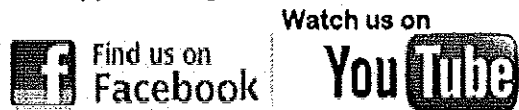

From: Kurt Eggebrecht
Sent: Tuesday, February 06, 2018 8:33 AM
To: B Schaff
Cc: lauxie3@tds.net; Patti Coenen; rattray.kirk@yahoo.com; Melissa L. Suttner
Subject: RE: Fox River House's Request for Noise Variance

Thank you for your e-mail. This noise variance request for Fox River House is scheduled for the February Board of Health meeting. We will meet February 14th at 7am in room 6A of the City center located at 100 North Appleton Street.

I will include your email in the Board's packet of materials.

Thanks,
Kurt

Kurt Eggebrecht
Health Officer
Appleton Health Department
920-832-6429
www.appleton.org



From: B Schaff [mailto:betschaff@yahoo.com]
Sent: Monday, February 05, 2018 4:31 PM
To: Kurt Eggebrecht <Kurt.Eggebrecht@Appleton.org>
Cc: lauxie3@tds.net; Patti Coenen <District11@Appleton.org>; rattray.kirk@yahoo.com
Subject: Fox River House's Request for Noise Variance

Good Afternoon Kurt,

Our neighbors recently shared a copy of Fox River House's request for a noise variance. We are writing to ask that you let the Board of Health know we are opposed to a "Conditional Variance" being issued to the Fox River House for the dates specified, as we have learned (see our previous e-mail exchange below on the topic) that this type of variance gives the bar the ability to play music as loud as they wish, making our requests to turn down the music irrelevant. Although Ms. Coenen's correspondence does not indicate the type of variance being sought, in reviewing the Appleton Municipal Code, Sec. 12-83 Variances - we would respectfully request the Board of Health consider issuing a "Special Variance." This would require the Fox River House to keep the noise level to the lowest practical level and include in the application the *steps to be taken to minimize noise* and *name of responsible person who will be present*. That way when the noise gets too loud that we cannot watch TV, despite making several calls to no avail, we would have the option to call the police to get the volume turned down. Per your advice, we contacted the Fox River House on several occasions this past summer, trying to be good neighbors; but unfortunately, that relationship has not been reciprocated.

Additionally, I would ask the Board to review sub (b) of the Municipal Code on Conditional Variances, to verify whether this request meets the requirements. According to (1) under this section

It may not be technically or economically feasible for certain commercial or industrial sources of sound to comply with the standard set forth herein. Therefore, the Board of Health may grant variances from this section if it finds that strict compliance is unreasonable because:

- a. Conditions are beyond the control of the person requesting such variance.*
- b. Special circumstances exist which would render strict compliance impractical.*
- c. Strict compliance would result in substantial curtailment or closing down of a business, plant, operation or the like*
- d. Control technology is unavailable or available only at a prohibitive cost.*
- e. No other alternative facility or method is available.*

Based on last year's discussion at the Board of Health meeting on this topic, Ms. Coenen has control over the bands she decides to contract with to play, as well as the ability to monitor sound levels through an app, which she mentioned in her request. Additionally, Fox River House is a year-round business, so its survival is not solely dependent on bands playing on the requested dates. With that said, we are not opposed to the bands, we just need to figure out a balance and unfortunately this past summer we were frustrated by the bar's unwillingness to respond to requests to turn down the music. We did not call every night there was a band, only the nights the music was so loud our kids could not sleep and we could not hear the TV. Therefore, we respectfully ask that regardless of the Board's decision, it include some conditions this year so Ms. Coenen has some incentive to work with us/listen to our concerns.

I would like to thank you and the Board of Health for your time and consideration of this request. Please notify us once a date has been set to review this topic as we would like to attend.

Sincerely,

Elizabeth Schaff and Kirk Rattray
523 West 8th Street
Appleton, WI

E-mails Referenced Above Over Issue This Summer:

B Schaff <betschaff@yahoo.com>

To

B Schaff

05/17/17 at 9:39 AM

Good Morning Kurt,

I just wanted to follow-up with you on the meeting from last week. I noticed in the Common Council agenda that the Board of Health minutes state the variance was recommended for approval and that the "Board provided suggestions on how the owner can minimize neighborhood disputes in regards to loud music". So does that mean she needs to follow the suggestions and get a decibel reader to monitor the bands and have them turn down the volume if it gets too loud? Also to clarify, the variance that was approved only allows the establishment to operate at the daytime noise levels outlined in the ordinance - correct? Finally, could we get the contact information for the individual that will be on sight when the bands are playing?

Sorry for all of the questions, I just want to make sure I am clear on things.
Thank you!

Elizabeth

Reply Reply to All Forward More
B Schaff <betschaff@yahoo.com>

To

Kurt Eggebrecht

06/28/17 at 8:54 AM

Hi Kurt,

I just wanted to follow-up with you on Fox River House's approved noise variance. As mentioned in my earlier e-mail, I had some additional questions on expectations based on the committee's discussion and clarification of the minutes. Since the variance has been approved, we have had to call the establishment on a couple of occasions, the most recent being this past weekend. On Saturday the band started around 8pm and was very loud. I called and asked if they could check the decibel reading and have the band turn down the volume. I was told they would. There was no noticeable change in volume, so I called back 20 minutes later. The person I spoke to said that they checked the levels and the band had turned it down several decibels – so they said they would see what they could do – which nothing changed. Our neighbor/my brother called the non-emergency number because he knew we tried twice and was frustrated with the noise. He spoke to Katelyn at the Appleton Police Department. She said Officer Wallace went over to the bar and was told that it had a noise variance and the band could play as loud as they wanted until 11pm. Because of the noise variance, the Police Department said they could not do anything about the noise unless we had documentation that said otherwise. I guess at this point, I am very confused – I thought the variance that was discussed at the meeting was to extend the band playing time at daytime noise levels until 11pm. Does the variance really give the bar permission to have the band play as loud as they want until 11pm? If that is the case, did the board realize that when they approved the noise variance? Also, besides the e-mail request, is there any other documentation on the variance?

Any clarity you can provide would be appreciated. Thank you for your time.

Sincerely,

Elizabeth

Reply Reply to All Forward More
Kurt Eggebrecht <Kurt.Eggebrecht@Appleton.org>

To

B Schaff

CC

Patti Coenen

06/28/17 at 1:36 PM

Elizabeth,

Thanks for reaching out and sharing your experience this past Saturday night. The noise variance that the Board of Health approved is just that, a variance to the current levels of noise that are permitted in the City of Appleton, meaning that they can exceed the level in this case the night time level based on the hours requested.

I am certain the Board of Health knew what they were voting on as they have approved many such requests over their years of service.

There was/is no other documentation than what was shared with the Board of Health.

I encourage you to continue to inform the establishment when certain bands are loud as this way they are made aware as well. I will cc the establishment owner Patti Coenen as well so she becomes aware of your frustration last Saturday.

Thank you-

Kurt

Kurt Eggebrecht

Health Officer

Appleton Health Department

920-832-6429

www.appleton.org

Reply Reply to All Forward More
B Schaff <betschaff@yahoo.com>

To

Kurt Eggebrecht

CC

Patti Coenen

06/28/17 at 4:09 PM

Good Afternoon Kurt,

Thanks for the clarification on that piece. I guess in looking at the city code (Sec 12-83) I was unclear what type of variance was granted - it sounds like it must have been the conditional variance. In terms of the board's discussion on monitoring the decimal level and having a point of contact for neighbors to call so steps can be taken to reduce the noise - does the bar still need to comply with this or is that a moot point because the variance was approved?

Thanks, again, for your time.

Elizabeth