

RETURN DATE: JANUARY 13, 2015 : SUPERIOR COUR
STONY CREEK ASSOCIATION,
JAMES and ELEANOR STACH, JOAN
P. JOHNSON and ROBERT E. ALLING, JR. : JUDICIAL DISTRICT
: OF NEW HAVEN
VS. : AT NEW HAVEN
BRANFORD ZONING BOARD OF
APPEALS and THE LEGACY THEATRE,
INC. : DECEMBER 9, 2014

COMPLAINT

TO THE SUPERIOR COURT:

To be held at New Haven in and for the Judicial District of New Haven comes Stony Creek Association, James and Eleanor Stach, Joan P. Johnson and Robert E. Alling, Jr. of the Town of Branford, County of New Haven and State of Connecticut respectfully appealing from a decision of the Zoning Board of Appeals of the Town of Branford, who complains and says as follows:

1. The plaintiff, Stony Creek Association is a civic association comprised of property owners within the Stony Creek section of Branford, Connecticut.
2. The plaintiffs, James and Eleanor Stach are the owners of the property known as 140 Thimble Islands Road, Branford, Connecticut 06405.
3. The plaintiff, Joan P. Johnson is the owner of the property known as 123 Thimble Islands Road, Branford, Connecticut 06405.
4. The plaintiff, Robert E. Alling, Jr. is the owner of the property known as 133 Thimble Islands Road, Branford, Connecticut 06405.
5. The defendant, Branford Zoning Board of Appeals is the agency designated by the Town of Branford to hear and provide decisions with regard to appeals from decisions of the Branford Zoning Enforcement Officer.

6. The defendant, The Legacy Theatre, Inc. is a corporation organized and existing under the laws of the State of Connecticut with a principal place of business at 128 Thimble Islands Road, Branford, Connecticut.

7. At some point in time, the defendant, The Legacy Theatre, Inc. submitted a "Tenant Fit-Up" application to the Zoning Enforcement Officer of the Town of Branford.

8. On or about July 31, 2014, the Zoning Enforcement Officer of the Town of Branford approved the Tenant Fit Up application.

9. The Plaintiff, Stony Creek Association and James and Eleanor Stach appealed the decision of the Branford Zoning Enforcement Officer to the Branford Zoning Board of Appeals.

10. The defendant Board held a public hearing on the appeal on September 30, 2014 and October 21, 2014.

11. On or about November 18, 2014, the defendant Board voted to deny the plaintiffs' appeal of the decision approving the Tenant Fit Up application.

12. The defendant Board caused a notice of the decision to be published in The Sound on November 26, 2014.

13. The defendant Board's decision to deny the appeal was illegal, arbitrary and an abuse of the discretion vested in it, in that:

- a. The plaintiffs presented evidence that the Zoning Enforcement Officer erred in approving the Tenant Fit Up application for some or all of the activities referenced in the application;
- b. The denial of the appeal resulted in unequal treatment of the plaintiffs under the law;
- c. The activities proposed by the Legacy Theatre did not constitute a legal pre-existing non-conforming use under the Branford Zoning Regulations Section 8.1B.;
- d. The activities proposed by the Legacy Theatre are an illegal expansion of any prior use of the property in violation of Section 8.1.C. of the Branford Zoning Regulations;
- e. The decision of the defendant is not supported by the record;

- f. The decision of the defendant is in violation of the Branford Zoning Regulations and the statutes of the State of Connecticut;
- g. The defendant based its decision on issues that were not properly before the Board;
- h. the use of the property as a theatre requires a special exception under Section 4.8G(4) of the Branford Zoning Regulations;
- i. there is no statutory and/or regulatory authority for a "Tenant Fit Up" permit and therefore, the approval is void ab initio; and
- j. the decision of the Board is in direct conflict with its findings of fact.

14. As a result of the decision of the defendant Board, the plaintiffs, James and Eleanor Stach, Joan P. Johnson and Robert E. Alling, Jr., are statutorily and classically aggrieved in that they own property within 100 feet of the property which was the subject matter of the appeal and because the use of the property as requested by the Legacy Theatre in the Tenant Fit Up application will impair the use, enjoyment and value of their properties due to the increased traffic, noise and use of the property by the Legacy Theatre.

15. As a result of the decision of the defendant Board, the Plaintiff, Stony Creek Association is statutorily and classically aggrieved in that its members own property within 100 ft. of the property which was the subject matter of the application and because the use of the property as requested by the Legacy Theatre in the Tenant Fit Up application will impair the use, enjoyment and value of their properties due to the increased traffic, noise and use of the property by the Legacy Theatre.

WHEREFORE, the plaintiff claims:

1. The defendant, Board's, decision be reversed;
2. Any other relief within the jurisdiction of the Court.

THE PLAINTIFFS,
STONY CREEK ASSOCIATION,
JAMES and ELEANOR STACH,
JOAN P. JOHNSON and ROBERT
E. ALLING, JR.

BY 

TIMOTHY J. LEE, ESQ.
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TELEPHONE: 203-787-6555
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BRANFORD ZONING BOARD OF
APPEALS and THE LEGACY
THEATRE, INC. : DECEMBER 9, 2014

CITATION

TO ANY PROPER OFFICER

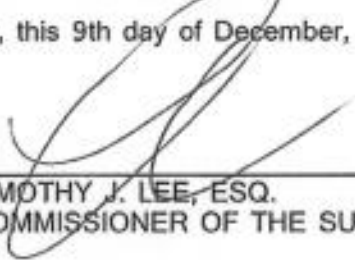
BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to summon the Zoning Board of Appeals of the Town of Branford, (c/o Lisa Arpin, Town Clerk of the Town of Branford, 1019 Main Street, Branford, Connecticut 06405) and the Legacy Theatre, Inc. of 128 Thimble Islands Road, Branford, Connecticut 06405 (c/o Agent for Service: Kelly Baidson Knudsen, 800 Village Walk, Suite 115, Guilford, Connecticut 06437, to appear before the Superior Court within and for the Judicial District of New Haven at 235 Church Street, New Haven, Connecticut 06510, on January 13, 2015, the appearance not to be made in person but to be made by each defendant or his/her or its attorney, as the case may be, by filing a written Statement of Appearance with the Clerk of the Court, on or before the second day following the return date, then and there to answer unto the foregoing complaint of the Stony Creek Association, P.O. Box 3145, Branford, Connecticut 06405, James and Eleanor Stach of 140 Thimble Islands Road, Branford, Connecticut 06405, Joan P. Johnson of 123 Thimble Islands Road, Branford, Connecticut 06405 and Robert E. Alling, Jr. of Fredericksburg, Virginia 22404, by serving upon Lisa Arpin, Town Clerk of the Town of Branford, 1019 Main Street, Branford, Connecticut 06405, two (2) true and attested copies of the complaint and of this citation at least twelve (12) days before the return date and by serving upon The Legacy Theatre, Inc., 128 Thimble Islands Road, Branford, Connecticut 06405 (c/o Agent for Service: Kelly Baidson Knudsen, 800 Village Walk, Suite 115, Guilford, Connecticut 06437) a true and attested copy of the Complaint and of this Citation at least

twelve (12) days before the return date.

The plaintiffs, Stony Creek Association, James and Eleanor Stach, Joan P. Johnson and Robert E. Alling, Jr., as principals, and Gabriel Cusanelli of Branford, Connecticut, as surety, are recognized in the sum of FIVE HUNDRED AND 00/100 (500.00) DOLLARS to prosecute this appeal to effect and comply with the orders and decrees of the Court.

Hereof fail not but this Writ with your doings thereon make due service and return.

Dated at New Haven, Connecticut, this 9th day of December, 2014.



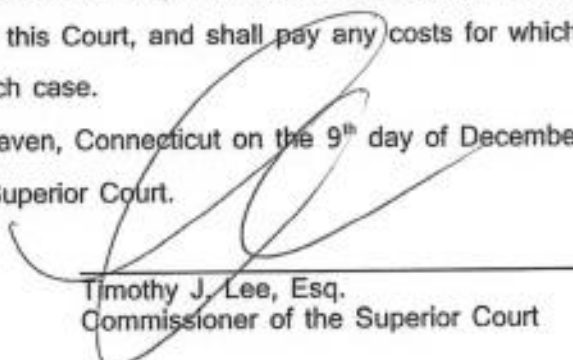
TIMOTHY J. LEE, ESQ.
COMMISSIONER OF THE SUPERIOR COURT

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RECOGNIZANCE WITH SURETY

You, Stony Creek Association, James and Eleanor Stach, Joan P. Johnson and Robert Alling, as principals, and GABRIEL CUSANELLI, of Branford, Connecticut, as surety, acknowledge yourselves jointly and severally bound to the Zoning Board of Appeals of the Town of Branford, defendant in this action, in a recognizance of \$500 that the Plaintiffs in this action shall prosecute to effect the appeal which it has taken against the Zoning Board of Appeals of the Town of Branford, brought to the Superior Court for the Judicial District of New Haven at New Haven on January 13, 2015, and that the Plaintiffs shall comply with the orders and decree of this Court, and shall pay any costs for which judgment may be rendered against it in such case.

Taken and acknowledged at New Haven, Connecticut on the 9th day of December, 2014, before me, a Commissioner of the Superior Court.



Timothy J. Lee, Esq.
Commissioner of the Superior Court

NEIL LONGOBARDI
P.O. Box 185643
Hamden, CT 06518

203-248-5000


203-410-6129

OFFICER'S RETURN

STATE OF CONNECTICUT }
 } BRANFORD DECEMBER 10, 2014
COUNTY OF NEW HAVEN } GUILFORD

Then and there by virtue hereof, this original CITATION, RECOGNIZANCE WITH SURETY, COMPLAINT, ON DECEMBER 10, 2014 I SERVED TWO TRUE AND ATTESTED COPIES OF THIS CITATION, RECOGNIZANCE WITH SURETY, COMPLAINT, TO THE BRANFORD ZONING BOARD OF APPEALS, BY LEAVING TWO TRUE AND ATTESTED COPIES OF THIS CITATION, RECOGNIZANCE WITH SURETY, COMPLAINT, WITH LISA ARPIN, TOWN CLERK, OF THE TOWN OF BRANFORD, CT AT 1019 MAIN STREET, BRANFORD, CT AND THEREAFTER I SERVED THE LEGACY THEATRE, INC. BY LEAVING A TRUE AND ATTESTED COPY AT THE USUAL PLACE OF ABODE OF THE AGENT FOR SERVICE FOR THE LEGACY THEATRE, INC. KELLY BAIDSEN KNUDSEN AT 366 LAKE DRIVE, GUILFORD, CT. I VERIFIED THIS ADDRESS AS BEING THE CORRECT ADDRESS FOR KELLY BAIDSEN KNUDSEN, IN A PERSONAL CONVERSATION WITH HER MOTHER NANCY SMITH.

Each received a true and attested copy hereof with my endorsement thereon. The within and foregoing is the original CITATION, RECOGNIZANCE WITH SURETY, COMPLAINT, WITH MY ENDORSEMENTS THEREON.

ATTEST

Neil Longobardi
STATE MARSHAL, N.H.C.

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| FEE: | SERVICE | \$ 80.00 |
| | TRAVEL | 35.00 |
| | COPIES | 21.00 |
| | ENDS | 1.60 |
| TOTAL | | \$ 137.60 |