

**TOWN OF CHATHAM
JANUARY 28, 2010**

**ZONING BOARD OF APPEALS
FINAL COPY**

MEMBERS PRESENT:

Kary Jablonka
Robert Leary
JP Henkel
Mitchell Khosrova
David Everett, Chairman
Jeff Lick
Adrian Ooms

MEMBERS ABSENT:

None

Public Present:

Fran Heany Mike Behrens
Abby Behrens Ryan Behrens
Michael J. Behrens Oliver Grannis
Marc Jackson Kristen Wogen
Anita Cartin Warner Collins
Seth Lachterman G.(?) Reznikoff
Howard Reznikoff Robin Blass
Chester L. Blass Liza Corsillo
Phoebe Lasky Jonathon Tenace
Patricia Tenace Pam Katz
Barbara Nagler Joan Bloomberg
Bill Behrens Nathan Behrens
Courtney McDonnell Megan Kane
Judith C. Luhmann
Several others

The January 28, 2010, Zoning Board of Appeals meeting was called to order by Chairman David Everett at 7:00PM. The Pledge of Allegiance was recited. Mitchell Khosrova moved and Bob Leary seconded that the minutes from the previous meeting be accepted. This carried.

PS/21- REQUEST FOR A MODIFICATION TO THEIR SPECIAL USE PERMIT WHICH WOULD ALLOW THE TENT TO BECOME A PERMANENT PART OF THE FACILITY PUBLIC HEARING

The Public Hearing was opened at 7:01PM. Chairman Everett announced that the procedure to follow would be: an opening statement by the applicant, Board questions and comments, open to the public for comments. During this phase, those speaking are to identify who they are and where they live. Respect for everyone's opinion was requested, and all comments are to be directed to the Board. Chairman Everett read a letter from Code Enforcement Officer Walt Simonsmeier indicating that no complaints were received by his office during 2009. A letter from the County Planning Board was also read, which suggested approval of this

unique project. 126 pieces of correspondence from the public indicating support of the request and 8 indicating disapproval of the project have been received and are available under FOIL for the public to see.

Scott Longstreet, the attorney for the applicant, reviewed that the Special Use Permit was approved in 2005 for both the tent and the permanent facility with limitations in place. The past 4 years the economy has been grim, all grants have dried up and the \$11million plus that is needed for the permanent building is not available. If the ZBA does not approve the tent, PS/21 will be gone. It has been demonstrated that noise is not a problem, and there are no new impacts inherent with this request, nor will any of the impacts change, despite the fact that the sound will not be enclosed in a building. This is a first class performing arts haven which satisfies all the criteria placed. Should this not be approved there could be far greater impacts from this 107-acre parcel, which could become a 20-lot subdivision. Mitchell Khosrova wondered about the dimensions of the tent and the durability of it. Mr. Longstreet stated that the frame will last a lifetime, but a new skin may be needed. The configuration would remain the same. The tent seats 300. Bob Leary wondered how many events were held in 2009. Between 45-50 events were held. There was a question as to whether the goal was to hold more events in the future. No, but the goal is to have the best possible season. There would not be performances at the tent and the permanent structure at the same time, once the building is in place. JP Henkel wondered about plans for replacing the skin of the tent. So far this hasn't been needed, and they expect it to last quite awhile. Renting out the facility to third parties for ancillary use was reviewed. It was pointed out that all restrictions must be followed for third party users. Mr. Longstreet reiterated that all that is being asked is to allow the use of the tent to continue.

The Public comment portion began.

Larry Salzman said that he joined PS/21 and has attended many events. The only noise that is disturbing is the trains. This is a wonderful addition to the area appreciated by the hundreds to thousands who come out for all the different programs. PS/21 is an asset both culturally and economically to the area.

Colleen Safford stated that she supports the arts but does not support this project. She said that complaints were made about the noise this past year to the sheriff. She questions the lack of negligible impact. The neighbors have voiced complaints for 5 years. This is intrusive; it is noise. This past season featured 26 back to back performances. She questioned the comment that PS/21 provides a positive impact for Chatham. She spoke with 7 businesses in the Town and 7 out of 7 claims they have not been impacted by PS/21's presence. No fund raising has been planned, and they are now leaning on the economic downturn as the reason for their lack of raising funds. There has not been a lot of local support. Where there once were limits, now there are none. (This was later refuted.) There may be up to 4 evening events a week during the season plus 40 matinee performances. There are no restrictions on non-amplified programs only.) The neighbors have known since 2008 that this would happen. Now all protections for the neighbors have been stripped away. PS/21 negatively impacts their lives. This is an inappropriate space for this facility. Chairman Everett told the audience that if there was a problem, the Town has to be notified so that the random sound testing, which is part of the agreement, can be initiated. The restrictions placed on PS/21 for noise is more restrictive than the Town standard.

Terry Lasky stated that there has been no relief from the noise. The promise was to allow this for 5 years, and after 5 years the tent would be finished. The ZBA must enforce its own ruling.

Seth Lachterman, who is part of the Walking the Dog Theater, uses the PS/21 space, and it has helped both PS/21 and the theater. He knows that the community has been impacted positively, as he personally took many people to the restaurants in town. This has been an economic draw. People from other than Chatham use the facility. His biggest gripe is the sound projection---you can only hear if you are in the front of the tent.

Mitchell Khosrova asked Mr. Lasky to explain the impacts of PS/21 to him. Mr. Lasky stated that his wife is very sensitive to the sound frequencies which are heard constantly during a performance. Mrs. Lasky

added that when she is on her porch reading or listening to the radio the noise is continually coming in and out to the degree that she can't listen to the radio or focus on the book. Sometimes she has to close up the house and turn on the air conditioning because of the constant thrumming sound. She added that she loves culture, and that an enclosed building would be perfect for acoustics. She wants things to be as promised, and that the plan that was improved be followed. If the building hasn't materialized, that is too bad.

Lee Smith said that he lives in Old Chatham and can hear the Thruway all the time, but that he chooses not to hear it. He supports this endeavor.

Pamela Katz said that this has been ongoing, and the neighbors are continuously losing. She already knows that a modification for acoustics will be coming next.

John Trevellyan said that there has been no negative impact on his life. Some deal with it. He is not surprised that the neighbors are frustrated. He suggested that a way to mitigate this might be to attend the performances to help balance things for them.

Ryan Behrens said that he supports the arts, but can't afford to come to all these performances as he has other expenses.

Barbara Nagler added her support. She said that PS/21 has added to the community and is an asset.

Howard Reznikoff feels it's a terrific place and that as a neighbor it is not a big problem.

Mike Behrens said that sound projects differently. It comes in and out, like a bad radio station, which is not pleasant, particularly late in the evening. He'd rather hear the natural sounds. A train going through lasts one to two minutes, while with the concerts they last 3-4 hours a day. The tent is on top of the hill and the sound comes down into the valley. He expects the Board to live up to the agreement. He supports the 5 year window that was granted.

John Tenace lives on White Mills Rd. and talked about the 5 year plan. PS/21 hasn't done what it has promised. He hears the sound occasionally. He stated that as president of the CHS student council, the school will not partner with PS/21.

Oliver Grannis said that he is from Germany and impressed with the cultural availability found here. He lives in the middle of the Town. He can hear the noises from athletic events, which is part of the life here. People in the village have an awareness of sounds and irritations of life that this group living around PS/21 doesn't have. The positive aspects are unique.

Suzanne Trevellyan thinks that the building is a great idea, and that she supports the idea to hang on a little longer. Someone from Kinderhook spoke to affordability. Movies on Tuesday nights are free. Other performances are open to all levels and world class artists come here. It would be a shame to lose it and not hang on.

Marc Jackson lives on High Bridge Rd. He loves this area. The reason they are called neighbors is because they are the physical neighbors of the facility. Many speaking in support are not neighbors. If you're not at the source, it's not pleasant.

Patricia Lasky said that PS/21 is operating on false premises. They have options. They can operate elsewhere. They can find a facility. It's important that they stand by their promise. She said she has been coming to these hearings for five years and is begging the Board to hear her voice. She does not want to be disturbed any longer. This is way too much to bear. If they are so creative, let them find an enclosed venue.

Abby Behrens said that she loves the arts. She gets up at 5AM, and she takes measures to save the environment, so is not happy when she has to turn on the air conditioning because of the constant drone. People who come to enjoy PS/21 make a day or two of it, and it's not constant. The neighbors can't remove the drone, and there is no control of it. She's not in favor of shutting PS/21 down, but feels it should be moved elsewhere.

Robin Blass stated that she is not a part of PS/21 but she lives across the road from it. She doesn't hear it, and the traffic is not any more of an issue than when the cars speed out of the village on their way to work during rush hour.

Bill Behrens said that he could hear it from his pool. But, a deal is a deal, so the building needs to be built, as that would baffle the sound.

Colleen Safford added that all they are asking for is that they stick to their word. They've asked for a fund raising plan. She doesn't understand why the neighbors are being asked to burden the brunt of this. The applicant hasn't done anything to help themselves. There has been no good faith. Now they need to stand by their word. The neighbors are being strung along with nothing happening. The Zoning Board must protect the neighbors.

Brian Behrens wondered in which direction the tent faces. It faces north.

Mitchell Khosrova said that he has always been a proponent of the tent, and that the Board has always been consistent about concerns. He asked Atty. Longstreet to address the issue of fundraising. Mr. Longstreet stated that this was included in the letter sent to the Board. 11 million dollars is needed. Professionals would have to be hired, but first there is a need to know that there is local support. Grants and governmental support has dried up. Many individuals have been spoken to, and the time is not right for this. They had hoped that this would get better, but things are getting worse. It's not right to ask for money during these times.

Terry Lasky said that they are focusing on the tent being there rather than a main building. If the tent ends, perhaps a business plan is needed. How can it be justified that the tent run even another season?

Scott Longstreet reminded everyone that in the original application the tent was never supposed to be temporary, but PS/21 was asked by the Board to limit the tent before the building, which was agreed upon.

Mitchell Khosrova stated that the study for the decibel level was for the 5

year period. It has been disruptive. In his opinion, they are starting fresh by asking for a permanent tent. People are being bothered and it is important to weigh the community benefits with personal inconveniences. The question was posed as to whether the ultimate goal is still to have a building. It is. Mr. Longstreet doesn't believe that this so-called intrusion is any greater than before. It's the same people who objected before this even started who are here. Many neighbors aren't bothered at all. Mr. Lasky disagreed. He said that the neighbors have not bothered to come in. Colleen Safford said that no good-faith is being shown at all in saying that the tent will stay. This is a bad execution of a dream. Those who live north of the tent are the ones hearing the noise.

A comment was made wondering why the tent couldn't be spun around so that the sound is projected towards the village. The Board needn't presume there is distraction. Anyone can come and listen. Why was the tent situated the way it was? This was an engineer's decision aiming for the least populated area.

JP Henkel said that this is not insignificant, and would be bothersome to him. People perceive differently and the decibel level may not be the only problem. Scott Longstreet said that if this noise is not of any greater impact than other uses for this property, he doesn't understand what the problem is. It's important to look at the long term benefit to the community. Mr. Henkel added that it is the right of the property owner to enjoy their property. Mr. Longstreet added that there is a limit of 50 decibels at the property line. No one else has to deal with these low limits.

Patricia Lasky stated that people bought houses in the country for a reason. PS/21 is operating under a false premise. They can have a tent, just elsewhere. The high school auditorium is available in the summer. If this is a dream, it should be researched further. The agreement of 5 years needs to be enforced.

Scott Longstreet stated that the benefit to all must be considered. Mr. Lasky said that the neighbors have gone the extra yard every single time. PS/21 doesn't.

Judith Luhmann lives on White Mills Rd, and although she can hear the tent, she's not as affected by it. She has been to the tent and feels it's a wonderful thing because it gets the arts here. You have to be a fan of this because the seats are uncomfortable, and it's often cold, but it is worth it. She wondered if there was a sound level restriction for the town, and if the records of the previous meetings are available.

The tent was to be temporary. Neighbors haven't complained because they are trying to be good neighbors. Now it's not going to end. Maybe more stringent levels for decibels are needed.

Judy Grunberg said that the 5 year agreement was a compromise. Life doesn't go in straight lines, and she never realized the impact this would make. People love the tent because of the environment, arts and community working together. Once the building is complete, the tent would be used for some of the programs such as the movies and swing dances.

Mr. Lasky commented that now the desire is to have a tent in perpetuity. The community must be honored and the commitment kept.

Mitchell Khosrova asked Scott if the orientation of the tent could be checked. We are trying to figure out a way to keep the tent without intruding. JP Henkel wondered about any other possible mitigations, such as a sound barrier.

Chairman Everett said that the Public Hearing would be kept open. Any new information should be submitted two weeks prior to the next meeting.

Mr. Lasky wondered if any relief could be given for the upcoming year. Mr. Everett said that only the courts could do that.

Marc Jackson asked if different engineers could be used. Mr. Everett stated that Paul McCreary from Morris Associates would be reviewing this and anyone else is welcome to hire an engineer to submit information to the Board. Mr. Leary said that we were very black and white with the

sound limitations from the get go. Random testing should be continued and a summary report of everything done over the years should be made.

Mr. Lasky said that no one cares about the annoyance to the neighbors. This was a promise. You are going back on your word. Atty. Longstreet said that this was not a promise. It was a condition of the agreement to mitigate a potential impact, which has been done adequately. The applicant is free to return for changes at any time. Chairman Everett emphasized that no promises were made. The special use permit was approved with conditions. The applicant has a right to ask for changes by making an application to the Zoning Board. Mitchell Khosrova added that no disingenuous actions have been made. Lacking sufficient fund raising is not an adequate answer. However, it may be in the applicant's best interest to consider responding to this query. Mr. Longstreet again said that potential donors were approached and the decision was made that this was not the time. Why isn't this adequate? Mr. Khosrova responded that trust is the issue. In order to move forward, this is a missing piece.

The Board reviewed what information will be submitted: the engineers will be looking at a different orientation for the tent. Ms. Safford will provide a log of complaints made during 2009. Any and all other information will be welcome.

The meeting was adjourned at 9:18PM.

David Everett, Chairman

Respectfully submitted,

Marilyn Cohen, clerk