

Zoning Board of Appeals

Minutes

(meeting taped)

Special meeting: Wednesday, September 23, 2009 in the City Hall Aldermanic Chambers.

Note: The monthly meeting scheduled for September 17, 2009 was cancelled due to a lack of quorum.

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

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

Building Official David Kopjanski was present.

Motion was made by David Manley and second by John Kowarik. Move to appoint Richard Bartholomew as temporary chair in the absence of the Chairman. Motion carried unanimously.

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. Public portion was closed.

Approval of minutes: Motion was made by David Manley and second by Walter Nizgorski. Move to accept the minutes of the August 20, 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.

The public hearing was continued from last month at 6:37 p.m.

James Rotundo, representing Jalowiec Realty Associates, LP reviewed the application. He stated that the development was created in 1985 as part of a five-lot subdivision at which time the parcel was zoned as R-5 which allowed for multi-family dwellings with a special exception. The Zoning Commission granted the special exception allowing for the four three-family dwellings and one two-family dwelling in the development. The buildings at 8 and 10 Marshall Lane and 85 & 87 Sodom Lane are similar in design. The buildings at 8 & 10 Marshall Lane were completed and house three families, the buildings at 85 & 87 were built with the ability for three-family occupancy but the lowest levels were not finished nor occupied. The lowest levels at 85 & 87 Sodom have the laundry areas for the building and the apartment area is sectioned off. The utilities and core mechanicals (electrical and plumbing) have been installed in the lowest levels of the two buildings. Parking for 85 & 87 Sodom Lane use the lot on 8 & 10 Marshall and 89 Sodom Lane. The area acts as one parcel with five buildings. The hardship is that when the subdivision was created and built, the use was allowed but due to the change in zoning to R-4, which prohibits multi-family use, in 2000 the use is no longer allowed. As the units were built prior to the change, the use should be allowed. The suggestion is that these variances can be granted in accordance with 195-80 c(2) of the regulations:

To grant a building permit for the enlargement or extension of a non-conforming use or building to any portion of the lot occupied by such use or building at the effective date of the chapter, which portion was arranged, intended or designed for such nonconforming use at the date of this chapter; provided that such enlargement or extension shall not exceed in all fifty percent of the appraised value of such use or existing building at the effective date of this chapter.

As stated, the intent of the buildings at 85 & 87 Sodom were for three-family dwellings. Finishing the lowest apartment will not exceed 50 percent of the appraised value. Mr. Rotundo referenced the letter from Corporation Counsel dated August 13, 2009 that was entered into the record last month which states *“In general, the ZBA can not grant a variance allowing a change of a “use” in a particular zone. However, Section 195-80 c(2) carves out a specific exception. Therefore, the ZBA has the authority to consider such an application.”*

Mr. Rotundo next submitted into the record a letter from Jalowiec Realty Associates, Limited Partnership dated August 20, 2009.

Dear Chairman and Members,

As part of the record we wish to confirm the following conditions which already exist and the future conditions which if the above applications are approved, will be included as part of the approval.

All necessary documents will be finalized and recorded at Derby City Hall before any permits are allowed.

- 1.) The original buildings were constructed and intended to be three family units.*
- 2.) The subject buildings requiring the variance are exactly the same design as the two buildings in use as three families on Marshall Lane.*
- 3.) Abutting of the properties and the significant relationship that presently exists between the properties is a factor for granting the variance.*
- 4.) Recording of the Parking Easements are a condition precedent of the variance. (If the Parking Easements are ever waived the two one bedroom units at 85 and 87 Sodom Lane must be vacated as the properties will be in violation of the conditional variance.)*
- 5.) The variance is contingent on the ongoing existences of the easements.*
- 6.) The Easements grant parking to a particular surveyed parking area with provisions concerning maintenance of same.*

Signed, Joseph C. Jalowiec, General Partner

At the last meeting there was expressed concern about a future sale of the parcels. The next step in the process if this variance is approved will be to obtain site-plan approval from the Planning & Zoning Commission for the parking plan. The affidavit from them would be filed in the town records defining the parking agreement in perpetuity.

Matthew Jalowiec, member of Jalowiec Realty Associates, LP, stated that he would be speaking as a member and a past resident of the development being discussed this evening. The original intent of the four new buildings was to have basement apartments and driveway access would be from Marshall Lane. The two-family at 89 Sodom Lane was existing. The units in the buildings all mirror one and other since it was built in the late 80's. The two buildings being discussed have a common area for laundry and storage and the apartment are have always been partitioned off from said common area. The basement apartments are designed with a small one-bedroom area, bath and kitchen/living room area, not something supportive for a family but rather an individual. The request this evening will make no visual change to the development. The request is to finish and occupy the area already constructed in the buildings.

Mr. Nizgorski, stated that as a long-time resident and past Sheriff he is very familiar with the area. Speaking with residents in the vicinity, they had approached the Zoning Commission when the code change was being discussed. Residents requested the change from R-5 to R-4 at that time. Now this request is seeking to reverse that change. He indicated that he would be basing his decision on the requests. His concern is making a change then perpetuates to another change request in the future from someone else and so on and so forth, precedence would be set.

Mr. Jalowiec indicated that the application before the Board is unique in that the structures are existing and visually, there will be no change. The request is to complete the development started in the 1980's not to add something.

At this time Mr. Rotundo stated that the applicant would like to withdraw the applications.

Motion was made by John Kowarik and second by David Manley. Move to accept the applicant's request to withdraw applications 299 and 300 at this time. Motion carried unanimously.

Motion was made by David Manley and second by John Kowarik. Move to adjourn the meeting at 6:55 p.m. Motion carried unanimously.

Respectfully prepared,
Karen Kemmesies, secretary

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