

Zoning Board of Appeals

Minutes

(meeting taped)

Monthly meeting: Thursday, August 20, 2009 in the City Hall media center.

The meeting was called to order at 6:37 p.m.

By roll call, members present: Mark Zeck, Angelo Dirienzo, Richard Bartholomew and David Manley. Alternate Walter Nizgorski was also present. John Kowarik and Earl Robinson were excused.

Building Official David Kopjanski was 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.

A letter was received Intellectual Disabilities Election Associates, Inc. requesting a deferment of the public hearing until next month in order to compile further information on the application.

Sam Rizzitelli of 26 Prindle Avenue questioned whether the Mayor has submitted a recommendation on the Jalowiec applications. Members responded NO. He understood that the applications are seeking variances to build more units and are applying to expand a residential use. He stated that this is a dangerous thing to do. There is a zoning code that has laid down how many units are allowed in each zone. Seeking expansion is not grounds for a variance. There is no possible way there is a legal hardship in a case like this. He asked the board to very carefully think about the ramifications of approving such an application. If approved, it would set precedence that could dismiss the current code of the City of Derby. The request is not a burden, they desire extra rental units on the existing lot. He hoped that there is no improper political influence over the process. He stated that there was no way to find a hardship in this case.

Antoinette Kreskowski of 42-44 Anson Street and 10-12 Lafayette Street speaking on application 305 stated that she was against any more apartments in the area as there is insufficient parking now. It is too dense now to put more apartments. She questioned whether she would receive notice of the September meeting and she was told yes.

Mr. Rizzitelli indicated that there is no concept for a deferment under the regulations. He stressed that the Board must follow the process properly as an error could result in an

automatic approval. He stated that to approve a variance it must be shown that the land has been burdened in order to decide on a hardship. Seeking to create living units is not a burden.

Mr. Dirienzo cited section 195-83 of the regulations which provides the Board a timeframe of 65 days to make a decision on an appeal after a hearing.

Mr. Rizzitelli stated that State Statute reads that after an application has been received the City has 60 days to have a hearing. Either the application should be heard or withdrawn. There is no such thing as a deferment.

Mr. Kopjanski indicated that the applicant can request a continuance after the hearing is opened. He was advised that there may be an additional parcel of land included in the application. The applicant may choose to submit the additional information or possibly seek a new application that would cover the scope of the project.

Atty. Domenic Paniccia indicated that his client, Intellectual Disabilities Election Associates, Inc, is making modifications to the application and this is the reason for the request of deferment. Other communities allow for such requests. His conversation with Mr. Kopjanski this afternoon regarding the modification was to approach the Board this evening and seek this deferment so as to compile all the necessary materials to move forward. He indicated that proper notice would be sent to the adjoining land owners pertaining to the next meeting.

The Chair indicated that the protocol for deferment has been challenged and as there is no legal basis brought forth to support said deferment, the Board seeks to move forward. Any discussions outside this hearing have no bearing on how the Board with progress now. The Chair suggested that the applicant either continue with the application or withdraw.

Nancy Alshuk of 15 Anson Street stressed that right now there are parking problems in the area and additional development would further exasperate the problem. She understood that the request is for development of the Barren block with parking 300 ft away from the property. She noted that with the current residents and with the overflow from the courthouse, parking in the area is a major problem now. Cicia Manor has 44 units with only 11 spaces for parking. She opposed any additional development.

It was noted that parking space is proposed with the application. Ms. Alshuk noted the great distance from the site. At this time Atty. Paniccia questioned for the record discussions on the application prior to the opening of the public hearing. The Board indicated that the appropriate weight would be given to public comment already received and it has yet to be determined if the hearing will be opened. The public will be given the opportunity to speak formally at the time that the hearing is opened, if that is the direction of this application.

No one else came forward. Public portion was closed.

Motion was made by Angelo Dirienzo and second by David Manley. Move to deny the request for deferment of application 305. Motion carried unanimously.

At this time **Application No. 305** – Applicant: Intellectual disabilities election Associates, Inc. asked that the application be withdrawn.

Approval of minutes: Motion was made by David Manley and second by Walter Nizgorski. Move to accept the minutes of the July 16, 2009 meeting, as written. Motion carried unanimously.

Application Nos. 299 and 300 – Applicant: Jalowiec Realty Associates, LP. Location of affected premises – 85 Sodom Lane and 87 Sodom Lane, Derby, CT 06418. Appealing the following sections of the Derby Zoning Regulations for the creation of an additional dwelling unit at each of the premises:

Section 195-12B – To allow multi-family use in the R-4 zone.

Section 195-54A – To allow a reduction in required on-site parking spaces from six spaces to zero spaces.

Section 195-55B – To allow parking spaces to be located on a separate parcel in a residential zone.

Section 195-55D – To allow required parking facilities to be located on a lot within 300 feet from the building served in a residential zone.

Section 195-61E – To allow required parking for dwelling units to be located on a separate parcel.

Section 195-80B – to allow by variance a use not permitted by right in any particular zoning district.

At this time Mr. Zeck recused himself for this application.

Motion was made by David Manley and second by Richard Bartholomew. Move to nominate Angelo Dirienzo to serve as chair in lieu of the chairman for applications 299 and 300. Motion carried unanimously.

The public hearing was continued from last month at 7:10 p.m.

The chair read the opinion from Corporation Counsel.

August 13, 2009

Dear Members:

I have been requested to provide an opinion as to the whether or not the zoning board of appeals (ZBA) has the authority to act on the applications filed regarding the above properties in light of Section 195-80B. In general, the ZBA can not grant a variance allowing a change of a "use" in a particular zone.

However, Section 195-80C(2) carves out a specific exception. Therefore, the ZBA has the authority to consider such an application.

I must remind you that this exception in no way relieves the applicant of its burden of proof and obligations regarding "hardship" etc., as set forth in Section 195-80 to 195-83.

Please feel free to contact me should you have any questions or comments.

Sincerely; Joseph T. Coppola

James Rotundo, representing Jalowiec Realty Associates, LP verified that the applicant has the option to postpone a vote on the application until such time that five voting members are present being that four affirmative votes are needed for approval. He requested that the hearing be continued until the next meeting.

Motion was made by David Manley and second by Richard Bartholomew. Move to continue the application until the next meeting at the applicant's request. Motion carried with Walter Nizgorski opposed.

Motion was made by David Manley and second by Richard Bartholomew. Move to adjourn the meeting at 7:15 p.m. Motion carried unanimously.

Respectfully prepared,
Karen Kemmesies, secretary

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