

**CITY OF NORWALK
ZONING BOARD OF APPEALS
JANUARY 8, 2009/ approved Feb. 5, 2009**

I. CALL TO ORDER

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

II. ROLL CALL

PRESENT: Taylor Strubinger, Chair; Gordon Tully, Secretary; Dawn DelGreco; Tony Lopez; Joseph Santo; John Hamlin

STAFF: Aline Rochefort - Zoning Inspector; Vladimir Mariano – Deputy Zoning Inspector

OTHERS: Attorney Liz Suchy; Mr. Tate; Atty. Frank Zullo; Ray Sullivan; Tad Diesel; Edward J. Musante, Jr.; Amy Kallestaen; Eric Kallesten; Atty. Ronald Gold

III. PUBLIC HEARINGS

A. 09-0108-01—Fairfield Norwalk, LP—Variance to allow a second ground sign on the premise. Property located at 595 Westport Avenue in Business No. 2 Zone.

Mr. Strubinger opened the public hearing.

Mr. Tully read the application and staff report regarding the property, indicating that it contained two separate uses, as well as two separate and distinct entrances.

Atty. Suchy, representing the applicant, discussed sign regulations, stating that one ground sign per lot was allowed in the regulations and that the applicant was proposing a second ground sign. She showed a photograph of the existing Pepperidge Farm sign, emphasizing that no change was proposed for it. She presented a rendering of the proposed sign for the property's residential use, indicating that it was part of a stonewall design and was less than six feet in height.

Mr. Lopez asked which was the sign faced. Atty. Suchy said it faced southeast.

Mr. Strubinger asked about re-location of the current ground sign. Atty. Suchy clarified that it was staying in the same place. She discussed the applicant's hardship as far as the property's large frontage and two separate uses. She explained that the addition of a ground sign for the residential use would reduce

confusion amongst drivers turning onto Hill's Lane. She added that zoning regulations could not have anticipated this property's circumstance.

Mr. Tully asked about the loop road. Mr. Tate, a landscape architect, discussed the entry and showed a photo of the loop road.

Mr. Santo commented that he while understood the safety concerns behind the proposal for a second sign, he still wanted the applicant to consider how the sign could be made more visible to drivers approaching it from Norwalk. Atty. Suchy addressed his concerns, suggesting that the sign could be more angled to the west.

Atty. Suchy added that she had spoken to the president of the Terranova Condominium Association, who expressed support for the proposal.

Mr. Strubinger closed the public hearing.

B. 09-0108-02—STLJLLC & 100 Westport Ave., LLC—Variance to increase allowed sign square footage and maintain existing sign 1 where located “as is”. Variance to increase sign height for sign 2 & 3. Variance to allow increase in height of individual letters and for the ice cream cone symbol. Variance to allow a total of 4 signs on the premise. Property located at 100 Westport Avenue in Business No. 2 Zone.

Mr. Strubinger opened the public hearing.

Mr. Tully read the application and staff report.

Atty. Zullo, representing the applicant, gave background about the property, stating that it had had 30 additions in its history. He emphasized that Stew Leonard's was an icon to the City and that the proposal would actually diminish the non-conformity at the site. Atty. Zullo reiterated that the proposal was to bring the outdoor structures indoors and that the actual footprint of the building would only increase by 750 square feet.

Mr. Sullivan, an architect, explained that the intention was to clean up the appearance of the site, rather than to expand it.

Mr. Tully asked about the building's second story. Mr. Sullivan described the area as primarily an administrative and kitchen area.

Mr. Strubinger asked for clarification as far as the building's footprint. Atty. Zullo explained, reiterating that the proposal would reduce the non-conformity, as far as square footage was concerned. He presented photos of Stew Leonard's locations in Yonkers and Danbury, emphasizing that both stores were large than

the one proposed here. Atty. Zullo discussed the importance of the store's logo and the iconic nature of the store and its sign.

Atty. Zullo turned in the receipts and distributed copies of sign regulations to the Board. He discussed the gray areas of the regulations and began to address the site's use. Mr. Tully commented that the Board was not discussing use.

Mr. Hamlin asked if it were true that the walls would be closer to the road than previously. Atty. Zullo said that the walls would be 49 feet closer to the road. Mr. Hamlin said that the hardship was then related to the size of the building. A discussion followed concerning whether the logo was inextricably tied up with the size of the sign.

Mr. Tully asked the staff if Atty. Zullo's comments were correct. Ms. Rochefort stated that Atty. Zullo's rendition was accurate. There was a discussion of the definition of structure. Mr. Mariano stated that the Building Department had a definition of structure, but that Zoning did not.

Mr. Strubinger asked if the proposed signs were larger than those at the Yonkers and Danbury stores. Atty. Zullo said yes.

Atty. Zullo reiterated that he believed the regulations were vague, but that the applicant would be diminishing the non-conformity if a variance were deemed necessary.

Mr. Diesel, the Director of Business Development in Norwalk, stated his strong support of the proposal, emphasizing that the appearance of Stew Leonard's was of great value to the city.

Mr. Musante, President of the Chamber of Commerce, spoke in support of the proposal. He stated that Atty. Zullo had clearly explained the proposal's technical factors, but added that the proposal needed to be considered beyond that, referring to Mr. Diesel's poetic description of the importance of Stew Leonard's to Norwalk.

Mr. Tully commented that variances set precedents. He asked the Board to consider the implications that granting this variance might have on "big box stores" in the area. A discussion followed concerning the parameters of legal precedents. Ms. Rochefort emphasized that each case was looked at separately.

Mr. Santo cited Aitoro as a good example of trademarks and logos with regard to signage.

Atty. Zullo stated that he disagreed with Mr. Tully's opinion of precedent in this case. Mr. Tully pointed out that the Board was responsible for the enforcement

of sign ordinances.

Atty. Zullo reiterated the applicant's hardship with regard to the vagueness of the regulations and the iconic look of the store.

Mr. Strubinger closed the public hearing.

C. 09-0108-03 Eric Kallestén & Amy Kallestén—Variance to allow parking within the zoning front setback. Property located at 5 Peter St. in B. Residence Zone.

Mr. Strubinger opened the public hearing.

Mr. Tully described the proposal.

Ms. Kallestén presented the green cards and explained that she was requesting a variance of 20 feet. She added that she and Mr. Kallestén wanted to keep the driveway as it was and also to remove the counter-top and refrigerator in the second kitchen. Ms. Rochefort clarified that on August 21, 2008, staff had found a second kitchen on the property.

Ms. Kallestén gave background concerning the property, explaining that when she and her husband purchased the property in 2004, it had a second kitchen, two driveways, two chimneys, and three front doors. She said that she had removed one driveway, one chimney and one front door. She said that her intent was to improve the façade and to comply with Zoning.

Mr. Strubinger asked about hand-drawn sketches submitted by the applicant. Ms. Kallestén explained that she wanted to keep one area of the house as it was, rather than switching it to a garage. Ms. Rochefort clarified that there was a violation for parking in the front setback. Mr. Santos asked staff to confirm that there was a violation because cars in the driveway were in the setback, under the current arrangement.

Mr. Mariano explained that because the driveway did not lead to a parking space, it was therefore not a legal parking spot. He added that the issue was not actually with where the owners were parking, but rather with the fact that the current arrangement did not provide a legal parking spot.

Mr. Santos asked Ms. Kallestén to confirm that the garage could be accessed from the house. She said yes. He asked her to reiterate the hardship of the case. Ms. Kallestén said that there was an existing, non-conforming use on the property.

Mr. Lopez asked the staff to confirm that the parameters as far as the variance only applied to each case alone. Ms. Rochefort confirmed this, stating that the

Board would not be opening the door for other variances.

Mr. Strubinger closed the public hearing.

D. 09-0108-04—Peter E. Ozols & Son, Inc.—Appeal of Zoning Officer's decision regarding use of property as a contractors' storage yard. Property located at 168 Connecticut Avenue Business No. 2 Zone.

Mr. Strubinger opened the public hearing.

Mr. Tully described the details of the application.

Atty. Gold turned in the return receipts and gave background concerning the case. He distributed packets of materials to the Board.

Mr. Tully asked why the Board was getting materials at this time. Ms. Rochefort stated that materials are to be received 10 days before a public hearing. After debating the idea of postponing the hearing, the Board decided to continue with the hearing.

Atty. Gold described the site and discussed the definitions of key terms such as "contractors' storage yard," warehouse," and "goods."

Mr. Santo asked Atty. Gold to clarify what exactly he wanted to see on the property. Atty. Gold said he wanted to see it used as a warehouse, arguing that zoning should be flexible enough to allow for storage of vehicles on the property. He added that zoning was meant to encourage business use in this area and that values of properties there were being depreciated by an inability for anyone to use the property.

Mr. Tully asked about trucks parked in front of the property. Atty. Gold said that letting the entire operation take place inside the property would actually improve the area. Ms. Rochefort reiterated that because it is a warehouse, vehicles could not be parked inside. Atty. Gold discussed the definition of goods, as stored in a warehouse.

There was a discussion of the timely filing of appeals, particularly with regard to Atty. Gold's previous appearance in front of the Board with regard to a 15-day limit.

Ms. Rochefort left the meeting to locate a written copy of the specific regulation regarding appeals.

There was a discussion of what the building could be used for and what constituted goods as far as warehouse use.

Ms. Rochefort returned to the meeting and read Zoning regulation 116-9C regarding the filing of an appeal. She confirmed that as of April 15, 1982, appeals were required to be filed within 15 days.

Mr. Tully asked staff to clarify the issue of the coming and going of vehicles, as opposed to the mere storage of vehicles. Mr. Mariano reiterated the definitions of both a storage facility and a warehouse.

Atty. Gold said that regulations could not maintain a period of time for these appeals. He discussed case law with regard to this point. He appealed to the Board to allow a flexibility of Zoning to work with the site to get a similar use.

Mr. Strubinger closed the public hearing.

IV. BOARD ACTION ON ITEM A THRU D

D) 09-0108-04—Peter E. Ozols & Son, Inc.

The Board discussed the definition of storage with regard to whether or not it excluded contractors' equipment.

**** MR. STRUBINGER MADE A MOTION TO DENY THE APPEAL BECAUSE A CONTRACTORS' YARD WAS NOT AN APPROPRIATE USE IN THE BUSINESS # 2 ZONE AND THE PROPERTY WAS APPROVED FOR GOODS ONLY AND NOT FOR CONTRACTORS' VEHICLES.**

**** MR. LOPEZ SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

C) 09-0108-03—Eric Kallesten & Amy Kallesten

The Board discussed the item and agreed upon conditions of approval.

**** MR. STRUBINGER MADE A MOTION TO GRANT THE VARIANCE FOR 20 FEET FROM THE FRONT SETBACK LINE WITH THE FOLLOWING CONDITIONS:**

- 1. THAT THE SECOND DRIVEWAY ON THE WEST SIDE OF THE PROPERTY BE ELIMINATED; AND**
- 2. THAT A PROPER LAWN BE INSTALLED IN PLACE OF THE REMOVED DRIVEWAY BY APRIL 15, 2009; AND**
- 3. THAT THE SECOND KITCHEN AREA BE ELIMINATED, BY REMOVING THE REFRIGERATOR, SINK, AND KITCHEN COUNTER; AND**
- 4. THAT ALL PERMITS BE SECURED FROM ZONING AND FROM THE BUILDING DEPARTMENT.**

**** MS. DELGRECO SECONDED.**
**** MOTION PASSED UNANIMOUSLY.**

B) 09-0108-02—STLJLLC & 100 Westport Ave., LLC

**** MR. STRUBINGER MADE A MOTION TO APPROVE THE VARIANCE, BECAUSE THE APPLICANT HAD SHOWN THAT THE NON-CONFORMITY HAD BEEN REDUCED.**

**** MR. TULLY SECONDED.**
**** MOTION PASSED UNANIMOUSLY.**

A) 09-0108-01—Fairfield Norwalk, LP

**** MR. STRUBINGER MADE A MOTION TO APPROVE THE VARIANCE, WITH THE CONDITION THAT STAFF BE CONSULTED ON THE ANGLE OF THE SIGN WITH REGARD TO TRAFFIC APPROACHING THE PROPERTY FROM THE DIRECTION OF NORWALK.**

**** MR. LOPEZ SECONDED.**
**** MOTION PASSED UNANIMOUSLY.**

V. ACTION ON HEARING MINUTES DECEMBER 4, 2009

**** MR. STRUBINGER MADE A MOTION TO APPROVE THE MINUTES.**
**** MR. TULLY SECONDED.**
**** MS. DELGRECO ABSTAINED.**
**** MOTION CARRIED, 5-1.**

VI. ADJOURNMENT

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

The meeting was adjourned at 10:42 pm.

Respectfully submitted by Charlene Smith.