

STATE OF VERMONT

SUPERIOR COURT
Environmental Division Unit

ENVIRONMENTAL DIVISION
Docket No. 154-12-15 Vtec

Old Lantern Non-Conforming Use

Decision on the Merits

This matter began with a complaint, lodged with the Town of Charlotte Zoning Administrator (“Zoning Administrator”) by Appellants here—Alison and Adrian Wolverton (“Appellants”)—who alleged that certain improvements and expansions had been made to an event facility in the Town of Charlotte (“Town”) known as the Old Lantern Barn.¹ Appellants sought in their initial complaint to have the Zoning Administrator conclude that the operation of the Old Lantern Barn should not be regarded as a pre-existing, nonconforming use, and that as a consequence, the Barn owners should be required to seek and secure applicable zoning approvals for its continued operation.

When the Zoning Administrator declined to adopt Appellants’ allegations, they appealed her determinations to the Town of Charlotte Zoning Board of Adjustment (“ZBA”). When the ZBA affirmed the Zoning Administrator’s determinations, Appellants filed a timely appeal with this Court.

Appellants are represented in this appeal by James A. Dumont, Esq. The Old Lantern Barn, together with its owners, Lisa and Roland Gaujac (hereinafter collectively referred to as “Old Lantern”), are represented by Liam L. Murphy, Esq. The Town is represented in this appeal by David W. Rugh, Esq. Neighbors Michael Frost, Karen Frost, Maura Wygmans, and Justin Wygmans also appear as Interested Persons and are representing themselves.

¹ In prior Decisions and Entry Orders in this Docket, the Court has referred to the challenged facility as “the Old Lantern Inn.” Those references were in error. There is a separate facility on the Gaujacs’ property named “the Old Lantern Inn” which is not the subject of Appellants’ complaints nor at issue in this appeal. Appellants’ concerns and challenges are only focused on the Old Lantern Barn and the events it hosts.

The parties engaged in many activities prior to this matter being ripe for trial, including filing twenty pre-trial motions, completing court-ordered mediation and informal settlement discussions, and conducting independent presentations to the Town Selectboard and Planning Commission. The Court thanks the parties for their efforts at attempting a voluntary settlement, even though their efforts did not eventually prove successful.

One of the pre-trial motions included Appellants' claims for sanctions against the Old Lantern and its attorney; their sanction requests were addressed in an Entry Order issued on May 26, 2017. We further addressed motions to amend and reconsider that Entry Order in a subsequent Entry Order issued on July 7, 2017. The Court again revisited this issue on Old Lantern's request to reconsider in an Entry Order issued September 13, 2017.

Old Lantern filed its own sanctions motion after the trial was completed. The Court intends to address that post-trial sanctions request after this Merits Decision is issued.

Several of the remaining pre-trial motions assisted the Court and the parties in addressing the legal issues presented for our review in this de novo appeal. In particular, the motions addressed by the Court in its July 3, 2017, Decision, as modified by the Court's Entry Orders filed on September 13, 2017 and November 13, 2017, led to the Court resolving the legal issues raised in Appellants' Statement of Questions 2, 6, 7, and 8, and narrowing the scope of the legal issues raised in Question 3.²

With all the legal issues raised by the parties in their respective pre-trial motions having been addressed by the Court, the parties completed their trial preparations. The Court conducted a site visit with the parties on December 12, 2017, and began the merits hearing on December 14, 2017 at the Costello Courthouse in Burlington, Vermont. The trial was completed in one day.

Based upon the credible evidence presented at trial, including that which was put into context by the site visit, the Court issues the following Findings of Fact, Conclusions of Law, and Judgment Order that accompanies this Merits Decision.

² The Court reviewed these rulings and listed the legal issues within its jurisdiction to address at the beginning of the trial. These legal issues are addressed in the Conclusions of Law section of this Decision.

Findings of Fact

1. The Old Lantern Barn and surrounding lands were first used as a commercial events facility, open to the public, sometime in the early 1960s. The large barn now known as the Old Lantern Barn has been continuously used since then as an events facility. The Burns family first operated a campground on the property, beginning in the early 1950s. The Barn was initially used as a central gathering area where meals for campers were served and concerts, weddings, community events, auctions, and other activities were offered.
2. The Town first adopted zoning regulations in the mid-1960s, after the Old Lantern property had already been established as a camping area and events facility.
3. The Old Lantern Barn lies in the West Charlotte Village Zoning District (“WCV District”).
4. The Burns family operated the Old Lantern property from the 1950s until sometime just prior to the year 2000. During the Burns family’s ownership, some of the land was sold off³ and the camping operation ceased. But the Old Lantern Barn continued to operate as an events facility even after the Burns family sold the property in 2000.
5. Most events occurred during the months of May through October, although the Burns family also had occasional events during the non-peak months. During the peak months, there were two to three weddings or other events per weekend. Some events also occurred during the week.
6. The Old Lantern provided credible evidence, including historical photos, newspaper clippings, and postcards, some dating to the Barn’s construction in 1959 and continuing through the early 1960’s, establishing that the Old Lantern Barn has been continuously used as an events facility for nearly sixty years. Copies of multiple newspaper clippings from the early 1960s and continuing up through the present day that were admitted at trial confirm the continuous operation of the Old Lantern facilities as an event facility. See Exhibits 2, 15–18, and 40.
7. Exhibit 15 includes a detailed list of the multiple events that occurred at the Old Lantern Barn from 1963 through 1966. Exhibit 15 also includes copies of newspaper clippings that advertised or reported on events at the Old Lantern Barn throughout several years. As discussed

³ In fact, it has been represented that two parties to this appeal—Maura and Justin Wygmans—in 2005 purchased the property on which they now reside from the former owners of the Old Lantern Inn.

below, there was no testimony or other evidence offered at trial that contradicted Old Lantern's assertion that events at the Old Lantern Barn have consistently occurred throughout its existence. We therefore conclude that the Old Lantern representations are accurate.

8. Mrs. Gaujac also credibly testified about the events that had been booked for the Old Lantern just before and after she and her husband, Ronald Gaujac, purchased the Old Lantern property. At the time of their purchase in early 2006, the Gaujacs received a list of the events that had already been booked for the following months in 2006. That list was admitted at trial as Exhibit 20; that Exhibit also included Mrs. Gaujac's list of the events that occurred at the Old Lantern Barn for several years after their purchase. No credible evidence was offered at trial that refuted Mrs. Gaujac's representation of events that have regularly occurred at the Barn during this time. We therefore conclude that Mrs. Gaujac's representations are accurate.

9. Mr. Richard Burns, son of the late Mr. and Mrs. Burns who originally established the Old Lantern facilities, provided credible, detailed testimony of the various events that his parents hosted on the property, including large camping events (some hosting 600–700 individuals), weddings, public and private dances and parties, auctions, pig roasts, Rotary Club meetings, and a regular event known as the POW-WOW.

10. Mr. Burns continuously worked for his parents at the Old Lantern facilities from when he was a child in the late 1950s until sometime in 1999. He assisted in the day-to-day operation of the events facility, its maintenance, and improvements.

11. The Old Lantern Barn as it exists today was first constructed in the late 1950s or early 1960s. The Barn as originally constructed included an indoor seating area with a kitchen and food preparation area located on the southern interior of the Barn. An addition to the Barn was added to the west side of the building in 1964 or 1965; the addition included an additional large seating area and a bar area. The dimensions and interior layout of the Barn has not changed since the mid-1960s.

12. The kitchen area has not been enlarged or relocated since its original construction. It originally included two ovens, fryolators, a 10-burner grill, an exhaust vent and a separate oven

on the back porch that was used to prepare pizzas and baked goods. The kitchen also included a walk-in cooler and a chest freezer.⁴

13. Meals have historically been served at the Old Lantern Barn to the campers and wedding and event guests. In the early decades of its operation, meals were prepared in the kitchen inside the Old Lantern Barn and served to the campers and those attending the other Barn events. Sometimes, for particularly large gatherings, some of the food and drinks served at Old Lantern events were prepared off site. However, the present owners of the Old Lantern facilities and their predecessors never ceased preparing and serving event meals from the kitchen in the Old Lantern Barn.

14. At no time has the Old Lantern Barn been operated as a restaurant offering meals to the general public; those offered meals at the Barn have been limited to potential and actual wedding or event principals, their guests, and campers.

15. During the decades that the Burns family owned and operated the Old Lantern facilities, no complaints were lodged with them or Town officials about how the Old Lantern facilities were being operated or its impacts upon the surrounding neighborhood. There was also no evidence presented at trial of any complaints being lodged about the Old Lantern facilities while it was owned by Mr. Dickerson and his partners, who purchased the Old Lantern property in 2000.

16. Mr. Dickerson was an auctioneer who held auctions inside and outside the Old Lantern Barn from the 1960s, throughout the Burns family ownership, and up until the time in 2006 that Mr. Dickerson and his partners sold the Old Lantern property to the Gaujacs.

17. After their purchase, Mr. Dickerson and his business partners continued to operate the Old Lantern Barn from the year 2000 forward as an events facility, with a variety of events throughout the year, on a schedule similar to that conducted by the Burns family.

18. Sometime around the beginning of 2006, Mr. Dickerson and his partners decided to sell the Old Lantern property because one of his partners became ill. In 2006, these partners sold the Old Lantern property to the Gaujacs. After their purchase, the Gaujacs have continuously operated the Barn as an events facility.

⁴ The Gaujacs completed some renovations to the kitchen after their purchase in 2006, at the direction of the Vermont Department of Health. Those renovations are detailed below at Findings ¶ 19.

19. Sometime around 2015, the Gaujacs renovated the kitchen at the Old Lantern Barn, in response to directives by officials from the Vermont Department of Health. The kitchen renovations included:

- a.) replacing wood shelving with metal shelving;
- b.) replacing a two-bay sink with a three-bay sink;
- c.) replacing two direct exhaust fans with a full hood, with exhaust fan vented above the roof line;
- d.) replacing a larger stove with a smaller stove and grill;
- e.) adding plastic walls to the walk-in cooler; and
- f.) adding a vinyl covering over the wood flooring.

20. By way of a September 11, 2015 letter, the Zoning Administrator responded to complaints from some of the neighboring parties by rejecting the neighbors' complaints and concluding that the Old Lantern Barn "has historically been used as an event/banquet facility and is considered a pre-existing, nonconforming use in the West Charlotte Village Zoning District."⁵

21. The Zoning Administrator also notes in her September 11, 2015 letter that she confirmed with state officials that the current operation of the Barn did not constitute changes that required amendments to the Barn's existing state Department of Health, wastewater, or water supply permits, and concludes that, "[b]ased on this information, I do not believe the facility's recent kitchen renovation and the shift to preparation of food on-site constitute an alteration or expansion of the Old Lantern Barn and event facility's pre-existing nonconforming use." Town of Charlotte Zoning Administrator Letter, Sept. 11, 2015.

22. Appellants thereafter appealed the Zoning Administrator's determinations to the ZBA. In their Notice of Appeal to the ZBA, Appellants gave notice of the following requests:

Relief Requested: Appellants request that the Town of Charlotte Zoning Board of Adjustment reverse the Zoning Administrator's (ZA) determination that the on-site food preparation in the new commercial kitchen operation at the Old Lantern Barn, and related activities, does not constitute a change and/or alteration in the facility's pre-existing non-conforming use that would cause the property to be

⁵ The Zoning Administrator's September 11, 2015 letter was not offered for admission at trial, but is part of the record in this appeal. It is specifically referenced in a pre-trial motion Decision of this Court. See In re Old Lantern Non-Conforming Use Appeal, No. 154-12-15 Vtec, slip. op. at 6-7 (Vt. Super. Ct. Env'tl. Div. July 3, 2017).

subject to the CLUR^[6] conditional use regulations. Appellants ask that the ZBA direct the ZA to require the property owners shall seek [sic] and obtain a conditional use permit in order to continue their present operations.

23. Appellants' Notice of Appeal to the ZBA provides greater detail about the grounds for their requested relief because it references (A) the kitchen renovations; (B) an allegation that, with the renovated kitchen and on-site meals preparation, the Barn had become a public restaurant; (C) an allegation that the noise levels at Old Lantern events has materially increased, such that its operation should be governed by the Town's performance standards;⁷ and (D) that the Old Lantern lost its grandfathered status as a pre-existing, nonconforming use because it ceased operation in 2006 for a period of greater than six months.

24. The ZBA heard Appellants' appeal on November 4, 2015, and issued a written decision on December 4, 2015, upholding the Zoning Administrator's determination concerning on-site meal preparations in the renovated kitchen.⁸ The ZBA also concluded that, as operated, the Old Lantern Barn does not constitute a restaurant use as that term is defined in the Town of Charlotte Land Use Regulations ("Regulations") and that the Barn has not ceased operation for a period of six month or more and had therefore not abandoned its pre-existing, nonconforming use status.

25. Appellants thereafter filed a timely appeal from the ZBA's decision with this Court. On June 2, 2016, Appellants filed their Statement of Questions, listing eight Questions in which various legal issues are presented. In light of our determinations on the multiple pre-trial motions, only Questions 1, 3 (as limited), 4, and 5 remain for our consideration.

Discussion

At its core, the legal issues presented concern the complaint by Appellants that the Old Lantern Barn is currently being operated in a manner that exceeds its pre-existing,

⁶ The Town of Charlotte Land Use Regulations.

⁷ We addressed Appellants' claims concerning an increase in the intensity of the Barn use and the applicability of the Regulations performance standards in our July 3, 2017, Decision, as amended. We concluded that caselaw precedent did not consider an increase in intensity of use as a basis for a non-conforming use to lose its grandfathered status, and that the performance standards are not applicable to lawfully continued non-conforming uses.

⁸ A copy of the ZBA's December 4, 2015 Decision was filed with this Court on December 31, 2016 as an attachment to Appellants' Notice of Appeal. We therefore regard that copy of the ZBA Decision to be part of the record in this appeal.

nonconforming use status. We addressed that threshold legal issue in our July 3, 2017, Decision on pre-trial motions.⁹ Nothing presented at the December 14, 2017, trial caused the Court to change its analysis of what constitutes a lawful, non-conforming use and what was established by the undisputed facts as to why the Old Lantern Barn had qualified as a lawful non-conforming use. We therefore do not repeat the legal analysis from our July 3, 2017, Decision and adopt it here by reference.

Our July 3, 2017 Decision, as modified by our September 13, 2017, and November 13, 2017, Entry Orders, resolved the legal issues raised in Appellants' Questions 2, 6, 7, and 8, resulting in the dismissal of those Questions. Further, due to the limiting language in Appellants' Notice of Appeal to the ZBA, we limited the scope of Question 3 to the legal issue of whether the "changes, alterations and expansions" to the Old Lantern kitchen and its on-site meal preparation were so significant as to cause Old Lantern to lose its grandfathered status as a lawful pre-existing use.

At the start of the trial, the Court summarized the outstanding legal issues, as governed by Appellants' Notice of Appeal filed with ZBA, as follows:

- a.) Did the Old Lantern operations change from offering off-site or catered meal preparation to on-site food preparation and, if so, was that change so substantial as to cause Old Lantern to lose its grandfathered status;
- b.) Is the Old Lantern Barn now or had it ever been operated in the past as a restaurant, so as to cause it to lose its grandfathered status; and
- c.) Did the Old Lantern Barn cease operations for six months or more, resulting it in losing its grandfathered status pursuant to Regulations § 3.8(A)(3).

See Dec. 14, 2017 trial recording at 09:36:00.

Appellants, through their legal counsel, concurred that these legal issues were raised through their Questions 1, 3, 4, and 5, although they continued to object to the Court's pre-trial rulings on the other Questions from Appellants' Statement of Questions. However, Appellants then also advised that they wished to raise an additional legal challenge to Old Lantern's grandfathered status: Appellants asserted, for the first time, that a past and/or present municipal ordinance required operators of the Old Lantern Barn to obtain something called a "dance hall

⁹ The Court's Entry Orders of September 13, 2017, and November 13, 2017, made certain revisions to the Court's July 3, 2017 decision, but not upon the Court's non-conforming use legal analysis.

permit,” that Appellants could produce evidence that Old Lantern had not obtained such a permit, and that the absence of a dance hall permit should result in the Old Lantern Barn losing its grandfathered status.

Appellants acknowledged that they had not previously raised the existence of a dance hall ordinance, nor Old Lantern’s lack of such a permit. The Court therefore ruled that this legal issue was outside the scope of its jurisdiction in this appeal. In response to this determination, Appellants then advised that they would not be participating in the presentation of evidence at this trial and may leave the courtroom before the Court had an opportunity to begin the taking of evidence. The Court advised that it did not believe that it could force Appellants to stay and participate in the delivery of evidence, but that the Court intended to proceed with the taking of evidence and completion of the trial. Appellants and their attorney ultimately chose to remain in the courtroom but did not actively participate in the presentation of evidence.

In response, Old Lantern, through its legal counsel, expressed outrage and requested that the Court impose sanctions against Appellants and their attorney. Appellants and their attorney registered their objections. The Court denied Old Lantern’s sanctions request and advised that if any party wished to present any further sanctions requests to the Court, they could do so, in writing, and after the trial was completed.

The Court then began and completed the taking of evidence. While Appellants chose not to participate in the presentation of evidence, the Interested Parties remained present and were afforded the opportunities to cross-examine Old Lantern’s witnesses and present their own testimony and other evidence, premised upon Appellants’ remaining Questions. See In re Garen, 174 Vt. 151, 153 (2002).

With these legal standards in mind, we address the remaining legal issues raised in this appeal.

I. **Whether Old Lantern changed from catered to on-site food preparation.**

By their Questions 1, 3, and 4, Appellants essentially ask whether Old Lantern violated the directives of Regulations § 3.8(A) by changing from one nonconforming use to another nonconforming use, without first receiving conditional use approval. At trial, we were somewhat at a disadvantage to understand the focus of these Questions since we did not have the benefit

of Appellants' presentation of evidence. We assume that these Questions are premised upon an allegation that was hinted at by the neighbors: that Old Lantern previously relied upon off-site food and beverage preparation, and that the 2015 improvements to its kitchen allowed its operators to now rely upon on-site food and beverage preparation. Appellants and the neighboring Interested Persons appear to assert that this change should cause the Court to conclude that the use of the Old Lantern Barn has been unlawfully altered and that its grandfathered status should be extinguished as a consequence.

The credible evidence leads us to conclude that the Old Lantern Barn has historically relied upon on-site food preparation. There was no evidence presented of an alteration to this use that would justify a change in the Barn's classification as a lawful, pre-existing but non-conforming use. In fact, we are disturbed by the complete lack of evidence to substantiate Appellants' and Interested Persons' assertions on this point. We therefore answer Questions 1, 3, and 4 in the negative and in favor of Old Lantern.

II. **Whether Old Lantern has operated as a restaurant.**

Another possible assertion that may have formed the basis of Appellants' Question 1, 3, and 4 was that the Old Lantern Barn kitchen renovations resulted in it being operated as a "restaurant" and that such was an unlawful change in use. We note that "restaurant" is a term defined by the Regulations, which allow restaurants in the WCV District only with conditional use approval. See Regulations Chapter X. Definitions (p. 131) and Regulations Table 2.1(D). Conditional Uses.

Our analysis here need only be brief, since there was no evidence presented at trial that the Old Lantern Barn had been converted to a restaurant. The Regulations define a restaurant as an "establishment of which the *primary* function is to serve food and beverages to the *public* . . . on premises." Id (emphasis added). The sole evidence presented at trial was that the Barn continues to be used as a wedding and events facility that primarily serves food and beverages only to wedding and event customers and their guests. The neighbors offered no direct evidence to contradict Old Lantern's presentation and appear to rely upon an unfounded assumption that since the Gaujacs made renovations to the Old Lantern kitchen, they must be operating a restaurant. Mrs. Gaujac admitted that they did sometimes invite potential customers to dinners

and wine tastings at the Barn, but these invitations are made in the hopes of securing their future event business. We find no support for the allegation that Old Lantern has or is now operating a restaurant from its Barn. We therefore reject Appellants' allegation and our response to their Questions 1, 3, and 4 remain unchanged.

III. **Whether Old Lantern ceased operation for six months or more.**

A non-conforming use may not be continued when such use "has been discontinued for a period of six (6) months" or more. Regulations § 3.8(A)(3). By their Question 5, Appellants ask whether the Old Lantern Barn lost its status as a lawful, pre-existing non-conforming use because that use had been discontinued for six months or more. Our analysis here is equally brief since we did not receive any credible evidence at trial to support this assertion.

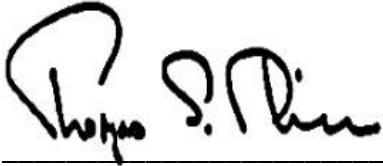
Early in the trial preparation process, Appellants asserted that the use of the Old Lantern Barn as an event facility had slowed down when Mr. Dickerson and his partners chose to sell and again when the Gaujacs spent time learning how to run the business they acquired in 2006. In fact, Mrs. Gaujac credibly testified that they purchased the Old Lantern businesses and property as an on-going concern and took title to the property and business with a full list of weddings and events that had already been booked for the coming year. More to the point, there was no evidence offered that Old Lantern ceased to be used as an event facility at any time for a period of up to six months. In fact, there was no evidence offered that the Barn had ceased to be used as an events and wedding facility for any measurable period of time. Based upon that evidence, and lack of contrary evidence, we conclude that the Old Lantern Barn did not cease operations at any period, particularly for a period of up to six months. We therefore answer Appellants' Question 5 in the negative.

CONCLUSION

For all the reasons stated above and in our Decisions and Entry Orders issued prior to trial, we answer all of Appellants' Questions in the negative, **DENY** their appeal, and **AFFIRM** the December 4, 2015, decision of the Town of Charlotte Zoning Board of Adjustment to uphold the September 11, 2015 denial by the Town of Charlotte Zoning Administrator to conclude that the Old Lantern Barn was operating in violation of the applicable Town zoning regulations.

This completes the current proceedings before this Court concerning this appeal. A Judgment Order accompanies this Merits Decision.

Electronically signed on April 2, 2018 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is written in a cursive style with a large initial "T" and "D".

Thomas S. Durkin, Superior Judge
Environmental Division