

Zoning Board of Appeals

Minutes

(meeting taped)

Monthly meeting: Thursday, January 21, 2010 in the City Hall Aldermanic Chambers.

The meeting was called to order at 6:40 p.m.

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

Both Alternates will be serving as voting members this evening.

Building Official David Kopjanski was present.

Motion was made by John Kowarik and second by David Manley. Move that Angelo Dirienzo serve as acting chair for this evening in the absence of the chair. Motion carried unanimously.

Public portion: 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 John Kowarik and second by David Manley. Move to table the acceptance of the minutes. Motion carried unanimously.

Application No. 316 & 317 – Applicant: BAMF Homes LTD. Location of affected premises – Lot No. 7 Tax Map 3-2 John Street, Derby, CT 06418. Appealing the following section of the Derby Zoning Regulations:

Section 195-11(E)(4) – Seeking a variance to reduce the required front yard setback from 30 feet to 20 feet for proposed lots 1 and 2.

Present were Carl DeCarli and Greg Field of BAMF Homes LTD and Attorney Dominick Thomas, represented the applicants. Atty. Thomas presented the certified receipts to the Building Official. He noted that the property of 16 John Street is in probate. He has notified the owner's son, Francis Lipke and the attorney handling the estate, Atty. Barbara DeGennaro.

Motion was made by David Manley and second by Sam Pollastro, Jr. Move to hear applications 316 and 317 simultaneously, without objection from the applicant. Motion carried unanimously.

Atty. Thomas noted that the maps make special note of the front porches. They are within 16 ft of the property line, if the variance is approved. He cited that within the regulations it states that

the parcel can have a porch extending into the setback but it must not extend more than 5 ft and can not be more than 55 sq ft. He and Mr. Kopjanski have discussed this matter and Atty. Thomas brings this caveat to the member's attention so as to encompass said allowance into the variance if they deem to do so.

Atty. Thomas explained that the applicant is seeking to divide the parcel into two lots, as allowed, as the parcel predates the subdivision regulations. One unique thing about this property is that storm water drainage from John Street is piped onto this parcel as there is no drainage in the road. The parcel currently has no drainage easement attached. Wetlands exist in the rear of the parcel. The applicant is seeking the front yard setback reduction to move the houses closer to the property line. The second unique thing is that the property line is a distance away from the actual road surface; the city's right of way extends more than 10 feet before it reaches the paved area. The proposed house, while satisfying the 30 ft setback, would be approximately 53 ft away from the paved area. The house on the abutting property at 25 John Street is approximately 12 ft from the city right of way line.

The applicant has had a soil scientist flag the parcel for wetlands and the soil scientist has stated that the upland area where the houses would be situated is suitable for houses to be built. The majority of the property, with the exception of one small corner is in the upland review that is regulated by the Derby Inland Wetlands Agency. With the required setbacks, one house would be 20 feet from the wetlands boundary and the other would be 8 ft from the boundary. The applicant is proposing a defined line to protect the lower wetlands so the wetlands meadow will serve as a biofilter for the storm drainage. The applicant is negotiating with the City for drainage and conservation easements for the purpose of protecting the wetlands. The applicant could build without a variance but they are seeking to move forward the buildings to further distance them from the wetlands and seeking this variance is a reasonably prudent alternative on the part of the applicant.

The hardship is that as a result of the wetlands boundary, development is in the upland review area and also the distance of city right of way to the actual paved surface is so great that it welcomes this shift closer to the road so that it would be better in line with the existing structures of the area and further from the wetlands. There is no economic hardship but rather it is the geography of the parcel and the road. Moving the structures closer to the road would prevent potent harm to the wetlands in the future and would enhance the protection of the wetlands. While John Street was recently improved, the dead-end street would likely remain in its current configuration indefinitely.

Atty. Thomas presented signatures from property owners (attached) in favor of the variance. He noted that the Orangewood East Condominium Association and owners of the Wal-Mart shopping center were also notified by letter. He also presented a letter from Kurt and Karen Kemmesies (attached), the adjoining property owners, supporting the development.

At this time members asked questions of the applicant.

Mr. Robinson sought clarification of the easements. The plan shows a maintenance easement in favor to the State of CT for a small portion of land by Sodom Lane where the pipe goes under the road. Mr. Kopjanski noted that there currently is no easement with the City.

Mr. Robinson questioned the maintenance of the fence and the wetlands area. Atty. Thomas stated that even in dry times the area is wet. The Wetlands Agency seeks to have the wetlands left untouched with no dumping of materials, etc. The fence would be posted with signs stating the conservation easement. The location of the fence is being discussed by the Wetlands Agency. The maintenance of the fence would be defined within the conservation easement.

Mr. Robinson questioned whether there was a ruling from the Wetlands Agency. Atty. Thomas indicated that he is approaching both boards simultaneously. While he could pursue the development without a variance, the Wetlands Agency seeks any possible prudent and reasonable alternatives when making their decision.

Mr. Manley questioned who defined the wetlands and if it was a basin with no exit. He also wondered why this was not piped to Sodom Lane. Atty. Thomas indicated that the wetlands is defined by a certified soil scientist sampling the land and defining where wetland soil exists. The area is not a basin but rather it continues to flow under Sodom Lane and under the shopping center dumping into the Two Mile Brook in the area of the diner. As far as piping, the Wetlands Agency wants to preserve and protect; not dewater the area.

Mr. Robinson was concerned that if this was approved and then the Wetlands Agency makes modifications, would they have to return to this Board. Atty. Thomas indicated that if approved, the plans would be revised with the variance in place and the Wetlands Agency would make their decision on the revised plan. Mr. Pollastro also questioned whether a decision from Wetlands should be made first. He also asked if the lot had already been separated.

Atty. Thomas indicated that at the appropriate time the change to the lot would be filed. This division does not have to go before Planning and Zoning as the parcel existed prior to the adoption of Planning and Zoning regulations being enacted. He indicated that the City boards can work separately or together, he is trying to create a coordinated approach to the applications. This is not an economic hardship. The applicant is trying to avoid future potential impacts to the wetlands.

Mr. Pollastro noted a previous application that was denied. He questioned what was the difference between this application and the previous one. He also noted that the driveway on lot 1 is placed close to the intersection.

Atty. Thomas indicated that the public records from the previous rulings is sparse. He stated that since the time of the first application, the drainage improvement project was completed and the road was repaved with curbing installed along the parcel being discussed. This application is proposing a conservation easement for the parcel. The previous applicant could possibly have appealed the decisions. Greg Field of 183 Wolf Harbor, Milford, CT, builder on the project indicated that he has had conversations regarding the driveway and it is being explored. Atty. Thomas noted that Public Works decides on the curb cuts for the driveway and they would have no objection to relocation if deemed necessary.

Mr. Kopjanski stated that the parcel is currently one lot. The applicant has submitted two applications for two proposed lots but they have not requested the divide. He was uncertain if the acreage supports the divide but it appears that it does. He stated that he does not know how large the houses will be, we do know that the front porch is proposed to project into the front yard setback by five feet with a maximum total of 50 square ft. The owner is entitled to the free split if there has been no previous actions. In the regulations, easement area is deducted from the total area of the lot and the overall coverage of the lot would have to be determined. The property boundary setbacks would also have to be reviewed.

Atty. Thomas indicated that the property is so large that it complies with setbacks and lot coverage. He did not think that a conservation easement is deducted from the lot coverage calculations; a utility easement is a different purpose. He noted that the maintenance easement in favor of the State of CT has been deducted.

At this time the chair opened the hearing for public comment.

Drew Perry of 27 John Street did not have a problem with the construction of houses but rather expressed concern for the wetlands. He did not feel that the split rail fence would provide sufficient protection. The drainage pipe is large and he was concerned with possible safety issues of children being injured. He also questioned how the wetlands would be maintained. He indicated that in the summer when the area is dry, is this going to be a fire hazard.

Atty. Thomas felt that the conservation easement could be crafted to address many of these concerns.

Mr. Kopjanski indicated that section 195-26(B) states that easements are not included.

Atty. Thomas indicated that drainage and maintenance easements would apply to that section but he did not feel that the conservation easement fell in that same category. He noted that with the size of the two lots, the rear line of lot #1 could be realigned to satisfy the lot size for lot #1 and lot #2 would also have sufficient land.

The Chair noted that this Board can only speak to the setback request, not wetlands issues and he encouraged Mr. Perry to attend the Wetlands Agency meeting.

Motion was made by David Manley and second by John Kowarik. Move to grant the variance for application #316 – applicant BAMF Homes LTD, Lot No. 7 Tax Map 3-2 John Street, Derby, CT to reduce the required front yard setback from 30 ft to 20 ft for proposed Lot#1. Discussion on the motion. Mr. Robinson stated that he withholds his vote on this application as he felt more information was needed from the Wetlands Agency. Motion was denied with Mr. Pollastro voting against and Mr. Robinson withholding his vote.

Motion was made by David Manley and second by John Kowarik. Move to grant the variance for application #317 – applicant BAMF Homes LTD, Lot No. 7 Tax Map 3-2 John Street, Derby, CT to reduce the required front yard setback from 30 ft to 20 ft for proposed Lot#2. Motion was denied with Mr. Dirienzo voting against and Mr. Robinson withholding his vote.

Without objection the adoption of the 2010 calendar of meetings was tabled.

Motion was made by David Manley and second by Sam Pollastro, Jr. Move to adjourn the meeting at 7:55 p.m. Motion carried unanimously.

Respectfully prepared,
Karen Kemmesies, secretary

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