

**CITY OF NORWALK
ZONING BOARD OF APPEALS
MARCH 18, 2021**

ATTENDANCE: Lee Levey, Chairman; Andy Conroy; Keith Lyon; Marilyn Altman; Tad Diesel;

ABSENT: Gregory Brasher; Chris Gavrielidis;

STAFF: Tammy Maldonado; Michelle Andrzejewski

OTHER: Liz Suchy; Tim DeBartolomeo; Wendy Foster; David Gagnon; Chris Casiraghi; Jacqueline O. Kaufman; Jason Klein; Jeffrey George

I. CALL TO ORDER

Chairman Levey called the meeting to order at 7:31. There was a quorum present. He reviewed the meeting protocol for all present.

For the first two hours, prior to 9:30 P.M., there will be a public hearing on the applications presented. After the application is announced the applicant will come forwards and identify themselves, state their name, and present their appeal. After the applicant has spoken those who wish to speak in favor will have a chance to be heard. After that those in opposition will have an opportunity to state their opposition for the record. In the case of an appeal the Zoning Staff will have an opportunity to present their findings. Finally, after those present have spoken, the applicant and only the applicant will have the chance to rebut and respond to the issues raised. The hearing is then closed and the next application is called. New applications will not normally be heard after 9:30 P.M. as the board must discuss and act upon the applications. No further public input is accepted after that time. The public is welcome to stay for that portion of the meeting but, should they decide to leave, they may contact the Zoning Office tomorrow to find out about the decision.

II. ROLL CALL

Chairman Levey gave the roll call of those present. Chairman Lee Levey; Andy Conroy; Keith Lyon; Marilyn Altman; Tad Diesel.

III. PUBLIC HEARINGS

A. (CONTINUED FROM 2/18/21) 21-0218-01 SACKETT NORWALK 490 LLC – VARIANCE FOR SETBACKS, BUILDING AREA, OPEN SPACE MINIMUM AND BUFFER STRIP FOR TWO OUTDOOR PADDLE COURTS IN BUSINESS #2 ZONE. PROPERTY LOCATED AT 490 WESTPORT AVE.

Ms. Maldonado stated that she had received letters of support for the project. She presented the letters to the commission to read. There was some confusion regarding which letters were available to be presented. Ms. Maldonado read a letter from Norwest Association East for the Commission. The letter stated that it was confident that the granting of the application would not have any adverse effects on the association and, therefore, it supports the application subject to the following conditions:

- 1) There will be no amplifying noise of any nature.
- 2) Lighting shall be turned off by 10:15 P.M. each night.
- 3) Application shall install a wooden fence of 10' in height along the bounding line facing the association property. If the approval of a 10' fence is not permitted by the ZBA then the fence shall be a minimum of 8' in height.

The Association as the neighboring property owner voices its full support for the project subject to those three conditions being met. The Association supports Norwalk's local businesses and wishes the applicant success with these additional facilities.

The prior meeting the letter from the Chamber of Commerce representative had been read into the record.

Ms. Jacqueline Kaufman came forwards to represent 490 LLC. Charlie Mason, owner of Paragon Fitness, was present as well. Jason Klein, a colleague of Ms. Kaufman's, was present as well. Kelly Chain, the sound engineer, was present as well to answer questions. The conclusion of her report is that any sound that emanates from the proposed paddle courts meets the Norwalk City Ordinance Regulation. They will consent to the conditions proposed in the letter being attached to the project. There will be no noise amplification and the fence will serve as sound absorption.

Chairman Levey asked if a 10' fence was permitted in Norwalk.

Ms. Maldonado responded that anything above 6' requires a building permit and a wind resistance test.

Chairman Levey clarified if that meant that the fence was structurally sound. He suggested the inclusion of a statement about maintaining the fence. He noted that several areas were open to possible damage from automobiles on the neighboring site. He wanted to ensure that any damage would be quickly repaired.

Ms. Kaufman replied that if there was some sort of landscape maintenance agreement that they would like to see filed with the zoning department they were more than willing to do so. Whether the fence is 8' or 10' they are more than open depending on what may be built.

Ms. Kaufman then presented several pictures to the Board regarding the layout of the property for the boards review. The building was designed under light industrial standards. The courts will be located in the back triangular piece.

Chairman Levey asked about a narrow strip of land on the south-east side of the sight that had been discussed in a prior meeting and asked if there was any new information to be covered. She pointed out that there was not enough area to eliminate the need for a barrier. Additionally, there is a residential line that creates a heightened set-back. This is not required for the neighboring B-2 zones.

Mr. David Gagnon came forwards to speak. He stated that they had looked at the area where the strip was in regards to the proposed course. There are still issues with the setback as a result.

Ms. Kaufman stated that there were also issues with how the building in that area even came to be and if that particular area throws them even more out of compliance. She pointed to a property that was also on the residential line that did not meet all of the setback requirements. She also recounted a case which established a precedent that purchasing the strip of land would not eliminate the hardship and problems. As such their initial case for hardship still applies and they would not be able to obtain the strip. She noted that the strip will never be developed residentially. Due to the uniqueness of the lot and the surrounding lots it is the opinion of Ms. Kaufman that it meets the hardship standard.

Chairman Levey asked if there was a proper amount of parking on-site or if there was an over-abundance or a shortage.

Mr. Gagnon stated that they had an excess of parking spaces. They were required to have 40 parking spaces and they have 54 proposed.

Chairman Levey asked how that worked with the addition of the two proposed courts.

Mr. Gagnon said that the 40 required spaces would be inclusive of the two additional courts.

Ms. Kaufman provided a photometric plan for the Board. It confirmed that there would be a 0% spillage beyond the property line. All the lights are full-cutoff.

Commissioner Altman asked if there was an issue with noise after the courts had been constructed if there was any recourse.

Ms. Kaufman responded that this had been discussed both with the condominiums and as a team. There are two courts present with up to four people each for a total of eight people on both courts at the same time. The sound technician had observed another two-court location in the past week and determined that the distance allowed for the sound to dissipate. There can be additional noise barriers in the form of fences and hedges. Additionally, the owner and site manager is on-site every day so if there is an issue the residents can go directly to him. There are also not enough courts (three courts are required) for tournament play which will eliminate the risk of loud crowds. There are no bleachers or places for bystanders to watch the players casually.

There were no further questions from the members of the Board.

Mr. Jeffrey George came forwards to speak. He signed the letter on the behalf of Norwest Association. He stated that the association was satisfied with the plan as submitted. They believe it will be a good addition and make for a good neighbor.

There were no parties who wished to speak in opposition to the application.

Chairman Level closed this section of the public hearing.

Commissioner Conroy stated that he did not see the hardship and would not be voting 'yes' as a result.

Commissioner Diesel said that he felt that the unique layout of the site did present a hardship and that the applicant has done a good job of addressing the potential issues. Additionally, it offers an amenity to the community and an improved use of the site.

Chairman Levey said he did not like the application. He felt that there were numerous negative aspects to it. However there has been a zone change and the lot configuration played a part in this. There is an effort of co-operation from the property owners to mitigate any potential problems that may arise from this. He desires a requirement that if the Board does not have to recommend or approve it that the building department approve a 10' high solid fence subject to all structural requirements for a structure of this type and that any damage to the fence on either side of the property line be rectified immediately. In lieu of a fence if additional sound-proofing was required that the planting of Green Giant Arborvitae trees be done to soften the sound.

Commissioner Altman said that her biggest issue was what the neighbors thought and the noise. She noted that they are in a section that allows for business but have an odd configuration of the lot. While it seems to be a plus, she feels it best to be wary. The current space is being trashed and could be used for a good purpose; but only if the neighbors would consider it a positive. She does have an issue with noise and it should be written into it that the owners have to rectify any noise issues.

Commissioner Lyons suggested that they make a motion with all the conditions that have been laid out already included.

**** CHAIRMAN LEVEY MOTIONED TO APPROVE THE APPLICATION SUBJECT TO THE CONDITIONS THAT HAVE BEEN PUT FORWARD IN THE LETTER FROM THE ADJOINING PROPERTY OWNERS.**

- 1) THERE WILL BE NO AMPLIFYING NOISE OF ANY KIND**
- 2) LIGHTING SHALL BE TURNED OFF NO LATER THAN 10:15 P.M EACH NIGHT**
- 3) APPLICANT SHALL INSTALL A WOODEN FENCE OF 10' IN HEIGHT ALONG THE BOUNDING LINE FACING THE ASSOCIATION PROPERTY.**

ADDITIONALLY, THE FENCE WILL NEED TO BE APPROVED BY THE BUILDING DEPARTMENT WITH KEEPING THE HEIGHT OF THE FENCE AT 10' AND REQUIRING THAT A STRUCTURE OF THAT HEIGHT BE SUBJECT TO STRUCTURAL REQUIREMENTS OF THE CONNECTICUT STATE BUILDING CODE AND THE POSSIBILITY OF DAMAGE TO THE FENCE THAT THE APPLICATION BE RESPONSIBLE FOR REPAIRING THE FENCE AS SOON AS POSSIBLE. ADDITIONALLY, SHOULD THE NOISE LEVEL BECOME OBJECTIONABLE SUBJECT TO THE AGREEMENT BETWEEN THE OWNER AND ADJACENT CONDOMINIUMS THAT A 12' HIGH ARBORVITAE GREEN GIANT BE PLANTED IN THE VICINITY OF THE NORTH SIDE OF THE FENCE.

**** COMMISSIONER DIESEL SECONDED THE MOTION.**

Commissioner Conroy said that that the owners already had normal use of the property and thusly did not see true hardship.

Chairman Levey said that he agreed with Conroy but felt that this provided a benefit that goes beyond the normal requirements of requesting a variance.

Commissioner Altman asked if they needed to designate which side of the fence the trees were on if planted.

Chairman Levey said that they wanted the trees planted on the North side of the fence, which would be the applicant's property. Planting on the south side will have very little benefit.

**** THE MOTION PASSED WITH FOUR (LEE LEVEY; TAD DIESEL; KEITH LYONS; MARILYN ALTMAN) IN FAVOR AND ONE (ANDY CONROY) OPPOSED.**

IV. BOARD ACTION ON: A AND REQUEST FOR EXTENSION OF TIME ON 4 BUTTONBALL TRAIL VARIANCE 20-0716-03 AND 7 NEARWATER RD 20-0917-01

Atty. Suchy was present for item 20-0716-03. She commented that Mr. and Ms. Matson have been working with Citizen's bank to secure financing. They have submitted all the documentation for the loan and the banks appraisal. They are also waiting for the modular building plans for the unit. They are being prepared by a Wisconsin company called PFS. They have been delayed in producing those plans and sending them to the client.

Chairman Levey said that the board has been reluctant to hear constant extensions from projects. It's been policy to give one and only one extension without good reason.

**** COMMISSIONER LYON MOTIONED TO APPROVE THE REQUEST FOR EXTENSION OF VARIANCE 20-0716-03.**

**** CHAIRMAN LEVEY SECONDED THE MOTION.**

**** THE MOTION PASSED UNANIMOUSLY.**

Atty. Suchy said that the application for 20-0917-01 was granted in September and all the documents were submitted on February 26th to apply for the permit. But due to COVID and staffing and the number of applications being dealt with it was deemed necessary to request an extension. She did not see why there would be any additional delay past this one. The contractor has already been hired. She did not feel like there would be a need for a 6-month increment but noted that the extensions happen in only 6-month increments.

**** COMMISSIONER CONROY MOTIONED TO EXTEND APPLICATION 20-0917-01 FOR A SIX-MONTH TIME.**

**** COMMISSIONER LEVEY SECONDED THE MOTION.**

**** THE MOTION PASSED UNANIMOUSLY.**

V. ACTION ON HEARING MINUTES – FEBRUARY 18, 2021

**** CHAIRMAN LEVEY MOTIONED TO ACCEPT THE MINUTES AS SUBMITTED.**

**** COMMISSIONER CONROY SECONDED THE MOTION.**

**** THE MOTION PASSED UNANIMOUSLY.**

VI. ADJOURNMENT

**** COMMISSIONER CONROY MOTIONED TO ADJOURN.
** COMMISSIONER ALTMAN SECONDED THE MOTION.
** THE MOTION PASSED UNANIMOUSLY.**

The meeting adjourned at 8:30 P.M.