

# *Zoning Board of Appeals*

---

## **Minutes**

(meeting taped)

Monthly meeting: Thursday, July 15, 2010 in the City Hall Aldermanic Chambers.

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

Without objection the chair called for a recess until 6:45 p.m. as the Board was awaiting the arrival of a member. The meeting reconvened at 6:45 p.m.

By roll call, members present: Mark Zeck, Richard Bartholomew, John Kowarik, David Manley and Sam Pollastro, Jr. Angelo Dirienzo and Earl Robinson were excused.

Alternate Sam Pollastro, Jr. will be serving as a voting member this evening.

Building Official David Kopjanski was present.

**Public portion:** This public portion is to satisfy section 101 of the Charter of the City of Derby. No one came forward. Public portion was closed.

**Approval of minutes:** Motion was made by John Kowarik and second by David Manley. Move to accept the minutes of the June 17, 2010 meeting with a correction on page 3 to show that the meeting calendar should state July **15** not 17. Motion carried unanimously.

**Application No. 327 & 328** – Applicant: BAMF Homes LTD. Location of affected premises – Lot No. 17 Tax Map 3-2 John Street, Derby, CT 06418. Appealing the following section of the Derby Zoning Regulations:

Section 195-11(E)(4) – Seeking a variance to reduce the required front yard setback from 30 feet to 20 feet for proposed lots 1 and 2.

Motion was made by David Manley and second by John Kowarik. Move that the Board hear application 327 & 328 simultaneously as the lots are adjoining, without objection from the applicant. Motion carried unanimously.

Present were Carl DeCarli and Greg Field of BAMF Homes LTD and Attorney Dominick Thomas, representing the applicants. Atty. Thomas presented the certified receipts to the Building Official. Mr. Kopjanski indicated that they appeared in order.

Atty. Thomas explained that the previous applications were heard in conjunction with the application before the Derby Inland Wetlands Agency. ZBA members at that time sought further information prior to making a decision on the variance. Since that time the Derby Inland Wetlands Agency has approved the application with stipulations. One stipulation being contested is the location of the split rail fence. The Agency stated that the fence shall be located on the boundary of the wetlands. His clients sought to have the fence located within the wetlands in a location defined by the applicant's soil scientist as a low grade wetlands.

Atty. Thomas stated that the parcel is not subject to subdivision zoning requirements as the parcel is allowed one split, the parcel is only required to satisfy setback and soil and erosion control requirements. He indicated that the lot is large enough for the two houses and in fact a strip of land is being given to the abutting property owner. This strip will include the maintenance easement for the City to maintain the piping that empties onto this parcel.

The house on proposed lot 2 is within eight (8) feet of the wetlands boundary with the attached deck being at seven and one half (7 ½) feet. This close proximity is a hardship that would be remedied if the house could be shifted closer to the road. Currently, the paved portion of John Street exists on the upper portion of the street right of way, the opposite side of the road from this parcel. This is a dead end street and further development that could possibly cause a change to the road is highly unlikely. The great distance of unpaved right of way is unique, with the parcel being more than 35 feet from the paved surface.

The abutting property owner at 25 John Street will be getting the thirty five (35) foot strip of land so as to allow the property to satisfy side yard setback requirements. The house is located close to the road, and placing the proposed houses closer to the road would put it more in line with this abutting property. (letter from abutter placed on file) A signed petition from the adjoining property owners indicating that they had no objections was also placed on file.

Atty. Thomas indicated that the proposed house on lot 1 is further away from the wetlands than the proposed house on lot 2. While wetlands has given its approval he felt they would see a move away from the wetlands as a favorable act that would benefit the preservation of said wetlands. He noted that a conservation easement, included in the wetlands application, is being reviewed by the City's Corporation Counsel. Details regarding the easement may include additional wetlands plantings but certainly will not include any cutting or filling of the wetlands.

Mr. Kopjanski indicated that these applications are essentially the same as what was presented in January, 2010. The Derby Inland Wetlands Agency did seek to have the split rail fence at the boundary of the wetlands so that there would be no disturbance within the wetlands. He indicated that the Board of Alderman has to approve the conservation easement and they have not done so as of this time. He indicated that the proposed development does currently satisfy wetlands and zoning regulations. They seek to move the houses forward. The drawings are

not clear as to the size of the houses, due to their reduced scale for this presentation. This Board must judge whether a hardship truly exists.

Mr. Pollastro questioned whether the fencing is required. Atty. Thomas stated that setting the fence posts within the wetlands would not be a disturbance and would not have a significant adverse effect on the wetlands. The applicant's soil scientist testified that the lower wetlands where the drainage flows has substantial wetlands but the upper portion was a low-grade wetlands with no significant wetlands vegetation. The proposed location was to be in this upper portion. Most conservation easements will have a delineation, generally a split rail fence. Having the fence at the boundary of the wetlands would be a hardship unless the proposed house could be shifted closer to the road, as being requested. He stated that if a variance was granted that the wetlands appeal of the fencing could be dropped.

Mr. Bartholomew questioned how eight feet is a hardship but eighteen feet is not one.

Mr. Fields stated that with the conservation easement, the grasses and vegetation will not be cut. There is a heightened risk of damage to the dwelling should those grasses catch fire. Moving the house further away from the fence would be a safety measure. Right now he could build the houses as proposed since he has wetlands approval and satisfies the zoning requirements but he is seeking the variance to offer the potential owners the increased safety measure.

Chairman Zeck questioned whether the design of the houses could be modified to bring them further away from the wetlands boundary. Mr. Fields indicated that the proposed design was drawn taking into account the wetlands and providing for a smaller width footprint.

Atty. Thomas indicated that the proposed houses are two-story rather than a sprawling ranch style so as to lessen any possible impact. He felt that having the opportunity to move away from the wetlands by use of a variance has an environmental benefit to the land. The request of the variance is driven by the uniqueness of the parcel. The design comports with the layout of the neighborhood. The request allows for the development to move further away from the wetlands.

Mr. Manley questioned whether the road would ever be widened. Atty. Thomas replied no. Mr. Manley noted that the Derby Inland Wetlands Agency approved the application that satisfied the zoning requirements. Atty. Thomas indicated that if the variance was granted, it would be reducing the amount of regulated activity for the wetlands agency. The modifications to the plans would be presented to the Derby Inland Wetlands Agency with a revised site plan. Mr. Manley questioned who would maintain the fence. Atty. Thomas stated that it would be the homeowner's responsibility. There also would be placards placed indicating the conservation easement. The applicant's position is that the easement should be defined at the lawn line not

the wetlands line. The lawn line being the area of the wetlands with no significant wetlands plantings.

Chairman Zeck queried that the applicant does not object to the fence but rather to the location of the fence? Atty. Thomas concurred. Chairman Zeck questioned that if the fence was placed where the applicant had requested, would there be a need for a variance? Atty. Thomas indicated no, noting that the proposed location of the fence was determined after consultation with their soil scientist. Chairman Zeck questioned whether the wetland restrictions on use would still be in existence even if the fence was located where the applicant has suggested. Atty. Thomas indicated that the homeowner would not be allowed to disturb the wetlands without prior approval from the Derby Inland Wetlands Agency.

Mr. Pollastro questioned whether the conservation easement is only subject to the Board of Alderman. Atty. Thomas indicated that he has done a great number of land use requests and he has never seen a town object to a conservation easement. The property owner retains ownership of the land and also gives the city right to any necessary maintenance regarding the water flow.

Mr. Kopjanski indicated that the Derby Inland Wetlands Agency does not approve houses; they approve or regulate disturbances that will affect wetlands. The agency has given the applicant permission to build within 7 ½ feet of the wetlands boundary. Even if the applicant were to be granted the variance to move the dwelling closer to the road, what is to say that they still may build within 7 ½ feet of the wetlands. The variance being granted is specifically for the front yard setback. The Derby Inland Wetlands Agency application speaks to an area of disturbance of ½ acre.

Atty. Thomas indicated that the wetlands application defined the amount of disturbance in the regulated area and this can not be changed without going before them again. This Board has the ability to make reasonable conditions for the approval. It could be stipulated that the shift forward would also be a shift away from the wetlands. The disturbed area includes the dwellings, the driveways, the grading and run-off containment structures.

Mr. Fields stated that a two story colonial design is being proposed that would be 36' x 28' with the lower level cantilevered to 26'. It includes a one car garage underneath and a walk-out basement. The variance is being sought to lessen the risk of fire hazard with the uncut vegetation in the conservation easement and to provide a little more distance from said easement.

At this time the hearing was opened for public comment.

Anthony Comdamo of 45 Minerva Street stated that he was interested in city government and that many of his questions were answered during the discussion. He questioned whether the granting of the variance would create a precedence.

Atty. Thomas indicated that the Zoning Board of Appeals does not set precedence in this capacity.

With no further public comment, the public portion was closed.

Members deliberated on the applications. Mr. Bartholomew wondered the impact of the wetlands appeal on the fence location. He questioned whether the hardship of the fence, as stated, was a hardship or rather more preferred. He noted that during discussions, the builder indicated that he could build without a variance. Mr. Kowarik indicated that the shift would be aesthetically positive to the area and he too was concerned with the fire risk. Mr. Pollastro noted that another alternative would be to reduce the request to one house. The lot is currently one lot and monetary concerns do not define a hardship.

Atty. Thomas stated that the property divide is a matter of right.

Mr. Kowarik noted that regulations throughout town have allowed for dense developments, he noted Frank Gates Lane as a most recent example. Condominiums have also produced a greater density but that land use was also allowed.

Motion was made by David Manley and second by John Kowarik. Move to close the public hearing on applications 327 and 328. Motion carried unanimously.

Motion was made by John Kowarik and second by David Manley. Move to grant the variance for application #327 – applicant BAMF Homes LTD, Lot No. 17 Tax Map 3-2 John Street, Derby, CT to reduce the required front yard setback from 30 ft to 20 ft for proposed Lot#1. Motion was denied with Mark Zeck, Richard Bartholomew and Sam Pollastro, Jr. voting against.

Motion was made by David Manley and second by John Kowarik. Move to grant the variance for application #328 – applicant BAMF Homes LTD, Lot No. 17 Tax Map 3-2 John Street, Derby, CT to reduce the required front yard setback from 30 ft to 20 ft for proposed Lot#2. Motion was denied with Mark Zeck, Richard Bartholomew and Sam Pollastro, Jr. voting against.

Motion was made by David Manley and second by Sam Pollastro, Jr. Move to enter into executive session at 7:52 p.m. for the purpose of discussion on a pending legal matter with Mr. Kojanski invited to attend. Motion carried with John Kowarik opposed.

Motion was made by John Kowarik and second by David Manley. Move to return to regular session at 8:00 p.m. Motion carried unanimously.

Motion was made by David Manley and second by Sam Pollastro, Jr. Move to adjourn the meeting at 8:02 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies, secretary

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