

Zoning Board of Appeals

Minutes

(meeting taped)

Special meeting: Thursday, August 2, 2012 in the City Hall Media Center.

The meeting was called to order at 6:45 p.m.

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

Motion made by John Kowarik and second by Sam Pollastro Jr. Move that Richard Bartholomew serve as acting chair in the absence of the chairman. Motion carried unanimously.

Public portion: This public portion is to satisfy section 101 of the Charter of the City of Derby. Public portion was closed.

Application No. 353 – Applicant: Schrade Roosevelt, LLC - Location of affected premises – Lots located on Tax Map 10-3-136, 137, 138 and 139, corner of Park Ave. and D St., Derby, CT 06418. Appealing a Cease and Desist ORDER issued by the Zoning Enforcement Officer against the use of the lots as a tractor trailer truck staging/storage area in R-5 zoning district (Sec. 195-13 permitted USES) claiming property is a continuance of a non-conforming use per Section 195-86.

Attorney Thomas Welch was present this evening representing the applicant. The applicant was advised that he could go forward with the presentation with the understanding that all four members must vote affirmatively for the application to be approved or it is his option to ask that the application be tabled until the next meeting with the contemplation of five voting members present. Attorney Welch agreed to go forward with the application this meeting.

Atty. Welch stated the applicant has purchased the Bassett Company building which is in the light industrial I-1 zone and the adjacent parking lot that is in the R-5 zone. The parking lot was used by Bassett for employee parking. A Zoning Board of Appeals decision recorded by the town clerk (Vol 184 pg 162) dated September 20, 1982 states that the W.E. Basset Co. was granted variances to erect a six foot high stockade type fence along the side yard of an existing parking lot, property located on the north side of Park Ave, Derby CT. The hardship for the variances was to relieve neighbors of parking lot from excess noise and lights when employees leave after night shift. At that time Bassett Company had approximately 250 employees with about 50 employees working the second shift from 3:30 pm to 11:30 pm. This shows that the lot was used for industrial use as a parking lot since back to that time. His client is seeking to

continue the use as a parking lot as an accessory use to the industrial zone. The only difference is the type of vehicle. He stated that this is a pre-existing non-conforming use. He cited Michael J Petruzzi et al vs. Zoning Board of Appeals of the Town of Oxford dated January 1979. The case states “where a non-conformity exists, it is a vested right which adheres to the land itself. “And the right is not forfeited by a purchaser who takes wit knowledge of the regulation which are inconsistent with the existing use.” 1 Anderson, American Law of Zoning (2d Ed.) § 6.37, p. 445. “A vested right, unless abandoned, to continue the nonconforming use is in the land[T]he right to a nonconforming use is a property right and ... any provision of a statute or ordinance which takes away that right in an unreasonable manner, or in a manner not grounded on the public welfare, is invalid. A lawfully established nonconforming use is a vested right and is entitled to constitutional protection. 2 Yokley, Zoning Law & Practice, § 16-3, p 219.” Continuing, Atty. Welch indicated that the applicant is actually decreasing the non-conformity due to the decrease in the number of vehicles in the parking lot. He requested that the appeal of the cease and desist ORDER be sustained.

It was explained that the basis of the cease and desist ORDER was that while it was recognized as the lot in the R-5 zone being previously used for employee parking, the use has changed to tractor trailer storage and staging. Tractor trailer use is more in line with construction use than employee use. Further, while the 1982 variance was found, there is nothing in the records stating that the lot itself had been granted a variance to be used by the I-1 zone. In section 195-61 c the regulations state that “in any residence district, not more than one commercial vehicle, with a gross weight limited to two tons, may be housed on any lot, and then only in a private garage; except that motorized equipment properly accessory to a farm, or to a group of multiple-family dwellings, may be housed, but only within a roofed enclosure.”

Atty. Welch again stated that the lot is a parking lot for the I-1 zone and it is a pre-existing approved use. The number of vehicles now in the lot is far less than previously utilized by the Bassett Company thus resulting in a decrease in the non-conformity.

Public portion for application 353:

John Campoli, 220 Hawthorne Ave, stated that at the time (1981) the intent was for employee parking, not tractor trailers.

James Robinson, 250 Hawthorne Ave, stated that tractor trailers did use the lot when it was Bassett Company. There has always been activity in the lot in off peak hours. He felt that the new owners are maintaining the lot, that economic development should be encouraged and that consideration should be given to the applicant.

Jeff Wandell, 116 Park Ave., has lived there for 31 years. Bassett has always had box trucks there. The dumpster at the gas station is the only disturbance in the area in the early hours of the morning.

Eugene Driscoll, 236 Hawthorne Ave., stated that he fully supports Derby's need for economic development but the noise the last few months has been disturbing. The lot was for employee parking not a staging area for tractor trailers and equipment. He felt the residential neighborhood should be preserved.

Susanne Kryvonis, 117 Park Ave., lives right across the street. She stated that there is no noise and their presence is bringing up the value as they are cleaning and maintaining the parcel. There is the back-up beeping but that is a safety necessity that did not bother her. There is more noise from the fire alarm or from the dam.

Alderman Ron Sill, 73 Grove Ave, first presented comments from Alderman Arthur Gerckens who was unable to attend this evening. First, the trucks need to follow zoning rules and there is a legal process to amend the rules. The noise is affecting the quality of life for some of the residents on Hawthorne Avenue. Safety is a concern. The truck noises are extensive with the engines needing to be warmed up, the air brakes charging and releasing, the coupling of the trailers, the back up alarms etc. all customary functions of the tractor trailer but not an equal comparison to employee parking vehicles. Dependant on the time of year windows are open or as the season changes the buffering effects of the trees will be lessened. He asked if the cease and desist is being followed. While certainly he welcomes and encourages businesses to come to Derby, he wants them to follow the rules and regulations set by the City.

Alderman Sill felt there must be a balance with the needs of the residents and the functions of a business. He noted that there is a noise ordinance that curtails activities in the overnight hours and this could be visited. The ordinance restricts the decibel levels of noise from 10 pm to 6:59 am.

Susanne Kryvonis noted that the Yale Boat House also utilizes the parking lot and parking on the street and their activities have impacts on the neighborhood. Their activities have not been questioned.

Eugene Driscoll noted that he attends a lot of government meetings and he was frustrated with the protocols of the last meeting and whether it violated FOI rules. There were people there wanting to speak but only the applicant was allowed time.

Carol Senfield, 238 Hawthorne Ave., stated that she realized that she had not been as attuned to the noises that emanate in the area from the business and residential activities and the commuter traffic on the road. Over time, the familiarity of the environmental impacts can muffle a person's response. On July 20th it was a cool evening and she opened her windows. Between 4:15 and 4:20 am on the 21st she was awakened to the sound of trucks. She encouraged the members to consider the effect this has on the residential properties and the quality of life. She would like to see time restrictions as were indicated by the noise ordinance.

She noted that the applicant also has property on Water Street and she wondered if this activity would be better served down there.

Jeff Wandell noted that there has been two vacant buildings and now there is someone there. He felt this favorable to area. The distressed vacant buildings lowered property values, whereas now it is being maintained.

James Robinson noted the variety of noises in the past. He missed the train.

The applicant George Schrade stated that he purchased the Bassett parcel because Water Street was not fulfilling all of his needs. During the land use process of approval, many restrictions were placed on the Water Street parcel. He has not officially moved into Derby as of yet and as such the vehicles on the Roosevelt Drive/Park Avenue site are not registered in Derby and they are not being taxed in Derby. Once the move is complete the intent would be to update the registrations. He indicated that Bassett had tractor trailers on the lot in question. You could not turn around without entering that lot. He explained that he is trying to be a good neighbor. He has hired local residents to assist in some of the duties of maintaining the site. He is also trying to be cognizant of the surrounding neighborhoods.

Atty. Welch stated again that their position is that this is a permitted right. Warehousing is a permitted use in the I-1 zone. The parking lot is being used as a parking lot only.

It was questioned whether stipulations could be applied to the use. Mr. Bartholomew explained that this evening the Board is addressing the cease and desist ORDER only. The question is whether there is a change of use or if this is a permitted right for the new owner. Does the parking of commercial vehicles, the tractor trailers, constitute a change. Is the R-5 lot usage an accessory use of the I-1 parcel. This is not a request for a variance.

The chair asked if anyone else desired to speak. No further comment was received and public comment was closed.

Members deliberated on all the information presented. They weighed the impacts of tractor trailer usage compared to employee personal vehicles in terms of whether the uses were similar or different in nature. The lot is zoned R-5 and they considered whether it is an accessory use to the I-1 parcel. They considered whether this is a continuation of the previous use with intensification due to the tractor trailers or if this is a change from the use. It was noted that the owner does have the option of pursuing a zone change through the Planning and Zoning Commission or a variance could be sought. That would be where the structure of the use could be defined, a question that was raised during the public portion.

Motion made by John Kowarik and second by Earl Robinson. Move that the applicant: Schrade Roosevelt, LLC - Location of affected premises – Lots located on Tax Map 10-3-136, 137, 138

and 139, corner of Park Ave. and D St., Derby, CT 06418 is continuing the use of the parcel with an intensification of the allowed non-conformity use as per Section 195-86 as a continuous usage as approved in 1982 and that this is not a change in use. Motion was denied with Richard Bartholomew opposed as he stated that he believed it is a change of use that will require land use approval being that the usage of the parcel went from an employee parking area to a tractor trailer staging area.

Motion was made by Sam Pollastro Jr. and second by John Kowarik. Move to adjourn the meeting at 7:50 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies, secretary

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