

**CITY OF NORWALK
ZONING BOARD OF APPEALS - MINUTES
REGULAR MEETING
FEBRUARY 18, 2021**

ATTENDANCE: Lee Levey, Chair; Gregory Brasher, Andrew Conroy, Chris Gavrielidis, Keith Lyon

STAFF: Tammy Maldonado

OTHERS: Vanessa Valdares, Charlie Mason, Ed Napierkowski, Adam Nelson, David Gagnon, Robert Cardello, Robert Maslan, Ralph Kolb, Ken Hughes, Jeff Olszewski, Nick Roberts, Dennis Dievert, Jason Klein

CALL TO ORDER

Mr. Levey called the meeting to order at 7:35 p.m.

ROLL CALL

Mr. Levey called the roll, a quorum was present. He then read the protocol for the hearings.

PUBLIC HEARING

A. (continued from 1/21/21) 21-0121-01 City of Norwalk – Variance of illumination restriction for athletic field lighting Property located at 288 Highland Ave.

Mr. Conroy read the item.

Mr. Roberts introduced Vanessa Valdares, Ken Hughes and Jeff Olszewski who would be making the presentation and provide answers to questions the Board had asked at the last meeting.

Mr. Olszewski said that the softball field on Highland Avenue was natural grass and the backstop was currently at the corner of the southern residential property on Highland Avenue. He said that all activity fell within that area. He said that in an effort to expand and enhance the field's usability they were proposing lights so they could use it into the evening. He said they'd looked at a few options including replacing the field and reorienting the diamond, but it wasn't achievable. He said they'd brought photo renderings of what light would look like on the existing field. He shared photo examples of similar facilities, noting that about 10 feet behind the dugout it was dark.

Mr. Mahoney from the lighting company said that looking at the light sources, there was a poll located in center field, which historically would have glared for batters and catchers. He said that today's technology meant that they could use it. He said the biggest difference was the elimination of the beam of the light source after a certain distance. He said they adjusted height and angle to create a curtain of darkness off the field.

Mr. Olszewski reiterated that technology had changed a lot and noted that it had been important to bring pictures as requested. Mr. Levey said it was considerably clearer than last month and asked if they'd met with the adjoining property owners. Ms. Valadares said they'd sent a certified letter to all adjacent property owners; they'd all been informed and given the option to attend this meeting to speak about it. She noted this was just the first step and that they would have to go get a special permit for the lighting. Mr. Levey said they hadn't gone beyond the normal bounds of legal responsibility to meet with them and asked Ms. Maldonado if any of those people were in attendance. She said none of the adjoining property owners were in attendance.

Mr. Brasher asked about the difference between the technology of the baseball field lights and these lights. Mr. Mahoney shared examples.

Mr. Conroy asked about the hours the lights would be on, he said he thought he'd read they'd be on until 10pm in one of the documents. Mr. Gavrielidis noted that his cousin lived in the house adjoining the Nathan Hale field, and that the lights were not bad, but that he understood that each location was different. Mr. Hughes said that the lights went off at 9pm and noted that Parks and Rec had a control system and could ensure that lights were off at that time.

Mr. Basher asked if this was the only lit field for female sports. Mr. Roberts said it would be the only turf lighted softball field in the state. He said that they had to find a solution so it wouldn't result in a Title 9 issue. He said if they didn't get the variance, they would have to find an alternate location for them. He said they would be open to a complete review, and everything the boys had the girls would have to have from an athletic and scholastic perspective. Mr. Hughes said that the AD's at both high schools had experienced that. Ms. Valdares said that this was why the city had funded the project.

Mr. Levey asked if there were members of the public who would like to make a comment, because there was none, he closed this portion of the public hearing.

B. 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.

Mr. Conroy read the case.

He read a letter from the president of the Chamber of Commerce, Brian Griffin, endorsing the project.

Ms. Kaufman from Carmody, Torrance Sandak and Hennessey introduced herself as the attorney for Charlie Mason, owner of Intensity Fitness and introduced others in attendance.

She said that they had gone above and beyond their notice requirement, that there were condos to the west of the property. She said they'd had good conversations, but there were still questions. She said they wanted to present their information tonight, and request to continue their hearing until after they'd address all of the questions of the neighboring condo board.

Ms. Kaufman shared an aerial of 490 Westport Avenue, noting it was oddly shaped lot and that the building was built to maximize the property area. She said it was built under light industrial standards, and that there was a small grassy area in the back that they would like the variance on.

She pointed out that to the east was a car wash and to the west was a restaurant and then a Goodyear tire. She pointed out the lot line which was oddly shaped. She said the strip of property was critical as it was in the B resident zone and was just a strip of undevelopable property.

She shared a closer view of the property, which was built in 1974 and had about 54 parking spaces. She noted it was a tennis and fitness facility. She said that the B2 zone didn't have requirements for side back setbacks except where it bordered on a residential zone. She noted that it wouldn't have any harm on the neighboring condos because of the built in buffer.

She shared photographs of various views of the exterior of Intensity and artists' renderings of the proposed paddle courts noting that it was popular in the community, and there was only one free court in Norwalk. She said it would be raised and lit and have mesh screening for safety.

She shared plans that included court elevations from various angles and site plans. She said that they would be requesting a variance for the westerly side yard for four feet. She said that with the B2 zone they functionally maintained a 30 foot buffer because of the unused strip of land between the two properties, and that included a lush thick tree line. She noted that the aggregate side yard required the same variance. She noted that the rear paddle court was 215 feet from the nearest residential dwelling.

She said they were requesting a variance of the rear yard setback in lieu of the 10 feet requirement. She said it was buffered by the B2 property which served as a buffer. She

said they were requesting two variances for the parking area. She noted it was hardship because of the history of the property and the change of the zoning map and zoning regulations.

She said they were requesting a variance for open space from 20% to 16.8%. She reiterated the hardships she'd enumerated; she noted the small tail of land that extended into the B zone which put extra constraints on this property, which was the only one like it, which provided a functional buffer which would serve the purpose of the zoning regulation.

Ms. Kaufman shared a map showing the distance to the south from the proposed courts to the residential property line. On the photometric plan, she noted that it was important to address the lighting despite it not being a requirement for the ZBA. She said that paddle was played in the winter, and the hours would be Monday-Thursday until 10pm, Friday until 8pm and weekends until 6pm. She said the lights were designed to illuminate the courts and not spill out past that.

Ms. Kaufman reviewed the other options they'd considered before settling on the location in the back. Mr. Gagnon pointed out an easement where they couldn't put the courts. He also noted that they'd planned to build an attractive wood fence behind the courts which would be a nice replacement for the chain link fence.

Ms. Kaufman said that this request would contribute to physical fitness during COVID and beyond and contributed to the commercial and employment needs of the city and added opportunities to make healthy choices and wellbeing through easy access to physical activity, healthy food, and medical care.

Mr. Levey asked if they'd considered building only one court in order to avoid asking for a variance, he said he thought they were pushing it too far. Mr. Mason said they'd initially thought about three courts and determined that two was the minimum for a paddle club. Mr. Wright said that they'd worked hard to get three and that two made sense. He said it didn't work to just have one. He said it didn't make sense economically. Mr. Levey said they couldn't argue that they were seeking relief because of money.

Mr. Mason said they were trying to create social environment go to play at, and that one court in the back of Intensity would not create the environment people would want to go to and they wouldn't risk building something that wouldn't be used. He said that they were aiming to build this because the community wanted it.

Ms. Kaufman said that the goal was to have healthy outdoor activity; nobody disputed positive goals. She said that the reasonable future use of the property went to the fact that it had an interesting history and difficult zoning.

Mr. Lyon said he didn't interpret them saying they wouldn't build a single court due to economic hardship, that the hardship was elsewhere. Mr. Conroy asked if they could approach abutting property owners to see if they could buy their properties. He said they were a little outside what is reasonable.

Mr. Wright noted that it wasn't just a piece of property but a strip that was in the B zone. Mr. Levey asked for a map of the area to the south, Ms. Kaufman said they'd bring it next time. Mr. Levey suggested that if they build an 8 foot high fence they should build it out of something that couldn't be destroyed by cars and snowplows to avoid making constant repairs.

Mr. Brasher asked if they should continue the conversation, knowing that they were going to wait for feedback from the neighbors. Ms. Kaufman said it was helpful to hear what the board was thinking so they could address them.

Mr. Conroy said that the presentation of the properties adjoining not being impacted because of what they are, he said they could consider expanding the property or using other property. Ms. Kaufman said that they'd demonstrated that this property was unique and had unique challenges. She said when they looked at a property and the hardships, the law didn't say that the other option included buying another property. She noted that it was a large building designed to be a fitness facility, and it would likely not survive if it were not a fitness facility.

Mr. Mason said that at one stage Intensity had a single tennis court to the while other buildings contained two and four tennis courts, he said nobody played there that they said they wanted to play near other people. He said now it was four squash courts, and well used. He said that the social context was significant here, which is why they needed at least two paddle courts.

Mr. Brasher said that as a paddle player agreed that one paddle court is useless. He said that there were only a handful of leagues in Fairfield County and to be part of them you need to have a couple of courts. He noted that it was impossible to get a court in Rowayton and that there had been a lot of interest in getting more paddle courts in Norwalk and that this would be as close as you're going to get.

Mr. Garrellick from the NorWest Condominium Board said that they had many questions that had not been answered yet. He said they needed to walk the property and discuss it. He said that the lights and noise had not been addressed.

Mr. Levey suggested the condo board put their questions in writing and share with Ms. Maldonado, and that they would be invited back next month. Ms. Kaufman said that they had talked to the chairman of the board on all of those items, and would provide materials, she said they were working on scheduling a meeting for next week.

Mr. Lyon asked if there was a difference between platform and paddle. Ms. Kaufman said they were the same, but that paddle was played on platform courts.

Mr. Levey closed this portion of the public hearing and said they would see them again on March 18th.

C. 21-0218-02 Theresa & Buell Duncan – Variance for height: peak 39’ required 40’ proposed and midpoint 31’ required 31.8’ proposed in B residence zone. Property located at 6 Golden Ct

Mr. Conroy read the item.

Mr. Maslan, the attorney for the Duncans, introduced himself, the property owners and architects Bob Cardello and Ed Napierkowski.

Mr. Maslan said he’d submitted paperwork and a PowerPoint. He shared the deck and said that the house was a 2.5 story house built in the 30s and added on to in the 50s. he said it was off of Crescent Beach and had been in Flood Zone VE since July of 2013.

He said that they needed a variance for the highest peak, for about one foot.

He reviewed the project which included a new second floor and attic above the northern portion of existing first floor with roof peak to match existing roof, installing flood compliant breakaway walls around existing open garage and raising the existing HVAC units and putting new steps on the north side of house. He said the total addition was 331 square feet.

Mr. Maslan said the second floor would remain almost the same and the main roof would stay the same. He said another part of the roof would be raised to match that. He said the previous owner got permits to raise the house and rebuild the foundation in 1981.

He shared drawings of the house that showed that the roof was 40 feet and would stay there. He said the proposed elevation would extend the peak of the roof at the same height, 40 feet. He said the HVAC unit would be raised 16 feet, and there would be breakaway walls around the garage.

He showed architect renderings of what the addition would look like from various angles.

He said that the attic floor area would be 889 square feet, the full second floor would be under 1481 square feet. He said the variance they were asking for were 40 for 39 for the peak and 31.8 in lieu of 31. Mr. Levey said they'd limited the building and construction cost to avoid the cost of raising the entire house. Mr. Maslan confirmed and said that it was an unusual situation.

Mr. Levey asked if anyone from the public wanted to speak. Tim Gaylord said his mother lived next door to the home and asked if it was possible to put the HVAC on the other side of the building so it wouldn't be visible, he noted his mother would be looking right at it at 16 feet. Mr. Maslan said that there was no room on the other side of the house, so Mr. Levey suggested landscaping. Mr. Maslan said that his clients would definitely do that.

Mr. Levey closed this portion of the public hearing.

**** MR. CONROY MOVED TO EXTEND THIS PORTION OF THE MEETING BY 15 MINUTES.**

**** MR. LYON SECONDED.**

**** THE MOTION PASSED UNANIMOUSLY.**

D. 21-0218-03 Eversource/City of Norwalk WPCA – Variance of the required two story minimum for replacement pump station in Business #1 zone. Property located at 473 Connecticut Ave.

MR. Conroy read the item.

Mr. Kolb introduced himself, Mr. DeVere and Chief Carr. He said that the Keeler Brook pump station was on the westside of the brook across from Chick fil-a on the south side. He said that everything was below ground, but that they were in a FEMA floodway, and to move components above the floodplain wouldn't work. He said they'd worked with Eversource and submitted a survey of the easement and proposed location and two drawings of the new building.

He said the new location would provide dependable pumping for the businesses on Connecticut Avenue and be out of the floodways and flood zones. He said that they couldn't get to the station if it overflowed so it was in everyone's best interest to relocate. He said that with all of the issues with the Eversource location, including high tension wires, they didn't have a lot of options. He said the footprint met their requirements and those of Eversource. He said because of the hardship of the high tension power lines, they'd proposed a flat roof on the building.

Mr. Levey closed this portion of the public hearing.

BOARD ACTION ON: A—D

21-0121-01 CITY OF NORWALK – VARIANCE OF ILLUMINATION RESTRICTION FOR ATHLETIC FIELD LIGHTING PROPERTY LOCATED AT 288 HIGHLAND AVE.

Mr. Conroy asked if they'd received notices that the people across the street were made aware via mail. Ms. Maldonado said she had five returned green cards, she noted it had been advertised in The Hour five times. Mr. Lyon pointed out that posting in the paper was not as effective as it once was, he said they needed to find a way to make sure people knew about things like this.

Mr. Conroy said he was inclined to go on with the lighting, Mr. Levey said that he was concerned about the location and cutoff of the lights, he said there was still light spillage to the rear yards of adjacent properties. He said with no response, he was inclined to believe they should approve it. Mr. Brasher said he was inclined to go along, and he wanted more opportunities for girls' sports.

Mr. Levey said that the lights should go off at 9pm and they should build that restriction into the approval.

**** MR. BRASHER MOVED TO APPROVE 21-0121-01 CITY OF NORWALK – VARIANCE OF ILLUMINATION RESTRICTION FOR ATHLETIC FIELD LIGHTING PROPERTY LOCATED AT 288 HIGHLAND AVE. AND PUT THE SAME RESTRICTIONS ON IT THAT THEY HAD ON THE FIELD AT NATHAN HALE, 9PM SHUTOFF**

**** MR. LEVEY SECONDED.**

**** THE MOTION PASSED UNANIMOUSLY.**

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.

This item was carried over to next month.

Mr. Conroy said he didn't like the presentation and didn't think it was a hardship. Mr. Levey agreed noting that the use of that land for paddle tennis courts was inappropriate and would require more parking. He said you could get one court on the property without getting a variance. Mr. Conroy said they should look at the aerial on Google Earth, he said they should work on it more.

21-0218-02 THERESA & BUELL DUNCAN – VARIANCE FOR HEIGHT: PEAK 39' REQUIRED 40' PROPOSED AND MIDPOINT 31' REQUIRED 31.8'

PROPOSED IN B RESIDENCE ZONE. PROPERTY LOCATED AT 6 GOLDEN CT

Mr. Levey said they were knowledgeable of the cost and size that would push them over the requirement to have to raise the house. Mr. Basher said he was generally supportive, but the aesthetics around screening the HVAC systems might demand further approval.

**** MR. LEVEY MOVED TO APPROVE APPLICATION 21-0218-02 THERESA & BUELL DUNCAN – VARIANCE FOR HEIGHT: PEAK 39’ REQUIRED 40’ PROPOSED AND MIDPOINT 31’ REQUIRED 31.8’ PROPOSED IN B RESIDENCE ZONE. PROPERTY LOCATED AT 6 GOLDEN CT WITH THE PROVISION THAT THEY WORK OUT A SOLUTION TO THE SCREENING OF THE HVAC UNIT**

**** MR. BRASHER SECONDED.**

**** THE MOTION PASSED UNANIMOUSLY.**

21-0218-03 EVERSOURCE/CITY OF NORWALK WPCA – VARIANCE OF THE REQUIRED TWO STORY MINIMUM FOR REPLACEMENT PUMP STATION IN BUSINESS #1 ZONE. PROPERTY LOCATED AT 473 CONNECTICUT AVE.

Mr. Conroy said that Keeler Brook flooded about 10 years ago and became an obvious problem, and he had no problem with where it moved. Mr. Levey concurred.

**** MR. CONROY MOVED TO ALLOW APPLICATION 21-0218-03 EVERSOURCE/CITY OF NORWALK WPCA – VARIANCE OF THE REQUIRED TWO STORY MINIMUM FOR REPLACEMENT PUMP STATION IN BUSINESS #1 ZONE. PROPERTY LOCATED AT 473 CONNECTICUT AVE.**

**** MR. LEVEY SECONDED.**

**** THE MOTION PASSED UNANIMOUSLY.**

ACTION ON HEARING MINUTES

• January 21, 2021

**** MR. CONROY MOVED TO APPROVE THE MINUTES OF JANUARY 21, 2021 AS SUBMITTED.**

**** MR. LYON SECONDED.**

**** THE MOTION PASSED UNANIMOUSLY**

ADJOURNMENT

**** MR. LEVEY MOVED TO ADJOURN.**
**** Mr. LYON SECONDED.**
**** THE MOTION PASSED UNANIMOUSLY.**

The meeting adjourned at 10 p.m.

Respectfully submitted,

L. Grassilli
Telesco Secretarial Services