

**CITY OF NORWALK
ZONING BOARD OF APPEALS
APRIL 8, 2010**

I. CALL TO ORDER

Mr. Strubinger called the meeting to order at 7:30 pm.

II. ROLL CALL

Ms. Rochefort took the roll call.

PRESENT: Taylor Strubinger, Chair; Tony Lopez; Dawn DelGreco; Nathan Sumpter;
Joe Santo

STAFF: Aline Rochefort; Vladimir Mariano

OTHERS: Drew Friedman; David Whitman; Nick Visconte; Atty. Chris Coldwell;
Raymond Valerie; Atty. Brian Tims; Jim Conti

III. PUBLIC HEARING

A. 10-0408-02 Drew Friedman—Appeal of Zoning Inspector’s refusal to accept application for permits. Property located at 1 Testa Place.

Mr. Strubinger opened the public hearing. Mr. Lopez read a memo from Ms. Rochefort, stating that the appeal should be denied. The memo indicated that the applicant should not be given a permit until the violation of use on the property was removed.

Mr. Drew Friedman turned in the green cards and explained that he had been issued a Cease & Desist that required him to obtain permits and a Certificate of Zoning Compliance. He added that a tenant on the property had attempted to comply, but had been turned away due to a violation on the property. Mr. Friedman emphasized that the regulations involved construction on properties, not the withholding of permits. He read from a letter written to Mike Greene of Planning and Zoning concerning U-Haul, which Mr. Friedman explained was no longer a tenant.

Discussing due process and the fair treatment of property owners, Mr. Friedman submitted several documents to the Board, including a letter he had written to Mike Greene, another that he had written to the ZBA, criticizing the unsubstantiated allegation, and also a list of permit violations, which he said was not complete.

Ms. Rochefort clarified the issues involved in the appeal. She said that Connecticut Tick, as a contractor, was not an allowed use. She added that the other tenants on the property could obtain permits, once Connecticut Tick moved out.

Mr. David Whitman, 1 Testa Place, stated that as the President of Connecticut Tick Control, he was being referred to as a contractor in this case, but emphasized that he was recognized as a manufacturer by the State of Connecticut. He read a description of his business to the Board, pointing out that he purchased raw goods to create another product, therefore establishing him as a manufacturer. Mr. Whitman added that there were two other manufacturers in that zone, as well.

Mr. Santo asked if Connecticut Tick delivered to people's properties and if the company applied the products once there.

Ms. Rochefort pointed out that the discussion had wandered away from the focus, which was the appeal of the tenants without permits.

Mr. Santo added that the landlord had been informed of the issue concerning allowed use. Ms. Rochefort said that Connecticut Tick had never appealed the allowed use issue.

Mr. Sumpter asked if the other companies were there legally. Mr. Strubinger clarified that two tenants had permits, two did not have permits, and one was not an allowed use.

Ms. Rochefort said that permits could be issued when the violation was cured.

Mr. Nick Visconte, who said that he was Mr. Friedman's partner, stated that a contractor's yard was not a permitted use, but that Connecticut Tick was not a contractor's yard. He added that they had gotten building permits in 2004. Ms. Rochefort clarified the difference between a building permit and a zoning permit.

Mr. Visconte also stated that he had never received a Cease & Desist for Connecticut Tick. Mr. Strubinger pointed out that the property owner was responsible for ensuring that tenants had permits. Mr. Visconte reiterated that the intent of the regulation involved construction, rather than the issuance of permits.

Ms. Rochefort pointed out that the Cease & Desist from February 5 had indicated that the applicant failed to obtain permits for other tenants. Mr. Visconte asked if the Cease & Desist had indicated that Connecticut Tick was not an allowed use. Mr. Santo said that the point was moot, because the applicant was not appealing the Cease & Desist per se.

Mr. Strubinger closed the public hearing.

B. 10-0304-01 The Jostal Corporation—Appeal of Zoning Inspector's Cease & Desist dated January 4, 2010 for use & occupancy without permits and creating an off-street parking facility in Business No. 1 zone. Property located at 467 Connecticut Ave.

Mr. Strubinger opened the public hearing. He asked the attorney for the applicant if he objected to his voting on the appeal, since he had served on a panel with Mr. Conti two years earlier. Atty. Chris Coldwell, representing the applicant, stated that he did not

object. He read a memo from Ms. Rochefort and explained that he had re-noticed the abutting neighbors, including Mr. Conti. Atty. Coldwell also submitted a copy of the application for both a building permit and a zoning permit. He gave background about the site, pointing out that previously 200 trucks per day had entered and exited the property. He said that there was significantly less traffic to and from the site currently. He indicated an overhead photograph taken in 1989, pointing out the area of concern.

Mr. Strubinger asked if trucks were still there. Atty. Coldwell said yes, pointing out Mr. Conti's property on the map and giving background about Valerie Transportation. He explained that Jostal had begun leasing exterior parking spaces in 1989 and that four separate site plans had been submitted. He described the property as containing a pre-existing non-conforming use.

Mr. Lopez asked if the applicant could cite any permits for use. Atty. Coldwell pointed out a 1972 permit and discussed the 2009 injunction. He reiterated that commercial motor vehicles were parked there, as they had been all along. He said that the traffic was significantly less than it had been and that the vehicles themselves were smaller now. He added that there was no issue with the interior tenants.

Mr. Santo asked if there were any structures being used illegally on the property. He added that there was a large container on the property that appeared to be used as an office.

Mr. Raymond Valerie said that Equip Corporation owned the container and it was probably being used to hold morning newspapers or perhaps to hold lawn mowers for a lawn care specialist.

Mr. Sumpter asked if Morning News were using the container as a drop off. Mr. Valerie said that no one was there on a permanent basis. Mr. Sumpter said that someone would need to distribute the papers and therefore must be operating it, which would make it an office. Mr. Valerie pointed out that the container had no lights, phone, or other office facilities.

Mr. Santo asked if use of the structure as an office by a contractor would be allowed. Ms. Rochefort said no.

There was a discussion of the use of the property. Atty. Coldwell said that only the use of the parking area was in question, adding "a commercial vehicle was a commercial vehicle." He reiterated that Jostal had leased to Valerie Transportation through 1998 and then Jostal had leased parking spaces to people with commercial vehicles.

Mr. Sumpter asked if the applicant had applied to Zoning, when the spaces began to be leased. Atty. Coldwell said no, pointing out that there were always violations.

Atty. Brian Tims, of Zeldes, Needle & Cooper, speaking on behalf of Mr. Conti, explained that permits had not been obtained for either use. He discussed the ingress and

egress between the Jostal property and Mr. Conti's property, adding that there was a lawsuit pending between Jostal and Conti.

Mr. Jim Conti described the property and gave background about it. He explained that his business had maintained the sites as neat and orderly. He added that some of the land now being encroached upon actually belonged to the City. He emphasized that the tenants on the property now changed so often that nobody seemed to actually be controlling the site any longer. Mr. Conti said that the site appeared to be a "commercial slum" since Valerie left the property.

Ms. Rochefort reiterated that the appeal involved the use and occupancy of the building without permits. She explained that how a vehicle was used was important, as different uses had different impacts on the area. She read aloud the regulations concerning non-conforming uses.

Mr. Sumpter asked how the applicant was conforming to the regulations. Mr. Strubinger explained that they would have to change the use in order to conform and in order to get the permit. Ms. Rochefort reviewed a list of permitted uses in the area.

Mr. Valerie said that the applicant never contested whether it needed permits. He discussed various contractors who had been on the property and discussed the definition of contractor. Mr. Valerie emphasized that the regulations defined a contractor's yard, but did not address the definition of a contractor. He said that accordingly, nearly anyone at the site could be called a contractor. He also asked why a site plan review was necessary for a site that was approved in 1972. He stated that the applicant should be told what it can and cannot do on the property, so that it could obtain permits. Mr. Valerie added that he and Mr. Conti had once had a harmonious relationship as neighbors, until the disagreement about parking vehicles on the property arose.

Mr. Strubinger closed the public hearing.

IV. BOARD ACTION ON A THRU B AND ACTION ON 09-0903-04—Ct. Friends School Corp.—request for extension of time in which to obtain building permits.

b) 10-0304-01 The Jostal corporation

**** MR. STRUBINGER MADE A MOTION TO DENY THE APPEAL, BECAUSE THE APPLICANT FAILED TO SHOW THE ZONING INSPECTOR HAD ISSUED THE ORDER IN ERROR.**

**** MR. SUMPTER SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

a) 10-0408-02 Drew Friedman

**** MR. STRUBINGER MADE A MOTION TO DENY THE APPEAL.**

**** MR. SUMPTER SECONDED.**
**** MOTION PASSED UNANIMOUSLY.**

Item 09-0903-04 Ct. Friends School Corp.

**** MR. SANTO MADE A MOTION TO GRANT THE REQUEST FOR EXTENSION.**
**** MS. DELGRECO SECONDED.**
**** MOTION PASSED UNANIMOUSLY.**

V. ACTION ON HEARING MINUTES—MARCH 4, 2010

**** MR. SANTO MADE A MOTION TO APPROVE THE MINUTES.**
**** MR. STRUBINGER SECONDED.**
**** MOTION CARRIES, 4-0-1 (DELGRECO ABSTAINING).**

VI. ADJOURNMENT

**** MR. STRUBINGER MADE A MOTION TO ADJOURN.**
**** MR. SANTO SECONDED.**
**** MOTION PASSED UNANIMOUSLY.**

The meeting was adjourned at 9:33 pm.

Respectfully submitted by Charlene Smith.