

TOWN OF CHATHAM

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MARCH 27, 2008

ZONING BOARD OF APPEALS

Members Present:

Kary Jablonka

Adrian Ooms

David Everett, chairman

Robert Leary

Suzanne Williams

JP Henkel

Tal Rappleyea, Atty.

Walt Simonsmeier, ZEO

Members Absent:

Mitchell Khosrova

Public Present: Robert Peitkiewicz

Stephen Hermance Scott Longstreet

Judy Grunberg John Burke

George H. Vollmuth Terry Lasky

Patricia B. Lasky Kimberly Costigan

Abby M. Behrens Lisa Tuthill

Chairman Dave Everett called the March 27, 2008, Zoning Board of Appeals meeting to order at 7:05 PM. The Pledge of Allegiance was recited. Kary Jablonka moved and Dave Everett seconded that the minutes from the previous meeting be approved. This carried.

PS/21- REQUEST FOR RELIEF FROM RESTRICTIONS PLACED ON THE SPECIAL USE PERMIT, USE OF BUILDINGS FOR HOUSING, ABILITY TO RENT SPACE TO THIRD PARTIES PUBLIC HEARING (cont.)

Chairman Everett opened the continuation of the Public Hearing. PS/21 was asked to submit an analysis of any environmental impacts. Atty. Longstreet passed out handouts that dealt with the modifications and a stand alone document dealing with the use of the buildings for housing. Bob Leary wondered why this hadn't been submitted earlier so that Board members would have a chance to review the information prior to the meeting. Atty. Longstreet spoke to the fact that this is dealing only with the tent, not the

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permanent facility which is addressed in the original SEQRA forms. He feels that lighting and noise for the houses are the only real issues not specifically covered in the Special Use Permit. He stated that in the 2 years of operation, the level of the volume has been controlled to mitigate any potential problems, and there have been no complaints so the limitations of length of season, number of programs and limited hours aren't really required. Chairman Everett reviewed that sound tests were done and sound levels did not go above those allowed. Mr. Longstreet stated that there are no environmental impacts in renting to third parties, because the only difference would be in the reason as to why people are going to the site. Mr. Longstreet also stated that using the buildings for performers and students also will not create a cumulative impact, but this can be dealt with later. The question was posed as to whether these buildings are currently occupied. They are not; they have been vacant for about a year and a half. If the use of the buildings are approved as an accessory use, a site plan would go to the

Planning Board. Once approved, the Building inspector would oversee that all state requirements are being met in the construction with required permits. Chairman Everett stated that the request made by this Board was to have the applicant submit any environmental impacts for the record, and the entire project had to be considered, which has been done. JP Henkel

commented for the need of double protection for the neighborhood. Chairman Everett opened the meeting for public comment.

Terry Lasky stated that it is completely untrue that there were no complaints. He said that messages were left on the phone and calls were not returned. Patricia Lasky added that a letter was written which talked about how she could hear the music in the privacy of her bedroom, and no response was made. Mr. Lasky continued by stating that he requested that sound tests be done at individual residences again, but no one wanted to do that. Now PS/21 is eating away at the restrictions on the permits. Multiple dwellings are also now being requested.

Abby Behrens said that several of the concerned neighbors couldn't make this meeting tonight, so she is speaking for them, as well. It was felt that the restrictions agreed upon were done in good faith as far as decibel levels, the number of years the tent would be in existence and the number of

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performances. So, even though sound could be heard, they didn't complain. Households offered to have people come and listen. Now, thinking about decibel levels changing and renting out the tent to who will alter everything. People's real estate is their main asset, and the agreements were made in good faith, and now we are back at the table again. She also thought that Mr. Longstreet's presentation talked in circles.

Terry Lasky wondered why Scott Longstreet was presenting this environmental impact, and doesn't the whole thing have to be redone because of the changes? Mr. Everett stated that the impact for the entire project has already been turned in and accepted.

Kim Costigan stated that she has the NIMBY syndrome-- PS/21 is great for the community, but it's too close to me. She did not care to be adversarial, but she can hear it at the house, but can live with it. However, if hours are extended, she is concerned, because as a working person she needs to be alert for her job,

Lisa Tuthill stated that she just learned of this proposal, and she is concerned about the extension of hours, and what events they would rent out the property to, and whether they'd have to follow the same limits. She feels the length of the season, if changed, might cause a problem.

Judy Grunberg stated that almost all facilities rent out to community persons for events such as weddings, at a minimal charge. There would be no extra noise, no change in hours. Scott Longstreet added that rentals would also be made to community groups

Patricia Lasky stated that now she is hearing Judy Grunberg saying "everybody rents out their properties." Now that there is a foot in the door, PS/21 is chipping away at the restrictions agreed upon. This was a residential area. She feels that PS/21 is disingenuous and deceitful in the attempt to chip away at the guarantees and protections agreed upon.

Abby Behrens wondered whether these rentals were planned for the tent or for the permanent facility, to which Atty. Longstreet replied that both are being considered. Mr. Longstreet stated that they are not on schedule for fund raising at this time for the permanent building. There is the need to demonstrate that they have the ability to run a season at a profit. However, they have had to turn down potential programs because of the restrictions. They would like to ask for 5 more years for the tent.

Mr. Lasky wondered if this wasn't bootstrapping, to which Chairman Everett responded that it is allowed in a Special Use permit to ask for modifications, and what this Board is considering are the impacts of such a change.

Judy Grunberg stated that at the last meeting there was a roomful of people, all of whom offered positive comments about this venture. She asked that the Board keep that in mind. Suzanne Williams suggested that if the Public Hearing was closed the Board would have 62 days to make a decision. Mr. Longstreet stated that having to wait that long for a decision would impact this year's programming, as brochures must be issued. JP Henkel stated that the premise that was made was that in two years no complaints had been made. This does not seem to be the case in listening to tonight's comments, yet the biggest concern seems to be in the volume rather than the number of performances. There is no request to change the volume levels. Mr. Longstreet stated that the Board needs to consider the source of the negative comments. There is a need to be more successful and not be more offensive. Mrs. Grunberg stated that they are in no way being devious or deceptive. PS/21 made a compromise for fewer performances to see how it went. When it became clear that all criteria had been met, they felt that it would be fine to revisit it, and this is the proper way to make changes. Atty. Longstreet stated that going to midnight would not happen often, but they need the flexibility. Suzanne Williams said that we can't "flex" the laws, but have to make decisions about it. Mr. Longstreet stated that in a Special Use Permit, changes should be able to be made as we learn more about what is needed. Flexibility is important. Mrs. Williams said that she is not even sure there ever will be a building. Mr. Longstreet said that they feel that asking for 5 more years is reasonable. Mrs. Grunberg stated that if the money can't be raised, the ZBA would be able to close the tent down.

Mr. Lasky stated that when the original plan was being considered, he begged that the Board require a Business plan, and that wasn't done. How about requiring it now? He also expressed concern about the amount of noise that could be generated if weddings and like activities are allowed on the site. Atty. Longstreet stated that the nature of the use is bound by the

decibel level, and there would be no more people at an event rented out as at a concert. Chairman Everett stated a concern about the rentals, as we don't want this to become a problem. Atty. Longstreet stated that the tax-free status of PS/21 hinges upon the number of times it is rented out. As an accessory use it must be subordinate to the main use, and the ZBA could shut down the facility altogether if this is breached.

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Bob Leary stated that he thought all was ok---the sound tests all came back within the proper limits. Everyone has to be protected here---PS/21 as well as the neighbors. There must be a happy road. Suzanne Williams stated that the neighbors will hear it, but it won't be intrusive. However, she recognizes that the level of intrusiveness is individual.

Patricia Lasky said that this is an inappropriate project for this area. She resents as being looked at as someone who should be dismissed because she was against it from the start. JP Henkel stated that this is a very difficult balancing act. He wondered if there was anything that could be done to make this okay. Terry Lasky stated that a noise statute should be in effect, and a business plan should be submitted. He questions someone wanting a tent in perpetuity. If this project can't be done, it can't be done. JP Henkel stated that he doesn't get the sense that there has been any real talking about the issues amongst the neighbors. He'd like to see those involved come to terms. Bob Leary reminded everyone that the ultimate goal is to have a soundproof building. Robert Peitkiewicz stated that it is important for all to try to be good neighbors. Lisa Tuthill said that she can hear the performances, and they really haven't been a problem, but extending them to midnight all the time could be. She also wondered about how many performances would now be allowed, the kinds of performances and when they'd take place.

Suzanne Williams moved, and Kary Jablonka seconded that the public hearing be closed. This carried. Chairman Everett reminded the Board that they were categorizing this project into three parts: the modifications to the limitations, the use of the houses on the property and rental to a third party. Tal Rappleyea distributed a draft dealing with the modifications. Atty. Longstreet stated that they are more than willing to compromise, but they need the flexibility to run over the time limits on occasion. After some discussion, PS/21 would be willing to keep the performance times the way they are currently with the flexibility to run over by no more than half an hour no more than five times in the season. There would be no plan to run over, it would occur only in unforeseen circumstances. PS/21 is also willing to take out any changes regarding the length of the season. They also would be willing to agree to 4 evening performances per week and 40 matinee performances for the entire season.

Terry Lasky commented that during the original proposal, the neighbors wished to negotiate with PS/21 and Atty. Longstreet refused this request. The Board suggested that in regard to the request to extend the tent for 5 years from this time, that they continue on schedule and come back in 2.5 years to request additional time if needed. At that time they could report the efforts made to reaching the goal of the permanent facility. As far as using the houses

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for the actors and students, Atty. Rappleyea stated that this could be considered an accessory use to the main use. Suzanne Williams suggested that using this facility for rental to a third party could be bifurcated at this time and taken out of this request to be dealt with separately at a later date. PS/21 agreed with this suggestion.

The applicant will provide any additional information regarding environmental impacts, and Atty. Rappleyea will revise the resolution. Discussion will continue at the next meeting.

**FAIRPOINT COMMUNICATIONS- REQUEST FOR PUBLIC UTILITY
SPECIAL USE PERMIT FOR A SWITCHING STATION ON RT. 203 IN
NORTH CHATHAM. PUBLIC HEARING (cont.)**

Stephen Hermance reported that the North Chatham Fire Company decided to reject the idea of allowing this station to be relocated on their property at the opposite end of the village. Other sites will be investigated, and other persons will be approached. Fairpoint's goal is to have no equipment on the present site. The new pieces will be removed and the ones that have been in operation up until now will continue to service that area until a new site is found.

**FAIRPOINT COMMUNICATIONS- REQUEST FOR PUBLIC UTILITY
SPECIAL USE PERMIT FOR A SWITCHING STATION ON POND HILL RD.
PUBLIC HEARING**

Mr. Hermance showed pictures of the proposed site along with a picture of a fence which the owner suggested they could use to shield the unit. Because of its location in an Industrial zone, the Board felt that no landscaping needed to be required. The Public Hearing was opened at 9:36 PM. There was no public comment so the Public Hearing was closed. Robert Leary moved that a negative declaration under SEQRA be adopted. Dave Everett seconded the motion and it carried unanimously. Dave Everett moved that the project be approved. Kary Jablonka seconded the motion and it carried unanimously.

The meeting was adjourned at 9:38 PM.

_____ Respectfully submitted,
David Everett, chairman Marilyn Cohen, clerk