

# *Zoning Board of Appeals*

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## **Minutes**

(meeting taped)

Monthly meeting: Thursday, January 22, 2015 in the City Hall.

At 6:35 pm Atty. Majorie Shansky opened a training discussion with the members present – Richard Bartholomew, John Kowarik, Phyllis Sochrin and Harvey Finkel. She reviewed the general duties of the Zoning Board of Appeals and explained the purpose or reason for seeking variances as well as the supporting factors that are considered in granting said variance.

The meeting was called to order at 7:02 p.m.

By roll call, members present: Richard Bartholomew, John Kowarik, Phyllis Sochrin and Harvey Finkel. Sam Pollastro Jr., Earl Robinson and Angelo Dirienzo were excused.

Also present – Atty. Majorie Shansky, Corporation Counsel representing the City for Schrade Roosevelt, LLC v. City of Derby ZBA. Building Official Carlo Sarmiento was unable to attend due to illness.

**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 Harvey Finkel and second by Phyllis Sochrin. Move to accept the minutes of the December 18, 2014 meeting, as written. Motion carried unanimously.

**Application No. 380** – Applicant: 340 Derby Avenue LLC. Location of affected premises – 340 Derby Ave, Derby, CT 06418. Appealing determination of the Zoning Officer on July 3, 2014 and **Application No. 001** – Applicant: 340 Derby Avenue LLC. Location of affected premises – 340 Derby Avenue, Derby, CT 06418. Appealing Section 195-17 E.1 and E.2 of the Derby Zoning Regulation. Requesting lot width variance of 26 feet and lot area variance of 26,087 sq ft in order to construct a 4,800 sf building.

It was noted that the application form used for Application No. 001 is a draft document but it does elicit the information needed to act on the requested variances. As the applications are for the same parcel of land, the hearing will be heard together. Further, it was expressed to the applicant that only four members are present this evening. To grant a variance, all members must vote affirmatively as four votes are needed for passage of the vote. The applicant was asked if he would like to table the discussion this evening or go forward. Walter Archer stated that he would like to go forward this evening and understood the stipulation.

John Rak submitted the certified letters sent to the abutting property owners within 150 feet of this parcel. He noted that most were signed with only three returned undeliverable.

Mr. Rak stated that the parcel seeking a variance is consistent in size with other lots in the area. The area is now zoned I-1 industrial and it is a pre-existing non-conforming lot. The lot is currently empty as the structure on the lot was vacant and demolished due to its level of disrepair.

Walter Archer explained that he purchased the property approximately four years ago and demolished the structure due to its condition. It was a wood frame 2 ½ story residential structure and as per the old property card had a 26 ft by 24 ft foundation footprint. The lot is 74 ft wide, narrowing as you go to the rear of the lot. He is proposing a two story commercial structure 40 ft by 60 ft. The structure will be designed for two tenants, one with street level access and the second will be below street grade and accessed from the rear of the building. Due to the steep grade of the lot, this design functioned as the best use of the parcel. There will be sufficient parking spaces to support the proposed use. To reduce the size of the structure would greatly reduce the effective usage of the land.

Atty. Shansky noted that when the residential structure existed the parcel was non-conforming and with the action of removal of the structure and transitioning to a commercial application, the parcel is being made more conforming to current code. Under Section 195-92(b) it states that “a permit may be issued for a permitted use on a lot which does not meet the standards for lot area and/or width of the particular district in which the lot is located if:

(B) the present owner or any prior owner did not illegally create this nonconforming lot and all yard, coverage and other zoning requirements can be met; however, in those instances where the lot area or shape prevents conformance with one or more yard requirements, the requirement for that yard shall be the same as the most restrictive district to which the lot area most nearly conforms;” Under this standard, the lot most closely conforms to the R-3 zone.

<b>Item</b>	<b>I-1 required</b>	<b>R-1 required</b>	<b>Proposed</b>
Min. Lot Area	40,000 sf	15,000 sq ft	13,913 sf
Min Lot Width	100 ft	100 ft	74 ft +/-
Max Lot Coverage	60%	20%	89% with pavement
Max Height	35 ft	30 ft	To be determined
Min Front Yard	20 ft	30 ft	50 ft +/-
Min Rear Yard	20 ft (next to R zone requires 50 ft)	50 ft	80 ft +/-
Min Side Yard	20 ft (next to R zone requires 40 ft)	16 ft	5 ft and 20 ft plus retaining wall
Max Driveway grade	10%		15%

Michael H Horbal, of 52 Main Street, Seymour, Ct presented the Proposed Site Plan one page drawing titled #340 Derby Avenue (Route # 115) dated 9/29/2014. He reviewed the design features and explained the reasoning for the placement of the structure as detailed so as to most conform with the industrial zone use limited by the parcel's size, dimension and steep slope. He indicated that the grade of the driveway will be sloping away for the road and proceeds to the parking area to the rear of the lot. By utilizing the 15% percentage on the driveway he is able to design the parking area at 5% grade making that portion of the parcel better suited to the tenants and customers exiting their vehicles. The driveway is on the easterly side of the parcel and a retaining wall with guide rail will be installed that abuts to #342 Derby Ave. providing for a 20 ft side yard between the building and the retaining wall. The variances are being sought so that the plan can be made conforming and as such can then move forward to Planning and Zoning Commission for their site plan review.

Public portion:

Frank Pepe property owner at 336 Derby Avenue stated that he had no objection to the proposed plan and he was in favor of the application. No one else came forward and the public portion was closed.

Motion made by Harvey Finkel and second by Phyllis Sochrin. Move to grant the requested variances for **Application No. 001** – Applicant: 340 Derby Avenue LLC. Location of affected premises – 340 Derby Avenue, Derby, CT 06418 in order to construct a 4,800 sf building with associated parking and driveway construction as per the Proposed Site Plan one page drawing titled #340 Derby Avenue (Route # 115) dated 9/29/2014 prepared by Michael H. Horbal defined in Section 195-17 E.1 and E.2 of the Derby Zoning Regulation for a lot width variance of 26 feet and lot area variance of 26,087 sq ft, side yard variance of 15 ft and driveway grade variance of 5% due to the presence of the retaining wall, the topographic challenges of the parcel both in shape and slope and to acknowledge that the construction replacing the residential use to a commercial use reduces the existing non-conformity. Motion carried unanimously.

Motion made by Phyllis Sochrin and second by John Kowarik. Move to deny the appeal of the determination of the Zoning Officer for **Application No. 380** – Applicant 340 Derby Avenue LLC. Location of affected premises – 340 Derby Ave, Derby, CT 06418. Motion carried unanimously.

**Executive Session:** Motion made by Harvey Finkel and second by Richard Bartholomew. Move to enter into executive session at 7:58 pm. for the purpose of discussion of pending litigation - Schrade Roosevelt, LLC v. City of Derby ZBA with Corporation Counsel Marjorie Shansky invited to attend. Motion carried unanimously.

Motion made by Harvey Finkel and second by John Kowarik. Move to return to regular session at 8:14 pm. Motion carried unanimously.

Motion made by John Kowarik and second by Harvey Finkel. Move to empower the Corporation Counsel to move forward with a public hearing at the Zoning Board of Appeals meeting on April 9, 2015 to discuss and take possible action for the settlement of the litigation - Schrade Roosevelt, LLC v. City of Derby ZBA. Motion carried unanimously.

Motion was made by John Kowarik and second by Harvey Finkel. Move to adjourn the meeting at 8:21 p.m. Motion carried unanimously.

Respectfully prepared,

*Karen Kemmesies*

Karen Kemmesies, secretary

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