

Zoning Board of Appeals

Minutes

(meeting taped)

Monthly meeting: Thursday, July 16, 2009 in the City Hall aldermanic chambers.

The meeting was called to order at 6:35 p.m.

By roll call, members present: Mark Zeck, Angelo Dirienzo, Richard Bartholomew, John Kowarik and David Manley. Alternates Walter Nizgorski and Earl Robinson were also present.

Building Official David Kopjanski was present.

Without objection, application 301 was moved up on the agenda after the approval of the minutes and the agenda was accepted, as amended.

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 and public portion was closed.

Approval of minutes: Motion was made by Angelo Dirienzo and second by David Manley. Move to accept the minutes of the May 21, 2009 meeting, as written. Motion carried unanimously.

Application No. 301 – Applicant: Mark C. and Florence K. Burel. Location of affected premises – 60 High Street, Derby, CT 06418. Requesting a variance to reduce the side yard set back from eight feet (8ft) to two and one tenth feet (2.1 ft) for the purpose of constructing an addition to the house.

Applicants Mark & Florence Burel were present. They submitted the certified notices and return receipts to the Building Official.

Mr. Burel explained that the house was built around the turn of the century. The configuration of the existing structure is non-conforming but is grandfathered to the zoning regulations. Due to medical issues and treatments he finds it difficult to ascend the stairs to the second floor of his home. The basement has a half bath. He is seeking to construct a full bath on the first floor and to enlarge the livingroom to accommodate a medical bed should it become necessary. The proposed floor plan would square off the structure in the rear which now is an “L” shape. The property is all ledge behind the building (photos were presented and placed in the file) making it impossible to build in that area without extensive blasting.

Mr. Manley questioned how the property boundary would be maintained being that the construction would be so close to said boundary. He questioned whether a construction easement during the excavation was advisable. Mr. Burel indicated that the neighbor, John Kowarik, has expressed no compunction about this addition.

Mr. Kopjanski stated that the addition extends the non-conformity of the parcel. Per the survey, the existing building is 2.4 feet from the property line and the addition would result in being 2.1 feet from the property line. Being that the structure is less than three feet from the property line, the building material will have to be one hour fire-rated. During construction, it is highly likely that the work will impinge on the adjoining property and a construction easement is a good suggestion.

Motion was made by Angelo Dirienzo and second by Walter Nizgorski. Move to take a brief recess at 6:52 p.m. Motion carried unanimously.

Without objection, the meeting reconvened at 6:56 p.m.

Mr. Robinson questioned how the excavation would be performed in this tight area. John Behun, builder for the project, came forward and explained that the intent is to hand dig the small area of excavation. No major equipment is anticipated as the rear yard would be too small to accommodate such equipment.

Mr. Nizgorski noted his familiarity of the City and this property. He noted that many properties were built prior to any zoning regulations and as such many properties were made non-conforming because of the implementation of said regulations. It is problematical for the current owners to utilize their properties unless a variance is considered.

Mr. Bartholomew noted a technical point in the submittals for this application. Under "*What portion of the Zoning Ordinance is being appealed.*" The side yard setback variance is stated as 5 ft 9 inches but should read 5.9 feet. The applicants accepted this correction, without objection.

Mr. Kowarik stated that the proposed addition would not change the character of the neighborhood.

Members discussed the stated hardship. Dr. Dirienzo questioned whether the hardship should be the disability of the applicant. Mr. Burel stated that he did not desire to have his medical issues cited. Mr. Bartholomew indicated that the application states increasing the living space so that it is a REASONABLE USE of the property. This appeared to be a valid reason as per the regulations. Members concurred.

The public portion was opened on this application. No one desired to speak at this time.

Members deliberated over the application. The proposal would be increasing the existing non-conformity on the property. By denying this application do we forfeit the owner's ability for reasonable use? Another application was approved recently to also square off the structure of an existing non-conforming building. Ledge on this applicant's property makes it difficult for the applicant to locate the addition in another location on the property. A full bathroom on the first floor does represent a reasonable use. The addition would not affect the appearance of the neighborhood beyond the period of time in which it is under construction.

Motion was made by John Kowarik and second by Angelo Dirienzo. Move to grant the variance for application #301 to reduce the side yard set back from eight feet to two and one tenth feet. Motion carried with David Manley opposed.

Application Nos. 296 and 297 – Applicant: Jalowiec Realty Associates, LP. Location of affected premises – 10 Marshall Lane and 8 Marshall Lane, Derby, CT 06418. Appealing Section 195-59G of the Derby Zoning Regulations. Requesting a variance to reduce parking space width from ten feet (10') to eight feet (8')

At this time Mark Zeck recused himself from these applications citing the landlord relationship.

Motion was made by David Manley and second by Walter Nizgorski. Move that Angelo Dirienzo serve as chair for purposes of the following applications. Motion carried unanimously.

Alternate Walter Nizgorski was placed as a voting member for this application in place of Mr. Zeck.

Present were Joseph Jalowiec, applicant and James Rotundo, engineer for the applicant. Mr. Rotundo submitted the certified letter receipts to the Building Official.

At this time the applicant requested that applications # 296 and # 297 be withdrawn. Upon review of the design it was found that sufficient spaces could be created without the need for the reduction in width.

The Chair asked if there was anyone from the public wishing to speak on applications 296 and 297. No one came forward.

Motion was made by John Kowarik and second by David Manley. Move to accept the request to withdraw applications # 296 and # 297. Motion carried unanimously.

Application Nos. 299 and 300 – Applicant: Jalowiec Realty Associates, LP. Location of affected premises – 85 Sodom Lane and 87 Sodom Lane, Derby, CT 06418. Appealing the

following sections of the Derby Zoning Regulations for the creation of an additional dwelling unit at each of the premises:

Section 195-12B – To allow multi-family use in the R-4 zone.

Section 195-54A – To allow a reduction in required on-site parking spaces from six spaces to zero spaces.

Section 195-55B – To allow parking spaces to be located on a separate parcel in a residential zone.

Section 195-55D – To allow required parking facilities to be located on a lot within 300 feet from the building served in a residential zone.

Section 195-61E – To allow required parking for dwelling units to be located on a separate parcel.

Section 195-80B – to allow by variance a use not permitted by right in any particular zoning district.

Mr. Rotundo explained that the affected premises (85 & 87 Sodom Lane) were created by subdivision in 1988 along with other adjoining parcels (8 & 10 Marshall Lane and the preexisting house at 89 Sodom Lane). At that time the property was classified as R5 which allowed for multi-family dwellings as a special exception use. The buildings at 8 & 10 Marshall Lane were constructed for three-family dwellings. The buildings at 85 & 87 Sodom Lane were constructed for three-family dwellings with the basement apartment only being roughed in for utilities, i.e. water, sewers, electrical. The basement apartments in the two buildings were not finished for occupancy at that time. He presented pictures detailing availability for three electrical services, three gas services and roughed in plumbing. Since that time the zone was changed to R4 which does not allow for multi-family dwellings. Mr. Jalowiec would like to finish off the apartments in each of the buildings but in order to do this, variances are needed. Two variances are to accomplish the finishing of the dwellings and four speak to the associated parking needed for occupancy. There are two large parking areas at 8 & 10 Marshall Lane that currently provide spaces for the existing apartments at 85 & 87 Sodom Lane. These spaces were approved at the time the subdivision was granted in 1988. Mr. Rotundo reviewed the zoning sections they were appealing. He explained that the hardship being claimed is that the buildings, when constructed in 1988, were intended to be three family dwellings but due to the subsequent zone change, the allowed use has changed.

Mr. Rotundo suggested that the variances be granted in accordance with section 195-80c2 of the zoning regulations that empowers the Zoning Board of Appeals to grant a building permit for the enlargement or extension of a non-conforming use or building when any portion of the lot occupied by such use or building at the effective date of the chapter which portion was arranged, intended or designed for such non-conforming use as of the date of this chapter provided that such enlargement or extension shall not exceed fifty percent of the appraised value of such use or existing building at the effective date of this chapter. The finish of the apartments will not exceed the stated fifty percent of the appraised value and he noted again the services already present.

Members questioned how many parking spaces were needed. Mr. Rotundo indicated that six spaces are needed for each of the three family dwellings for a total of 24. Mr. Rotundo indicated that the lots at 8 & 10 Marshall have 23 spaces and the lot along side 89 Sodom Lane has 5 spaces with 89 Sodom Lane only requiring 4 spaces.

Mr. Kopjanski reiterated that when the subdivision was granted in 1988, the parcel was zoned as R-5 which allowed for multi-family under a special exemption. When the zoning regulations were changed in January, 2000, the parcel was changed to an R-4 zone and now the special exception is not an option.

Mr. Nizgorski questioned the added density the additional apartments would create and whether the basement apartment was satisfactory for the intended use. Mr. Jalowiec indicated that rather than a basement apartment, it is better described as a garden apartment that is predominately above grade and requires only four steps down to the entrance. Mr. Rotundo indicated that this would be a one bedroom studio style apartment.

Mr. Manley questioned the consequences if the property was divided and sold off and the off-site parking was denied by the new owners. Mr. Rotundo indicated that an affidavit of parking will be attached to the parcel that will be filed with the land records. The zoning regulations speak to this requirement in commercial uses and such affidavit could be attached in this instance. Mr. Nizgorski indicated that he was uncertain whether such an affidavit was ironclad or could be broken.

Mr. Kopjanski indicated that here we have five separate parcels of land; if it was one combined lot; there would be no issue with parking. Residential parking is required to be on the same lot under the regulations. If the lots were to merge it would increase the non-conformity under the R-4 zone. He also noted that a variance applies to the property not to the owner.

Members asked about maintenance and whether the parking areas could become a burden on the city. Mr. Kopjanski indicated that one of the reasons why parking areas are contained to one lot is to place the responsibility on the property owner – extending the spaces increases the liabilities across property lines.

Mr. Bartholomew indicated that right now there is one owner and the buildings are utilizing the parking areas. What is needed is to provide four additional spaces for the two basement apartments. What needs to be decided is that when the special exception was granted in 1988, was it the intention to have three family dwellings and if so then the matter is the zoning regulations changing in 2000.

Mr. Manley asked for further clarification on the variance for section 195-80B. Mr. Rotundo stated that a use variance can not be granted under the section, but they are requesting a

variance to that, given the circumstances that these were intended to be three-family dwellings at the time of construction.

Mr. Kopjanski indicated that on the one hand there is a prohibition against granting a use variance but on the other hand there is an application before you where the applicant is claiming one of the six specific variances that shall be considered by the Board. Their claim is that they meet the provisions set in section 195-80 C2. Their claim is that the buildings were originally designed as three family dwellings. This is the crux of the decision at hand.

Mr. Jalowiec explained that in 1988 the subdivision was presented because the neighborhood did not desire further condominiums. He completed the two buildings on Marshall Lane with three units each but at the time did not complete the two buildings on Sodom Lane but rather occupied only two of the three units in each building. Currently, there are twelve units total on the parcels and this variance request increases the number to fourteen units. At present, the five parcels are in a trust and there is no intention to divide the parcels. It could be stipulated that no individual sale of a lot would be permitted. He indicated that in the twelve existing units one third of the tenants are widows; the typical renter would likely be a single person, not a family that would tax the school system. He also noted that in the years since the buildings were constructed, there have been no accidents on the corner due to traffic from the existing lots. The properties are well maintained.

Mr. Manley noted that times change and the Board must make their decisions looking to the future impacts. The zoning regulations were changed in the City in 2000 to speak to changing times. His concerns remain with the increased density and the off-site parking potential problems.

Mr. Rotundo indicated that as far as parking in the future, as per the regulations, a site plan would be submitted to the Planning and Zoning Commission. An approval, if granted, would be filed on the land records and per site plan review the document would be a written affidavit binding each participating owner and successor and interest for the life of the joint use of the facility.

At this time the public was invited to speak.

Anita Duggato stated that the parcel is in an R-4 zone and there were reasons why the regulations were revised in 2000 and classifications were changed. The changes were to address density and congestion issues in the City. The area being discussed is a very busy intersection and the Board must deliberate with future concerns in mind.

With no further public comment, the public portion on this application was closed.

Mr. Nizgorski stated that he was opposed to changes from the R-4 delineation. This could lead to requests for changing attics or basements into additional spaces; the reason for the change was to limit such modifications to existing dwellings. He strongly supported the zoning regulation addition of the R-4 zone when it passed in 2000. At this time he relinquished his voting privileges to Mr. Robinson.

Mr. Robinson questioned whether an executive session was advised to discuss clarifications regarding these applications so a decision could be made. While the applications were officially opened this evening allowing for sixty-five days from this evening to provide a decision, the applicant did begin this process with the Board in May. Members appreciated the applicant's patience but found no reason for an executive session at this time. As this is very complicated with no prior precedence set to be referenced, Mr. Bartholomew requested advice from Corporation Counsel regarding section 195-80B prior to making any decisions on the applications presented.

Motion was made by Richard Bartholomew and second by John Kowarik. Move to table applications 299 and 300. Motion carried unanimously.

Executive Session: No session was necessary.

Motion was made by Walter Nizgorski and second by David Manley. Move to adjourn the meeting at 8:05 p.m. Motion carried unanimously.

Respectfully prepared,
Karen Kemmesies, secretary

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