

Zoning Board of Appeals

Minutes

(meeting taped)

Monthly meeting: Thursday, February 16, 2012 in the City Hall Aldermanic Chambers.

The meeting was called to order at 6:32 p.m. The chair called for a brief recess to await the arrival of members of the board. The meeting reconvened at 6:42 p.m.

By roll call, members present: Mark Zeck, Angelo Dirienzo, Richard Bartholomew, John Kowarik, Sam Pollastro Jr. and Earl Robinson. New alternate Joseph DiMartino arrived during the application presentation.

Building Official David Kopjanski was present.

Election of chair:

A motion was made Angelo Dirienzo and second by Sam Pollastro Jr. Move to nominate Mark Zeck as Chairman of the Zoning Board of Appeals. Motion carried unanimously.

No other nominations were received. The floor was closed.

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 Sam Pollastro Jr. and second by Angelo Dirienzo. Move to accept the minutes of the July 21, 2011 meeting, as written. Motion carried unanimously.

Meeting Schedule for 2012:

Motion was made by Angelo Dirienzo and second by Sam Pollastro Jr. Move that the Zoning Board of Appeals will hold their regular monthly meetings on the third Thursday of each month at 6:30 p.m. at the City Hall for the remainder of calendar year 2012 and January 2013. Motion carried unanimously.

The Zoning Board of Appeals meeting schedule for the remainder of 2012 calendar year shall be the third Thursday of each month at 6:30 p.m.:

	July 19, 2012
	August 16, 2012
	September 20, 2012
	October 18, 2012
	November 15, 2012
	December 20, 2012
March 15, 2012	
April 19, 2012	
May 17, 2012	
June 21, 2012	
January 17, 2013	

At this time chair Mark Zeck recused himself due to his professional relationship with the applicant for applications 346 and 347. Angelo Dirienzo stepped forward to serve as chair for the remainder of the meeting. It was noted for the record that alternate Earl Robinson will serve as a voting member for the following applications.

Application No. 346 and 347 - Applicant: Jalowiec Realty Associates, LP, location of affected premises – 85 Sodom Lane and 87 Sodom Lane, Derby, CT 06418. Appealing the following sections for the creation of one additional dwelling unit at each of the properties:

Section 195-12 B – To allow multi-family use in the R-4 Zoning District

Section 195-54 A – To allow a reduction in required on-site parking spaces from 6 to 0

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

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

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

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

Present this evening were applicant Joseph Jalowiec and his legal representative Attorney Thomas Welch.

Motion made by Earl Robinson and second by Sam Pollastro Jr. Move to allow taking application 346 and 347 simultaneously as the request for variances applies for both 85 and 87 Sodom Lane. Motion carried unanimously.

Atty. Welch stated that the applicant is seeking a use variance to allow a three family unit in a zone not allowing three units and to allow parking on an adjoining parcel. The applicant is seeking to complete garden apartments in each of the buildings on Sodom Lane as well as to provide the necessary parking. He explained that the buildings at 85 & 87 Sodom Lane and 8 & 10 Marshal Lane were built in the mid-1980's. They all were similar in design and the parking requirements were satisfied with a shared parking area located to the rear of the buildings. The garden apartments on the Marshal Lane buildings were completed at the time of construction (3 family in each building) and the garden apartments on Sodom Lane were roughed in but not occupied. Pictures were presented showing three gas meters, three electric meters and plumbing that would allow for connection for sink and lavatory drains. Project plans for "Park Hill Estates" from Rotondo Engineering, LLC dated 02.09.12 entitled "Re-Striping Plan 9' Spaces" were submitted. They detail total spaces provided equaled 25 (twenty-five) spaces with the required amount being 24 (twenty-four) spaces.

Mr. DiMartino arrived at this time. It was noted that as an alternate he would not be voting on this application this evening.

Atty. Welch indicated that the applicant is not asking to change the configuration of anything that is presently located on the parcel. This is what existed at the time of the code change in 2000 and what presently exists. The parking is provided through the joint ownership of the units by Jalowiec Realty. To provide for this parking arrangement in perpetuity Atty. Welch presented a "Parking Easement and Agreement" that could be executed to insure that the off-site parking would be provided.

"KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, JALOWIEC REALTY ASSOCIATES, LIMITED PARTNERSHIP, is the owner of certain real property know as 85 Sodom Lanes, 87 Sodom Lane, 8 Marshal lane and 10 Marshal Lane located in the city of Derby, County of New Haven and State of Connecticut as is more specifically described in Schedule A; and

WHEREAS, the owner wishes to set forth certain parking rights and easements for the above referenced properties; and

WHEREAS, currently parking exists on property know as 8 Marshal Lane and 10 Marshal Lane; and

WHEREAS, 85 Sodom Lane and 87 Sodom Lane do not have any on-sight parking;

NOW, THEREFORE, the undersigned being the owner of all of said parcels hereby makes and creates the following Grants:

1. To the owners of 85 Sodom Lanes, 87 Sodom Lane, 8 Marshal lane and 10 Marshal Lane, and their successors and assigns, a perpetual right to park in common, using those parking area defined on a certain map entitled "Re-Striping Plan 9' Spaces" prepared for Jalowiec Realty Associates, L.P. Sodom Lane, Derby, Connecticut, by Rotundo Engineering, 25 Brook Street, Suite 201A, Shelton, Connecticut 06484, dated February 9, 2012.

Maintenance Provisions:

1. The owners of said parcels, present and future, shall annually inspect said parking areas, accessways, if any, to determine any damage to said common parking areas.
2. The owners of said parcels shall share equally in the cost of the maintenance, repair, snowplowing, sanding, clearing of trees and bushes that interfere with the driveway and general improvement of said parking area and for the cost of maintenance, repair, replacement when necessary and cleaning of any and all parking areas.
3. In the event damage is caused to any of the parking areas by any of said parcel owners or their agents, beyond the ordinary wear and tear, the owner of said parcel causing or creating said damage shall bear the full cost of repairing same.
4. No party shall in any way obstruct the right-of-ways or parking facilities nor shall full and free access be impaired in any manner whatsoever to those parcel owners designated above.

5. There shall be no trucks, items of personal property, or other structures or property stored, kept, maintained or parked within said common parking areas at any time.
6. The owners of each parcel agree to indemnify and hold the other parcel owners harmless from and against all liabilities, expenses, claims, damages and demands for injury to persons or property when such injury results from, is related to or arises out of any maintenance, repair or replacements undertaken pursuant to this agreement or result to any guests, licensees or invitees of such indemnifying owners, absent of showing of gross negligence, willful misconduct on the part of such other owners or the result of misuse or torturous act of any guests, licensees or invitees of such indemnifying owners.”

This draft would be subject to review by the City's Corporation Counsel and once approved would be filed with the Court and properly placed on the City records should these variances be approved.

Atty. Welch noted that per Section 195-80 of the zoning regulations, the Board has the right to grant a building permit for the enlargement or extension of a nonconforming use or building to 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 nonconforming use at the date of this chapter, provided that such enlargement or extension shall not exceed in all fifty percent of the appraised value of such use or existing building at the effective date of this chapter.

Atty. Welch stated that the garden apartment in each building was intended or designed to be a three-family building at the time of construction, similar to that at 8 & 10 Marshal Lane. The utility meters were all installed at the time of construction in the mid-1980's. The addition of the garden apartment will not raise the appraised value by 50 percent. Atty. Coppola had previously issued an opinion that the regulations do not permit a use variance. This is the exception to that rule and is not something that can happen in other parts of the town. Due to the uniqueness of the existing use on this parcel and that the intended use was demonstrated prior to the changes in the regulations in 2000 it provides for the reasonable decision to allow for a variance. Further, currently the parking arrangement is for the shared use of parking on the adjoining lot. By virtue of executing the proposed "Parking Agreement" it provides for certainty that said parking would be assured in perpetuity, whether or not ownership changed in the future. Thus, the non-conformity would be reduced by virtue of the fact that the parking is clearly provided for in the written document. Something that can never be taken away.

The hardship presented is that the applicant's hardship originates in the Planning and Zoning Regulations and arises directly out of the application of the regulations to circumstances or conditions beyond the control of the Applicant. As a result of the peculiar characteristics of this property and the change in the zoning ordinance, a strict application of the zoning regulations result in an unusual hardship to the Applicant, as opposed to the general impact which the

regulation has on other properties in the zone. The variance requested by the Applicant complies with Connecticut General Statutes, Section 8-6(a)(3) in that the variance does not substantially affect the comprehensive zoning plan and the adherence to the strict letter of the regulations does not cause unusual hardship unnecessary to carrying out the general purpose of the zoning plan.

At this time Atty. Welch provided to Mr. Kopjanski the certified letter receipts sent to the adjoining property owners.

Questions on the applications. Mr. Kowarik questioned the requirements of the zone. Mr. Kopjanski indicated that the parcel is in the R4 zone, defined as such, after the adoption of the 2000 regulations and it allows for a single family dwelling with a minimum of 9,000 square feet. Prior to that it was an R-5 zone which did allow for two-family units and multi-family units by special exception with a minimum of 3,750 square feet per unit. The original parcel was subdivided in the 1980's to allow for the construction of four three-family units. It was noted that the house at 89 Sodom Lane was pre-existing, is separate from this discussion and is served by its own on-site parking. Mr. Dirienzo questioned the cost to complete the units. Mr. Jalowiec estimated approximately \$30,000 per unit. This was well under the 50% limitation. As the buildings were built in the 1980's and served as two-family units up until the present, the hardship and the representation of reasonable use was asked to be further clarified. Atty. Welch indicated that as the buildings were constructed as three-family buildings as provided by the regulations at that time. The property owner has the reasonable use of said buildings as they were intended. Members asked Mr. Kopjanski if there were time restrictions as per installation and use. Mr. Kopjanski indicated that under the building code if a permit is issued and the installation is completed, inspected and approved then the installation is considered valid unless it can be demonstrated that it is in some way defective. In terms of the zoning, this application speaks to two main issues – the intended use and the parking issues. Under the current zoning regulations, the R4 zone does not allow multi-family dwellings. The buildings at 85 & 87 Sodom Lane, if three family is allowed, would require 2 spaces per unit or 6 spaces per building. Currently and under this plan, there are no spaces on the building lot itself but rather, there is the required number of spaces on an adjoining parcel in close proximity to the units. The suggested easement does provide for a continuing agreement for parking but Mr. Kopjanski felt that a licensed agreement would be better suited. He noted that the area of any easement must be deducted from the allowed square footage of the lot. Atty. Welch had no objection to the suggestion of a licensed agreement. A question arose as to the size of the parking spaces. Mr. Kopjanski stated that the size at the time of construction was 9 ft by 18 ft with parallel spaces being 8 ft by 22 ft and current standards are 10 ft by 18 ft. The 9 ft dimension is grandfathered.

Public comment on this application was opened. No one came forward. Public portion was closed.

Motion made by Richard Bartholomew and second by John Kowarik. Move to grant the variances for application #346 and 347- Applicant: Jalowiec Realty Associates, LP, location of affected premises – 85 Sodom Lane and 87 Sodom Lane, Derby, CT 06418 for the following sections: Section 195-12 B – To allow multi-family use in the R-4 Zoning District; Section 195-54 A – To allow a reduction in required on-site parking spaces from 6 to 0; Section 195-55 B – To allow required parking to be located on a separate parcel in a residential zone; Section 195-55 D – To allow required parking facilities to be located on a lot within 300 feet from the lot being served in a residential zone; Section 195-61 E – To allow required parking for dwelling units to be located on a separate parcel; Section 195-80 B – To allow by variance a use not permitted by right in any particular zoning district and further stipulate that a parking licensing agreement be approved as a condition of approval and as based upon the hardship stated.

It was noted that the decision was based on the facts as follows: There is no change in the square footage of the buildings on either 85 or 87 Sodom Lane, it was demonstrated that plumbing and utilities have existed (prior to the change in the zoning regulations) and exist on said buildings for a three unit structure; the garden apartment design always existed and no reduction in the number of units has ever been requested, all the prerequisites are satisfied, the parcel is unique and the application reduces the non-conformity by the implementation of a parking licensing agreement.

Motion carried unanimously.

Motion was made by Richard Bartholomew and second by Earl Robinson. Move to adjourn the meeting at 7:30 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies, secretary

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