

TOWN OF NEWINGTON  
ZONING BOARD OF APPEALS  
CONFERENCE ROOM L101  
131 CEDAR STREET  
NEWINGTON, CT. 06111  
JANUARY 8, 2015

I. ROLL CALL

Comm. Tanger: Chairman Califano

Chairman Califano: Present

Comm. Tanger: Comm. Plavcan

Chairman Califano: Absent

Comm. Tanger: Comm. Quattromani

Chairman Califano: Excused

Comm. Tanger: Comm. Richter

Comm. Richter: Present

Comm. Tanger: Comm. Ekstrom

Chairman Califano: Excused

Comm. Tanger: Comm. Igielski

Comm. Igielski: Present

Also present:

Michael D'Amato  
Zoning Enforcement Officer  
Assistant Town Planner

Chairman Califano: Before we start the meeting we will go over the rules and regulations of how the ZBA meetings are run. There are two parts to the meeting. The first is the public session where the petitioners will be called up to the rostrum and give your name and address, comment on your petition and also what their hardship is which is very important. After all of the petitions have been heard, we will call anyone from the public who would like to address the commission either "for" or "against" the petition. Then we will bring the public session to a close and open with a work session. The public is invited to stay but they cannot make any comments while we are having our work session. If you cannot stay for the decision by the commission, you can call the Building Department tomorrow and Mike will give you the decision that was made the previous night.

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Chairman Califano: John, do you want to read the first petition, please.

Comm. Richter: PETITION 00-15-01 Positively Pesach, LLC of 375 Willard Avenue is seeking a VARIANCE of 31 parking spaces from the required 180 of Newington Code Section 6.1.1C concerning parking requirements for medical and dental offices. 375 Willard Avenue is located on the westerly side of the road, approximately 900 ft. north of Alumni Road.

Chairman Califano: Will the petitioner or their representative please step forward and state your name and address.

Attorney Tammy Levine: I am Tammy Levine and I represent the petitioner, Positively Pesach, LLC. My client is ill and he is not here as well, so I am trying to, tonight, as you probably have all had a chance to read the application, I want to kind of reiterate what the hardship and why we are seeking a variance. As you may recall, these buildings were built 25 years ago - 375 - 365 and at that point each building had approximately 30,000 and they were zoned for office use and office use required five spaces per parking use so that would have been 150 per building approximately. Somehow over the last twenty five years, 100% of 375 has evolved into medical office buildings and each time a medical office user went to apply for a building permit or whatever, you know, building permits were issued. The tenants got their permits and spaces constructed. As you probably know, it is a successful office park there and the issue of parking never arose. It came to the forefront recently. My client was in the process of refinancing his mortgage and the surveyor preparing the survey for the refinance discovered that at 375 there are only 149 spaces. Under the current zoning regulations, if you multiply the 30,000 X 6 per thousand which is what is required for the medical offices based on gross area, that would obviously require 180. We could debate whether gross area really means the whole - the entire surfaces of the building because why would you count hallways and things in an office building, but rather than debate that, we are seeking a variance because the configuration of the building on this particular lot does not allow more parking; even if it did - I am not - we might be seeking a variance anyway because it would be so much impervious area that it would detract from what are actually very attractive buildings, so I think I have attached a survey to the application, I don't know if you have that, but I had a bigger one made so that you could see (puts up diagram) So, 375 is this building and as you will see we have a lot of frontage on Willard and so there is plenty of parking in front of it and there is plenty of parking on the side of the building. There is also plenty of parking in back. The problem is we could not - we can't build more parking of wetlands and you've got a retention basin and we've done as much as we can do. So there can't be any more impervious area.

We also wanted to make sure because, aside from showing the hardship we also have to demonstrate that granting this variance would not cause kind of a contradiction in your zoning plan or your zoning regulations, so what we did was, we looked at the parking lot during various times of the day to see if, in fact, there is ever a shortage of parking because obviously your concern is you want the patients or the clients of the offices to be able to park, and not have a problem when they go there. There is a unique feature to the building. Grove Hill, as you know, occupies the major chunk of the building. But, Versenius, also known as Biomedical is a dialysis place and those people on dialysis are not driving themselves for dialysis. So, they are being dropped off and picked up, or the person may be staying. But, in any event, there has never, in 25 years, been a shortage of parking, ever and the building is fully occupied

So, what we did was as you can see, is we took photographs and I can pass this along, the times of the photos are on that - these were this week and so people are back to work - we didn't do it during Christmas, when no one was there and there are always at least probably 25 parking spaces empty so that solves the 149. So now we are down to, probably at most 120-124 ever being used at one time, so this would not cause any problem for the patients and the clients of the offices. I can pass this along. What we did was, these pictures as you can see, these were taken like at five of twelve in the morning on Monday morning. These were taken at 3:00 in the afternoon on Monday, which notoriously is a busy day because people either get over what they are doing on the weekend or put off calling and then these were taken the following day and - the pictures speak for themselves, there are too many parking spaces. Now, that of course is ancillary to the hardship issue but, again, because of the physical attributes of this particular lot, if you look next door, going south, you've got a building where Rosenberg the orthodontist is, those buildings have much more area to construct parking so they've got plenty of parking there and of course you've got the VA, they've got tons. But this particular lot and the one next door, they don't have that same thing. Frankly, I think, probably when the buildings were built, nobody thought there would be a distinction - I'm not sure there was a distinction at that time between general office use and medical office use, whether there was a higher requirement for parking for medical because from the day that these buildings were constructed, there were medical users in those buildings which would mean that immediately they were out of compliance if the higher requirement were in the regulations back then and I'm just not sure - I tried to do some research. I don't think we ever came up with a clear answer. I did actually find a case to help you, where the ZBA was free to consider that in fact, the town had kind of assisted in this problem by issuing zoning permits and zoning certificates of compliance and so there was an estoppel argument made, well, now you know, you can turn around and say we are not compliant anymore when you have been issuing compliance certificates, so the ZBA did grant a variance in a similar situation but instead of parking the person had constructed something that was violate of the setback compliance and I can give you the site and history if you want, but we are here pleading hardship based on the physical attributes of the property - the fact that this will not be a problem for the patients and it will not be out of harmony with your zoning regulations because you have a really great use of this building and of the property and I think probably the residents of Newington are quite happy with how those buildings are situated. Any questions?

Comm. Richter: 6.1.1C when was that adopted?

ZBA Enforcement Officer Michael D'Amato: So part of what she touched on before, I tried to research, the actual dates that these were changed and you'll see, further up in Section A, that parts are effective in 2001 but there was no effective date for this and there were changes. It is my understanding that there were changes that reduced the number of total parking requirement so rather than needing 5 or 8, you need 4 and 7, I can certainly let you know, but I don't have that information. I am trying to pull old copies of the regulations and I just don't have them yet.

Comm. Richter: The point I was trying to get at is the building was built in 1986 and everything was approved at that point, zoning wise, and they knew at that point some medical...

Attorney Levine: ...well, I don't know.

Comm. Richter: Well, I live down the street, medical was going in there.

Attorney Levine: Okay.

Comm. Richter: Now, if this compliance of the parking was adopted well after 1986, then - even prior to 1986, whenever it was adopted, I mean they were still not compliant, however, if it was approved at that point, I think all the permits and everything was approved, then shame on us.

Chairman Califano: It was obviously the Town's...what would happen if we do not allow the variance.

Attorney Levine: That is a very good question, because what are we supposed to do, evict the tenants? I mean that's what, I don't know what else would happen, that is why I am saying we have a hardship. If we had enough property, I'd say, hey, let's just build the spaces, but we don't have the property.

Comm. Richter: I was there several times and I counted 148 parking spots and I witnessed for two hours or so and there were oodles of empty parking spaces and to turn around and try to cut the greenery and I know that's another part of zoning that we want to have greenery around buildings, we don't want to disrupt that, but you're damned if you do and damned if you don't situation, I don't think we can.

Attorney Levine I actually think this kind of a perfect situation for a variance if there was going to be a problem, if you are going to subject people to not being able to park there or not having a problem and they have a doctor's appointment you don't want to be driving around looking for a parking space, if it was going to be remapped or if there was some really overriding reason I would be here with egg on my face too because after all yes, the town granted these permits and nobody, I guess everybody knew there was plenty of parking so it just never became an issue and you are right, from day one, because these tenants, this is the amazing part, some of these tenants have been here since day one. The dialysis has been here, I think, since day one and Family Dental has been there since 1996, these are all long term and I think Grove Hill probably is in there for the long haul, so we don't want to take away from the attractiveness of the property which even if we could build some more parking spaces, we can't, there is no where to go, so I guess your question is a great one, I don't know what the answer is, we would literally have to evict our tenants which would lead to a lovely mess and for what, the law does not require you to do something completely crazy or wasteful and in this case I think that's what the result would be.

Comm. Richter: This only came about due to the surveyor's survey because you're re-mortgaging

Attorney Levine: Right. So the surveyor, I don't know if you have it, but when you are doing the survey and refinancing, they put this grid on the top which shows your various lot frontage, front area, sideyard, all your various zoning requirements and so the surveyor, whom you know well, Alan Bongiovanni emailed me the survey of course, I think it's right here, so this little space is a big survey, okay, and it says - parking 6 spaces per thousand - it was 180, 149 provided I said, oh, what, how did we not know that - so I made him go count it again and he went and counted, I think there is one - there is one space in an odd place that he might not have caught, but he counted it 3 times because first he had 150, so that is how we discovered this.

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Chairman Califano: So without this variance they won't get the mortgage?

Attorney Levine: We can't because we are technically - you know - obviously a search revealed a noncompliance Zoning compliance from this town for the mortgage refinancing, I can't not disclose that, of course, it is on the survey so we had to bring it to their attention and the bank said, we can't, you know, we have to have this fixed because you know, the bank ends up owning the property because it wants to be compliant.

Comm. Igielski: So if someone else wants to re-mortgage it in the future they could come up against this issue again.

Attorney Levine: It will come up again and/or if my client wants to sell the property naturally, or then if someone else wants...it's an issue that has to be addressed, so first I was taken aback by , my God, what happened, and then I realized we have to come and clear this up.

Comm. Richter: The only thing that would come up in it would be back to the 180 in compliance, if it is going to be a medical facility; it is nonmedical, I believe the parking is adequate.

Attorney Levine: It is one space short.

Comm. Richter: Only because of medical.

Chairman Califano: Can I take when it was originally planned, it probably was built for offices only and medical didn't come into it but then after it was built and they had the application for the medical, they are not going to tear this thing up. This is obviously what happened.

Comm. Igielski: Isn't the pediatrician's office in there, or is that part of Grove Hill.

Woman in audience: Grove Hill is a separate unit.

Attorney Levine: She's from the management company.

Comm. Igielski: They have been there for a while.

Attorney Levine: Yeah. Grove Hill has been there. I will leave the pictures here and leave the survey.

Comm. Igielski: You're part of the management company?

Attorney Levine: No, I am the attorney.

Comm. Igielski: You are the attorney and you are the management company (woman in audience), okay, thank you. I just wanted to get that straight. Thanks.

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Chairman Califano: Is there anyone who would like to speak in favor or against the petition? If not, can I have a motion to close the public hearing session.

Comm. Richter: I make a motion to close the public hearing.

Comm. Igielski: Second.

Chairman Califano: All in favor? Aye unanimously. Okay, we will open the work session.

ZBA Enforcement Officer Mr. D'Amato: That was a motion to close the public hearing.

Chairman Califano: Yes.

Now we are going into the Work Session John, do you want to read the petition, just part of it.

Comm. Richter: PETITION 00-15-01 Positively Peseach LLC of 375 Willard Avenue is seeing a Variance of 31 parking spaces from the required 180 of Newington Code Section 6.1.1C concerning parking requirements for medical and dental offices.

Chairman Califano: Okay, the petitioner is looking for a variance from the town that calls for - it should call for 180 parking spaces. It only has 149 and they are looking to re-mortgage the building and without this variance they will not be able to get their mortgage. Any comments from the commissioners?

Comm Richter: They are looking for a variance from 6 per thousand down to 4.9 per thousand and I feel that if we can put it on record that due to the circumstances of being built in 1986 everything was approved back in 1986 and it was medical back then initially it wasn't but medical came in there, I feel that we are obligated to give this approval of 4.9, that is my opinion, I have witnessed over there, I have been over there several times and looking and I don't see any need to add 30 more parking spaces for something that is a non-necessity, we have enough of that in the state now.

Chairman Califano: Another thing is I don't think they could get 30 spaces over there because there's wetlands and those other buildings and there is landscaping that the town wants now and parking instead of just having all black top. I think it would be in our best wishes here, I guess, here to grant the petition.

Comm. Richter: I think it would be advantageous for the town...

Comm. Tanger:...to grandfather it in.

Comm. Richter: ...well, not only grandfather it in, but I think it is advantageous to the Town to keep that facility as is, tax wise and not lose a building and we've got enough empty spaces throughout the country.

Comm. Tanger...if you want to set a precedent (inaudible tone and static interruption)

Chairman Califano: Right, there's other places that probably would get away with it, really, things are a little different now. Building Department comment, Mike?

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ZBA Administrator Michael D'Amato: I would just say that she is correct in that the applicants through all of the different tenant bases have gone through the procedures as required by the town because in discussing this because this had come up prior to discussing what their options were, I went through all the permits, I went through all the plans, I looked at the original approval back in '86 and it was approved as Spectrum Office Park. The sign still sits there, a pylon sign sitting at the entry, Spectrum Office Park. I tried to find minutes; I tried to see if there were conditions if parking ever came up, was it ever an issue, they have since it was built and right straight on through the last time, have gotten all their permits and then signed off by the Town and I think it is important to just to let you know that she is correct in letting you know in saying that the town has - they have never skirted any regulations.

Chairman Califano: I have a question, now most of the, the other buildings also have some medical people and I see some dental, considered medical, right?

ZBA Administrator, Michael D'Amato: Yeah.

Chairman Califano: Now, the other buildings there too, because of the sizes, does that mean there are more medical people in there, you know the building is completely medical, 375, that is why it requires 180 parking spaces?

ZBA Administrator, Michael D'Amato: I have not really looked too, too much at 365 and not that long ago they went through and split the property. It was developed, my understanding, together and they are now two separate parcels functioning independently of one another. From my, from what I can tell, the parking was split, you can see the property line goes right up the middle and it does not look like those are the original or did they take more parking and put it on 365, I can't say that, that is the case but yet, 365 has different use than 375.

Chairman Califano: So if this ever came up again and there was more medical people in that 365, the same problem might arise?

ZBA Administrator, Michael D'Amato: I would have to look at seeing what was there. My initial concern from my perspective is what is there is from a "use" perspective and you know, what problems may arise in the future obviously and the one thing that we talked about was that there is no use that is really allowed in that zone that would require more parking spaces than medical, so down the road, if Grove Hill leaves you have 20,000SF of possible open space and from the way that regulations stand now, there is no higher requirement for parking and she indicated that she has a certificate of zoning which is from me, because it came in day one or day two of me working in the Town of Newington to get a request for a certificate of zoning compliance; I went through the file, I see all the current tenants have been approved, there are no existing zoning violations, no issues with the dumpsters no issues with anything, signage all approved, she gets it and that is what started this because she got the certificate of zoning compliant and she looked at the survey and then there was an issue.

Comm. Igielski: How can you tell that there isn't sharing spaces, like the counts, is there any intermingling?

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Comm. Tanger: If you look at the front of the building, you can see, it is not shared because you would pull in to the particular driveway and you wouldn't go over it.

Comm. Richter I think it is a blueprint of 375, or 365 - 365 is the blueprint.

Chairman Califano: Can I have a motion?

Comm. Richter: I make a motion to allow the variance. Yay or Nay.

Chairman Califano: Second?

Comm. Tanger: Second.

Comm. Igielski: This kind of makes us aware that we have to keep on our toes about future building, etc.

Chairman Califano: There is a motion to allow the variance at 375 Willard Avenue. All in favor?

Unanimously respond Aye.

Chairman Califano: All opposed? None. The petition is granted.

Atty. Levine: Thank you very much.

Comm. Igielski: Is there any way that we can stay on top of this in the future?

Chairman Califano: As far as...?

Comm. Igielski: When building in Newington so that we do not run into this again.

ZBA Administrator, Michael D'Amato: We being the Town or We being the ZBA?

Comm. Igielski: The town.

ZBA Administrator, Michael D'Amato: Yeah, any time an application comes in to the office that I look at, one of the things we check for is if the proposed use is in compliance with the zone intended and that properties support the use that is being proposed, so if they were to come in and say we want to occupy 123 Main Street, I would look to see if it is compliant for the zone and then based on the square footage, which is gross square footage, the building is 10,000SF and may require 100 parking spaces, we need to make sure that they have at least one hundred and that is SOP in the office we look for that stuff, that is part of what we do, because we don't want to bring up that problem going forward and have issues, so it is definitely something that is on the radar and is checked. Depending on what is going on they get their approvals, yes, site inspections are made by various different entities and then at the end of the process we require an as built in which a surveyor goes out and he takes measurements, calculations and he provides one of these which is - this is where the building is, this is the parking that is required and he gives it a classification which that is an A2 survey, which is a very high level of accuracy and then stamps with his seal, saying I have license to do it and I did it and this is what I found and so we require the as built to be submitted to us before we issue CO.

So we don't let them occupy the building until we have something from a licensed person that says

Comm Tanger: Inaudible

Michael D'Amato

ZBA Administrator: It is a little...some of the original plans are quite dusty and falling apart. I looked through them as best as I could. I think there was confusion as to what the building was because it was approved as Spectrum Office Park and if you look at the regulations, Corporations Headquarters and Office Parks require 5 per thousand which puts them at 150 - if they go business professional office then you are 120, and I tried to find minutes or something that would say, oh, you know, based on this you have the right amount of parking or just something getting into the heads of the people who approved it, I couldn't. The person inspecting for zoning compliance was also the building inspector in the 80's, was one person, it was not two entities so you had half as many eyes on the job. That could have been part of it, prior to me being around, I don't know but I certainly covered as much ground as I could.

Comm. Igielski: Did it ever happen that they did approve for a certain type of building and then they started building and changed it.

ZBA Administrator Michael D'Amato They changed the physical - (everyone is talking and interrupting speaker) from a use perspective - once a building is approved and built, you do not get cart blanche to just come occupy whatever you want in there. Like I said, as tenants change you have to then come and make sure you have a permit for your sign, you've got to make sure that any alterations you are doing inside the building are improved via the building code and the building inspector, all that stuff. If we give you a permit to build, you know, a circle - and you change and want to go build a square, you have to come back in and say, can I build the square? We ultimately say yes or no, based on various things and that is what she was touching on when she was saying we can't really expand the parking, because you just can't just form a parking lot right to the property line, our regulations don't allow it and that was part of what her hardship was, so there are a lot of checks and balances that are in place. We do go through them and then we dealt with her extensively on this matter and tried to deal with it prior to her coming here and ultimately there was no real way to solve the problem.

Comm. Richter: The only way to solve the problem was to put it on record as we did in voting, that solved the problem.

Comm. Igielski: There was a problem on N.B. Avenue and this was many years ago on Harris Drive.

Chairman Califano: Right up to Church.

Comm. Igielski: Right.

Comm. Richter: And across the street here, we've had issues over there.

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V. MINUTES OF PREVIOUS MEETING October 2, 2014

Chairman Califano: May I have a motion to accept the minutes.

Comm. Richter: I make a motion to accept the minutes.

Comm. Igielski: Second.

Chairman Califano: All in favor? Aye unanimously.

VI. COMMUNICATIONS AND REPORTS

None.

VII. NEW BUSINESS

Does everybody have the roster with the correct information on that, telephone numbers, e-mail addresses. Please send an e-mail to Mike. (everyone talking at once)

Chairman Califano: I don't know if Paul Plavcan resigned or not, and if they resign they have to send in a letter.

Comm. Igielski: I don't think he resigned; I think it is his work schedule.

ZBA Administrator: If you happen to see him, have him get in touch with us because we tried to send the notice - the last one went to Center Court but it kept coming back, so I do not have a good address for him.

Adrienne, who works in the office, we used what she had and it kept coming back.

And Neal Forte's resignation was effective yesterday. He was under the impression that he resigned a year ago because I was working with him on an application that he had and he said he was on the ZBA but not anymore. He was on the ZBA as far as I was concerned, so he said, no, I resigned, so he sent a written notification yesterday and effective yesterday, so now they can start the process of getting his position filled and we have to make sure that we have these vacancies filled. Audra sent me an email yesterday afternoon and she did let me know she would not be able to attend.

IX. ADJOURNMENT

Chairman Califano: Motion to adjourn?

Comm. Richter: I make a motion to adjourn.

Comm. Igielski: Second.

Chairman Califano: All in favor? Aye unanimously. Thank you. The meeting adjourned at 8:32PM.

  
Respectfully submitted,  
Sophie Glenn-Recording Secretary