

August 24, 2020

Mayor & Commissioners of the City of Rehoboth Beach
Ms. Ann Womack, City Secretary, MMC
Rehoboth Beach City Hall
229 Rehoboth Ave
Rehoboth Beach, DE 19971

Re: Site Plan Review Application No. 0620-03 (Clear Space Theatre & Rehoboth Spotlight)
413, 415 and 417 Rehoboth Avenue

Dear Mayor & Commissioners:

Pursuant to Rehoboth Beach Code (“Code”) §236-35, this letter is notice of appeal by the below appellants (“Appellants”) of the decision(s) of the Rehoboth Beach Planning Commission (“RBPC”), made on August 14, 2020 (“the Decision”), as a final action, to approve, with certain conditions, the above site plan application(s) No. 0620-03 (“the Application”), filed by Clear Space Theatre (“CST”) and Rehoboth Spotlight (“RS”) (collectively “CST/RS”). Although both CST and RS apparently filed two separate applications for which two separate, back-to-back public hearings were held, the RBPC treated them both under the same Application No. 0620-03, and so our use of the singular terms “Application”, “Decision” and “public hearing” and similar terms refers to either one or both such applications, “Decision” or “public hearing”, as the context allows.

In §236-35 regarding appeals of site plan decisions made by the RBPC, the City incorporated the appeal standards in §236-6 regarding appeals of subdivision decisions. Accordingly:

If any person shall be aggrieved by the final action of the Planning Commission, an appeal of the entire final action of the Planning Commission in writing to the Commissioners may be taken within 10 days after the date of the final action of the Planning Commission by filing with the Commissioners a written notice of appeal consisting of a general statement of the grounds for appeal and the grounds upon which the person filing the appeal believes they have been aggrieved.

The general statement of the grounds for appeal of the Application filed by CST/RS and as approved in the Decision are the following (some of which may overlap in some instances), all of which support the conclusion that the process used by the RBPC, the public hearings, and the Decision were improper:

1. The Decision of the RBPC was a final decision that was not reasonable, was not the result of an orderly and logical review of the evidence, did not involve a proper interpretation and application of the applicable provisions of the Code, and did not comply with state statutory and federal and state due process standards. More specific grounds are stated below.
2. The RBPC improperly concluded that site plan review was not mandated by §236-30.A, including specifically §236-36.A(3).
3. Much of the Application (and other supportive information provided by the Applicant) was illegible to the public, including in regard to important information therein.
4. The Application failed to contain all of the information required by §236-32.C(1) - C(26).
5. The Application was prematurely scheduled for a public hearing in violation of §236-32.H because it did not meet the requirements therein.

6. Key evidence, necessary but not sufficient to approve the Application, was not submitted until 72 hours before the public hearing, thereby illegally depriving the public of a meaningful right to participate in the public hearing.
7. The RBPC notice of the public hearing illegally imposed the requirements for this public hearing that “Members of the public wishing to speak will be required to pre-register ... at least two (2) full business days prior to the meeting” and that “All [emailed] comments shall be submitted at least two (2) full business days prior to the meeting date” (the meeting was Friday, August 14, 2020 at 1:00 PM, so two full business days would be no later than Wednesday, August 11, 2020).
8. The RBPC’s conduct of the “public hearing” was contrary to the standards for “public hearings” that apply in these situations, even during COVID-19.
9. The Applicant did not include information about, and/or the RBPC did not consider, all of the legally required factors in §236-30.E(1) to E(21).
10. The Decision was arbitrary and capricious in that it was not sufficiently supported by the record evidence.
11. The Decision failed to address, or wrongly failed to recognize and failed to base the Decision on, the fact that, for purposes of zoning and site plan review under the Code, at least two of the lots covered by the Application (lots 415 and 417) had merged into one lot and were not unmerged, and also that all three lots covered by the Application (lots 413, 415 and 417) had merged into one lot and were not unmerged.
12. Several members of the RBPC failed to make an independent judgment about the site plan’s compliance with the laws and regulations identified in 236-30.E, and/or prejudged the matter of such compliance prior to the public hearing.
13. One of the members of the RBPC who participated at length in the RBPC’s discussions and who voted in favor of the Application was ineligible to serve on the RBPC because he did not meet the requirements in Code §51-2.
14. Several members of the RBPC who participated in the RBPC’s discussions and who voted in favor of the Application had illegally prejudged key factual and legal issues involving the Application and/or engaged in conduct that gave the appearance of impropriety that precluded their participation and/or vote and/or had a conflict of interest.
15. Several members of the RBPC who participated in the RBPC’s discussions and who voted in favor of the Application illegally became witnesses for or on, instead of acting solely as quasi-judicial decisionmakers on, the Application.
16. Several members of the RBPC who participated in the RBPC’s discussions and who voted in favor of the Application illegally were privy to and/or received important information not included in the public hearing record.
17. The Decision imposed inadequate “conditions” as part of its approval of the Application, and the so-called “Aspirational Goals” identified in the Decision should have been “conditions” imposed in mandatory language as part of further conditions that should have been added. Among the additional conditions that should have been mandated, either because they were required by law (such as but not limited to the Code’s zoning and site plan requirements) or because the failure to include them was arbitrary and capricious as defined in §236-6.A(6), were the following: parking requirements (including specifically some on-site parking requirements) and requirements for traffic safety (for vehicles, bicycles and passengers).

18. The Decision was inconsistent with the City's Comprehensive Development Plan.

The general statement of the grounds upon which the Appellants filing this appeal believe they have been aggrieved are as follows (at least one Appellant falls into one of the grounds below, some Appellants fall into more than one of the grounds below, and each ground below includes at least two or more Appellants):

1. Several Appellants own and/or reside on properties that are immediately adjacent to the land on which CST/RS will build their structures, and as a result of the Decision these Appellants believe they will be adversely affected by, among other things: additional noise; additional artificial light at night; reduced natural light during the day; additional traffic and associated safety and back-up problems on streets/circle that they regularly use (as drivers, bicyclists or pedestrians) on daily basis when residing in their properties; additional parking problems on their streets, including right in front of their properties; invasion of privacy due to inadequate screening; the lack of protection for the architectural massing, composition, scale, and character of their neighborhood; the incompatibility of the new construction with the existing scale and character of nearby properties; the lack of preservation of streetscapes; drainage and/or stormwater problems; and decreased property values.
2. Several Appellants own and/or reside on nearby properties that are within 1,000 feet of the land on which CST/RS will build their structures. The RBPC itself asked that CST/RS reach out to and meet with such persons within 1,000 feet to discuss the potential impact of the CST/RS on those persons, and suggestions for minimizing problems for those persons. As a result of the Decision these Appellants believe they will be adversely affected by, among other things: additional noise; additional light; additional traffic and associated safety and back-up problems on streets/circle that they regularly use (as drivers, bicyclists or pedestrians) on a daily basis when residing in their properties; additional parking problems on their street, including right in front of their properties; the lack of protection for the architectural massing, composition, scale, and character of their neighborhood; the incompatibility of the new construction with the existing scale and character of nearby properties; the lack of preservation of streetscapes; and decreased property values.
3. Several Appellants own and/or reside on nearby properties that are less than approximately one-half mile of the land on which CST/RS will build their structures. As a result of the Decision these Appellants believe they will be adversely affected by, among other things: additional traffic and associated safety and back-up problems on the streets/circle that they regularly use (as drivers, bicyclists or pedestrians) when residing in their properties; the lack of protection for the architectural massing, composition, scale, and character of the neighborhood by the CST/RS property; the incompatibility of the new construction with the existing scale and character of properties near the CST/RS property; and the lack of preservation of streetscapes near the CST/RS property.
4. All of the Appellants are property owners and/or residents in Rehoboth Beach entitled by law to participate in site plan public hearings, and the City's site plan procedures (especially in regard to public hearings) have been established to protect their interests – particularly in connection with traffic and safety problems on the streets/circle that they regularly use (as drivers, bicyclists or pedestrians) when residing in their properties, and in connection with their other interests stated above (for Appellants within 1,000 feet or about one-half mile of the CST/RS project). As a result of the Decision which was arrived at as the result of the RBPC's process which did not comply with applicable law, all of the Appellants believe they have been injured by such procedures and thus have procedural injury standing.

Further, please note that as permitted by the Code, we do intend to submit a written submission no later than 21 days before the date set by the Commissioners for the M&C appeal hearing, and also an additional written (i.e.,


reply) submission no later than 7 days before such date, or at such later times as the Commissioners may allow for the parties to the appeal to file such submissions.

Because there are numerous Appellants in this matter, we have set up a Liaison Group to which the City can send all future communications on this matter. All members of this Liaison Group should receive at the same time by email (at their emails addresses below) any future communications and the City will receive a response from the person in the Liaison Group whose has been selected to respond to each communication. This will make it easier for the City to communicate with us on this matter.

Finally, please find attached a check for \$150 as the appeal fee.

Respectfully submitted,

- Suzanne Goode* DD
Suzanne Goode, 1 Grove Street, Rehoboth Beach, DE
- Steve Latsios* DD
Steve Latsios, 72 Kent Street, Rehoboth Beach, DE (Liaison email: slats1411@gmail.com)
- Robert Lauder* DD
Robert ("Bo") Lauder, 96 Sussex Street, Rehoboth Beach DE
- Mark Betchkal* DD
Mark Betchkal, 38640 Cottage Lane, Unit 5, Rehoboth Beach, DE
- Marie Hatkevich* DD *Michael Nolan* DD
Marie Hatkevich & Michael Nolan, 221 Munson Street, Rehoboth Beach, DE (Liaison email: mhatkevich54@gmail.com)
- Kenneth Konesey* DD *Jan Konesey* DD
Kenneth & Jan Konesey, 42 Oak Ave, Rehoboth Beach, DE
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- John Hughes* DD *December Hughes* DD
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- Jennifer Duncan* DD
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- Janice Miller* DD
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- James Ellison* DD
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- Harvey Shulman* DD
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- David Mellen* DD *Judy Mellen* DD
David & Judy Mellen, 105 Rodney Street, Rehoboth Beach, DE
- Chad Sensenig* DD *Amy Sensenig* DD
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