

**CITY OF NORWALK
ZONING BOARD OF APPEALS
MINUTES
BY VIDEO CONFERENCE AND TELECONFERENCE
JULY 16, 2020**

ATTENDANCE: Lee Levey; Chairman; Andy Conroy; Chris Gavrielidis; Tad Diesel;
Gregory Brasher;

STAFF: Aline Rochefort; Tammy Maldonado; John Hayducky; Matthew Sapienza,
Corporation Counsel

OTHERS: Rick Constantini; Attorney Elizabeth Suchy; Attorney Christopher Jarbo;
Nicholas Marigalino; Attorney Mark Grenier; Jay Russel; Ira Chilton;
Amber Penberthy

I. CALL TO ORDER

Mr. Levey called the meeting to order at 7:30PM.

II. ROLL CALL

Mr. Levey called the roll and indicated that they had a quorum.

Mr. Levey provided an overview of the how the meeting will be conducted and said that for the first two hours there will be a public hearing on the applications that were listed in The Norwalk Hour, and after the applicant and or his or her representative has spoken those against the application will have the opportunity to state their opposition for the record. After that has concluded the applicant and only the applicant will have the opportunity to rebut and respond to the issues that were raised. The hearing will then be closed and the board will discuss and act upon the applications and no further public input will be accepted and should an applicant decide to leave you may contact the Zoning office tomorrow to learn about the decision.

III. PUBLIC HEARINGS

- A. **20-0618-01- Zion Properties, LLC- (Garavel Subaru)-** Variances for additional signage; variance of allowed directional signage height. **Property located at 512-528 Main Ave. (TO BE RE-HEARD FOR PROPER NOTIFICATION OF ABUTTERS)**

Mr. Constantini said the only change is that they had requested a third variance in the prior application and had withdrawn it prior to the last hearing and it is not part of the application, and the requested changes are the same as were requested last month. He asked that he last hearing and application become part of the record. Ms. Rochefort said her office has not received any comments either in favor or against this application.

- B. **20-0319-02- Nicolas Maraglino-** Appeal to issue of Notice of Violation for non-compliance with site plan. **Property located at 7 Brookfield St.**

Attorney Jarbo noted that they have submitted by email a copy of the notification letters that were sent out to all of the property owners together with a proof of mailing.

Mr. Maraglino came forward and stated that he is the owner of Commercial Tire located at 7 Brookfield Street. He provided an overview of the business and said he has been working at the business since 1967 and in general they sell and replace tires and are the only commercial tire company that is left from Bridgeport down to Greenwich so they do provide an essential service. He said they service between 20-25 customers per day and have eight employees and there is a no parking area in front of the building and they try to ensure that no one parks in that area, but they do change tires out in front of the building and there is approximately 18' between the building and the road and is where most of the big work is performed on the large trucks. If we are not allowed to change tires in front of the building they would be prohibited to do business.

Attorney Jarbo stated that they were here last year for an appeal for a notice of violation and the Board had denied the appeal and then took the appeal to Superior Court and are here to re-present the application. He asked that the 1960's zoning application be part of the record as well as the letters that were submitted in connection the 1975 variance application. He said when they were here last year that board had made a decision based on the absence of failure to present proof of the certification of compliance and wanted to see a document that legitimizes this use and had denied the appeal until such time as they return with a certificate of compliance, but the board never decided on some of the other issues that were included in last year's hearing. He requested that the board reconsider its decision from last year and reverse itself because they think the board's decision went beyond the notice of violation and did not make a decision on the first alleged violation.

He said they believe the corrective action that was stated informs the applicant that he had an approved site plan and needed to abide by it and did not order him to provide documentation that they had a certificate of compliance. He said that they submit the corrective action should prevail over the general statement of the violation, and the board should have considered the impact of the previous variance upon the question of certificate of compliance. There were at least seven zoning related approvals related to this business and there is nothing in the zoning department filed to indicate that any of the zoning officers at that time raised the issue of the certificate of zoning compliance.

Attorney Jarbo stated that Mr. Maraglino's father went to the ZBA four times to seek approval of an addition to expand the commercial tire business and four times the ZBA had approved the application and everyone knew that the garage would be used for the commercial tire business. Furthermore, the zoning office issued zoning permits three times that they are aware of for the approved building addition and constructed the addition for the building on the belief he could use it for his commercial tire business.

Attorney Jarbo stated that Mr. Maraglino had made significant economic investments and improvements to his property based on the ZBA approval and related staff approval that were issued at that time, and they have spent 45 years since then to operate the business on this site and investing in the property and believe it would be highly inequitable for the city to now say that they cannot operate their business at this location because they cannot produce a standalone document called a certificate of zoning compliance.

Attorney Jarbo addressed the other issue in the notice of violation and submitted that tires and equipment are not being stored out front, and changing tires on vehicles that are parked out front does not violate the regulations, but admits that tire storage has been a challenge but today his client keeps the tires on the side and not out front and if there are equipment or tires out front it is on a temporary basis and the tires on the side of the building are picked up a few times a week. He said changing tires at this location has always been part of the business and presently is a wholesale and storage usage with the replacement of tires occurring out front. Attorney Jarbo noted that under State Law changing tires on a vehicle does not constitute what the state considers to be a motor vehicle repair so there is no approval that is required as would be for a motor vehicle repair garage or service station. They do not believe that changing tires outside prohibited by the 1975 variance and believe that the city is interrupting the drawing from 1972 too strictly to say that it is a site plan as we construe that term today. He said he understands that the city's goal is to have businesses' accommodate all parking onsite rather than utilizing street parking for customers and employees. He said he knows the Zoning Department has received numerous complaints from the neighbor on McIntock Street but the other neighbors on Brookfield Street don't seem to have a problem with his client's business activity and he submitted letters from the neighbors on Brookfield Street and the Post Road in support of his client.

Attorney Jarbo said in conclusion they are requesting that the prior action be reversed based on the approvals from the 1960's and 1970's and apply the doctrine of municipal

estoppel to prevent any current requirement for a certificate of compliance based on the fact that the zoning officers essentially certified compliance when they signed off on the building and zoning permit forms three times in the past. He noted that there is no definition of storage in the 1960 regulation and nothing that strictly prohibited changing tires outside of the building and do not believe it violates those regulations or the 1975 variance for his client to change tires outside today while the subject vehicles are parked in front of the building.

Mr. Conroy said the owner was trying to acquire the property across the street so that he could have their customers and employees park across the street and asked if that has happened. He also said the site plan that was submitted in 1975 was generalized and asked if that takes away the need for the parking spaces. Attorney Jarbo said that Mr. Maragalino spent a lot of time with an engineer trying to develop a plan to construct a building on that side of the street that would accommodate larger trucks but the turnaround area is the issue, he also investigated the possibility of obtaining property from the credit union but that plan did not succeed either so currently there is no zoning approval for the commercial use of that property across the street. Mr. Conroy asked Attorney Jarbo if there are any further clarifications on how the parking issue would be remedied. Attorney Jarbo said that he cannot promise anything tonight and that it is something that his client wants to try and find a solution for but he does not have one that can be offered tonight.

Mr. Hayducky presented new photo's that showed examples of work being done in a parking space. He said when the variances were approved it stated that the use would require three parking spaces and any parking space that is required for a use on a property must be utilized for parking and not for working on vehicles or for storage of tools and or equipment. He said they are not trying to stop him from doing business but are trying to get compliance with a site plan that was associated with a variances that were approved. Mr. Gavrielidis asked if they have been changing tires in this manner for the past 50 years. Mr. Hayducky said "yes" and by their own admission they do perform work on the exterior however, there was a note from the zoning enforcement officer at the time stated that the area in front of the building there was storage of tires.

Mr. Diesel asked for clarification of when parking is for parking and when it is not for parking. Mr. Hayducky responded and said in this case the use of the parking spaces are for the requirement of a place for employees to park, and the regulation states that a parking space cannot be used for anything other than parking.

Mr. Brasher asked what would have to happen at the property to make the applicant compliant. Mr. Hayducky said there will need to be the three parking spaces that would need to be clearly marked and accessible and any other space that is not utilized for the parking spaces would then need to become landscaping. He said they would also need to verify that there was no storage of any tools or equipment in those parking spaces and if everything is verified as stated in the site plan they could get a certificate of zoning compliance. Mr. Brasher asked if the three parking spaces are required to be in the front.

Mr. Hayducky said “yes” because the ZBA stated so or would need to apply for another variance to move the parking spaces.

Mr. Hayducky read a letter that was received in support of the application from the credit union. President of Mutual Security Credit Union please be advised that the Mutual Security Credit Union has no issues on the way Mr. Maraglino is conducting his business as stated in the notice of the issuance of violation dated October 29, 2018, and support his appeal.

Attorney Grenier stated there is a permit that requires three parking spaces and to this day Mr. Maraglino has refused to abide by that permit. The pictures that were submitted today continue to show that he is doing work outside the scope of his recapping permit that he received in 1975. In closing he said that fully support Mr. Hayducky’s in his efforts and he has been vigilant in showing the numerous time over violations and are asking that the applicant abide by the zoning regulations and the permit that was issued by the Zoning Commission.

Attorney Jarbo stated that working on a parked patron’s vehicle is a violation and although the number of employees was mentioned the parking out front was not specifically intended to be solely for employees. He also said he does not think it is a violation of the regulation of storage of tire or equipment. Mr. Levey said that fact is that when you are working on a vehicle on the street or undesignated parking space you are intensifying the use of your business by not being able to do that work within the confines of the service bays. He also said the employees that are parking elsewhere is an unfair utilization of property that is not owned by the business. Attorney Jarbo said that not all properties in town have the required number of parking spaces today that would be sufficient to serve their currently staff and patrons and if it was legal before he does not think it could be made illegal simply because there are more employees today.

- C. **20-0716-01 Salomon, Robert, James & Suzanne-** Variance to enclose existing open air porch on single family residence previously granted by variances in 1996 & 1997.
Property located at 9 Rocky Point Road.

Attorney Suchy stated that the property is a single family dwelling that exists by way of variances from 1996 and 1997. She said there is a deck that faces Long Island Sound on the second floor of the property and is currently open. The applicants have a desire to enclose that deck and make it indoor interior living space so there would be no expansion of the existing footprint. She said the hardships have already been established by the variances years ago and submit that the same hardships and difficulties exist today.

- D. **20-0716-02 Cassena Care at Norwalk-** Variances to reduce lot area coverage for proposed new parking lot expansion. **Property located at 23 Prospect St.**

Ms. Rochefort said that she will work with Mr. Russel to schedule a new date for the hearing.

- E. **20-0716-03 Scot & Donna Mattson-** Variances for replacement single family residence. **Property located at 4 Buttonball Trail.**

Attorney Suchy requested that she work with staff to determine what the date will be for this matter to move forward as she will likely be away next month.

IV. BOARD ACTION ON: A-E

- E. **20-0716-03 Scot & Donna Mattson-** Variances for replacement single family residence. **Property located at 4 Buttonball Trail.**

The application was opened and continued.

- D. **20-0716-02 Cassena Care at Norwalk-** Variances to reduce lot area coverage for proposed new parking lot expansion. **Property located at 23 Prospect St.**

The application was opened and continued.

- C. **20-0716-01 Salomon, Robert, James & Suzanne-** Variance to enclose existing open air porch on single family residence previously granted by variances in 1996 & 1997. **Property located at 9 Rocky Point Road.**

MR. LEVEY MOVED TO APPROVE THE APPLICATION.
MR. GAVRIELIDIS SECONDED THE MOTION.
THE MOTION PASSED UNANIMOUSLY.

- B. **20-0319-02- Nicolas Maraglino-** Appeal to issue of Notice of Violation for non-compliance with site plan. **Property located at 7 Brookfield St.**

Mr. Brasher said issue with no compliance to the approved site plan and in his opinion is not excusable and it seems years ago that it was made very clear on what they needed to have and it doesn't appear they have been doing that, and installed the three parking spaces in the front and is essentially an extended garage. He said in his opinion their business has outgrown the space.

Mr. Levey said he agrees and they have had a year and a half since we made our decision on the appeal have done nothing to come forward with an effort to comply with our disapproval of it. Mr. Diesel said they did say they would try to work with the property across the street but were unsuccessful. Mr. Brasher said the parking across the street would only help with the employee parking and doesn't circumvent the zoning regulation. Mr. Levey said it also doesn't circumvent the requirement for three marked parking spaces and does nothing to alleviate the situation of them working out in front of the building. Mr. Brasher said he would be open to giving them their certificate of zoning if they had those three parking spaces and with the requirement of no tools, the landscaping aspect and not using the parking spaces as an extension of the garage. Mr. Levey said he agrees but the zoning compliance has been waylaid. Mr. Conroy said he disagrees and that the business has outgrown the space unless they can solve the parking issue. Mr. Gavrielidis asked when a business is operated in the same manner for over 50 years wouldn't they be grandfathered in, and if their staff is parking in a public lot happens all over town and a majority of the neighborhood is in favor of the business. Mr. Levey said it they are extending working on vehicles in a public space constitutes a public hazard.

Mr. Conroy asked if a 90 or 180 day stay can be granted. Mr. Levey said in his opinion the application should be denied because they have not shown any indication they will comply. Mr. Conroy agreed but said he would like to give them a six month stay if legal but if after that the same situation is persisting according to the zoning inspector the action is taken. Attorney Sapienza said extension can be granted with the consent of the applicant however are limited to 65 days but the applicant cannot present additional information because the hearing is closed.

**** MR. CONROY MOVED TO SPLIT THE MOTION INTO TWO VOTES.
** MR. LEVEY SECONDED THE MOTION.
** THE MOTION PASSED UNANIMOUSLY.**

**** MR. CONROY MOVED TO APPROVE THE APPEAL FOR THE
CERTIFICATE OF ZONING COMPLIANCE.
** MR. LEVEY SECONDED THE MOTION.
** THE MOTION PASSED UNANIMOUSLY**

**** MR. CONROY MOVED TO DENY THE APPEAL FOR THE
NONCOMPLIANCE OF THE SITE PLAN.
** MR. LEVEY SECONDED THE MOTION.
** THE MOTION PASSED WITH FOUR (4) IN FAVOR AND ONE (1)
OPPOSED- MR. GAVRIELIDIS.**

- A. 20-0618-01- Zion Properties, LLC- (Garavel Subaru)- Variances for additional signage; variance of allowed directional signage height. Property located at 512-528 Main Ave. (TO BE RE-HEARD FOR PROPER NOTIFICATION OF ABUTTERS)**

- ** MR. LEVEY MOVED TO APPROVE THE APPLICATION.**
- ** MR. CONROY SECONDED THE MOTION.**
- ** THE MOTION PASSED UNANIMOUSLY.**

V. ACTION ON HEARING MINUTES:

DECEMBER 5, 2019

- ** MR. CONROY MOVED TO APPROVE THE DECEMBER 5, 2019 MINUTES AS SUBMITTED.**
- ** MR. BRASHER SECONDED THE MOTION.**
- ** THE MOTION PASSED WITH (4) FOUR IN FAVOR AND (1) ONE ABSTENTION-MR. DIESEL**

FEBRUARY 20, 2020

- ** MR. BRASHER MOVED TO APPROVE THE MINUTES OF FEBRUARY 20, 2020 AS SUBMITTED**
- ** MR. GAVRIELIDIS SECONDED THE MOTION.**
- ** THE MOTION PASSED WITH THREE (3) IN FAVOR AND TWO (2) ABSTENTIONS- MR. DIESEL AND MR. LEVEY**

JUNE 18, 2020

- ** MR. BRASHER MOVED TO APPROVE THE MINUTES OF JUNE 18, 2020 AS SUBMITTED.**
- ** MR. LEVEY SECONDED THE MOTION.**
- ** THE MOTION PASSED WITH (4) FOUR IN FAVOR AND (1) ONE ABSTENTION-MR. DIESEL.**

VI. ADJOURNMENT

- ** MR. LEVEY MOVED TO ADJOURN**
- ** MR. BRASHER SECONDED THE MOTION**
- ** THE MOTION PASSED UNANIMOUSLY.**

The meeting adjourned at 10:50PM

Respectfully submitted,

Dilene Byrd
Telesco Secretarial Services

