

## **To stop noise from weddings, Stonehurst neighbors take the historic inn to court**

**by  
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CONWAY — To stop the noise from summer weddings held at Stonehurst Manner, neighbors are taking the historic restaurant and inn to court, and using past zoning violations as the cornerstone of their case.

The couple, Dr. Marni Madnick and Robert Schor, contend the music from outdoor weddings disrupts their peace and quiet on summer evenings, and that the concrete patio on which the weddings are held was never approved by the town.

They're asking the court not to allow Stonehurst to hold weddings until the zoning issues are resolved.

To conform with town building regulations, Stonehurst is asking the Conway Planning Board to what amounts to a retroactive site plan review.

Planners got their first look of what promises to be a very messy review earlier this month. Taking a cue from board member Ted Sares, who said the board needed further time to do its homework on the background of the case, the board opted to continue the site-plan review hearing to April 23.

"It's a legal matter. I'm not going to say one more thing," said Sares, adding that he "wasn't smart enough" to comment on the case until he had had time to digest all of the legal materials.

Site-plan review was sought at the March 12 meeting "to consider additional parking areas, a new tent garden patio, a new wedding garden patio and associated infrastructure. Waivers were for drainage calculations, curb fl air radius, connecting drive, number of parking spaces, underground utilities, and a buffer free of prohibited use and street trees."

The Stonehurst contends that those activities have been going on well before zoning was adopted in 1980 and that they therefore are grandfathered nonconforming uses.

One of those improvements is an outdoor tent patio located 300 feet from the couple's house at 49 Neighbors Row, which they purchased from the Connie Davis Watson estate in 2003.

Stonehurst owner Peter Rattay was represented by attorney Bob Carey of the prestigious law firm of Orr and Reno of Concord and Mark Lucy of White Mountain Surveys of Ossipee.

Lucy and later Rattay said the siteplan approval is for work already done, and not anything new.

In a memorandum to planning board members, Town Planning Director Tom Irving explained that the Stonehurst did not believe they needed siteplan approval for the work performed on the property.

Irving said town officials first investigated the site in summer 2007 after being informed by Schor that construction work was taking place there on the patio. Irving said he and town building inspector David Pandora went to the site and agreed that the Stonehurst ought to have obtained site-plan approval from the planning board and a construction permit from Pandora. “

I also noticed there had been paving done over the years and that this too, would have required site-plan review,” said Irving in a telephone interview.

The Stonehurst hired Lucy’s firm, which led to the Stonehurst coming to the planning board March 12.

“Yes, it took longer than anyone would have hoped, and the wheels of government do work slowly, but this was not our delay,” said Irving this week.

He added that the town does try and work with applicants to bring them into compliance, as litigation, he said, “is a last resort.”

He said the town’s files show that the Stonehurst did receive conditional approval for paving in 1989, but it is not clear whether they received full approval.

Filing the request for the injunction in Carroll County Superior Court March 11 was attorney Rob Miller of Sheehan, Phinney, Bass and Green of Manchester, also a high-profile law firm.

Carey, Rattay’s attorney, said it was obvious that Miller was trying to use a public forum to try the noise issue and said that the case would be heard and resolved in Superior Court.

Miller in papers said Schor, one of his clients, had attempted to work things out with Rattay and town officials in summer 2007 and 2008 but to no avail — hence the filing of the injunction.

The abutters want the court to stop the Stonehurst from hosting outdoor wedding functions, which average 10 to 12 a year.

According to a request for an injunction filed by Miller, Schor and Marnick request the court to:

- find that the Stonehurst’s activities constitute an actionable nuisance; • grant the petitioners’ request for injunctive relief by barring any such further use of the Stonehurst Manor’s Tent Garden Patio
- award the petitioners their costs and attorney fees associated with bringing this action due to the benefit conferred on others in the residential neighborhood by this action, and

- grant such other and further relief as may be just, equitable and appropriate.

Miller, counsel to Schor and Madnick, said his clients are unable to enjoy peace and quiet on wedding days due to the proximity of the Stonehurst functions.

He wrote in his legal overview presented to board members March 12 that the hotel in 2007 built a permanent concrete structure known as the “Tent Garden” to accommodate 2400-square-foot private function tents typically used for wedding receptions “featuring amplified music produced by live bands and disc jockeys.”

The function tent, he said, is located directly behind the Schor-Madnick residence within 250 feet of the their property line and within 300 feet of the house.

Miller in documents submitted to the board March 12 also wrote: “Mr. Rattay has been on notice since summer 2007 that the noise produced by these events was a nuisance to Mr. Schor and Dr. Madnick. Additionally, the Stonehurst has been on notice since January 2008 that the petitioners would take legal action to oppose any further receptions on noise producing activity on the Tent Garden Patio in 2009.

“Undersigned counsel notified Mr. Rattay ... that petitioners would oppose any further noise producing activity on the tent patio, and, as such, Mr. Rattay should not book any such events in that location until this matter was resolved. Accordingly, Mr. Rattay has been on notice that any events scheduled in the same location in 2009 would be imperiled, and would be booked at his own risk,” wrote Miller. In the papers submitted to the board March 12, Miller further wrote:

“Because the Stonehurst Manor was operating, in some capacity, prior to the Town of Conway’s adoption of its Zoning Ordinance — the Stonehurst Manor is, to some degree, a nonconforming use. Under New Hampshire law, however, there are significant legal limitations on how nonconforming uses can continue to operate and expand.

“In order to determine the changes to its Site Plan within its existing nonconforming use, Stonehurst Manor has the burden of proof to show precisely what its business activity and physical layout was at the time it became a nonconforming use (in this case, on or about March 11, 1980).

“Based on my review of the Stonehurst Manor’s site plan application, Stonehurst Manor has not presented the Board with such evidence. Planning Director Tom Irving’s Compliance Report does not appear to even recognize or call out the fact that Stonehurst Manor is a nonforming use, and given that fact, significant additional scrutiny of the plan is required. “Based on admissions made on Stonehurst Manor’s February 13, 2009 Site Plan, a number of physical additions to the site, including but not limited to (1) the concrete ‘Tent Garden’ and Gazebo structure; (2) at least 33 additional paved diagonal parking spaces and significant additional paved areas; (3) the concrete ‘Wedding Garden’ structure; (4) a one-story woodframe garage and shed; (5) pole-mounted commercial lighting, (6) a commercial-strength electric generator on a concrete pad; (7) construction of additional gravel drives, woods roads,

and retaining walls; and (8) onsite location of dumpsters for food refuse have apparently been made to Stonehurst Manor subsequent to the adoption of the zoning ordinance. A review of Stonehurst Manor plans maintained in the Conway Town Hall was insufficient to establish exactly when some of these additions were made. Nevertheless, it appears that all of these changes were made without a special exception, variance or site plan approval being granted, or a building permit being issued by the Town of Conway, at some time after the Town of Conway's Stonehurst Manor became a nonconforming use.

"In light of the foregoing, we urge the Board to (1) reject the requested additions of the concrete patio "Tent Garden," "Wedding Garden," 1-Story Woodframe Garage and Shed, additional paving, parking and commercial lighting as impermissible expansions of a non-conforming use; and/or (2) reject the additions of the concrete patio, 'Tent Garden,' Wedding Garden,' '1-Story Woodframe Garage and Shed,' additional paving, parking and commercial lighting as a nuisance to abutters, and (3) put the applicant to its required burden of proof to conclusively establish the precise condition and use of the property at the time that the zoning ordinance was passed in March, 1980, prior to the Board approving any change in use to the parcel. To the extent that the applicant is unable to carry its burden on these required elements of proof, the application must fail as a matter of law."

Miller said the couple in August and September 2008 hired the acoustical accounting firm of Cavanaugh Tocci Associates of Sudbury, Mass., a member firm of the National Council of Acoustical Consultants. They determined the noise level to be objectionable — but Sares, in a comment that echoed back to the planning board's recent dealing with abutters in the Red Jacket Kahuna Laguna Waterpark case, said the town does not have a noise ordinance.

Still, Miller contends that nuisance noise can be considered an issue.

According to legal documents filed by Miller, the couple after purchasing the home in April 2003 moved to the residence in July of that year. They contend that the sellers never mentioned the issue of possible noise from outdoor weddings.

Rattay in a follow-up interview underscored that Stonehurst has been hosting weddings for more than 40 years and was hosting weddings when he purchased it in 1978.

That point was backed up by planning board chair Steve Porter at the hearing March 12, as he said he was raised near the Stonehurst and remembers watching weddings and receptions there from afar as a kid in the 1960s.

In letters submitted by attorney Carey on the Stonehurst's behalf to board members, many nearby residents and business owners spoke out in support of the Stonehurst.

Wrote nearby business owner Kathy Brassill from Adventure Suites below the Stonehurst on Route 16, "[My property] has been in my family since the early '70s. We are aware that Stonehurst is a wedding destination. We have no issues with their weddings and speaking from a residential and commercial viewpoint because we also live at Adventure Suites."

A March 2009 affidavit from Sally Davis, 75, niece of the late Connie Davis Watson, says, "My aunt owned the house on Neighbors Row that Mr. Schor now lives in. I have been to weddings at the Stonehurst. I also visited my Aunt Connie at her house and sat out on her porch when there were weddings at the Stonehurst Manor. I never found the noise from the weddings annoying or disturbing. My Aunt Connie never mentioned that she thought the weddings at the Stonehurst Manor were a problem."

Stonehurst Manor Condo Association unit 6B owner Kenneth Moldow, an owner since 1977, wrote, "I have never in over 30 years of living in my unit been bothered or disturbed by noise, or any other distraction or inconvenience emanating from the inn."

A letter from Alan Haddad, the president of the Stonehurst Village Association, adds, "I have owned Unit 17C since 1997: Weddings were held behind the inn years before the current patio was installed. Weddings were always done in good taste with minimum noise levels. No members of the association have complained to the board of directors about weddings or noise issues."