

29 January 2014

Jose Giner, Town Planner
Laura Magaraci, Zoning Enforcement Officer
Branford Planning and Zoning
1019 Main Street
Branford, CT 06405

RE: 128-132 Thimble Island Road

Dear Mr. Giner and Ms. Magaraci:

Thank you for meeting with the delegates from the Stony Creek Association on January 21, 2014 regarding the properties at 128-132 Thimble Island Road. As we briefly explained to you, we met with you at the request of the Stony Creek Association Executive Board for the specific purpose of inquiring as to what, if any, applications may have been submitted for the 128-132 Thimble Island Road complex.

At this meeting, you explained that, to date, a zoning permit has been issued for 132 Thimble Island Road (formerly Black Eyed Susans) for renovations to the existing structure, continuing its use as a one bedroom dwelling unit. Relative to 128 Thimble Island Road (the Puppet House), you explained that, although you have had a pre-application review meeting with the current owners, Legacy Theater Inc., no formal application has yet been submitted.

In reviewing the file material for 128 Thimble Island Road, you shared a preliminary letter of intent from Legacy Theater, Inc. summarizing the proposed use of the property. The new owner's letter states that they propose to develop the property as a year-round theater/performing arts center with activities including theatrical performances six (6) nights a week (excluding Mondays) for six (6) week cycles, offering six (6) productions annually; that is, 36 full weeks of full production operations. Their letter also states that in addition to these full productions, the facility would also be used for rehearsals and classes.

From previous informal conversations with the former (retired) town planner, it was clear that any proposal for a full scale/year round theater operation at 128 Thimble Island Road property would constitute a change relative to the nature or character of the former Puppet House activities and, thus, would be deemed an expansion of the use, triggering the special use permitting process as provided by the Town's *Zoning Regulations*.

Based on last week's meeting, it appears that you have a different opinion. You indicated that you have already informally suggested to the Legacy Theater owners that their project may simply be a continuation of the pre-existing use, and, as such, absent any substantive changes to the building exterior, their project would not be subject to the special exception process with the requisite public hearing. Furthermore, you noted that, depending on the nature of their formal proposal, the project might not even be subject to site plan review; rather, it could possibly be processed administratively with nothing more than a zoning permit application prior to issuance of a building permit. As you know, neither site plan review nor an administrative review require a public hearing and would preclude any public comment, particularly from those living in the immediately surrounding residential neighborhood.

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I respectfully disagree with your current position as to what permitting process is required for this property under the Town's *Zoning Regulations* and ask that you reconsider your position in light of the following information.

The Legacy Theater letter of intent clearly proposes a change in the nature and character of the former use, expanding the theater/performing arts use beyond that which has historically existed at 128 Thimble Island Road. As a result, their proposal is an expansion not merely an intensification of use, which is evident when considering both on the basic history of 128 Thimble Island Road and Connecticut zoning law.

Summarizing the history of 128 Thimble Island Road:

- The building at 128 Thimble Island Road opened in 1903 as a silent movie house, The Lyric Theater. It operated on a limited basis, providing seasonal entertainment for both people vacationing in Stony Creek and local residents.
- In 1920, the building theater was purchased by a local community group, the Parish Players, which used the building to stage amateur "summer stock" productions.
- In the 1930's, the theater became a venue for professional summer stock performances. Although these productions were renowned, theater patrons stayed in local hotels or came to the theater by trolley. Productions were limited to the summer season.
- During World War II, theater operations were completely abandoned when the building was refurbished to manufacture parachutes as part of the national war effort.
- In 1961, the property was purchased by Grace Weil, who planned to create an international puppet museum to display her vast Sicilian puppets collection. Beginning in 1963, Ms. Weil and her business partner, Salvatore Macri, began to use the building as their home base for their puppets, the venue becoming known as the Macri-Weil Sicilian Theater. While there were a handful of occasional puppet shows at their home base in Stony Creek, the building was primarily used to store the large puppet collection, the troupe primarily performing in other venues across the country, including theaters, universities, museums, and puppet show festivals.
- In 1963, Ms. Weil died, leaving her portion of the business to her son, James "Jimmy" Weil. Trained in puppetry, Jimmy continuing to work with Salvatore Macri. When the troupe was in Stony Creek, they occasionally held puppet shows at 128 Thimble Island Road; however, the building continued to primarily be used to store the puppets.
- In 1984, reportedly due to professional conflicts between Macri and Weil, the puppet shows ended in Stony Creek ended, but the puppet collection could be viewed by the public by arrangement. When Salvatore Macri retired in 1999, the Macri-Weil Sicilian Theater troupe formally disbanded.

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- During the 1990's, Barry Fritz, a longtime friend of Jimmy Weil, assumed management responsibilities for the building. From time to time, the building was available on a limited basis for occasional weekend performances by various local amateur groups such as the Quarry Players of Stony Creek, the Guilford Storytelling League, and the Alliance Theater Group of New Haven.

Based on this history, it is clear that the Legacy Theater's proposed operations are significantly different from the nature and character of the prior use, expanding theater operations. This leads to the issue as to how the Town's *Zoning Regulations* should be applied and what land use regulatory procedure should be applied to review this proposed expanded use; that is, special exception, site plan review, or an administrative review.

It is well established by Connecticut's Supreme Court that the extension of a use is a matter of fact. While the mere increase in the amount of business done is considered intensification, a change in the nature or character of a use constitutes an expansion. In the instant case, while the property owner has the right to continue to operate the theater to the same extent as it existed, that owner does not have a unilateral right to change the nature and character of that use without special use permit approval. As the State Supreme Court has noted, in considering whether or not a particular activity is an expansion of a use, the change in the character of the existing use relative to the proposed use must be considered. The Court has specifically stated that three factors must be considered:

- (1) the extent to which the current use reflects the nature and purpose of the original use;
- (2) any differences in the character, nature, and kind of use involved; and
- (3) ***any substantial difference in effect upon the neighborhood resulting from differences in the activities conducted on the property.***

While the Legacy Theater's letter of intent proposes to continue using the building as a performing arts venue, which may generally reflect the original theater use, the precise "nature" or "character" of their proposed use is significantly different from that which previously existed. In short, Legacy Theater's proposed operations -- some 36 weeks of productions six (6) days each week -- represent an expansion of the use -- not merely an intensification -- far beyond the more modest, occasional, and limited local/seasonal performances that have occurred historically at this property (e.g. summer stock theater, storage of the Macri-Weil puppets, occasional puppet shows, and, local/amateur weekend productions).

Since the Legacy Theater's proposed expansion of theater operations at 128 Thimble Island Road as set forth in their letter of intent appears to be substantially different from the former theater use and, thus, undeniably would have a substantially different effect on both the immediate residential neighborhood and the Stony Creek Village community as a whole, the Town *Zoning Regulations* require that their proposal be processed through the special exception permit process. While the special exception process allows an owner to use his property in a manner expressly permitted by the local zoning regulations (e.g. a theater), the conditions and standards for the use are set forth in those local regulations. Moreover, the Planning & Zoning Commission is able to consider public concerns and to adopt appropriate conditions of approval that may be needed to protect the public health, safety,

RE: 128-132 Thimble Island Road

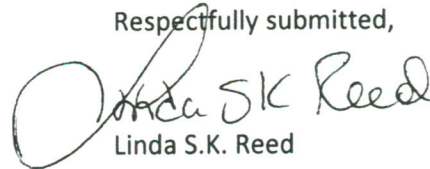
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convenience, and property values as required by C.G.S. § 8-2. The special exception process will allow the Commission to address the specific location and its operations, including, but not limited to, elements such as traffic/parking, lighting, and noise, to ensure that the residential character of the immediate neighborhood is not compromised.

I believe that this letter provides the information needed to support a decision to process the proposed Legacy Theater project for 128 Thimble Island Road as a special exception application rather than as a site plan or an administrative review. If you would like to discuss any of the information offered in this letter, please let me know. I look forward to your response. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda S.K. Reed". The signature is written in a cursive style with a large, looping initial "L".

Linda S.K. Reed

cc: Jamie Cosgrove, First Selectman

LAURA MAGARACI, ZONING ENFORCEMENT OFFICER
Town of Branford
P. O. Box 150
Branford, CT. 06405
Phone 203-315-0676, Fax 203-315-2188



February 4, 2014

Linda Reed
36 Watrous Avenue
Branford, CT 06405

RE: The Puppet House

Dear Ms. Reed,

Thank you for submitting for your letter dated January 29, 2014 regarding possible re-development of the Puppet House. Though your concerns have been duly noted, we believe it is premature to offer official comment at this time since no formal plans have been received. If and when formal application has been made, we will make a determination in writing on how the application will be handled.

Again, I thank you for your time and thoughtful comments.

Sincerely,

Laura Magaraci, CZEO
Town of Branford

cc. Jose' Giner

Meagan DeJesus

From: Keely [sco_ish_keely@yahoo.com]
Sent: Tuesday, February 04, 2014 12:14 PM
To: Daniel A. Bullard CLU ChFC
Subject: Fwd: Legacy Theatre
Attachments: letter from Linda Reed dd 1-29-14.pdf; response letter dd 2-4-14.pdf

----- Original message -----

From: Jose Giner
Date:02/04/2014 9:52 AM (GMT-05:00)
To: Keely
Cc: jcosgrove@branford-ct.gov, Terry Elton , Laura Magaraci
Subject: Legacy Theatre

Dear Keely:

On January 21 our Zoning Enforcement officer Laura Magaraci and I met with a subcommittee of the Stony Creek Association regarding their concerns about the plans for the old puppet house in Stony Creek. We did so with the caveat that we had not received any final detailed plans from your organization. The people representing the Association were of the opinion that, based on their understanding of your plans, the proposal should be brought before the Branford Planning and Zoning Commission as a change in use requiring a Special Exception.

I explained that my initial opinion was that Theaters are a permitted use within the Restricted Business (BR) District. The puppet house building had been clearly designed as a theater and had been used for a variety of performing arts over the years with no intent to abandon the use. I explained that the use was non-conforming with respect to the parking and that since we had documentation showing a capacity for 150 patrons that no variances would be needed for parking as long as the patron total did not exceed the grandfathered capacity.

The subcommittee members disagreed with our characterization of the use as being the same that had historically existed and posited that the your proposal was an expansion of a non-conforming use triggering the need for Public Hearing . One of the subcommittee members, Ms. Linda Reed subsequently sent the attached correspondence setting forth her objections to our interpretation. It is my understanding that the full Association has not acted on this as of yet.

Laura responded to Ms. Reed per the attached letter. She basically told Ms. Reed that we cannot give a formal opinion without knowing what the final plans will be.

Having said that, I will be forwarding the correspondence to our Town Attorney for a review given that legal issues were raised that could be later challenged when a decision is made on your proposal. I thought it appropriate to give your organization a heads up that there may be a legal challenge looming and to give you and your counsel a chance to review the issues that were raised and provide your own input.

Please pass this along to the appropriate people in your organization and let me know if you have any questions.

Sincerely

José Giner, AICP

Town Planner

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