

Zoning Board of Appeals

Minutes

(meeting taped)

Monthly meeting: Thursday, April 18, 2013 in the City Hall Aldermanic Chambers.

The meeting was opened at 6:35 p.m.

Chairman Zeck stated that a brief recess would be taken to await one member.

At 6:45 p.m. the meeting was called to order.

Roll call - members present: Mark Zeck, Richard Bartholomew, John Kowarik and Harvey Finkel. Angelo Dirienzo, Sam Pollastro Jr. and Earl Robinson were excused. Building Inspector 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.

Approval of minutes: Motion made by John Kowarik and second by Harvey Finkel. Move to accept the minutes of the March 21, 2013 meeting, as written. Motion carried unanimously.

At this time the Chair advised the applicants that there are only four voting members this evening. Alternate member Harvey Finkel will be a voting member. With only four votes, the decision must be unanimous. The applicants can choose to continue their applications until next month if they seek to try to have five voting members. Applicants were in agreement that they would go forward this evening.

Application No. 365– Applicant: William and Lisa Rooney. Location of affected premises – 49 Ida Avenue, Derby, CT 06418. Appealing Section 195-26 (O) of the Derby Zoning Regulations. Requesting a height variance of six (6) feet, in order to construct a twelve (12) foot high rear yard property boundary fence.

The applicants were present this evening. Mr. Rooney stated last month that he moved into the house in May 2012. Due to the topography of the lot and due to his wife's disability they are seeking additional measures for privacy. They have constructed a stockade fence around the rear and side perimeters of the lot and they are seeking to extend the height by an additional six feet. Mr. Rooney asked if Corporation Counsel had offered a decision. Chairman Zeck explained that the Corporation Counsel offers guidance to the Board but the action on the variance will be made by this Board. Corporation Counsel has suggested a reasonable accommodation is appropriate considering the existence of the disability. The applicant has

provided documents demonstrating a disability. Chairman Zeck asked if the applicants wished to provide any further comment or evidence. They indicated that they had nothing further.

Public portion for application 365: The Chair noted that there was opposition presented last month during the public hearing. This evening there is no one present to speak for or against this application. Public portion was closed.

Members began deliberation. Chairman Zeck indicated that being that the applicant has demonstrated to the City, to Corporation Counsel and this Board that there is a disability, it behooves the Board to make a decision as to what is reasonable. The medical information submitted speaks to the medical conditions present but does not specifically express the need for the level of privacy being sought. Members noted that the public did raise concern about the possible effect of lowering their property values should this 12 ft high fence be allowed. They also raised concern for safety in the stability of such a high structure. Members asked if there has been any interaction by the applicants and their neighbors. The applicants indicated that no fruitful compromises could be reached and the neighbors were not receptive to the applicants. Chairman Zeck asked if there is a derivative of the original request that would be acceptable to applicants and offer a compromise to the neighborhood. Mrs. Rooney stated that due to the different elevations of the adjoining properties, their property is the low spot and the existing fence height provides no blockage of the neighboring views. The intent is to add a lattice style six foot extension to the existing fence. She felt that the result will be aesthetically pleasing and could actually raise the value of the properties. Members asked if the extension could be only in the rear of the property. The applicants indicated that there is a second floor deck and a retaining wall that raises the adjoining properties on the rear and sides of their rear yard. There is no way to fully block because of the differences in grade but this would provide adequate obstruction of view. They stated that vegetation was considered but again the height is a problem. Bamboo was suggested but they were very concerned with the specimen's invasive behavior. Chairman Zeck noted that the medical documents are dated April 7, 2010. He asked if this is accurate as of today. Mrs. Rooney indicated that she has a total and permanent disability. Members discussed whether the variance would be associated with the property or to the applicant and her existing disability. It was suggested that the reasonable accommodation is directed toward the disability and if for whatever reason the situation changes then the variance would be null and void. It would not continue on the property should Mrs. Rooney leave the residence.

Motion made by Richard Bartholomew and second by Harvey Finkel. Move to grant the variance requested in application #365 to allow for construction of a twelve (12) foot high rear yard property boundary fence by placing a lattice style six (6) foot extension on the existing stockade fence with the contingency that it only applies as long as the applicant Lisa Rooney remains at the premises and continues to present the permanent disability as described. Discussion on the motion. Members questioned if the City needed information to determine that the disability continues to exist, but they felt the documentation defines it as permanent. The

members stressed the reason for approval is to provide for reasonable accommodation of the disability but the record is clear that the fence extension shall be removed at whatever time the existence of the disability no longer presents at the property. Motion carried unanimously.

Application No. 366– Applicant: Father McKenna’s St Vincent DePaul of Shelton. Location of affected premises – 1 Park Avenue, Derby, CT 06418. Appealing Section 195-17 (E) Reduction in lot area and Section 195-26 (A) Reduction of Lots. Requesting a variance to reduce the area of a lot from 14,505 ftsq to 7,005 ftsq in the I-1 zone.

Application No. 369 – Applicant: Father McKenna’s St Vincent DePaul of Shelton. Location of affected premises – 237 Roosevelt Dr. Derby, CT 06418. Appealing Sec 195-17(E)(7) seeking a variance to reduce north sideline set back from 20 feet to 7 feet 11 inches and south sideline setback from 20 feet to 1 foot 5 inches to build addition to existing building.

Both applications are being heard at the same time. Atty. Thomas Welch was present representing the applications as well as stating that he is on the Board of Directors of Father McKenna’s St Vincent DePaul of Shelton. Atty. Welch indicated that both the parcels shown are currently pre-existing non-conforming lots. The intent is to purchase from Manion Realty a portion of the property and provide shared parking thus decreasing the non-conformity at 237 Roosevelt Drive. The certified letters for #366 were presented last month; the letters for #369 were presented to Mr. Kopjanski this evening.

Atty. Welch stated that the total project will reduce the non-conformities that currently exist in regards to parking and certain setbacks. He presented an updated map that details the parking dimensions as requested by Mr. Kopjanski. The distance and the turning radius are in compliance with current regulations. The number of parking spaces for 237 Roosevelt Drive has been satisfied. The addition onto the building with the purchase of the parcel from 1 Park Avenue reduces the existing non-conformity for 237 Roosevelt Drive for the rear yard setback by 65 feet but by adding onto the building we are increasing the non-conformity of the side yards by 50 feet. The net result is that the project will reduce the overall non-conformity by 15 feet. The hardship as stated is:

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, topography and locations on this property, 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 cause unusual hardship unnecessary to carrying out the general purposes of the zoning plan.

The new addition and configuration of the expanded parcel will create an “L” shaped parcel that will provide storage area for the facility as well as needed employee parking. The existing front parking area of 237 Roosevelt Drive will not connect with the newly created parking area off of 1 Park Avenue.

Public portion for application 366: The public portion was opened. There was no one present to speak for or against this application. Public portion was closed.

Motion made by John Kowarik and second by Harvey Finkel. Move to grant the requested variance for application #366, Appealing Section 195-17 (E) Reduction in lot area and Section 195-26 (A) Reduction of Lots. Requesting a variance to reduce the area of a lot from 14,505 ftsq to 7,005 ftsq in the I-1 zone. Motion carried unanimously.

Public portion for application 369: The public portion was opened. There was no one present to speak for or against this application. Public portion was closed

Motion made by John Kowarik and second by Harvey Finkel. Move to grant the requested variance for application #369, Appealing Sec 195-17(E)(7) seeking a variance to reduce north sideline set back from 20 feet to 7 feet 11 inches and south sideline setback from 20 feet to 1 foot 5 inches to build addition to existing building. Motion carried unanimously.

Motion was made by Richard Bartholomew and second by Harvey Finkel. 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.