

Zoning Board of Appeals

Minutes

(meeting taped)

Regular monthly meeting: Thursday, April 24, 2008 in the City Hall media center.

The meeting was called to order at 6:35 p.m.

By roll call, members present: Mark Zeck, Angelo Dirienzo, John Kowarik and David Manley. Alternate Walter Nizgorski was present and sat in as a regular voting member. Richard Bartholomew was excused. Alternate Michael Dellinger was absent.

Corporation Counsel Joseph Coppola and Building Official David Kopjanski were present.

Without objection, the executive session was moved on the agenda to directly after approval of minutes.

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. No one came forward to speak.

Approval of minutes: Motion was made by David Manley and second by John Kowarik. Move to accept the minutes of the March 20, 2008 meeting, as written. Motion carried unanimously.

Executive Session: Motion was made by John Kowarik and second by Angelo Dirienzo. Move to enter into executive session at 6:37 p.m. for the purpose of discussing a legal matter with Corporation Counsel Joseph Coppola and Building Official David Kopjanski invited to attend. Motion carried unanimously.

Motion was made John Kowarik by and second by David Manley. Move to return to open session at 6:59 p.m. Motion carried unanimously.

Motion was made by John Kowarik and second by David Manley. Move to go out of order on the agenda and take application #274 before application #212. Motion carried unanimously.

Application No. 274 – Applicant: Derby Shopping Center, LLC. Location of affected premises – 500 New Haven Avenue, Derby, CT 06418. Appealing Section 195-71(C) (3) (4) of the City of Derby Zoning Regulations. Requesting variance to allow for the installation of two additional freestanding signs at the premises.

Atty. Thomas Welch, representing the applicant, explained that the applicant is seeking to place two location signs – one at the entrance on Sodom Lane and one by the Dunkin Donuts on Rte. 34. The parcel is unique in that the main sign currently located on Rte. 34 is a distance away from the actual entrance. Sub-section 3 indicates that the applicant is entitled to one wall of free-standing sign not exceeding thirty-two feet and sub-section 4 indicates that shopping centers occupying less than ten acres are entitled to one free-standing sign not exceeding fifty square feet, shopping centers occupying ten acres or more are entitled to one free-standing sign not exceeding one hundred square feet solely to identify the shopping center. The hardship, as to the size of the parcel, the location to the rear of the parcel and the unique topography with a brook dividing the parcel, the location of the entrances as they currently exist are significantly different than if this was being built from scratch. The proposed location signs, they believe, will not affect the comprehensive plan and will be a great assistance to public health and safety in terms of identifying the ingress and egress for this project. Project manager Robert Pryor of Langan Engineering & Environmental Services explained the layout of the parcel and the location of existing and proposed signage. He explained signage is very important to any retailer in providing for the consumer to approach the location with ease. Typically, the main sign is adjacent to the entrance to the shopping center. That condition does not exist here. Coming off of Rte. 34, the entrance is the second driveway, the first being the entrance to Burger King. During the zoning process, there was consideration given to closing that entrance but leasing agreements with Burger King require that the entrance exist. The developer will be making modifications to the existing Burger King entrance to make it safer. By placing the proposed location sign at the main entrance on Sodom Lane, it will help to avoid people missing the entrance and having to continue on Sodom Lane and turn around. The second sign would be located by Dunkin Donuts and relates to the existing limited access entrance on the westbound side of Rte 34. This additional signage would help those who may have missed the turn onto Sodom Lane. The location of the entrances is limited due to the existing open watercourse through the center of the parcel. The Traffic Commission was pursued to make modifications to the Rte.34 exchange so as to explore alternative access but they did not favor any changes.

Members asked questions of the applicant. It was explained that the existing sign on Rte. 34 would be rebuilt to detail Lowes and the accessory businesses to be built. The Sodom Lane sign will be located on the bank by Webster Bank and would not be in the line of sight. The Burger King entrance on Sodom Lane was originally designed to be a right in/right out configuration but left turns are being made off of Sodom Lane. It will be redesigned to eliminate the ability to make a left turn and the turn from the shopping center parking lot into Burger King will remain. The existing businesses, Burger King, Dunkin Donuts and Webster Bank will remain the same. Members noted that the existing main sign served the other businesses for years but it was noted that there has been a number of businesses through the years. It was questioned whether the purpose of the signs is to benefit the profitability of the business. The applicant replied that the desire to place the location signs is to benefit the consumers in terms of public health and safety concerns.

Mr. Kopjanski explained that the question for the variance is the number of free-standing signs allowed; as it is a shopping center on a corner lot it is allowed two free-standing signs. There currently is four - the major shopping center sign, a Burger King sign, a Dunkin Donuts sign and a Webster Bank sign. The proposed location signs would then bring the total to six. His question is whether these proposed signs are announcement signs or direction signs. Their size and design tend more to an announcement sign. Direction signs are allowed above the number of free-standing signs but the maximum square footage is six square feet. The square footage of each of the proposed signs is 72.09 sf.

At this time, the application was opened for public comment. No one came forward.

The Board members deliberated on the application. Mr. Manley noted that the Board has raised concerns previously about sign pollution in the City. He did feel that that the signs were for directional purposes and offered the suggestion that the size be reduced or the pedestal lowered. He noted that there have been a number of stores there previously that has failed.

Chairman Zeck felt it was favorable to provide the business the opportunity to succeed. The existing signs were placed prior to the current zoning regulations and as of right, they can remain. A hardship exists because of the uniqueness of the property, and it is not the result of the applicant's own actions. There is a safety issue for allowing the public the proper access and the public would benefit by having entrance identification.

Motion was made by John Kowarik and second by Walter Nizgorski. Move to approve Application No. 274 – Applicant: Derby Shopping Center, LLC. Location of affected premises – 500 New Haven Avenue, Derby, CT 06418. Appealing Section 195-71(C) (3) (4) of the City of Derby Zoning Regulations. Requesting variance to allow for the installation of two additional freestanding signs at the premises. Motion carried with Angelo Dirienzo opposed.

Application No. 212 – Applicant: Lewis and Susan Jersey. Location of affected premises – 13 Stephen Street, Derby, CT 06418. Requesting a fourteen foot rear yard variance. Hardship: odd shape of lot (concave rear boundary) which without variance permits only an unsightly triangular shape addition not in harmony with surrounding properties.

Atty. Domenic Thomas, representing the applicant, noted that this case is on a remand of the appellate court. The application was rejected based on the regulations that if there was any reasonable use to be made of the property, the variance had to be denied. The court determined that the Board's interpretation was improper. He noted that in the Appellate Court decision, "at that time Board Member Moran stated that no reasonable use requirement appeared to be the only basis to reject the application. Then Chairman Rizzitelli replied that without the requirement in the code, they would probably be approved okay."

Atty. Thomas stated that in his opinion this is the most classic kind of variance. Because in fact what you have is an older sub-division – pre-1970 and when approved by the Planning and Zoning Commission, these were approved lots. This lot is an odd shape; it has a concaved rear boundary. He displayed how any addition that could be built within the setbacks would be a triangular shape.

In 2004, the owners sought both front and rear setback variances to build an addition. That application was denied. In 2005 they came forward with a new application where the addition would satisfy the front setbacks but due to the unique rear boundary, they sought a rear-yard variance. Without the variance, only an odd-shaped addition could be built. The Appellate Court case noted that even though there is an existing use there is a good reason because the topography of the property, to put it where it violated the setback regulations, and to give a variance. In this case it would be normal even under their first application to approve it so that the front of the house facing Stephen Street creates a smooth front. The applicants chose to come back in and reduce the variance by eliminating the front yard setback variance request. There is no way to construct any sort of a reasonable addition to the house within the setback lines. When you look at the prior record it appears that the only reason was the regulation. In effect, the zoning regulations are quite clear that when there is an unusual condition of the property, not similar to everything else in the neighborhood, the application of the setback regulations creates a hardship. Looking at the neighborhood lots, this lot is clearly dissimilar than others in the neighborhood. Atty. Thomas noted per the case that the zoning members reviewing the application in 2005 indicated that there was a reasonable use of the property existing and the court indicated that the finding was improper. Based on that, the applicant feels there are sufficient grounds upon remand to grant the variance and permit the building of the addition.

Members had questions on the design of the addition. Lewis and Susan Jersey were present to answer questions. Members received drawings of the addition. In the rear is a door which enters into a two-car garage that would provide access to the backyard rather than having to use the overhead doors. The addition will provide for a bedroom/bath accessed from the existing living space. Members noted that no stairs are shown on the plan.

Atty. Thomas stated that the drawing is a relatively basic plan and the issue before the Board is the setback. What goes on inside that structure is the Building Official's prerogative. The Board is not approving anything with respect to what they put in there, that has to meet building code standards.

Members asked if this addition will be used as an apartment. The applicants indicated that the current house is approximately 800 sq. ft and the addition will provide additional living space. Atty. Thomas stressed that the Building Official would be watchful of such an action. The house is small and the applicants are simply attempting to add another bedroom/bath. The addition will bring the square footage up to about 1,200 sq. ft, still small for a ranch-style home.

Mr. Manley indicated that he understood that this property is already non-conforming. Atty. Thomas indicated that the existing house sits outside the setbacks but he was uncertain when the setbacks were put into effective. Mr. Manley understood that there was variance already given to build a deck on the other end of the house. Now, the applicant is seeking to add onto the other side of the house. Atty. Thomas indicated that it is necessary because of the shape of the lot. Mr. Manley questioned whether another alternative would be to build a second floor. Atty. Thomas indicated that it would be cost prohibitive to raise the roof as opposed to building the addition. Second, as the existing house is non-conforming, so would the addition. Building Official Kopjanski indicated that a second floor addition would have to honor the setbacks. It is hard to tell from the plans but possibly it could be built within the required setbacks by offsetting the addition on the existing house. Mr. Zeck questioned how close the nearest house is to the rear property line. Mr. Jersey indicated that there is a steep grade in the rear and it would be hard to say exactly but the roof of the structure down below is barely visible. Mr. Manley noted that the existing house is below the road grade and a second floor addition would be in line or slightly about the road grade. This is a possible alternative. Atty. Thomas reiterated why the addition is not a viable alternative. Mr. Zeck noted that if the second floor addition was built within the setbacks, the existing structure would require construction to support the addition and the style would be dissimilar to the other homes in the neighborhood.

At this time, the application was opened for public comment. No one came forward.

Motion was made by John Kowarik and second by Walter Nizgorski. Move to approve Application No. 212 – Applicant: Lewis and Susan Jersey. Location of affected premises – 13 Stephen Street, Derby, CT 06418. Requesting a fourteen foot rear yard variance. Hardship: odd shape of lot (concave rear boundary) which without variance permits only an unsightly triangular shape addition not in harmony with surrounding properties. Motion carried with David Manley opposed.

Application No. 276 – Applicant: John Delafield. Location of affected premises – 180 Silver Hill Road, Derby, CT 06418. Appealing Section 195-26AA (1) of the City of Derby Zoning Regulations. Requesting specific variance under Section 195-80(c) 6 to allow use of house trailer on premises for a period not to exceed one year.

John Delafield explained that the house at 180 Silver Hill Rd. owned by Rosalie Bielen and her husband was severely damaged by fire. The home will have to be gutted and rebuilt. The owners are currently residing in a hotel but this is a great inconvenience for them. Mr. Delafield stated that his company leases trailers and he proposes a 14 foot by 40 foot house trailer that will be placed on the concrete carport pad next to the house foundation. The trailer will be there for one year or hopefully less. He is seeking the variance to allow the temporary placement of this trailer. He noted that it is customary for the town to hold the issuance of the certificate of occupancy on the house until the trailer is removed.

Members noted that the hardship claimed is that there is no other suitable location for the homeowner to live. Members noted that there are alternatives to a hotel, the senior housing in town for one. Mr. Delafield stated that the owner has lived there for nearly 80 years and is asking to be able to remain on her property while her home is rebuilt. Members questioned the cost benefits for staying in a trailer verses a hotel and Mr. Delafield suggested that the trailer may be less expensive for the insurance company who is paying the expense, but not dramatically cheaper and there is no one pushing her to this option.

At this time, the application was opened for public comment.

Linda Geloso of Ansonia, goddaughter of Mrs. Bielen, stated that her godmother has lived at the house all of her life and is devastated with the loss of her home. She and her husband go up to the property every day. Her husband is almost Alzheimer's and the hotel setting is very disorganizing, he has been wandering onto Bridgeport Avenue, a busy and potentially dangerous street. Her godmother really wants to be able to stay at the "farm" as she calls it.

Members deliberated on the request. It is a temporary request. The owners are experiencing a great hardship with the loss of their home. There also is a public safety concern and a medical issue was presented. Mr. Kopjanski noted that the request is for a one year placement of a trailer with the ability to annually request an extension for up to three years. Currently, the zoning regulations do not allow house trailers and there is no interest to change the regulations. This variance provides for a temporary relief.

Motion was made by John Kowarik and second by Angelo Dirienzo. Move to approve Application No. 276 – Applicant: John Delafield. Location of affected premises – 180 Silver Hill Road, Derby, CT 06418. Appealing Section 195-26AA (1) of the City of Derby Zoning Regulations. Requesting specific variance under Section 195-80(c) 6 to allow use of house trailer on premises for a period not to exceed one year. Motion carried unanimously.

Motion was made by Angelo Dirienzo and second by Walter Nizgorski. Move to adjourn the meeting at 8:14 p.m. Motion carried unanimously.

Respectfully prepared,
Karen Kemmesies, secretary

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