

# *Zoning Board of Appeals*

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## **Minutes**

(meeting taped)

Special meeting: Thursday, January 7, 2010 in the City Hall Aldermanic Chambers.

The meeting was called to order at 6:40 p.m.

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

Building Official David Kopjanski was present.

The Board took a brief pause to verify that the applicants were not in attendance somewhere else in the building. Mr. Kopjanski confirmed that they could not be found.

### **Public portion:**

No one was present and the public portion was closed.

### **Approval of minutes:**

Motion was made by David Manley and second by John Kowarik. Move to accept the minutes of October 15, 2009 and November 24, 2009, as written. Motion carried unanimously.

**Application No. 308** – Applicant: Angelica M. Baez. Location of affected premises – 51 Anson Street, Derby, CT 06418. Appealing the following section of the Derby Zoning Regulations:

Section 195-122 – Seeking a variance to allow a grocery beer license within 1,500 feet of a church, school, park and other liquor dispensing establishments.

As there was no one in attendance for the applicant and as the special meeting was called so as to hear this application within the timeline required by ordinance, the members deliberated on the application with the information available.

Mr. Kopjanski stated that the applicant provided him with a statement as to the hardship and a listing of businesses that sell alcohol within the 1,500 foot radius of the premises. He indicated that the applicant has provided him with a list of the notifications but he has not been given the certified letter receipts. The absence of the receipts would be a technical flaw in any approval.

Mr. Kopjanski cited section 195-124 which states that “If any existing liquor outlet, which shall be located within the 1,500 foot distance, shall be discontinued with intent to abandon for a

period of 30 days, such liquor outlet shall not be resumed except in conformity to Section 195-122, above.” Section 195-122 states “No land, building or premises, which prior to the effective date of these regulations is not the site or location of a liquor outlet, shall thereafter be used either in whole or in part for a liquor outlet if the liquor outlet would be within 1,500 feet of any other liquor outlet, school, public park or church, measured as hereinafter specified.”

The applicant would need to explain what the reason was that the prior license was not continued by the owner and would have to demonstrate that there was no intent to abandon. Section 195-90 sets rules for abandonment.

- a.) Any non-conforming use that has been abandoned shall not thereafter be re-established.
- b.) Abandonment, as used herein, shall mean the voluntary discontinuance of use when accompanied by an intent not to re-establish such use.

The Chair noted that the applicant and her representative were present for the December 17, 2009 meeting which was cancelled due to a lack of quorum. At that time the special meeting date was set for this evening, January 7, 2010. Without them being present this evening and without the verification of proper notification to abutting property owners through certified letter receipts being presented, the Board has to consider their position. Further, it is the burden of the applicant to demonstrate that the license was not abandoned. If the Board takes no action, the application will be approved automatically because of the timeline for necessary action. A denial without prejudice will allow the applicant to reapply without penalty of the waiting period.

Motion was made by David Manley and second by Sam Pollastro, Jr. Move to deny without prejudice application #308 (aka #306). Motion carried unanimously.

Motion was made by Sam Pollastro, Jr. and second by David Manley. Move to table the adoption of the meeting schedule for 2010. Motion carried unanimously.

Mr. Manley noted that the parking lot adjoining City Hall appears to be used by patrons of local businesses. He asked if something could be done to insure available spaces for those persons with business in City Hall. This will be explored.

Motion was made by David Manley and second by John Kowarik. Move to adjourn the meeting at 7:10 p.m. Motion carried unanimously.

Respectfully prepared,  
Karen Kemmesies, secretary

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