

# *Zoning Board of Appeals*

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## **Minutes**

(meeting taped)

Monthly meeting: Thursday, October 21, 2010 in the City Hall Aldermanic Chambers.

The meeting was opened at 6:30 p.m.

Motion made by David Manley and second by Angelo Dirienzo. Move to go into recess for ten minutes to await other members. Motion carried unanimously.

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

By roll call, members present: Mark Zeck, Richard Bartholomew, John Kowarik, Earl Robinson and Sam Pollastro, Jr. David Manley and Angelo Dirienzo recused themselves from the application and left the meeting.

Building Official David Kopjanski was present.

**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 John Kowarik and second by Earl Robinson. Move to accept the minutes of the September 16, 2010 meeting, as written. Motion carried unanimously.

**Application No. 331** - Applicant: Apollo Pizza. Location of affected premises – 235 Roosevelt Drive, Derby, CT 06418. Appealing Section 195-17 (E)(6) of Derby Zoning Regulations. Requesting a rear yard setback variance of 12.6 ft to construct an addition to the existing building within 7.6 ft from the rear property boundary line.

Gus Markos, owner, Atty. Thomas Welch, representing the applicant and Fred D'Amico, engineer were present. This application is continued from last month as per the request of the applicant.

Atty. Welch stated that on first glance he was hesitant to proceed with this client in seeking a variance as the need is to show a hardship and initially this was not clear. Upon further research and discussion with the client he felt more confident to proceed. The parcel is a non-conforming use in the I zone and is a non-conforming corner lot. The client purchased the business in 1992 and it has remained the same for all these years with the trailer being used for

materials storage; the trailer also being part of the existing non-conforming use. With the creation of the enclosed storage addition and the removal of the trailer, the client is, in fact, reducing the non-conformity. He indicated that the Health Department has specific requirements regarding a restaurant establishment. Walls must be fire rated, smooth, impervious, non-absorbent, light colored and easily cleanable. When the Health Department did their inspection recently they found that the trailer must be cleaned out, there are holes in the trailer walls that will allow insects to enter and the existing conditions do not meet the necessary standards. He cited a Supreme Court case stating “ in cases when extreme hardship has not been established, the reduction of a non-conforming use to a less offensive prohibitive use may attest to independent grounds to pass a variance.” He indicated that the owner currently has the right to continue the existing use by right. The owner is seeking to move out the trailer that is currently very close to the rear boundary and construct an enclosure under the current roofed area, an area that is further away from the boundary. The addition would be a reduction in the non-conformity. Most certainly, this application is unique being that has existed and continue to exist as a non-conforming use, being that the parcel is a corner lot that is non-conforming and being that the restaurant establishment is overseen by Health Department requirements. Respectfully, the applicant requests that the board look favorably on their request.

Mr. Kopjanski noted that he researched the files for this parcel. There are permits dating back to 1973 but no documentation or permit on when the roof structure was constructed. In 1993 there was a permit taken for the addition on the east side of the property. He stated that as the trailer is being used as a function of the restaurant then it could be considered a part of the non-conforming use. The question arises how the trailer is to be considered. It is on wheels and potentially movable. It has existed for more than 30 years, should it have been considered a structure or an accessory use to the parcel. The trailer is not a registered vehicle nor is it being assessed as a structure. If the application was granted would there be assurances that the property owner would not place a trailer on the property in the future.

Chairman Zeck questioned whether there were complaints or violations regarding the trailer. Mr. Kopjanski responded no.

Atty. Welch indicated that the trailer has electricity running to it. It has not been moved in 30+ years and it is being used as part of the restaurant operations. The Health Department inspected it and found problems that needed attention.

Mr. D’Amico noted that the trailer is approximately 40 ft x 10 ft, the proposed addition will have less square footage than the existing trailer. The trailer has not been moved in years and it is highly likely that it will have to be demolished in place and carted away.

At this time the members asked questions of the applicant and the building official. Members discussed whether the trailer should be seen as a motor vehicle or as an accessory structure to

the building. As the engineer has indicated, the trailer has not been moved for years and demolition will likely be needed for its removal, then the appearance could be construed to be an accessory structure. There is electricity to the trailer, the tires appear to be dry-rotted making it unmovable. Members discussed how a trailer or accessory structure should be defined in the future. It was understood that if a new trailer was put in place of the old trailer and as long as said new trailer did not occupy a parking space or loading zone, then it would not be a violation. In this instance, the assessor card has not classified it as an accessory structure, nor is the trailer registered as a motor vehicle so it has not been taxed over the years. The trailer is being used for a non-conforming use and the regulations state that a change can not be made that would increase the non-conformity. If it can be demonstrated that the trailer removal and addition will be a reduction in the non-conformity, then the change would be within the regulations.

Atty. Welch indicated that the trailer has not moved in more than twenty years and the owner did purchase the business with the trailer in place. It is being used as part of the restaurant operation and that is reinforced by virtue of the Health Department citing it for its discrepancies. He stressed the uniqueness of the property and the longstanding use as a restaurant. Mr. D'Amico indicated that the trailer does not appear to be road worthy due to its deteriorated condition, the non-functioning signal lights, rotten tires, etc. The trailer is closer to the property line than what the proposed addition will be and the dimension of the trailer is approximately 40 ft by 10 ft or 400 square feet. The addition is smaller than the size of the trailer.

At this time public comment was opened. Tom Harbinson, president of IDA International Inc., located at 200 Roosevelt Drive, Derby, CT; across the street from the applicant's property stated that his business has been there since 1988. He has found Apollo Pizza to be a good neighbor and has had a good business relationship and he seeks to have the Board respond favorably to this application.

No further public comment was received and public comment was closed.

At this time the members deliberated on this application. They indicated that granting the variance would create more open space between the building and the boundary. Removing the trailer would improve the parcel aesthetically and alleviate the appearance of a possible blighted condition. The Health Department has identified issues with the trailer and he is seeking to remedy the obstacle by constructing the addition. The applicant did purchase the business with the trailer on it and has used it for storage for the restaurant business. If the Health Department issues are not resolved, the restaurant could be forced to close. The concern would be not to be setting a precedent that a trailer can evolve into a structure. In this instance it is unique due to the length of time the trailer has been in place being used for the business operation. It is highly doubtful that the DOT would think that the trailer is road worthy. Members determined that the usefulness of the storage can be construed that the trailer has evolved into a structure and as such is part of the existing non-conforming use. The proposed

addition will be reducing the square footage of the non-conforming use. The chair noted that the site plan presented with this application is flawed as it does not include the trailer. For purpose of this application, it shall be a general understanding that the trailer is immovable and is part of the non-conformity of the structure. Members agreed that it shall be understood that placement of a trailer on the property in the future should not be allowed. It was noted that in the event of damage to the existing structure such as in the case of a fire, the owner would have the right to seek a temporary variance to allow for a portable structure such as a temporary trailer to be placed on the property for a limited period of time, subject to city approval.

Motion made by John Kowarik and second by Sam Pollastro. Move to grant the variance for application #331 Applicant: Apollo Pizza. Location of affected premises – 235 Roosevelt Drive, Derby, CT 06418. Appealing Section 195-17 (E)(6) of Derby Zoning Regulations. Requesting a rear yard setback variance of 12.6 ft to construct an addition to the existing building within 7.6 ft from the rear property boundary line with it stipulated that the existing trailer shall be removed and going forward no trailer may be placed on the property for the purpose of storage in conjunction with the business. Motion carried unanimously.

Motion was made by John Kowarik and second by Richard Bartholomew. Move to adjourn the meeting at 7:35 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies, secretary

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