

# Zoning Board of Appeals

---

## Minutes

(meeting recorded)

Regular meeting: Thursday, December 19, 2024

The meeting was called to order at 6:34 p.m. in the aldermanic chambers of City Hall.

1. Call to Order - The meeting was called to order at 6:34 p.m. in the aldermanic chambers of City Hall.
2. Pledge of Allegiance
3. Roll Call

Sam Pollastro Jr.	present
John Kowarik	present
Earl Robinson	excused
Jeffrey Bell	present
Ray Bowers	present
David Reed (alternate)	present - voting member for absent member
Rita Pelaggi (alternate)	present

Also present: Zoning Enforcement Officer Kevin White (on ZOOM), Corporation Counsel Brian Lema and Town Clerk Marc Garofalo served as host for ZOOM.

4. Additions or deletions and acceptance of the agenda.

**Motion** made by Jeffrey Bell and second by John Kowarik. Move to accept the agenda, with the deletion of #10-12 Nitoo and Dharaamdeo Nuckched, 6 Singer Village Dr. and #13-15 The Hops Company, 77 Sodom Lane as they have asked to table the matters until the January meeting. Motion carried unanimously.

5. Public Portion

No public came forward.

**Motion** by Ray Bowers and second by John Kowarik. Move to close public portion. Motion carried unanimously.

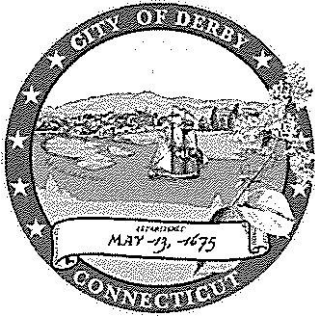
6. Approval of minutes – July 18, 2024, October 17, 2024 and November 21, 2024

**Motion** by John Kowarik and second by Earl Robinson. Move to approve the minutes for July 18, 2024 and October 17, 2024, as written. Motion carried unanimously.

Minutes for November 21, 2024 were tabled, without objection.

7. Applicant: Roseann and Robert Haakerud, 5 Jeanetti Dr., Derby, CT 06418 Location of affected premises: Same. Appealing the Derby Zoning Regulations 195-26 (O) that existing hedges need to be removed or cut along the property line to less than six feet.

Roseann and Robert Haakerud were present this evening. Atty. Ian Cole from Cohen & Thomas, 315 Main St. Derby, CT was present representing them. The certificate of mailings were presented for the file.



CITY OF DERBY  
ZONING/WETLANDS ENFORCEMENT  
1 ELIZABETH STREET  
DERBY, CONNECTICUT 06418  
Telephone 203-736-1481

October 1, 2024

Roseann and Robert Haakerud  
5 Jeanetti Dr.  
Derby, CT 06418

RE: Shrubs  
Dear Roseann and Robert Haakerud:

On September 3, 2024, I visited your house to inform you that your neighbor at 1 Schmitt Terrace has complained about the arborvitae growing along the property line between your land and his.

According to Appendix B, Figure 32. E, "No fence, hedge, or wall exceeding 6 feet in height may be erected within any required side or rear yard".

Therefore, as I instructed you that day, you must lower this tree line to 6' or less.

You are hereby given 14 days upon receipt of this letter to do so. Failure to do so will result in a fine of \$50.00 a day for every day this task is not accomplished.

If you wish to discuss this or if you need any clarification about this matter, I can be reached at 203-736-1481.

Sincerely,

Kevin P. White  
Zoning Enforcement Officer

Cc: Linda Fusco Chief of Staff  
Brian Lema Corporation Counsel

Atty. Cole reviewed the comments he had submitted with the application.

Reasons for appeal from the October 1, 2024 decision of the ZEO

The letter to the applicants dated October 1, 2024 states that a line of “arborvitaes trees growing along the property line “ violates appendix B figure 32E of the zoning regulations.

The letter apparently also relies upon section 195 -26 .O of the regulations (Miscellaneous Design and Use Regulations) which provide in part; “No fence, hedge or wall exceeding six feet in height may be erected within any required side or rear yard.

The property is located in the R-4 zone which provides as follows:

- (5) Minimum required rear yard: 40 feet.
- (6) Minimum required side yard: eight feet.

The reasons for the appeal are that;

a) The zoning enforcement officer has misinterpreted the regulations which do not define what a hedge is. The common definition of a hedge is “ a fence or boundary formed by a dense row of shrubs or *low trees*” Mirriam -Webster dictionary. Emphasis added. “ A row of closely planted shrubs or *low-growing trees* forming a fence or boundary. American Heritage Dictionary. Emphasis added. The applicant’s arborvitaes are not shrubs, they are trees that are not low growing and consequently do not fall within the common definition of a hedge.

b) The arborvitaes were planted in 2016 and even if their location within the 8 foot side yard setback were to be considered a zoning violation, they are now, pursuant to C.G.S. 8-13a, deemed a nonconforming structures in relation to the property boundary because they have been “so situated for three years without the institution of an action to enforce such regulations.”

c) Numerous other properties in the district have rows of arborvitae tree plantings located within the 8 foot side yard and 40 foot rear yard setback requirements, further demonstrating that rows of arborvitae tree plantings have never been considered “hedges” prohibited by Section 195-26. O of the regulations.

**Atty. Cole cited regulation “§ 195-80. Powers and duties.**

The Zoning Board of Appeals shall have the following powers:

A. Appeals. To hear and decide appeals made by any person or persons severally or jointly aggrieved by any order, requirement or decision of an administrative official in the enforcement of these regulations. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement or decision appealed from, and shall make such order, requirement or decision as in its opinion ought to be made in the premises and shall have the powers of the officer from whose order, requirements or decision the appeal was taken, provided that the affirmative vote of four members shall be necessary to reverse or modify the order, requirement or decision appealed from.”

Atty. Cole reviewed his stated reasons and stressed again that the arborvitaes are not a hedge and they are not low growing trees. These arborvitaes were planted in 2016 after removing hemlocks that were in that same area that had gotten overgrown.

Atty. Cole asked Mrs. Haakerud a number of questions to present the timeline of this issue. She indicated that she has lived there for 48 years and is a retired teacher. Her neighbor is David Sonsini at 1 Schmitt Terrace. She stated that prior to the October 1st letter from ZEO Kevin White she had many meetings with him. The letter states that he was at their residence on September 3, 2024 at which time he instructed her and her husband that they had to lower the arborvitaes to a height of six feet and she stated that he said it was because he was tired of the complaints from the neighbor. She stated that she had two or three prior meetings with Mr. White at City Hall and at that time Mr. White and Mayor Dziekan had told her that they had looked at the trees and stated that the trees are beautiful and they could stay on her property and she did not have to do anything to them and do not talk to her neighbor. She indicated that the prior hemlocks were a line of privacy trees and in 2016 the trees were replaced with the current arborvitaes. Mr. Sonsini had a 6 ft. stockade fence on his property at the time. Atty. Cole presented photos of the location during various years depicting the older trees as well as the current arborvitaes. (Photos placed on file at the Building Dept.) She also stated that there are a number of

neighbors in the neighborhood that have arborvitaes similar to the size of her trees and are located in or close to property lines. Further, the placement of her house on the parcel faces Mr. Sonsini and the trees provide a privacy screen to his house. The view is such that her deck and views into her house are very visible from Mr. Sonsini's house. She has a clear line of sight to the camera in his driveway that he has installed. She has heard comments about conditions in her house that could only be made by someone seeing into the windows.

Atty. John Sponheimer was present representing Mr. Sonsini. He was offered the opportunity to ask Mrs. Haakerud any questions he may have regarding this issue. He presented a picture and verified that it was an appropriate depiction of the current trees in question. She concurred and explained that they planted the trees in 2016 and then added a few more in 2019 because a driveway was constructed on the neighbor's property and she was seeking privacy.

Atty. Sponheimer questioned the classification that the arborvitaes should be considered a pre-existing non-conforming use as stated by Atty. Cole. He noted though that if that was the intent then it has to be taken into account that the trees continue to grow and get larger. Code states that you cannot increase a non-conforming use and it is his position that the growth itself is doing just that. Further, the neighboring properties with arborvitaes is not relevant to this case and the issue continues to be that the trees should be maintained at no higher than six feet.

Atty. Sponheimer asked a number of questions to Mr. Sonsini. David Sonsini, 1 Schmitt Terrace state that he has lived there for 22 years. He stated that the trees were six feet when they were planted and have grown to 12 to 14 feet and are encroaching onto his property. Atty. Sponheimer summarized that it is his position that the three year stipulation as well as the determination of a non-conforming use does not apply in this instance and the Board should support the Zoning Enforcement Officer's findings.

Atty. Cole stated again that the trees will continue to grow. The Board can suggest a modification to the order, they can concur with the ZEO. The Haakerud's have offered to trim the trees on Mr. Sonsini's side but he will not allow them to access the property. It is Mr. Sonsini's right to trim the trees himself up to his property line as long as he does not cause significant damage to the trees. Efforts have been made to resolve this issue.

#### 8. Public portion for application

The chairman asked if there was anyone wishing to speak. There was no public in the room or on ZOOM to come forward.

Members of the Board were asked if they had questions. Mr. Pollastro questioned why the matter is before the Board now when the trees were planted many years ago. Mr. Sonsini stated that in 2023 he had a knock on his door and it was Bartlett Tree Service seeking to access his property to trim the trees. He stated that the trees were hanging over his boat and imposing onto his fence. He stated that he did not want the liability of having the service on his property. He doesn't want the liability or expense of a tree service. He stated that the trees are trimmed regularly on the Haakerud property but never touched on his side.

Corporation Counsel Lema explained that it falls upon this Board to determine whether the ZEO has correctly applied the regulations in this instance given the facts heard this evening.

#### **§ 195-26. Miscellaneous design and use regulations.**

O. Fences, walls and hedges. In residential zones no fence, hedge or wall in excess of four feet in height may be erected within five feet of any property line in the required front yard. Higher fences, hedges or walls up to a maximum height of six feet may be erected in the front yard if they are set back 10 feet from the property lines. No fence, hedge or wall exceeding six feet in height may be erected within any required side or rear yard. No fence, wall or hedge, the gross area of which is 80% or less open, shall be located within a ten-foot radius of the intersection of any driveway edge and a street property line. This does not apply to wire, stretcher, hurdle, post-and-rail and split-rail fences which do not present impairment to visibility (See Appendix Figure 32)

#### **§ 195-62. Flag lot regulations.** (Amended 11/4/2013)

(8) Landscaping.

(a) A permanent and continuous landscaped buffer strip shall be provided on the flag lot at least 20 feet set back from any lot line shared by a front lot and a flag lot. At least 50% of the required plantings shall consist of evergreen species, at least six feet in height and 1.5 inches in caliper. Suitable existing trees and shrubs may be preserved or augmented by plantings to provide the required buffer. Said buffer strip shall be recorded on the deed as a restrictive covenant and shall be maintained by the property owner. Said deed shall be filed in the land records of the Town Clerk prior to endorsement of any record map.

Members discussed the position that the continued growth is an expansion of a non-conforming use. That seems to be a subject for interpretation.

Mr. Pollastro questioned whether Mr. White recalled the visit with the applicant and Mayor Dziekan. Mr. White indicated that he had never been to the property with Mayor Dziekan. Mrs. Haakerud clarified that it was her recollection that Mr. White had indicated that he viewed the property with Mayor Dziekan and then relayed the discussion that the trees looked fine and that she maybe should not speak with the neighbor. Mr. White indicated he did not recall. He did say that she did come to the office to discuss the issue. He thought it had been settled but then the matter was again brought to his attention.

Mrs. Haakerud clarified a few issues. She indicated that she has not had regular trimming on her side. Only minor grooming was needed on occasion. She can still see through the trees to some extent and has installed shades in her windows for privacy. Mr. Sonsini did mention to her that he sees her on his camera.

Mr. Sonsini explained that he made the statement about the camera because he observed her driving down Schmitt Terrace, apparently checking to see if the trees had been touched on his side. Mr. Sonsini explained that he had the camera installed for security of his vintage vehicles.

Mr. Pollastro asked if there were any further comments.

**Motion** by John Kowarik and second by Ray Bowers. Move to close public portion. Motion carried unanimously.

#### 9. Action on application

**Motion** by John Kowarik and second by Ray Bowers. Move to overrule the decision of the Zoning Enforcement Officer on the grounds that this is not a hedge, it is a tree and the applicant is seeking privacy and at the time the trees were originally planted they were six feet. Motion carried unanimously.

~~10. Applicant: Nitoo and Dharaamdeo Nuckched, 6 Singer Village Dr., Derby, CT 06418 Location of affected premises: Same. Appealing the Derby Zoning Regulations 195-11 E(7)b for an 11 foot variance to install a greenhouse.~~

~~11. Public portion for application~~

~~12. Action on application~~

~~13. Applicant: THC The Hops Company LLC, 77 Sodom Lane, Derby, CT 06418 Location of affected premises: Same. Appealing the Derby Zoning Regulations 195-80 regarding the Cease and Desist Order for the expansion of a deck allowing for additional seating.~~

~~14. Public portion for application~~

~~15. Action on application~~

16. Approval of Meeting Calendar for 2025

**Motion** by John Kowarik and second by Jeffrey Bell. Move to approve the calendar, as presented. Motion carried unanimously.

The Zoning Board of Appeals meeting schedule for the 2025 calendar year shall be

the third Thursday of each month:

January 16, 2025  
February 20, 2025  
March 20, 2025  
April 17, 2025  
May 15, 2025  
June 19, 2025

July 17, 2025  
August 21, 2025  
September 18, 2025  
October 16, 2025  
November 20, 2025  
December 18, 2025  
January 15, 2026

The meetings will be held at 6:30 P.M. at City Hall or on ZOOM, 1 Elizabeth Street. The calling of a meeting is dependent on the filing of an application for variance.

#### 17. ADJOURNMENT

**MOTION** was made by Ray Bowers and second by David Reed. Move to adjourn the meeting at 7:40 p.m. Motion carried unanimously.

Respectfully prepared,

*Karen Kemmesies*

Karen Kemmesies, secretary

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