

Zoning Board of Appeals

Minutes

(meeting taped)

Monthly meeting: Thursday, April 19, 2012 in the City Hall Aldermanic Chambers.

The meeting was called to order at 6:45 p.m. The chair called for a brief recess to await the arrival of members of the board. The meeting reconvened at 6:50 p.m.

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

Naugatuck Valley Health Department Housing Code Enforcement officer Rita Fazzino was present.

Chairman Zeck explained that this was a unique application. Per Section 102 – 1.2 of the Charter of the City of Derby, as amended in 2002; the Zoning Board of Appeals is the appeals board for the local Health District. There are unique rules as this is not a request for a variance. Two thirds of the total number of members must be present to be a quorum. The vote is a majority vote of the members present. The Board's duty is to hear the appeal and then decide whether to modify, reverse or take no action on the violation notice filed by the Health Department.

Public portion: This public portion is to satisfy section 101 of the Charter of the City of Derby. Joseph Bassi came forward looking for the Board of Alderman. It was explained that this was the Zoning Board of Appeals. Public portion was closed.

Approval of minutes: Motion was made by John Kowarik and second by Earl Robinson. Move to accept the minutes of the February 16, 2012 meeting, as written. Motion carried unanimously.

Application No. 349 - Applicant: Susan L. Schroeder, location of affected premises – 69 Seymour Avenue, Derby, CT 06418. Appealing the International Property Code 2000 – sections 304, 304.3, 605, 605.1 and 605.2 as determined by the Naugatuck Valley Health Department.

Present this evening were applicant Susan L. Schroeder, her son Ian Schroeder and her property manager Vincent Mas.

Ms. Schroeder stated that the tenant lease expired April 9, 2012. The tenant has agreed to move as of May 1st. She indicated that the report from the Health Department has merit and

she plans to comply with the issues once the tenant has vacated the unit. She indicated that the tenant is causing undue hardship and he is self-inducing these violations. The tenant has been served to quit based on the expired lease and a summons has been served within the past two weeks. The return date on the summons is April 23, 2012. As the tenant has agreed to move, she suggested that the matter is moot.

The chair stated that the matter is not moot as long as the unit is occupied.

Ms. Schroeder requested a continuation until May 1, 2012.

The Board indicated that they are bound to protect the City and all residents. An eviction notice can take some time. The tenant has indicated the intent to move but he is still physically in the unit and at times has his daughter residing with him in said unit. The Board is voting on whether the conditions identified in the violation are valid. The Board's action can either stay the process or allow the Health Department to further pursue action on the matter with possible fines being imposed on the property owner.

Ms. Schroeder withdrew her request.

Mr. Mas explained that he has attempted to remedy the issues on the violation but the tenant has not allowed access to the unit. Ms. Schroeder concurred and mentioned many interactions she has had with the tenant. At one point the tenant had recommended a friend of his who could do the work. The friend came and worked for days but then indicated he could not fix the problem but yet she had to pay him for the services provided. At one point there was a mouse problem and she hired an exterminator to resolve that issue. She did call the Police Department for assistance but she indicated that when the officer arrived and reviewed the situation she was told that the tenant was within his right to deny access and there was nothing that he could do. She continued describing many other confrontations and she indicated that the tenant was retaliatory and erratic. At one point he had expressed interest in purchasing the building but she told him it was not for sale.

Ms. Fazzino indicated that the final day to abate the violation was February 27th. The matter would have been turned over to the prosecutor's office but the appeal stopped that action. She indicated that the violations do not go away with the tenant leaving. There are serious electrical issues in the kitchen and bathroom. The wiring is very old cloth-covered wiring. It is not working at the outlet and the reason must be determined back to the source. In addition to the two non-functioning outlets that require GFI outlets, there are tiles missing on the kitchen counter and a small hole in the kitchen wall. She felt the violations could be easily resolved. She indicated that she found the unit to be otherwise meticulous.

The Board questioned how long it would take to fix the violations. Mr. Mas indicated that he felt he could accomplish the work in four days taking into account that he would have to retain a

licensed electrician for the outlets. The Board confirmed that once the unit is vacated that the unit must remain vacant until the violations are resolved and that the owner would need to obtain a certificate of occupancy from the Building Official prior to renting out the unit.

At this time the public portion on the application was opened. No one came forward to speak. Public portion was closed.

The Chair indicated that the matter before the Board is the violation and the issue is simply between the property owner and Naugatuck Valley Health Department. The actions of the tenant do not resolve or remove the violations. The Naugatuck Valley Health Department has cited four violations. The applicant's statements that the police were called does bear some weight on this matter but no supporting reports have been submitted from the Police Department. The action of one officer does not prohibit further pursuit of assistance to resolve the repairs. The Board has to make a decision based on the following standards:

- 1.) Is the true intent of the code improperly interpreted – nothing was presented to indicate that the interpretation is disputed.
- 2.) Does the provision of the code not apply – nothing was presented.
- 3.) Can the requirements be adequately satisfied by other means – nothing was presented.
- 4.) Is it an undue hardship – statements were presented that may show some possible hardship.

The Board ascertained the recommended amount of time needed to complete the task, as time has already gone by and there is a concern for fire hazard and safety issues, should be accomplished quickly and the sum total of work needed was minimal. The original order stated 10 days to complete the task.

Motion made by John Kowarik to move to extend the stay until May 15, 2012. There was no second and the motion failed.

Motion made by Richard Bartholomew and second by Sam Pollastro Jr. Move to extend the order to correct the violations as stated in the letter to Susan L. Schroeder dated February 27, 2012 from the Naugatuck Valley Health Department for ten (10) calendar days starting April 20, 2012. Motion carried with John Kowarik opposed.

Motion was made by John Kowarik and second by Earl Robinson. Move to adjourn the meeting at 8:30 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies, secretary

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