

# *Zoning Board of Appeals*

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## **Minutes**

(meeting taped)

Special meeting: Thursday, July 19, 2007 in the New City Hall.

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

By roll call, members present:

Samuel Rizzitelli, Angelo Dirienzo, Richard Bartholomew and John Kowarik. Mark Zeck 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.

**Public portion:** The Chair noted that there would be a public portion for each application. This public portion is to satisfy section 101 of the Charter of the City of Derby.

Delia Fortier of 4 Talmadge Street questioned if there was an application for Roseland Pizza as her property is on the adjacent street and she was not notified.

John Adams of 7 Talmadge Street also questioned if there was an application for Roseland Pizza.

Mr. Kopjanski presented a facsimile that he had received today at 4:00 p.m. from Attorney Richard Volo regarding application #266 – applicant EBIFICIO, LLC. It states:

*“On behalf of the above stated applicant Ebificio, LLC of Hamden, CT the previous application submitted to the City of Derby ZBA requesting several variances at property at 350 Hawthorne Avenue, Derby, CT owned by Lina, Gary and John Lucarelli is hereby withdrawn. The application will be resubmitted in revised form for the next scheduled ZBA meeting.”*

**Application No. 266** –Applicant: Edificio, LLC, 350 Hawthorne Avenue, Derby, CT 06418

Location of affected premises – Same. Appealing determination of Building Official and Zoning Enforcement Officer appealing Sections 195-12E4 195-87A, 195-54, 195-26D11 and 195-25E1 of the City of Derby Zoning Regulations. Requesting variances to construct a 985 square foot restaurant addition.

Motion was made by Angelo Dirienzo and second by John Kowarik. Move that application #266 – applicant: Edificio, LLC be withdrawn as per the facsimile presented this evening from the Law offices of Richard A. Volo, representing the applicant.

Discussion on the motion. Mr. Manley noted that there will be discussion of application fees later in the meeting and he questioned whether this would impact the withdrawal or the submittal of a new application. The chair indicated that the discussion of fees could include that question.

Mrs. Fortier questioned whether there was information available for this application. She was encouraged to speak with the Zoning Enforcement Officer.

Motion carried with Angelo Dirienzo recusing himself from the vote.

**Application No. 264** – Applicant: Sharlene McEvoy, 200 Emmett Ave., Derby, CT 06418, Location of affected premises – Same. Appealing the issuance of a Cease and Desist Order for the construction of a property boundary fence in excess of six feet in height.

**Application No. 267**– Applicant: Sharlene McEvoy, 200 Emmett Ave., Derby, CT 06418, Location of affected premises – Same. Appealing determination of Building Official and Zoning Enforcement Officer. Zoning ordinance 195-260. Requesting variance to maintain an existing fence on the northern side of the property and to appeal the cease and desist order.

Atty. Barbara M. Schellenberg, representing the applicant for applications 264 and 267, advised the Board that there may be a notification issue. She has received green receipts from the certified letters from most of the notified parties but she did not have the white copy of the receipt from the post office for the mailings. There were thirteen letters sent by certified mail but the post office could only confirm twelve of the letters. She asked that the public hearings for both applications 264 and 267 not be opened until the next meeting so that proper notification could be sent to the adjoining property owners.

The Chair indicated that the Board must take action within a statutory period of time and the preferred action would be to withdraw said applications until the documentation is complete.

Atty. Schellenberg asked if enforcement of the cease and desist could be suspended until the next meeting. The Chair indicated no, as such action would be as if the application was being heard and action taken. Atty. Schellenberg asked if the application could be opened and then continued until next month as she has proof of notification of twelve of the thirteen parties and she would have ample time to notify that last person prior to the next meeting. The Chair indicated that as proper notification of all parties has not been accomplished, that party would not have fair opportunity to hear the application in its entirety.

Mr. Kopjanski indicated that one application is for the cease and desist while the second is a requested variance. He questioned whether notification requirements applied to the cease and desist. At this time a brief recess was taken to research the regulations regarding notification.

Motion was made by John Kowarik and second by Richard Bartholomew. Move to take a recess at 6:15 p.m. Motion carried unanimously.

Without objection, the meeting reconvened at 6:24 p.m.

Per section 195-82 notification of adjoining property owners is required to override a decision by the Zoning Enforcement Officer.

Atty. Schellenberg indicated that the applicant withdraws applications 267 and 264 at this time and new applications will be filed.

**Public portion** was opened on the applications.

Mr. & Mrs. Gianpolo of 204 Emmett Avenue indicated that work continues on the fence after the cease and desist order was placed on the property and materials are falling into their yard. It was suggested that the property owner speak with Corporation Counsel or the Zoning Enforcement Officer as taking action is beyond the scope of this Board being that there is no application before them. Mr. Kopjanski indicated that he would investigate what penalties the law would allow to gain relief of this matter.

Motion was made by Richard Bartholomew and second by Angelo Dirienzo. Move that applications 264 and 267 be withdrawn, as requested by the attorney representing the applicant. Motion carried unanimously.

**Discussion of fee schedule:** Members discussed whether the fees were sufficient. It was noted that the legal notices filed in the newspaper far exceeds the fee being received from the applicant. Members discussed whether the City or the individual should bear the expense. Members were divided on this issue. It was decided that the fee schedules of the adjoining towns would be reviewed and the matter would be further discussed at the next meeting. It was questioned whether the Zoning Board of Appeals or the Board of Alderman set the schedule. This will be clarified.

Motion was made by Angelo Dirienzo and second by David Manley. Move that the meeting adjourn at 6:51 p.m. Motion carried unanimously.

Respectfully prepared,  
Karen Kemmesies, secretary

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