

# *Zoning Board of Appeals*

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## **Minutes**

(meeting taped)

Special meeting: Thursday, November 15, 2007 in the New City Hall.

Meeting was called to order at 6:05 p.m.

By roll call, members present: Angelo Dirienzo, Richard Bartholomew and Mark Zeck. John Kowarik and Samuel Rizzitelli were excused. Alternates Walter Nizgorski and David Manley were present with both sitting in as voting members this evening.

Building Official David Kopjanski was also present.

**Public portion:** The Chair noted that there would be a public portion for each application. This public portion is to satisfy section 101 of the Charter of the City of Derby. No one came forward to speak.

Motion was made by Richard Bartholomew and second by David Manley. Move that Angelo Dirienzo serve as chair in the absence of the elected chair. Motion carried unanimously.

Motion was made by David Manley and second by Mark Zeck. Move to accept the minutes of the September 20, 2007 meeting, as written. Motion carried unanimously.

**Application No. 269** – Applicant: Elizabeth Ippolito. Location of affected premises – 397 Hawthorne Ave, Derby, CT 06418. Appealing determination of Building Official and Zoning Enforcement Officer. Appealing Section 195-23(B) of the City of Derby Zoning Regulations. Requesting variance to create a separate building lot for the premises.

**Application No. 270** – Applicant: Elizabeth Ippolito. Location of affected premises – 395 Hawthorne Ave, Derby, CT 06418. Appealing determination of Building Official and Zoning Enforcement Officer. Appealing Section 195-23(B) of the City of Derby Zoning Regulations. Requesting variance to create a separate building lot for the premises.

Both applications were heard simultaneously.

Atty. Alphonse Ippolito, representing the applicant, presented the certified receipts to the building official.

Atty. Ippolito explained that his father owned this property since the late 50's. The property at 395 Hawthorne Avenue was built in the early part of the twentieth century and the property at 397 Hawthorne was built in 1962, both prior to the implementation of zoning regulations. When the house was built at 397, the property was bifurcated to allow for obtaining a mortgage. A survey was done but was apparently not recorded. In 1994 the residence at 395 Hawthorne Avenue was renovated and changed from a two-family dwelling to a single family dwelling. Recently, with the rezoning, this parcel was changed from a P zone to an OS zone as the parcel adjoins Osbornedale State Park. By virtue of Section 195-23(B), no buildings are allowed in the OS (open space) zone. Looking at the property, as is, it has two residential buildings on one piece of property that is open space. What that has caused is a serious hardship in that a buyer can not get financing and the owner can not sell the property separately. What the applicant is seeking is to reduce the non-conformity by dividing the parcel into two separate single family use parcels. The applicant is not asking for any additional building, no additional changes to the property. Atty. Ippolito noted that the boundary lines of the proposed division were drawn to satisfy the minimum setback requirements of a residential zone.

Mr. Kopjanski stated the parcel is in violation because of the open space delineation and because it has two single family houses on one lot. In 1967 the parcel was zoned as P – a classification similar to open space with the allowance of a special exception for a single family house under the same terms and conditions as an R-15 zone. R-15 is similar to the R-3 zone in the current regulations. In 2000, when it was rezoned as open space – there is no provision made for residential housing. The zone is only for public use and subsequently the classification was modified to allow for non-profit use. There is no mechanism under Planning and Zoning Commission to allow for the lot division. The only relief is to seek a variance through ZBA.

There are other parcels on this side of Hawthorne Avenue that are also non-conforming due to the OS classification. The uniqueness of the parcel being discussed this evening is that it is the only parcel that has two dwellings on a single lot. Atty. Ippolito indicated that the request is to try to reduce the non-conformity by having one house on each lot. It is understood that these houses will not be permitted to expand due to the open space designation. By allowing for the dividing of the lot, the variance is actually decreasing the number of non-conformities.

**Public portion** was opened on the applications. No one came forward to speak.

Motion was made by David Manley and second by Mark Zeck. Move to approve **Application No. 269** – Applicant: Elizabeth Ippolito. Location of affected premises – 397 Hawthorne Ave, Derby, CT 06418. Appealing determination of Building Official and Zoning Enforcement Officer. Appealing Section 195-23(B) of the City of Derby Zoning Regulations. Requesting variance to create a separate building lot for the premises and **Application No. 270** – Applicant: Elizabeth Ippolito. Location of affected premises – 395 Hawthorne Ave, Derby, CT 06418. Appealing

determination of Building Official and Zoning Enforcement Officer. Appealing Section 195-23(B) of the City of Derby Zoning Regulations. Requesting variance to create a separate building lot for the premises. Motion carried unanimously.

**Application No. 272** – Applicant: John Capela. Location of affected premises – 5 Coe Lane, Derby, CT 06418. Appealing determination of Building Official and Zoning Enforcement Officer. Appealing Section 195-11 E(1) of the City of Derby Zoning Regulations. Requesting variance to allow the re-subdivision of the existing lot.

Fred D'Amico, P.E. of 9 Park Rd, Oxford, representing the applicant; presented the certified receipts to the building official.

Mr. D'Amico explained that the parcel is located at the end of the paved area of Coe Lane with a driveway accessing it. Coe Lane is the boundary between Derby and Ansonia. Ansonia has recently approved a sub-division across the street and Coe Lane will be updated during development. The applicant is seeking a variance of 38.58 feet from the minimum width requirement for the parcel. The proposed lot would satisfy all other zoning requirements for the zone. The reason for the request is that there is an existing garage that the applicant seeks to have remain. The proposed lot division takes this into account and results in the parcel having less than the minimum width at the street line, but the parcel will expand beyond the garage and at that point the minimum width will be satisfied. As the requirement states that the width is specific to the street line, a variance is being sought. The existing lot is unique in that it is triangular in nature. In the mid 90's the lot was created by a previous owner who owned a larger parcel. That larger parcel was divided to provide for the lot in question as well as the sub-division named Woodland Walk.

The brick house and garage were built in the 1950's and are well constructed. Mr. Capela purchased the property more than ten years ago. He desires to preserve the existing garage. If the garage was removed, the request for a variance would still be required but the design could be reconfigured resulting in a smaller length needed for the variance on the width.

Mr. Kopjanski indicated that the size of the parcel is large enough to allow for separation into two single-family dwelling lots satisfying the requirements for the R-3 zone for the 15,000 sq. ft requirement. There is also sufficient space to satisfy the lot widths. The problem lies in the placement of the existing garage.

**Public portion** was opened on the application.

Ralph Martone, 10 Woodland Walk, stated that his lot is a rear lot in the sub-division and it abuts Mr. Capela's property. He stated that on the property right now is a motor home, a tow truck, a dump truck and a boat (photos were filed with the application folder on file in the building official's office). He questioned where they would be going if this variance was

allowed. He was concerned that they would be moved even closer to his property line. He questioned, if this is approved, is there enough acreage to maintain the farm animals currently on the property. There are sheep, chickens, roosters, dogs. He questioned if there were requirements regarding farm animals. Third, he asked where the sanitary sewer connections would be made as he has an easement on his property for sanitary sewers.

Mr. D'Amico stated that the Commission may be able to place a restriction, requiring that the farm animals be removed. The same could be possible with the vehicles. Possibly, a conservation easement could be stipulated that would prohibit parking in a prescribed area. The sanitary sewers will be connected to Ansonia, as per an agreement the property has with the City.

Mr. Kopjanski stated that farm animals, if used for commercial use – i.e. selling products from the animals, breeding, etc., would constitute a violation as this would be a business in a residential zone. If the animals are considered pets then they would be allowed but would be subject to requirements set by the health department. Mr. Kopjanski indicated that if the variance is granted then the applicant will have to go before the Planning and Zoning Commission for a re-subdivision as the parcel was already divided to create Woodland Walk. Possible restrictions could be defined as well as design and geographic details during the Commission's review. ZBA does not have the authority to place restrictions.

Ruth Ann Drury, 16 Woodland Walk, stated when she moved into her home in May 2000, the basement was dry. In Spring, 2004 she experienced flooding and had to install a basement sump pump/drain system to deal with the matter. Since development off of Coe Lane has occurred she has experienced water related issues. This past April they had another flood, the worst of all and she had an accumulation of nine feet of water in the basement. These reoccurring water problems have cost them a lot of money. The fire department lived on Woodland Walk for three days dealing with the flooding. She questioned if development on this property would further aggravate the problem.

No further comments were received and the public portion was closed.

Motion was made by David Manley and second by Mark Zeck. Move to deny **Application No. 272** – Applicant: John Capela. Location of affected premises – 5 Coe Lane, Derby, CT 06418. Appealing determination of Building Official and Zoning Enforcement Officer. Appealing Section 195-11 E(1) of the City of Derby Zoning Regulations. Requesting variance of 38.58 feet to the lot width to allow for the re-subdivision of the existing lot with the hardship claimed that the existing garage prevents the frontage without it's removal. Motion carried with Walter Nizgorski opposed. The application was denied by a vote of four in favor of the denial, one opposed.

**Discussion of fee schedule:** The secretary noted that the legal notice for this meeting to advertise the notice of the meeting twice cost more than \$250.00. The Board will also incur the expense of advertising the action taken by this Board as well as the cost of the secretarial duties. This month there were three applications so the notice was much longer but it is conceivable that each application costs the City in the range of \$150.00 or more. The current fee is \$100.00 for single and two family dwellings and \$150.00 for all other applications. The fee is the same whether there is one or multiple variances on the application. It was noted that an increase would be consistent with fees being charged by other towns. Mr. Nizgorski noted the fees in North Branford.

Motion was made by Richard Bartholomew and second by David Manley. Move to recommend to the full Board of Alderman to change the fee schedule for the Zoning Board of Appeals applications to cover the expenses incurred by the Board. The charges recommended are as follows:

One and two family dwellings - \$175.00 – single variance

All other applications - \$250.00 – single variance

Multiple variances – an additional \$50.00 per variance being sought by the applicant.

Motion carried unanimously.

Motion was made by Mark Zeck and second by Walter Nizgorski. Move to adjourn the meeting at 6:55 p.m. Motion carried unanimously.

Respectfully prepared,  
Karen Kemmesies, secretary

*These minutes are subject to Board approval at their next scheduled meeting.*