

# *Zoning Board of Appeals*

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## **Minutes**

(meeting taped)

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

The meeting was called to order at 6:37 p.m. The chair called for a brief recess to await the arrival of members of the board. The meeting reconvened at 6:45 p.m.

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

**Public portion:** This public portion is to satisfy section 101 of the Charter of the City of Derby.

Thomas Lionetti of 79 Sunset Drive questioned the appropriateness of opening the meeting and immediately calling for a recess.

Eugene Driscoll of 246 Hawthorne Avenue reserved time to speak on Application 353.

Arthur Gerckens of 374 Hawthorne Avenue reserved time to speak on Application 353.

John Campoli of 220 Hawthorne Avenue reserved time to speak on Application 353.

Public portion was closed.

**Approval of minutes:** Motion was made by Angelo Dirienzo and second by Earl Robinson. Move to accept the minutes of the April 19, 2012 meeting, as written. Motion carried unanimously.

**Application No. 352** – Applicant: Fernando Guerra - Location of affected premises – 131 Dirienzo Heights, Derby, CT 06418. Appealing Section 195-13 E.2 of the Derby Zoning Regulation. Requesting a lot area variance of 538 sq. feet in order to convert a one family house into a two family house in the R-5 zone. The applicant stated that his attorney had not arrived and asked that the meeting go forward with the other applicant.

**Application No. 353** – Applicant: Schrade Roosevelt, LLC - Location of affected premises – Lots located on Tax Map 10-3-136, 137, 138 and 139, corner of Park Ave. and D St., Derby, CT 06418. Appealing a Cease and Desist ORDER issued by the Zoning Enforcement Officer against the use of the lots as a tractor trailer truck staging/storage area in R-5 zoning district (Sec. 195-13 permitted USES) claiming property is a continuance of a non-conforming use per Section 195-86.

Attorney Thomas Welch was present this evening representing the applicant. He presented the receipts for the certified letters to Mr. Kopjanski. He briefly reviewed the history of the parcels. He explained that the Bassett facility utilized the lot for employee parking and had in fact obtained a variance for a six foot fence in 1982 to create a buffer with the residential property adjoining said parcel. The parcel is zoned for R-5 with the parking area in existence in excess of thirty years. His client has purchased the property and is asking for the continuance of the allowed use.

At this time Angelo Dirienzo noted that he is recusing himself from the application as one of the notified property owners, Lina Lucarelli, is a relative. With that recusal, there is only four voting members present. The applicant was advised that he could go forward with the presentation with the understanding that all four members must vote affirmatively for the application to be approved or it is his option to ask that the application be tabled until the next meeting with the contemplation of five voting members present. Attorney Welch asked that the application be tabled until the next meeting.

Motion made by Earl Robinson and second by Richard Bartholomew. Move to table application 353, at the request of the applicant, due to the fact that there is only four voting members. Motion carried unanimously.

Residents in the audience asked that they be allowed to speak on this application. It was explained that the application will be heard next meeting. They felt it unfair that they did not have an opportunity to speak. The Chair polled the members and suggested that a special meeting be called so as to expedite the process. A special meeting was tentatively set for August 2<sup>nd</sup>.

**Application No. 352** – Applicant: Fernando Guerra - Location of affected premises – 131 Dirienzo Heights, Derby, CT 06418. Appealing Section 195-13 E.2 of the Derby Zoning Regulation. Requesting a lot area variance of 538 sq. feet in order to convert a one family house into a two family house in the R-5 zone.

Attorney Dominick Thomas was present representing the applicant. He presented the certified letter receipts to Mr. Kopjanski. He explained that the neighborhood where this premise is located consists of two-family houses. The neighborhood was built decades ago. When zoning regulations were changed it made multi-family houses non-conforming with the intent that going forward new construction will have to meet the updated requirements. In this instance, the previous property owner changed the two-family dwelling to a one-family dwelling. His client purchased the property observing the nature of the neighborhood. His client is not seeking to change it back, per se but rather he is seeking to restore the dwelling to its original state.

At this time a letter (attached) dated June 19, 2012 from Theodore J. Estwan Jr. of 43 Franklin Avenue, Derby, CT 06418 was read into the record.

"I am writing to you today with regards to the ZBA application that you have before you for 131 Dirienzo Heights. The applicant has approached the Planning and Zoning Commission to offer an opinion as to whether or not the application meets the Plan of Conservation and Development. Since I have been chairman of the PZC for the past 14 years, it has not been a past practice of the Derby PZC to offer its opinion to other boards and/or commissions with regards to regulations that are outside of its jurisdiction.

The Derby PZC will not be rendering a comment with respect to this application one way or another.

However, since I grew up at 139 and then at 117-119 Dirienzo Heights and raised my own family on Franklin Avenue, I feel that I can comment as a neighbor with regards to this application. The Derby Housing Authority had control of this entire neighborhood that I grew up in and when the properties were sold, ALL 25 houses were two family residences.

Although the Plan of Conservation and Development discourages the conversion of a single family home to two-family, it is clear that the existing neighborhood has been and will for the foreseeable future be a two-family neighborhood.

As my parents have passed on, I am once again a property owner a few houses away from this address. I take no exception to having the home converted back to its "original" state. Additionally, one of the keys to having a two family home is the ability to provide off street parking which this does.

If you have any questions or concerns, please fee free to contact me at any time. Best regards, Theodore J. Estwan, Jr."

Atty. Thomas confirmed that the applicant is able to provide two conforming parking spaces for each unit as detailed on the drawing. He reiterated the historical nature of the neighborhood and that this dwelling is the only single family dwelling. The property is an oversized corner lot capable of providing necessary parking and the issue is the density requirement which has a shortfall of 538 square feet. The applicant is simply seeking to restore the dwelling to its original state. At the time his client purchased the house he believed it was a two family dwelling and that the square footage was adequate. With the change in zoning regulations it is likely that the majority of the homes became non-conforming but are grandfathered under the law.

Mr. Kopjanski indicated that this application is similar to the application received a year ago. Atty. Thomas has presented more information as to the historical details of the neighborhood. The hurdle is Section 195-87 (b) which indicates that any non-conforming building or non-

conforming use, if changed to conform to the requirements of this regulation shall not hereafter be changed back to a non-conforming building or use. Further, before granting a variance on the basis of unusual difficulty or unreasonable hardship, there must be a finding by the Board of Appeals that all of the following conditions exist: That if the owner complied with the provisions of the regulations, he would not be able to make any reasonable use of his property, that the difficulties or hardship are peculiar to the property in question, in contrast with those of other properties in the same district, that the hardship is not the result of the applicant's own action and that the hardship is not merely financial or pecuniary.

The hardship claimed on the application states that the property is in a long established two-family neighborhood. Property is an oversized corner lot. Prior owner used property as a one family residence. The zone text change made the property non-conforming as a two-family by 538 square feet. The property owner did do due diligence in the purchase of the parcel. He thought the property was a two-family only needing restoration. In looking at the assessor's information on the internet, Eric Guerra indicated that it shows total lot having 10,018 sq footage. The shortfall was only discovered during the A-2 survey.

Members discussed the progression of the parcel. The dwelling was converted from a two-family to a one-family with a building permit being issued on 5/19/1997. The 2005 property card defines it as one family unit. A certificate of occupancy was issued upon completion of the renovation of the dwelling into a one family unit. The one family unit conforms to existing regulations as a one unit dwelling. The change in regulations, made a two-family non-conforming due to the revision in density requirements whereas prior to the revision, either the two-family or one-family dwelling were conforming.

**Public portion:**

Keith McLiverty of 15 Academy Hill Rd stated he did not appreciate the Planning and Zoning Commission reference at this time. The time to raise historical differences or effects would have been during the deliberations of the change of the regulations back in 2000. A buyer simply using the assessor's card to determine the size of the lot is disconcerting as the A-2 survey is the only accurate measure. Regulations were revised to speak to the density in the city. In 1997 the house was renovated to a one family resulting in a reduction in density. Reversing that action is contrary to the intent of the revision. As stated previously, per section 195-87, a change back shall not be allowed.

Atty. Thomas noted that the assessments of 129 and 131 Dirienzo Heights as per the assessor's cards shows that they are relatively equal. Mr. McLiverty noted that the value of the assessments can be challenged through appeal, an annual process so making comparisons is in error.

No one else came forward and public comment was closed.

Members deliberated on all the information presented.

Motion made by Angelo Dirienzo and second by Richard Bartholomew. Move to deny application #352 Applicant: Fernando Guerra - Location of affected premises – 131 Dirienzo Heights, Derby, CT 06418. Appealing Section 195-13 E.2 of the Derby Zoning Regulation. Requesting a lot area variance of 538 sq. feet in order to convert a one family house into a two family house in the R-5 zone on the basis of the fact that the zoning ordinance of the City of Derby section 195-87 (b) states as follows - That any non-conforming building or non-conforming use, if changed to conform to the requirements of this regulation shall not hereafter be changed back to a non-conforming building or use Motion carried with Earl Robinson opposed.

Motion was made by Richard Bartholomew and second by Earl Robinson. Move to adjourn the meeting at 8:05 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies, secretary

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