

# *Zoning Board of Appeals*

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## **Minutes**

(meeting taped)

Special meeting: Thursday, April 26, 2007 in the New City Hall.

Meeting was called to order at 6:05 p.m.

By roll call, members present:

Samuel Rizzitelli, Richard Bartholomew, Mark Zeck and John Kowarik. Angelo Dirienzo was excused. Alternates Walter Nizgorski and David Manley were present with Mr. Manley sitting in as a voting member this evening.

Building Official David Kopjanski was also present.

### **Election of a Chair:**

Richard Bartholomew nominated Samuel Rizzitelli with second by David Manley.

Mark Zeck nominated Angelo Dirienzo with second by John Kowarik.

With no further nominations, the floor was closed and the vote was called.

Vote for Samuel Rizzitelli as chair.

Samuel Rizzitelli	yes
Richard Bartholomew	yes
Mark Zeck	no
John Kowarik	no
David Manley	yes

Vote for Angelo Dirienzo as chair.

Samuel Rizzitelli	no
Richard Bartholomew	no
Mark Zeck	yes
John Kowarik	yes
David Manley	no

With the votes taken, Samuel Rizzitelli was elected Chair for the Zoning Board of Appeals.

### **Approval of minutes:**

The matter was tabled without objection.

**Application No. 262** – Applicant: Annabella Nakis, 11 Krakow Street, Derby, CT 06418  
Location of affected premises – Same. Appealing determination of Building Official and Zoning Enforcement Officer denying certificate of Zoning Compliance for construction of a two story deck. Zoning Ordinance being appealed: Section 195-11E (6) - side yard setback of sixteen (16') feet required, thirteen feet six (13'6") inches proposed. Hardship claimed: Without variance inhabitants will not be allowed access to door at all times in case of an emergency.

The property owner was present and indicated that changes to the plans have allowed her to build within the regulation requirements. Mr. Kopjanski reviewed the plan during a brief recess and determined that there was no need for a variance. The applicant withdrew the application.

**Application No. 263** – Applicant: The Recreation Camp Inc., 550 Roosevelt Drive, Derby, CT 06418, Owner: The Recreation Camp Inc. and Derby Housing Authority  
Location of affected premises – Same. Appealing determination of Building Official and Zoning Enforcement Officer denying certificate of Zoning Compliance for a proposed building addition and off-street parking areas. Zoning Ordinances being appealed: Section 195-23E - rear yard and front yard setback variances for the expansion of an existing building; Section 195-39D (2) - variance to allow vehicles in a parking lot to back out directly into street; Section 195-54 - variance of thirty seven (37) parking spaces to provide 12 off-street parking spaces where fifty nine (59) are required; Section 195-55A – variance to allow the creation of a fifteen (15) car parking lot in the front yard setback of an RM zone property at Guardiano Terrace; Section 195-55B – variance to allow the creation of a fifteen (15) car parking lot in the RM zone for the use of a property on another lot. Hardship claimed: Full text detailed in application – expansion would allow for a handicap accessible recreation camp to learn aquatic and boating skills for years to come.

Atty. James Cohen, representing the applicant, asked that the public be allowed to speak at this time. Mr. Rizzitelli explained that the practice is to hear the application and then open the public comment. Atty. Cohen explained that a resident was present but was unable to remain through the presentation and would like to make his comments now. Mr. Kowarik noted that the City Charter cites that public portion is held. Without objection, the public portion was opened.

Jack Walsh of 31 Eighth Street stated that he is chair of the Parks & Recreation Commission but he is not speaking on their behalf this evening. He spoke to the history of the Camp noting it is in its 90<sup>th</sup> year. He stated that he learned to swim there as a youth and later ran the camp for a period. The Camp is not a function of the Parks & Recreation of the City but rather is funded through grants and fees and is providing a valuable service to the City at no charge to the City. He encouraged the members to do whatever can be done to keep the program going. It is the only summer outdoor program in the City for swimming and other water sports and they are now extending their offering to academic programs. He noted that the Camp has done a

phenomenal job over the years, never a drowning, fees are reasonable and it offers a distinctive service to the City.

Atty. Cohen presented twenty six (26) certified receipts to the building official, 23 are signed, 2 were not picked up, 1 was forwarded and then returned. In attendance this evening along with Atty. Cohen were Donald Smith, professional engineer for the project, and Board of Director members Robert Manger, Roy Glover, Charles Sullivan and John Rak. The institution has existed since 1917 and has provided service to thousands over the years. The Camp has always been at its current site and was in existence long before zoning regulations were written. The lot is constrained by Route 34 and the Housatonic River and the expansion will be going vertical as there is no buildable land. He stated that this is a classic definition for a hardship where the topography or the shape of the lot makes it impossible to strictly comply with the regulations. It is not because this is a great organization but rather it is because of the condition of the land and the basic unfairness of applying the strict application of zoning regulations to the land in question.

Mr. Smith presented the application detailing each variance request.

Section 195-23E states “All active recreational uses or facilities must be located at least 100 feet from any property line and/or recreational zone.” The applicant requests a variance of 59ft. 4inches to 84 ft. front yard and a variance of 80 ft. rear yard to allow an existing non-conforming building to be expanded. The side yard setbacks are not effected. Hardships claimed are:

1. The Recreation Camp has been serving the youth of the Valley from this location since 1917. The existing building does not conform to the provisions of the Zoning Regulations because the use was established and the original building was constructed prior to the adoption of the zoning regulations. It is physically impossible for the current location to be in compliance with the regulations due to the size, shape and topography of the parcel. The Camp’s property is bounded by CT Route 34 and the Housatonic River and the depth of the property is less than 100 ft. As proposed, the expansion will decrease the existing non-conforming front yard setback by 1.8 ft. Granting this variance will allow a reasonable expansion of the building in order to comply with health and accessibility codes without violating any other land use regulations.

2. This property is unique in that the City changed the zoning designation of the property from R-5 to OS in 1999 and the existing building is the only building in the OS zone that is non-conforming in terms of location (i.e. setbacks). Additionally, the property is constrained by it steeply sloping topography, the Housatonic River and Rt. 34.

3. The recreational use of this property was established and the building was constructed prior to the establishment of the zoning regulations. Any noncompliance with the regulations is no due to the negligence of any former or current Recreation Camp official.

4. Due to the size, shape and topography of the property, it is impossible for the Recreation Camp to comply with this provision of the zoning regulations. The Recreation Camp is a nonprofit organization and there will be no financial gain realized from this project. The

beneficiaries of this project will be the generations of valley children who will be able to utilize a new, expanded and handicap accessible Recreation Camp to learn aquatic and boating skills for years to come.

Section 195-39D (2) states “No parking lots shall be designated that force vehicles to back onto the street.” The request is to vary this section to allow a parking lot that requires vehicles to back onto the street. Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option. The Camp is currently negotiating with the Derby Housing Authority for approval to construct an eleven car parking lot (note: negotiating has reduced the number originally indicated in the application from 12 to 11) on Lakeview Terrace. Currently, Lakeview Terrace is a low-volume residential street with existing residential driveways that requires vehicles to back onto the street. This variance would only apply to the spaces being considered on the Housing Authority property and not the on-site parking lots with access to Rt. 34. The proposed parking spaces would be intended for use by the Recreation Camp staff and they would be signed to prohibit overnight parking. During the off-season the parking spaces would be blocked off to prevent their unauthorized use.

2. The Recreation Camp property is unique in that it is technically infeasible to provide more than two (2) on-site parking spaces, except possibly with a parking garage. However, a parking garage would not be able to be constructed due to the required setbacks.

3. The Recreation Camp did not alter the topography of the property to make it unsuitable for the development of a parking area.

4. Due to the size, shape and topography of the property, it is technically infeasible, regardless of cost, to comply with this provision of the zoning regulations.

Section 195-54 states “For each use of land, buildings and other structures, off-street parking spaces shall be provided in such number and in the location specified ...”. The request is to vary the requirements of this section by thirty-two (32) parking spaces (59 spaces are required, 27 is provided.) (Note: since the application was written negotiations with the Housing Authority has changed the number provided – originally seeking variance for 37 spaces as noted in application.) Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option.

2. The Recreation Camp property is unique in that it is technically infeasible to provide more than two (2) on-site parking spaces, except possibly with a parking garage. However, a parking garage would not be able to be constructed due to the required setbacks.

3. The Recreation Camp did not alter the topography of the property to make it unsuitable for the development of a parking area.

4. Due to the size, shape and topography of the property, it is technically infeasible, regardless of cost, to comply with this provision of the zoning regulations.

Section 195-55 A states “in residential zones, no off-street facilities shall be designated and/or located in any required front yard except for the paved portion of a driveway which gives access to said facility.” The request is to vary this section to allow an off-street parking lot to be constructed in the front yard of a residential zone. Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option. The Camp is currently negotiating with the Housing Authority for approval to construct a total of fifteen (15) parking spaces on the Housing Authority property. The location of these spaces would be in the front yard of the Housing Authority property. There is insufficient land area on the Housing Authority property to construct a parking lot that is not in the front yard.

2. There are no other cases in the R-M Zone where a parcel is being used for off-street parking associated with an off-site use.

3. The Housing Authority property is the only other suitable location to develop an off-street parking area within walking distance (300 ft) of the Recreation Camp. The Birmingham Utility property is unavailable due to Department of Health regulations.

4. The zone of the property cannot be changed to a “non-residential” zone because then the primary use (elderly housing) would become non-conforming.

Section 195-55 B states “In residential zones, parking spaces required for all uses shall be provided on the same lot as the principal use.” The request is to vary this section to allow a parking lot in a residential zone, that is not on the same lot as the principal use. Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option. The camp is currently negotiating with the Housing Authority for approval to construct a total of fifteen (15) parking spaces on the Housing Authority property which is in a residential zone. If this variance is not granted, the Camp staff will continue to park along Lakeview Terrace. In order to facilitate safe passage to/from the off-site parking areas, the Camp has made application to the Department of Transportation for the installation of a traffic signal and a signalized pedestrian crossing at the existing crosswalk on Rt. 34 at Lakeview Terrace.

2. There are no other cases in the R-M zone where a parcel is being for off-street parking associated with an off-site use.

3. The Recreation Camp did not alter the topography of the property to make it unsuitable for the development of a parking area.

4. It is technically infeasible to combine the parcels so the use and the parking area are on the same parcel.

Section 195-55D states “if the parking facility is not located on the same lot it is intended to serve, a written affidavit of agreement, binding each participating owner and successor in interest of the life of the joint use of the facility, shall be recorded in the land records prior to the endorsement of any site plan.” The request is to vary this section to allow a written parking agreement that is “at will” rather than “binding for the life of the facility”. Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option. The Camp has an Agreement with the State of Connecticut DEP for the development and use of ten (10) off-street parking spaces to be located on the DEP property. The Camp is currently negotiating with the Housing Authority for approval to construct a total of fifteen (15) parking spaces on the Housing Authority property. Neither the CTDEP or the Housing Authority are willing to enter into an agreement that is "binding for the life of the facility". We understand that if either or these agreements are terminated, the applicant must return to the ZBA for additional consideration.

2. The CTDEP has indicated they cannot enter into a "life use" agreement without the approval of the General Assembly. If the Housing Authority agrees to allow the construction of the parking areas, we anticipate that they will not want to enter into a "life use" agreement either.

3. The applicant cannot control the requirements that the DEP or the Housing Authority attach to the proposed agreement. We have asked and they said NO.

4. Our neighbors are being kind enough to grant us an "at will" agreement, they cannot be forced or financially enticed to enter into an agreement that contains a "life use" clause.

The expansion will make the facility handicapped accessible in terms of a handicap accessible parking space, elevators and lifts and handicap accessibility to the waterfront. The parking needs were determined as per the letter dated March 29, 2007 from David G. Sullivan of Barkan & Mess Associates, Inc., traffic engineers and transportation planners, assessing the usage and potential parking needs and offering an opinion that the projected elementary school rate of .28 was appropriate in calculating the needed spaces for this facility. The calculation of 200 children at .28 spaces per child equaling fifty-six (56) spaces plus office and storage space square footage that added three (3) spaces into the calculations brought the total needed spaces at fifty-nine (59). There will be approximately twenty (20) staffers as well as the parents dropping off the campers. The DEP will allow ten (10) spaces behind their building as defined in the letter (attachment #5 in the application) dated March 15, 2007 from Thomas Morrissey, Chief, Bureau of Outdoor Recreation, State of Connecticut DEP. The Housing Authority is negotiating a drop-off loop with four parking spaces in addition to an eleven space parking lot. The eleven spaces in the lot would primarily be used by the staff resulting in limited traffic activity. Signs will be posted "for Recreation Camp use only" and this should allow for the Police to enforce the restriction. The applicant has had informal conversation with the Police Department. A traffic evaluation is being reviewed to see if the crossing warrants traffic signs at the intersection. The Camp is exploring a full traffic light with a pedestrian crossing button with the DOT. The intent is to have staffers stationed across the street to escort campers to the site. It is understood that if the parking was lost in the future, the matter would have to be brought to the City's attention and action would be required to resolve the change in plan.

Mr. Smith completed his presentation. Mr. Rizzitelli opened the floor to the members for questions. It was noted that alternate Mr. Nizgorski was invited to ask questions being that in

the event that this application is continued, he may be a voting member at a future meeting pertaining to this application.

Mr. Kopjanski indicated that Mr. Smith has accurately represented the variances needed. Only one of the variances involves the construction, the remaining five pertain to parking regulations. The Derby Inland Wetlands Agency and the Planning and Zoning Commission will have overview of the plan if the variances are allowed. The site plan approval is required by Planning and Zoning and if a change in circumstance occurred, the project would be out of compliance and would have to be revisited by Planning and Zoning. Mr. Kopjanski indicated that he worked with the applicant to verify the sections that were out of compliance and that required the variances being requested this evening. He conferred with the City Engineer in determining the number of parking spaces needed for this use and it was determined that the use was similar to that of an elementary school. The space requirements were made from this assumption.

Mr. Bartholomew questioned whether all these variances were needed to add onto the building, and whether the applicant could seek the variance for backing out on to the street even though it was not their property. Mr. Kopjanski stated that was correct. Mr. Bartholomew asked how many parking permits were to be issued and what was the ratio of counselor to camper. Mr. Smith indicated there were approximately twenty staff members and the ratio is one (1) counselor for every twelve (12) campers. Mr. Smith clarified that the need for the parking spaces exists today even without the addition. The expansion would provide more program space but not an increase in membership. With the expansion, the building would provide for ten (10) bathroom facilities and requirements are one (1) facility per twenty (20) campers.

Mr. Manley questioned whether the applicant would go forward with the expansion without the parking. Mr. Smith indicated that the Camp would desire to go forward and would continue the practice of parking on the street. It was noted that without all the variances, the expansion can not go forward. Mr. Manley questioned how the vote would be taken. Mr. Rizzitelli indicated that there would likely be a vote on each variance. Mr. Manley expressed concerns. There is no guarantee on the traffic light and there is no guarantee on the parking perpetually. Mr. Smith indicated that the DOT has been approached for a full traffic signal with pedestrian crossing and if the parking was withdrawn, the applicant would have to come back to the City. Mr. Kopjanski indicated this proposed activity requires Planning and Zoning approval and with the approval will be an accepted site plan. If they lose the parking spaces, they would be in violation of their site plan and the City would take action to shut down the operation until an alternative plan is decided.

At this time the hearing was opened to the public for their comment.

Donald Germain of 16 Lakeview Terrace stated that he has been living there for more than thirty years and he is familiar with the traffic and the pedestrian activity. When the Camp is in session the conditions are horrendous. He stated that it is a miracle that no one has gotten killed.

There is parking on both sides of the street and children run across the street. He had strong safety concerns and was uncertain whether this plan would solve the concerns. He had nothing against the Recreation Camp but he can not see how this is going to work. He also stated that he believed that state statute provides that any parking lot with more than ten spaces is open to the public so the restrictions could not be imposed and he questioned whether it required handicapped spaces.

Louis Gaetano of 10 Lakeview Terrace questioned if the parking would only be for the eight weeks that they are in session. It was understood that the parking lot would be chained off when not in use.

Roy Glover ,Camp Director from (address inaudible), Shelton spoke in favor of the application and stressed how this expansion would greatly help the camp and service the youth.

Anthony Teodosio of 22 Lakeview Terrace stated that he was in favor of the Recreation Camp as it is a great place for the children. As a child he swam there. When the Camp is in session the traffic stops on the main road to drop the campers off and they run across the street. Cars slam on their brakes and there have been rear-end collisions. No matter how many parking spaces, this would continue to be a problem. He did not feel the parking plan would work.

George Dunne of 8 Lakeview Terrace stated that his main concern in that the parking is now being moved up into the neighborhoods. He asked if the Camp was aware of the number of calls to the Police Department. He stated that there are youth hanging out up there and every morning there is litter everywhere. He was in favor of the turn around area, the light, the DEP parking but not the Housing Authority parking lot.

Judy Dunne of 8 Lakeview Terrace questioned how there would be a sidewalk area if the cars are pulling in and backing out. Mr. Smith indicated that the parking spaces would be in approximately eighteen feet from the street and there would be sufficient room for the sidewalk between the space and the street. Ms. Dunne was concerned with pedestrian safety with the vehicles backing over the sidewalk.

Colleen Ezzo of 14 Lakeview Terrace was not disputing how wonderful the camp is but noted how the camp is open to youth beyond the Derby city limits. She felt that the parking lots would encourage more traffic flow and would directly effect the property values on Lakeview Terrace. She has done improvements to her house in the past and had to make changes to the plans for two feet. Here, the applicant is seeking a far greater number of variances. She agreed that there is a need to solve the problem but she did not feel that this was the answer.

Robert Manger, Camp director, noted that counselors currently park on both sides of Lakeview Terrace making visibility difficult and this plan is to try to eliminate the congestion and the safety



concern by providing off-street parking. He noted that no one has been struck crossing the road to go to the Camp.

Mr. Germain noted that the problems are not only for the eight weeks the camp is in session. The neighbors see an abundance of youth parking in the evenings and illegally entering the Camp or going on state property to utilize the river. He said you get tired of calling the police.

No one else came forward at this time.

Due to the complexity of the application, Mr. Rizzitelli suggested that the matter be tabled until the next meeting to allow the members and the public to digest the material presented this evening.

Motion was made by Mark Zeck and second by David Manley. Move to table application #263 The Recreation Camp Inc., 550 Roosevelt Drive, Derby, CT 06418, Owner: The Recreation Camp Inc. and Derby Housing Authority until the next meeting. Discussion on the motion. Mr. Kowarik questioned when the meeting would be held. Mr. Rizzitelli indicated that the members will review their schedules and a compatible date will be set and advertised for the public. Motion carried unanimously.

Without objection the meeting adjourned at 7:27 p.m.

Respectfully prepared,  
Karen Kemmesies, secretary

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