

Members Present:

David Everett, Chairman
Mitchell Khosrova
JP Henkel
Robert Leary
Jeffrey Lick
Kary Jablonka

Public Present:

Brandee Nelson, Crawford & Associates
Evan Stoller, Architect
Donna Staron
Judy Grunburg
Scott Longstreet, Esq.
Reporter, Chatham Courier

Chairman Everett called the meeting to order at 7:00 pm. The Pledge of Allegiance was recited. Mitch Khosrova made a motion to approve the minutes of the December 18, 2013 meeting, David Everett seconded the motion, carried. Mitch Khosrova made a motion to approve the minutes of the January 23, 2014 minutes, Bob Leary seconded the motion, carried.

Chairman Everett asked that Board members who had concerns with additional hours of operation for PS21 at the last meeting, express their concerns.

Kary Jablonka stated that he had reservations at the last Board meeting in regard to the hours of operation. At the last meeting he said he voted that the hours of 11:00- 11:30 pm were ok but later after the meeting, decided that he was not comfortable with that time frame.

JP Henkel commented that he was never comfortable with the late hours because of the property being within earshot of homes with children. He does not feel that the Board is asking a lot in cutting back on the hours of operation.

Mitch Khosrova stated that this application is difficult and he has never lost sleep over any applications before the Zoning Board in the last 12 years that he has been a member. He stated that the applicant and their professionals have done a phenomenal job as well as town Attorney Tal Rappleyea and Town Engineer Paul McCreary in presenting information. He has learned a lot from the great engineers since the first application was presented before the Board. Mitch said that it is not about the noise and sound but rather lateness of the hours of operation. This community is use to early hours and he believes that mitigation can be done to satisfy everyone. Mitch brought a copy of the transcript of the December 2013 meeting where it states on page 96 to page 105 that everyone agreed to the hours of operation ending at 10:30 on the week days and the weekends. He stated that there was direct testimony that those late hours were opposed by several members of the public specifically by the lateness of the hours. He stated that he made a mistake in voting yes for the last application approval after he heard a Board member state that he couldn't have a conversation while sitting at a kitchen table of a neighbors' house. He stated he would be concerned if PS21 could not function without those late hours but they can but no real proof has yet been discussed before a ZBA meeting.

Bob Leary also stated that he also voted against the late hours of 11:00 pm- 11:30 pm right from the beginning as well as the extra nights extending the time an extra half hour. He commented that he would like to see PS 21 end at 10:00pm for the seven days and not five extra times extending another half hour.

Scott Longstreet, Esq. commented that PS21 has mitigated the sound volume drastically and the fact that a Board member could not carry on a conversation whether that was a regular event or whether that regularly happens or if it even happened he didn't know. He stated that the sound is not going to be above the ambient level at the property line. He referred to a letter he wrote to the Board regarding PS21's reasoning as to why they feel that reducing the hours is unacceptable and he also characterized Ms. Grunburg's acquiescence to changing the hours a form of "brow beating." He stated that lowering the hours is not a condition that PS21 can live with. If the Board insists on the reduced hours, he commented that PS21 would withdraw their application.

Dave Everett made a motion to go into executive session to meet with legal counsel at 7:15 pm, Mitch Khosrova seconded the motion, carried. Mitch Khosrova made a motion to come out of executive session at 7:38 pm, seconded by Bob Leary, motion carried.

Town attorney Tal Rappleyea commented that this is a matter of looking at the record and making sure that there is a rational basis for anything and everything. He recalled that at the close of the Public Hearing the hours of 10:00 and 10:30pm were agreed upon. We don't have much on record of the expansion of the times for the evening hours or additional morning hours. We need to establish information in the record and re-open the Public Hearing to gather more information with respect to the manner in which the time frame impacts the community if there are any impacts. This will give us the proper information to make an informed decision.

JP Henkel commented that he was ready to vote in December for 10:30 pm and since his background is in dealing with children, his concern is the need to find out if the neighbors children are having a problem sleeping while performances are going on. JP said he would like the project to go through and he appreciates everything that the engineers and PS21 have done but he still doesn't know what the sound will be like in the neighbors' homes at 11:00- 11:30 at night.

Engineer Brandee Nelson respectfully disagreed saying that PS 21 has agreed to limit the sound and has agreed to use electronic limiting devices. Mitch Khosrova stated that he was not sure whether the ambient levels at 12 midnight were a problem, that's why he can't agree on the late hours. Ms. Nelson stated that this is not something that is continuous, it is seasonal. She stated that there is a high degree of variability and she and PS21 are asking for flexibility and good faith that the findings are based on the science of noise transmission.

Chairman Everett asked the Board if they felt they needed to know the impact of noise from the neighbors at such a late hour. JP Henkel commented that he would like to reopen the Public Hearing because the last Public Hearing stated 10:30 as the latest hour agreed upon. Mr. Longstreet asked JP if he felt he could not vote now? JP stated he would like to hear from the public again.

Tal Rappleyea stated that at the close of the last Public Hearing it was agreed upon that the hours would be to end at 10:00pm on weekdays and 10:30pm on weekends. Because we stopped the review at that time we need to develop a record of a more historical usage of the hours. What impacts there may be and we need to review the average ambient level to see what the impact will be at 12 midnight as opposed to 12 noon. He stated that if it is the decision of the Board to make a condition to limit the time

frame then he suggested re-opening the Public Hearing. Dave Everett commented to Tal that since you are listing the time frame, we need to know what period of the evening tends to be more intrusive than at other times of the day. Mitch commented that he would like to have that documentation of the history of the last 2 years depending on what time functions occurred and when they started and ended that provided more noise than others. This would help the Board understand the need for PS21 to have the later hours. In relation to movies, they could go past the 10:30 hour, it's only the amplified sound he was concerned with. JP Henkel commented that the non-amplified sound could go later. Dave also asked that Engineer Paul McCreary also give information on the impacts of sound.

Brandee Nelson explained that PS21 did give impact levels from the original application and then 3 recent Public Hearings. There will still be the occasional late night but we have heard from the neighbors and there did not seem to be a repeat pattern of noise. Mr. Longstreet stated that PS21 has been back 3 times and in each instance this Board has determined that there is not enough of a negative public response to warrant not giving extended hours. There are a few neighbors that may be bothered by PS 21, whether they have an objective or subjective issue with PS21, he stated he has his own opinions on that. He also stated that the record shows that the Board has not been getting complaints from anyone else other than the few neighbors who came to the Hearings. He reiterated that PS21 has agreed to reduce the sound levels to 45dB (A) at the property line and in the building with a new design. He explained that he does not see the need to re-open the Public Hearing and finds it totally unjustifiable. Bob Leary commented that PS21 said years ago they were going to enclose the entire building eventually but PS21 has been going back and forth on this. Mitch again stated that the Board needs a better understanding and more knowledge to make an informed decision with more input from the public.

Ms. Nelson commented that since the Board is asking for more information about diminution of sound, she feels that they are being put through an exercise of being told what to do and maybe the neighbors have an ax to grind. Tal responded that if there is no evidence of the impacts, this being in the record will make the decision more defensible.

Mr. Longstreet commented that PS21 is not willing to go back to a Public Hearing. He asked if the Board could vote to approve without a Public Hearing if PS21 gave the Board all the other information that it was asking for. Tal responded yes but there should be a Public Hearing to have a proper basis to get more information and to gather public input. Mr. Longstreet commented that there is no information that will be relevant to having another Public Hearing. Mitch Khosrova commented that had PS21 not been asked to change their mind on the hours by counsel, they would have had approval. He stated that the applicants changed their mind after the Public Hearing and it is perfectly judicious to have another Public Hearing to get more input. It is standard practice to allow for public input before any final decisions are determined.

Ms. Nelson commented that she didn't think there would be any new people to hear from since the neighbors had opportunities to speak for 3 months, this was just a delay. JP Henkel disagreed and stated that this is not a delay, the Board is just trying to make sure they make a rational decision and they want more information.

Mr. Longstreet asked for a 5 minute break to have a discussion with his client at 8:10pm. The Board reconvened at 8:14pm.

Ms. Grunberg commented that yes she did agree to the early hours without the advice of her attorney but that PS21 would also like the flexibility and to trust their judgment. They would also like to go home at a decent hour.

JP Henkel stated that this Boards' decisions stand for a long time and they would like to have the opportunity to have more discussions with the engineers and the neighbors to determine the reasonable amount of flexibility in the hours of operation.

Mr. Longstreet commented that he did not understand why this Board was not thrilled that PS21 came before them and does not understand why there needs to be a debate over the hours, there are only performances from mid- May to mid- October. He also stated that after consulting with his client, if the Board insists on having another Public Hearing, PS21 will withdraw their application.

JP Henkel made a motion to re-open the Public Hearing, Bob Leary seconded the motion, carried. Chairman Everett polled the Board on whether to re-open the Public Hearing; Chairman Everett, yes; Mitch Khosrova, yes; JP Henkel, yes; Bob Leary, yes; Kary Jablonka, yes; Adrian Ooms, no, he does not think it's necessary; Jeffrey Lick; no. Motion passed to re-open the Public Hearing.

Mr. Longstreet stated that PS21 is withdrawing its application before the Board.

With no further business to discuss, Mitch Khosrova made a motion to adjourn the meeting at 8:24 pm, Kary Jablonka seconded the motion, motion carried.

David Everett, Chairman

Respectfully submitted,

Barbara A. Fischer, Clerk