

# *Zoning Board of Appeals*

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## **Minutes**

(meeting taped)

Special meeting: Thursday, May 31, 2007 in the New City Hall.

Meeting was called to order at 6:32 p.m. The meeting was scheduled to start at 6:00 p.m. but was delayed while awaiting members to make a quorum.

By roll call, members present:

Samuel Rizzitelli, Mark Zeck and John Kowarik. Angelo Dirienzo and Richard Bartholomew were excused. Alternates Walter Nizgorski and David Manley were present with both sitting in as voting members this evening. Mr. Zeck arrived at 6:34 p.m.

Building Official David Kopjanski was also present.

**Application No. 263** – Applicant: The Recreation Camp Inc., 550 Roosevelt Drive, Derby, CT 06418, Owner: The Recreation Camp Inc. and Derby Housing Authority

Location of affected premises – Same. Appealing determination of Building Official and Zoning Enforcement Officer denying certificate of Zoning Compliance for a proposed building addition and off-street parking areas. Zoning Ordinances being appealed: Section 195-23E - rear yard and front yard setback variances for the expansion of an existing building; Section 195-39D (2) - variance to allow vehicles in a parking lot to back out directly into street; Section 195-54 - variance of thirty seven (37) parking spaces to provide 12 off-street parking spaces where fifty nine (59) are required; Section 195-55A – variance to allow the creation of a fifteen (15) car parking lot in the front yard setback of an RM zone property at Guardiano Terrace; Section 195-55B – variance to allow the creation of a fifteen (15) car parking lot in the RM zone for the use of a property on another lot. Hardship claimed: Full text detailed in application – expansion would allow for a handicap accessible recreation camp to learn aquatic and boating skills for years to come.

The Chair reopened the public comment.

Colleen Ezzo of 14 Lakeview Terrace expressed frustration on the notifications regarding this proposed expansion. She stated that she received a letter from Mr. Donald Smith advising her of a June 5<sup>th</sup> meeting but she was unaware of this meeting until per chance someone told her. She indicated that this project requires six major variances, a clear indication that there is a big problem in the area. She was concerned with the safety of the children crossing the street each day. She stated that there is increasing numbers of people in the neighborhood now as the weather gets warmer even without the camp officially open.

Attorney James Cohen noted that at the last meeting they were awaiting a decision from the Housing Authority. The license agreement (attached) has been finalized.

Judy Dunne of 8 Lakeview Terrace stated that she looked at the areas being discussed for parking and she wondered if the area for the turn around could be configured for parking so as to eliminate the need for the area by the Germain property.

Anthony Teodosio of 22 Lakeview Terrace asked if the spaces were for employees or attendees of the camp.

Donald Smith Jr., professional engineer for the project responded to the questions. First, the eleven spaces by the Germain property would be posted for staff only. There would be no parking allowed for general use. Second, the front area that Mrs. Dunne called a turn around is designed as a drive-thru with four spaces for the parents to pull in and drop off and then leave. Because of the grade of the land on the north side of the bank makes it difficult to create parking spaces in the lot. With the lots planned on the DEP property behind the maintenance garage and the eleven spaces on Lakeview Terrace, there is enough parking area for the total staff of the facility. He indicated that the State DOT has denied the request for a full light but has agreed to a push button activated pedestrian signs with flashing lights. He indicated that the City's Traffic Authority has not weighed in on the traffic conditions.

Anthony Teodosio suggested that the employees congregate in a commuter area and then travel to the Camp so as to reduce the number of vehicles to one or two. In regards to the drop off, the road is horrendous in the morning and he questioned if there is a better way to drop off the children so they do not have to cross the highway. Having to cross the highway is not a good solution.

George Dunne of 8 Lakeview Terrace asked if approval is dependent on all five variances passing.

Mr. Rizzitelli indicated that there are six different variances being requested.

Mr. Kopjanski stated that the purpose of these variances is not to create parking but rather to build an expansion on the building which then requires the owner to satisfy zoning regulations. They have to meet the number of spaces required per the square footage of the addition or they need to receive variances from the parking requirements that are associated with that addition. Unfortunately, there is not enough parking on-site or off-site now. They need all six variances before they can put the addition on the building.

Mrs. Esposito questioned if they could request fewer spaces. It was noted that the variance is seeking a lesser number than required.

Mr. Dunne asked whether the DOT denial for the traffic light makes this request fail. Mr. Rizzitelli stated that the traffic light is not associated with any of the variances being requested.

Donald Germain of 16 Lakeview Terrace stated that his major concern is pedestrian traffic crossing Rte. 34 at peak times of the day, the majority of which will be children. He can foresee something happening there. Naturally, the children will be thinking of the fun and swimming, not oncoming traffic.

Colleen Ezzo stated that the neighbors know the facility is wonderful but they would like to see some resolution that did not have children crossing the street.

Atty. Cohen stated that there will be no new children added with this addition. The children that are now crossing the road will continue to cross the road and those being dropped off will continue to be dropped off. It is not the case that this will result in more children. The applicant is trying to make the facility better.

Mr. Teodosio stated that he does not see 59 cars parked, he generally sees about ten vehicles parked on Lakeview Terrace related to the Camp.

Ms. Ezzo stated that the situation is changing because we are establishing parking on Lakeview Terrace.

Atty. Cohen stated that the number of 59 is associated with the required ordinance; the variance is seeking to reduce this number of spaces. The applicant is trying to provide as much as they can to resolve the on-street parking. The staff are being asked to park in these spaces. Buses will be doing what they are doing now; the people dropping off will continue what they are doing now.

After hearing no further comment from the public, at this time the board deliberated on this application.

Mr. Manley noted that the license agreement, presented this evening, states that the agreement can be terminated for any reason so this is a temporary, not permanent agreement.

Mr. Rizzitelli noted that if the agreement was terminated, the applicant would cease to be in compliance with the regulations which would then initiate action from the Building Official.

Mr. Manley did not believe the DOT would approve the traffic light. He is concerned with the children crossing wherever they like even with the flashing lights. While there has never been an accident, he was concerned that this was creating a hazard.

Mr. Rizzitelli agreed that the best case scenario would be for the traffic light to be installed. Possibly, the City agency involved in traffic concerns could get involved.

Mr. Nizgorski stated that he is involved with another town with a similar request for a traffic light. He indicated that getting a traffic light is near impossible.

Mr. Rizzitelli noted that Irving School has a crossing guard to direct traffic when the children have to cross the road, maybe a similar practice would be beneficial for this location.

Mr. Nizgorski suggested that the crosswalks be painted and well defined.

Mr. Smith stated that there is a marked crosswalk now and the application will add one on Lakeview Terrace. The applicant will be adding flashing light signs. Staff have been trained by the police department and will wear vests and carry signs to facilitate the crossing in the morning and afternoon.

**Motion was made by Walter Nizgorski and second by John Kowarik. Move to take action to approve application #263 including all six variances.**

Discussion on the motion. Mr. Rizzitelli addressed the hardship cited by the applicant, attachments 3-1 through 3-6, and stated that they will be incorporated into the decision as the basis of the hardship.

Attachment 3-1 Section 195-23E states "All active recreational uses or facilities must be located at least 100 feet from any property line and/or recreational zone." The applicant requests a variance of 59ft. 4inches to 84 ft. front yard and a variance of 80 ft. rear yard to allow an existing non-conforming building to be expanded. The side yard setbacks are not effected. Hardships claimed are:

1. The Recreation Camp has been serving the youth of the Valley from this location since 1917. The existing building does not conform to the provisions of the Zoning Regulations because the use was established and the original building was constructed prior to the adoption of the zoning regulations. It is physically impossible for the current location to be in compliance with the regulations due to the size, shape and topography of the parcel. The Camp's property is bounded by CT Route 34 and the Housatonic River and the depth of the property is less than 100 ft. As proposed, the expansion will decrease the existing non-conforming front yard setback by 1.8 ft. Granting this variance will allow a reasonable expansion of the building in order to comply with health and accessibility codes without violating any other land use regulations.

2. This property is unique in that the City changed the zoning designation of the property from R-5 to OS in 1999 and the existing building is the only building in the OS zone that is non-conforming in terms of location (i.e. setbacks). Additionally, the property is constrained by it steeply sloping topography, the Housatonic River and Rt. 34.

3. The recreational use of this property was established and the building was constructed prior to the establishment of the zoning regulations. Any noncompliance with the regulations is no due to the negligence of any former or current Recreation Camp official.

4. Due to the size, shape and topography of the property, it is impossible for the Recreation Camp to comply with this provision of the zoning regulations. The Recreation Camp is a nonprofit organization and there will be no financial gain realized from this project. The beneficiaries of this project will be the generations of valley children who will be able to utilize a new, expanded and handicap accessible Recreation Camp to learn aquatic and boating skills for years to come.

Attachment 3-2 Section 195-39D (2) states “No parking lots shall be designated that force vehicles to back onto the street.” The request is to vary this section to allow a parking lot that requires vehicles to back onto the street. Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option. The Camp is currently negotiating with the Derby Housing Authority for approval to construct an eleven car parking lot (note: negotiating has reduced the number originally indicated in the application from 12 to 11) on Lakeview Terrace. Currently, Lakeview Terrace is a low-volume residential street with existing residential driveways that requires vehicles to back onto the street. This variance would only apply to the spaces being considered on the Housing Authority property and not the on-site parking lots with access to Rt. 34. The proposed parking spaces would be intended for use by the Recreation Camp staff and they would be signed to prohibit overnight parking. During the off-season the parking spaces would be blocked off to prevent their unauthorized use.

2. The Recreation Camp property is unique in that it is technically infeasible to provide more than two (2) on-site parking spaces, except possibly with a parking garage. However, a parking garage would not be able to be constructed due to the required setbacks.

3. The Recreation Camp did not alter the topography of the property to make it unsuitable for the development of a parking area.

4. Due to the size, shape and topography of the property, it is technically infeasible, regardless of cost, to comply with this provision of the zoning regulations.

Attachment 3-3 Section 195-54 states “For each use of land, buildings and other structures, off-street parking spaces shall be provided in such number and in the location specified ...”. The request is to vary the requirements of this section by thirty-two (32) parking spaces (59 spaces are required, 27 is provided.) (Note: since the application was written negotiations with the Housing Authority has changed the number provided – originally seeking variance for 37 spaces as noted in application.) Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option.

2. The Recreation Camp property is unique in that it is technically infeasible to provide more than two (2) on-site parking spaces, except possibly with a parking garage. However, a parking garage would not be able to be constructed due to the required setbacks.

3. The Recreation Camp did not alter the topography of the property to make it unsuitable for the development of a parking area.

4. Due to the size, shape and topography of the property, it is technically infeasible, regardless of cost, to comply with this provision of the zoning regulations.

Attachment 3-4 Section 195-55 A states “in residential zones, no off-street facilities shall be designated and/or located in any required front yard except for the paved portion of a driveway which gives access to said facility.” The request is to vary this section to allow an off-street parking lot to be constructed in the front yard of a residential zone. Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option. The Camp is currently negotiating with the Housing Authority for approval to construct a total of fifteen (15) parking spaces on the Housing Authority property. The location of these spaces would be in the front yard of the Housing Authority property. There is insufficient land area on the Housing Authority property to construct a parking lot that is not in the front yard.

2. There are no other cases in the R-M Zone where a parcel is being used for off-street parking associated with an off-site use.

3. The Housing Authority property is the only other suitable location to develop an off-street parking area within walking distance (300 ft) of the Recreation Camp. The Birmingham Utility property is unavailable due to Department of Health regulations.

4. The zone of the property cannot be changed to a “non-residential” zone because then the primary use (elderly housing) would become non-conforming.

Attachment 3-5 Section 195-55 B states “In residential zones, parking spaces required for all uses shall be provided on the same lot as the principal use.” The request is to vary this section to allow a parking lot in a residential zone, that is not on the same lot as the principal use. Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option. The camp is currently negotiating with the Housing Authority for approval to construct a total of fifteen (15) parking spaces on the Housing Authority property which is in a residential zone. If this variance is not granted, the Camp staff will continue to park along Lakeview Terrace. In order to facilitate safe passage to/from the off-site parking areas, the Camp has made application to the Department of Transportation for the installation of a traffic signal and a signalized pedestrian crossing at the existing crosswalk on Rt. 34 at Lakeview Terrace.

2. There are no other cases in the R-M zone where a parcel is being for off-street parking associated with an off-site use.

3. The Recreation Camp did not alter the topography of the property to make it unsuitable for the development of a parking area.

4. It is technically infeasible to combine the parcels so the use and the parking area are on the same parcel.

Attachment 3-6 Section 195-55D states “if the parking facility is not located on the same lot it is intended to serve, a written affidavit of agreement, binding each participating owner and successor in interest of the life of the joint use of the facility, shall be recorded in the land records prior to the endorsement of any site plan.” The request is to vary this section to allow a written parking agreement that is “at will” rather than “binding for the life of the facility”. Hardships claimed:

1. Due to the existing lot location, size and topography, expanding on-site parking at the Recreation Camp is not a viable option. The Camp has an Agreement with the State of Connecticut DEP for the development and use of ten (10) off-street parking spaces to be located on the DEP property. The Camp is currently negotiating with the Housing Authority for approval to construct a total of fifteen (15) parking spaces on the Housing Authority property. Neither the CTDEP or the Housing Authority are willing to enter into an agreement that is “binding for the life of the facility”. We understand that if either or these agreements are terminated, the applicant must return to the ZBA for additional consideration.

2. The CTDEP has indicated they cannot enter into a “life use” agreement without the approval of the General Assembly. If the Housing Authority agrees to allow the construction of the parking areas, we anticipate that they will not want to enter into a “life use” agreement either.

3. The applicant cannot control the requirements that the DEP or the Housing Authority attach to the proposed agreement. We have asked and they said NO.

4. Our neighbors are being kind enough to grant us an “at will” agreement, they cannot be forced or financially enticed to enter into an agreement that contains a “life use” clause.

Motion carried with David Manley opposed.

Roll Call:

Samuel Rizzitelli	yes
Mark Zeck	yes
John Kowarik	yes
David Manley	no
Walter Nizgorski	yes

**Application No. 261** – Applicant: James Corbett, 12 Garden Place, Derby, CT 06418

Location of affected premises – Same. Appealing determination of Building Official and Zoning Enforcement Officer denying swimming pool permit. Zoning ordinance 195-13E(3) Lot Coverage. Requesting variance to allow 33.6% lot coverage where 30% maximum required.

Atty. John Sponheimer was present representing the applicant. He submitted the certified return receipts to the Building Official. He presented letters from the following abutting owners requesting that the Zoning Board of Appeals approve the application.

Dr. William Indocci	49 Seymour Avenue
James Petrino	22 Garden Place
Pete Petrino	18 Garden Place
Mr. & Mrs. Walter Hession	19 Garden Place

Atty. Sponheimer indicated that the applicant is seeking to construct a 12 foot by 23 foot swimming pool, a very average size pool. The request for the variance equates to approximately 160 square feet of coverage. He stated that the lots sizes in the area were set in the 1920's long before zoning. Many other lots in the area are larger with much more lot coverage. Presenting the assessor's map he pointed to the lots on Garden Place. He noted a number of neighbors as well as Irving School. He stated that the requested variance will have no effect on the abutting property owners. He stated that the hardship would be that this is a pre-zoning ordinance lot and to satisfy the requirements, the size of the pool would have to be 70 square feet, a very unusable size. This is a de minimus<sup>1</sup> request

The application was opened for public comment. No one came forward.

Mr. Kopjanski indicated that the previous request was for a 13 foot by 26 foot swimming pool. The lot is approximately 7,000 square feet which is smaller than many in the neighborhood. Buildings on the lot now include the main house, a shed and porch, all within the setbacks and the coverage allowed.

Mr. Kowarik questioned whether the pool would be within the allowed coverage requirements if the porch and shed did not exist, thus not requiring a variance. Mr. Kopjanski responded that a variance would probably not be needed under that scenario.

Mr. Nizgorski stated that he did not see anything wrong when he walked the property. He felt the board should consider giving leeway to the residents. A swimming pool is a source of enjoyment and since the neighbors are not complaining, maybe it should be considered.

Mr. Kowarik noted that the neighbors were not opposed with the exception of no response from the Narowski family.

Mr. Rizzitelli stressed to the members that they must consider the legal hardship and apply that standard fairly to all applicants in terms of allowing any variance. Mr. Nizgorski noted minimal encroachment and that residents should be allowed enjoyment from their property. Mr. Kowarik indicated an increase in assessment resulting in more taxes for the City.

Mr. Rizzitelli stated that the City earning tax dollars is never a reason for granting a hardship. To define a hardship, the land must be unique in nature. The applicant may have presented uniqueness by displaying the lots in the neighborhood. Members noted that much of Derby has land that is unique but the Board must be careful in classifying all as unique because then there

would be no need for zoning regulations. The applicant's lot is much smaller than many within the area thus uniqueness could be established. The applicant has presented the argument of de minimus, a uniqueness and smallness to the request.

**Motion was made by David Manley and second by John Kowarik. Move to take action to approve application #261 incorporating Schedule A as part of the grounds for granting the variance.**

"Schedule A The applicant believes strict application of the lot coverage requirement in regards to his application is not appropriate because of the following circumstances which constitute a hardship:

Strict application of the lot coverage requirements would allow the applicant to construct a swimming pool which could not exceed seventy (70) square feet in totality, which is much too small a pool to be of any use.

The applicant's lot size was established prior to 1923 which was long before any zoning rules and over seventy-seven years before adoption of the current regulations. An analysis of the size of other lots in the area shows that the property located immediately to the west of the applicant contains approximately 17,000 square feet permitting lot coverage of over 5,000 feet. The abutting property to the rear of applicant contains approximately thirty thousand (30,000) square feet allowing approximately 9,000 square feet of coverage.

Across the street the parcel on which Irving School is located is 4.75 acres and the lot at 19 Garden Place contains 10,000 square feet permitting 3,000 feet of lot coverage.

On the westerly side of Seymour Avenue almost all of the lots are substantially larger than that of the applicant.

The only similar sized lots are those immediately easterly of the subject premises one of which appears to have been reduced in size by the property taking for the installation of Route 8.

Granting of this variance will in no way diminish the value of any abutting premises, or change the character of the neighborhood in any negative way, as the proposed use by this applicant is reasonable and in conformity with the character of the neighborhood.

In conclusion the applicant respectfully requests that the board exercise its wide powers long upheld by our courts and grant the variance requested based on the hardships and facts mentioned herein."

Motion carried unanimously.

Mr. Manley noted the expense for the City for the publication of legal notices and other expenses incurred by this Board. He suggested that the Board review the current application fee schedule and consider modification. This will be added to the next agenda.

**Approval of minutes:**

Motion was made by John Kowarik and second by Walter Nizgorski. Move to adopt the minutes of the April 26, 2007 meeting. Motion carried with Samuel Rizzitelli abstaining.

Without objection the meeting adjourned at 7:32 p.m.

The next meeting is scheduled for July 19, 2007 at 6:00 p.m. with review of application fees to be included on the agenda.

Respectfully prepared,  
Karen Kemmesies, secretary

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

<sup>1</sup> International Dictionary of English *de minimus non curat lex* [latin] *The law does not concern itself with trifles, a principle of law, that even if a technical violation of a law appears to exist according to the letter of the law, if the effect is too small to be of consequence, the violation of the law will not be considered as a sufficient cause of action, whether in civil or criminal proceedings.*