinguishers will be visibly stored at all exits and at lighting controls. A public announcement of exit locations will be made before all performances;
- (M.) Parking and Access: Parking will be accessed from the existing drive at the intersection of Airport Road and Dump Road. Parking will be in the hayfield east and south of the Barn. This area will be mowed and clearly marked. Access and parking for handicapped persons and service staff can be made through the Edgcomb driveway. A parking attendant will direct patrons while arriving and departing all events. There shall be no parking in any areas marked "additional parking" on the site plan unless all other parking spaces are full. The easternmost additional parking area shall be utilized last;
- (N.) Emergency Access: A sixteen (16)-foot wide access route for emergency vehicles will be maintained to the front and back of the Barn and parking areas at all times;
- (O.) Signage: Show announcements will be posted on temporary signs. Signs will be put up the day of the show and taken down the day after the last show. The signs shall direct the public to access and exit the premises by use of Brook Road and Airport Road and direct the public to use Brook Road and the paved portion on Airport Road only;
- (P.) Traffic: Public announcement prior to each show will ask patrons to leave by the Airport and Brook Road paved roads only and remind patrons to use such paved roads for access in the future. The program shall contain a printed statement

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about always using the Brook Road and Airport Road paved roads. All advertisements will direct patrons to use such paved roads. A sheriff, Town Constable, or an employee of a private security company shall direct cars away from the dirt roads at the conclusion of each event;

(Q.) Waste: A port-o-let will be present at all performances, to be cleaned weekly. The port-o-let will be discreetly lighted during public performances and properly screened from neighbors. All garbage will be picked up daily and taken to appropriate depository on a weekly basis;

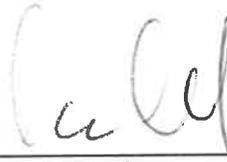
(R.) Children: All children under age of twelve (12) must be accompanied by adult supervisor at all times;

3. Permits: Before the first public event Edgcomb shall secure all necessary state permits for this use of the Barn and shall obtain a curb cut access permit from the Warren select Board;
4. Each Party shall bear their own costs, expenses and attorney's fees related to this appeal.

DEVELOPMENT REVIEW BOARD

 6-4-08

Peter Monte date

 6/4/08

David Markolf date

 6/4/08

Lenord Robinson date

 6/4/08

Virginia Roth date