

**TOWN OF CHATHAM
JULY 25, 2013**

**ZONING BOARD OF APPEALS
FINAL COPY**

Members Present:

Mitchell Khosrova, Dep. Chair.
Adrian Ooms
Jeff Lick
JP Henkel
Robert Leary
Kary Jablonka
Walt Simonsmeier, ZEO
Paul McCreary, Town Engineer
Tal Rappleyea, Town Attorney

Members Absent:

David Everett

Public Present:

Brandee Nelson Pat Prendergast
Victor Borghi Joan Borghi
Deborah Pierce

Deputy Chairman Mitchell Khosrova called the July 25, 2013, Zoning Board of Appeals meeting to order at 7:02PM. The Pledge of Allegiance was recited. Proposed changes to the June minutes were submitted by Brandee Nelson, who is representing PS/21. The changes were reviewed. JP Henkel moved and Jeff Lick moved to accept the modified June minutes. This carried.

Aaron Gaylord- Requesting an Area Variance for a side-yard setback for a septic system that is within 10 feet of the property line located at 2628 County Route 9. PUBLIC HEARING

Engineer Pat Prendergast submitted a letter showing that he has permission to represent Aaron Gaylord and the new property owner, Jeff Saunders. This request is seeking permission to use the state requirement of 10' for this setback rather than the 50' the Town requires. This parcel is surrounded by DEC wetlands, which results in a very small building envelope. The septic requirement is that of a sand filter bed going into a gravel fill bed. Because of the gentle slope of the land, this will not interfere with other wells in the area. DEC has approved this location. Postal receipts were submitted. The closest house is located about 200' on the other side of the hill, and there will be no runoff from the sand filtering system to this home. As per Town Code 180-41, a 40' variance is being requested. Per some concerns as to whether this was a buildable lot, ZEO Walt Simonsmeier presented the 1982 and revised in 1987 subdivision map, which shows this as a buildable lot. This property is located in an RL-2 zone. No construction has begun yet, as the sale took place this past year.

The Public Hearing was opened at 7:45PM.

Deborah Pierce, who lives across the street from the property, claimed that she was told that this was not a buildable land when she purchased her property. She added that it had been surveyed several times. She wondered how this was changed, since it will interfere with the wetlands. Victor Borghi, another adjoining property holder, indicated that he was told the same thing-----there

could be no building on this lot. He wanted to buy it from an early land owner (Keith), but did not since he had been informed it couldn't be built on, and now that has changed. Mitchell Khosrova explained the process involved. This property, in order to be built upon, would require that the property owner seek a variance to permit this. With the new technological changes and the kinds of septic systems available, the applicant is now coming to the ZBA to request an area variance which would permit a building on this property. Kary Jablonka wondered what the concern in. Mr. Borghi indicated that the back of the property is wet and swampy---originally it was a lake until the beavers came. What will the owner do when his home is flooded by the ground water? He has serious environmental concerns. Adrian Ooms stated that the Health Department and the DEC have approved a septic system, and we need to go with that information. It was also noted that on the 1987 subdivision map, the building envelope was located in the same place where building will be taking place.

The Public Hearing was closed at 7:40 PM. The five standards for accepting/rejecting a variance were reviewed: 1. Is this a substantial request? 40' is an 80% request, so it could be considered substantial, but the state requirement is met without the variance; 2. Will this cause a negative change to the community? No; 3. are there substantial negative effects to the environment? DEC looked at this, the Board understands the concern, but needs to have faith in the DEC and other professionals, so, no; 4. Is there an alternative for the applicant to achieve the same result? Even with a smaller house, it would be in the same place and the same kind of septic system would be required, and a variance would be required, so, no; and 5. Is this self-created? No.

Adrian Ooms moved and Robert Leary seconded that this 40' variance request be approved. This carried unanimously. Mr. Borghi was concerned that the DEC sits in their offices and they don't know the area and what could, and probably will happen. Atty. Rappleyea will submit the Notice of Action.

Continuation of Special Use Permit Modifications for the PS/21 Performance Arts Facility owned by Questaterra, LLC, located at 2980 State Route 66. INFORMATIONAL (cont.)

Brandee Nelson thanked the Board for considering the proposed changes to last month's meeting minutes. She stated that she wanted to be sure that they were accurate, as there have been issues in the past with the public. She is prepared to address some of the questions posed from last month's meeting. All of the below was substantiated with reports, maps and charts.

1. Water Supply source: the well that has already been dug provides 6 gal/min, resulting in 8600 gal/day. Currently, about 1200 gal/day are used, so no new wells will be needed. This well meets all requirements. The Health Department will be seeking information on chlorination and

filtration, which will be provided. In the new facility, permanent bathroom facilities will be added. There is no kitchen facility planned. The well is located about 300' from the building and it is deep. Shower facilities for the performers will also be put in.

2. Site lighting: This will be kept as minimal as possible, and it will match what is already there. Only one light pole with 3 downcast pole mounted lights will be added. There are currently 10 bollards being used from the tent---7 of these will be used to go to the new facility, so overall the amount of site lighting will be about the same as it is currently.
3. Visual Impacts and Comparison to the original building: Initially a height variance for the building was approved. Since this building will be lower than the Town requirement, this is no longer needed. Proposed height is 34'7". Most of the hedgerows have remained. The new facility is only 1.64 acres, while the approved original disturbance was 6.84 acres---a difference of about 5 acres. The lowest corner of the footprint is being used. There is a 90 degree rotation from the original proposal, and seating in the embankment is being planned. Removable chairs will be used, making this a multi-purpose space. Raked seating will hold 273 seats, stadium style. The fixed seating will not be straight to the stage. There was some discussion regarding this. Ms. Nelson showed some of the proposed building materials: galvanized metal, tung and groove wood and the washed stone exterior.
4. Sound Impacts: Brandee Nelson stated that at the time of the original approval, a lot of testing had been done. At that time, the Town had been working on a new sound law, which never was approved, however, PS/21 agreed to work within the limits of that proposal. Ms. Nelson reviewed what sound mitigations were done throughout this procedure to help alleviate the concerns brought up by the public. She does not feel that additional sound testing is needed. The noise will be focused downwards into the venue and baffling will be used to direct it down. The neighbors will say that they still will be able to hear this; however, the point of compliance is in what the Code says. Yes, there is some audibility, but they are still compliant. Sound testing bears this out. Standards have been met for the past 8 years. The Board responded that sound is the main complaint. This isn't about the science of the sound----it is in the constancy of the hum throughout the season----the nuisance aspect, which the Board tries to mitigate.

Our Town engineer, Paul McCreary feels that people who have issue with sound will continue to have issue with sound. NYS is showing that less than a 3dBA difference between ambient sound and additive sound has no impact. Science does give us the ability to analyze sound though, and DEC does have guidelines. Mr. McCreary feels that the fact that PS/21 differentiates between night and day

performances, and they are respecting a non-adopted sound ordinance. He suggests that PS/21 look at the sound corridors that he has shown and see if the sound levels fall within acceptable levels there. It was further suggested that they look at the sound at the source, and do some comparisons of source sounds at 105 dBA, 100, dBA, 95dBA. Source sound is often harder to monitor than property line sound. Mr. McCreary has some spreadsheets that he would be willing to share with Ms. Nelson. Ms. Nelson feels that she can have these calculations to the Board by next week, and then wonders if a Public Hearing can be set for the next meeting. After some discussion, it was determined that next month the new information will be discussed by the Board, and then a Public Hearing will be set for the ZBA's September meeting. It will also be able to then go to a Public Hearing for a Site Plan review in October to the Town Planning Board. The Board asked that the placement of the residences be on the sound map for next time, along with where testing took place. Mr. McCreary will provide an aerial map, too. Ms. Nelson indicated that Table 16 from the original provides this information. Our Board just wants to be sure that there is no dismissal of anyone's voice in regard to this project, or any of the ZBA projects.

The meeting was adjourned at 9:13pm.

Mitchell Khosrova, Deputy Chairman

Respectfully submitted,

Marilyn Cohen, Deputy clerk