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**Town of Calais**

**Development Review Board**

**Appeal of the Zoning Administrator's Decision to Issue Notice of Violation for Appellant's Building of a Theater Without a Permit**

**Findings and Decision**

**In re: William Blachly and Unadilla Theater**

DRB 2012-14

**INTRODUCTION AND PROCEDURAL HISTORY**

The Calais Development Review Board held a duly noticed public hearing on September 20, 2012 at 7:30 p.m. at the Calais Recreation Center in East Calais Village pursuant to an August 7, 2012 appeal by William Blachly and the Unadilla Theater of a Notice of Violation that the Calais Zoning Administrator issued on July 26, 2012. The Notice of Violation states "You built a theater without a permit."

The board heard on behalf of the Appellant from Mr. Blachly, who as the owner is an interested person, and also from Ms. Ann O'Brien, a resident on the property, and Mr. Caleb Pitkin, a builder and sometimes director at the Unadilla who had represented the Applicant at the original permit hearing (at which the Applicant did not appear). The board heard on behalf of the Town from the Zoning Administrator, Rolf Mueller.

Members of the DRB participating in the appeal hearing were Margaret Bowen, chair, and members Ruth Porter, Barbara Weedon, Steve Duke, and Nedene Martin.

Recording secretary Tim Scandale took minutes, which are incorporated by reference into this decision.

The DRB makes the following findings based on the application, evidence, and testimony.

**FINDINGS**

As presented during the testimony, the appeal revolves around what was granted in permit #2012-14.

The Unadilla Theater has for many years hosted productions in a theater building on the Blachly property. On July 5, 2012, in response to application 2012-14, the DRB issued Mr. Blachly a permit for conditional use as a cultural facility of a still-under-construction agricultural barn. As indicated in the permit: "When the Unadilla Theater is operating he wants to hold rehearsals and other uses related to the said theater during the summer and

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fall productions.” Agriculture is a permitted use and cultural facility is a conditional use, per Table 2.2, in the Rural Residential District where the property is located.

In testimony during the appeal hearing, Mr. Blachly claimed that he had not received his permit in the mail, but knew that one had been granted. He and Mr. Pitkin stated that they assumed, without reading the permit, that it had been granted as requested, and so they proceeded to do what they say they believed the application had requested.

During the appeal hearing, the Appellant stated that he believed he had requested and been granted a permit for a second theater because he had included the word “performance” among the many possible uses of the structure. The Appellant further argued that there is no violation because the structure has never hosted a performance and so has not functioned as a theater.

The Zoning Administrator stated that he had mailed permit #2012-14 to the Appellant as required. The DRB notes that the receipt for the certified mail piece carries Ann O'Brien's signature and the date of delivery of July 13, 2012.

The Zoning Administrator stated that the Unadilla Theater advertised in the newspaper and posted on its website information promoting a performance to be held in a new theater. Mr. Mueller indicated that permit 2012-14 did not grant permission to build a new theater. Therefore, on July 26, 2012, he issued a Notice of Violation. The DRB notes that the receipt for the certified mail piece carries Ann O'Brien's signature and the date of delivery of July 30, 2012.

Both sides agree that state regulators stepped in, preventing public performances in the new structure due to issues of safety (wiring, seating, fire, etc.) and sewage. The Appellant explained that he is looking for ways to address the state's concerns and that, in the interim, productions have been moved to the Haybarn Theater at Goddard College.

The DRB rejects the stunningly circular argument that, although the Appellant believes he is in possession of a permit to build a theater and intended to and still wishes to use the new structure as a theater, there is no violation because it has not yet been used as such.

**The DRB finds that the Appellant did build a theater without a permit. The DRB upholds the notice of violation.**

It strains credibility to expect that the DRB understood it was being asked to approve construction of a second theater based on a permit application which clearly stated that there was anticipated to be no increase in traffic and no increase in water demand or sewage disposal. Clearly, had the board contemplated a full-fledged theater, under the zoning it would have been required to address some level of increased traffic and would have made the permit contingent on the Applicant's submission of paperwork from relevant regulators

such as the fire marshal and sewage engineer.

The DRB understood from the written application and from the testimony that the Appellant intended to convert all or part of an agricultural barn to cultural use, including rehearsals during which the performers would make use of the existing theater's toilet and washroom facilities.

However, based on the appeal testimony, the board concludes that there was some lack of clarity on the part of the Appellant and also on the part of the DRB that led to misunderstandings. Specifically, responding to "[D]escribe the general use (other than residential) and character of the adjoining landowners and the neighborhood," the application listed the following: "cattle, sheep, storage machinery costumes, props, rehearsals, performance." This did not indicate to the DRB that the Applicant definitely planned to host performances in the new building, but only that performances are held in the neighborhood. On the sketch of the site, though, the application stated "The new building will be used for multi purposes: housing for cattle, sheep, storage for machinery theatre related items (props, costumes, sets), rehearsal and performance space." The DRB recognizes that a specific prohibition on public performances in the new structure would have rendered the permit more clear.

The DRB notes that the building that was constructed exceeds the dimensions of what was applied for; as this was not cited in the Notice of Violation, there is the opportunity for Mr. Blachly to re-apply with the correct dimensions.

Mr. Blachly indicated his willingness and intention to consult in person with the Zoning Administrator in advance of submitting a future application.

## **DECISION**

Based upon these findings, the Development Review Board makes the following decisions:

1. Mr. Blachly is in possession of permit 2012-14 for conditional use of a 40'X70' agricultural barn for rehearsals and other theater-related purposes that do not involve attendance by the public.
2. Section 3.3(A)(4) of the Calais Land Use and Development Regulations as most recently amended by town vote on March 6, 2012, states that "A conversion or change of use from . . . a conditional use to another conditional use, requires conditional use approval under Section 5.3." Thus, if Mr. Blachly wishes to use the barn/rehearsal facility as a theater or for other purposes involving public attendance, he must apply anew for conditional use approval, providing all information that is requested on the permit application form, including realistic estimates regarding traffic, and accurately reflecting the dimensions of the structure as built and of any intended expansion of or addition to the

structure.

3. Any future permit for a theater shall be contingent on Mr. Blachly having received and submitted copies of all necessary permits and certifications from the state or other relevant entities regarding septic and safety, including, if needed, any Act 250 permit or amendment.

4. Absolutely no performances, receptions, public rehearsals, or other events that can reasonably be expected to be attended by the public may be conducted, hosted, staged, or allowed to occur in the barn structure/cultural rehearsal facility unless and until the Appellant has applied for and received a permit for such use from the town of Calais. Disregard of this explicit restriction shall be construed as a further violation of the existing permit 2012-14.

5. Because the zoning does not specify a procedure for amending a permit already granted, should Mr. Blachly decide not to pursue conversion of the rehearsal space into a theater, he must file a permit application for the rehearsal space reflecting the larger dimensions. The DRB grants Mr. Blachly a 30-day grace period from the date of this decision to file for such a permit, after which time the Zoning Administrator may issue a Notice of Violation because of the size of the structure.

**NOTICE:** This decision may be appealed to the Vermont Environmental Court by Mr. Blachly or by the town, as interested persons. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471.

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Margaret Bowen, Chair

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Date

*Ruth K. Porter*

*10/8/2012*

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Ruth K. Porter

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Date

*Barbara Weedon*

*10-9-12*

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Barbara Weedon

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Steve Duke

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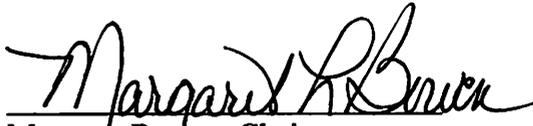
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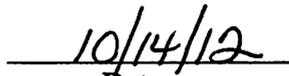
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Nedene Martin

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Margaret Bowen, Chair

  
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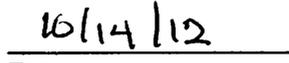
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Ruth K. Porter

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