

Zoning Board of Appeals

Minutes

(meeting taped)

Monthly meeting: Thursday, February 20, 2014 in the City Hall Aldermanic Chambers.

The meeting was called to order at 7:13 p.m.

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

Building Official Carlo Sarmiento was present.

Motion made by Sam Pollastro Jr. and second by John Kowarik. Move that Richard Bartholomew serve as acting chair in the absence of the chairman. Motion carried unanimously.

The chair explained that there are four voting members present this evening making a quorum. For an application to be approved, it requires four affirmative votes. An applicant has the choice to table their presentation until the next meeting anticipating a possible five member quorum or they can go forward this evening understanding that the vote must be unanimous. The applicant of application #377 agreed to go forward.

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 Sam Pollastro Jr. Move to accept the minutes of the January 16, 2014 meeting, with a correction on page 1 third paragraph from the bottom, the motion should read “to make copies OF the submitted materials” not “copies on the submitted materials. Motion carried unanimously.

Application No. 377 – Applicant: Yovani Collado. Location of affected premises – 51 Anson Street, Derby, CT 06418. Appealing Section 195-122 of the Derby Zoning Regulations to allow a grocery beer license within 1,500 ft of a church, school, park and other liquor dispensing establishments.

Atty. Eugene Skowronski was present representing the applicants. The applicants Yovani Collado and Angelica Baez as well as the property owners Juan & Josephine Taverner were also present. The certified receipts were presented to the building official.

A 15 page petition (on file in the Building Department) stating “We, the undersigned, being eighteen (18) years of age or older, hereby support the application of Yovani Collado to the Zoning Board

of Appeals to obtain a variance that would enable him to apply for a grocery beer permit from the Connecticut Liquor Control Commission that would allow him to sell beer at his store, the Derby Mini Market located at 49 Anson Street, Derby, Connecticut.” was presented for the record. Atty. Skowronski noted that the petition has names of people residing outside the neighborhood, an indication that they attract a broad spectrum of customers. He presented photographs (on file in the Building Department) showing the displays of products sold within the establishment.

Atty. Skowronski submitted a “Memorandum in Support of Variance Application of Yovani Collado seeking a variance of Section 195-122 concerning location of liquor outlets.”(on file in the Building Department) It states that from 2003 till October 21, 2008, the premises at 49 Anson Street, Derby Connecticut contained a grocery store type business, similar to its current business, known as Josephine’s Variety Plus which was owned and operated by Evelyn Baez, a cousin to current co-owner Angelica Baez. Evelyn Baez had a grocery beer permit for said premises from 2003 until October 21, 2008. In approximately October 2008 Evelyn Baez, going through a divorce, transferred the Josephine’s Variety Plus business to her father, Gennaro Baez. Gennaro Baez assumed temporary ownership of this business with the intention to sell it to his niece, Angelica Baez. Gennaro Baez, being a temporary owner, was not aware of or did not realize the importance of renewing the grocery beer permit in October of 2008. Gennaro Baez was under the belief that when he sold the business to his niece, Angelica Baez, and her husband, Yovani Collado, in the early part of 2009 that they could renew the grocery beer permit. Neither Angelica Baez nor Gennaro Baez intended to permanently abandon the grocery beer permit. When Angelica Baez and Yovani Collado went to renew the grocery beer permit in 2009, they learned that they could not do so because of the Derby Zoning Regulations Section 195-122. Atty Skowronski cited precedence showing that where a hardship is a result of the voluntary act by one other than the one who a variance will benefit, the Zoning Board of Appeals may in sound exercise of its liberal discretion grant a variance. The memorandum describes that the location has been used for commercial purposes since at least 1950 under a variety of ownerships. St. Mary’s Church has existed since 1900. The Derby Mini Market provides services to the neighborhood allowing local residents to walk to the store. They offer Western Union transfers, an ATM machine and focus their product on the cultural diverse community that is consistent with their heritage. This is a “mom and pop” store with the owners working seven days a week. The lapse was an oversight not of their making. They are only seeking to restore a service that was offered at that location previously. The premises is located in the CDDD zone and per Section 195-20 of the Derby Zoning Regulations the purpose and intent of the CDDD zone is to encourage the concentration existing downtown of business providing goods and services needed by the population and to provide an appropriate space to satisfy the needs of modern local retail development and encourage local retail development to the mutual advantage of both customers and merchants.

The applicants corroborated the timeline of events and indicated that allowing the variance would be helpful to their neighborhood patrons.

It was noted that the application states the address as 51 Anson Street whereas the memorandum states 49 Anson Street. The owners clarified that the upstairs apartments are 49 Anson and the store is 51 Anson Street. The owner also stated that Yolanda's, another market in the area, received their liquor permit to sell beer after their establishment, then Josephine's Variety Plus. Atty. Skowronski stated for the record that the memorandum presented this evening is for the store and should be corrected to read 51 Anson Street.

At this time, the public was invited to speak on this application.

Paula Hansel of 57 Anson Street stated that the owners are very hard working people and the close proximity of the store is greatly helpful being within walking distance of their residences. This addition to their line of merchandise would be received positively.

Building Official Carlo Sarmiento noted that he has been conversing with Atty. Skowronski. He stated that the premises have no code violations and he saw no issue with the request.

Motion made by John Kowarik and second by Harvey Finkel. Move to grant the variance for application #377 to allow a grocery beer license for 51 Anson Street, Derby Mini Market, applicant Yovani Collado. Motion carried unanimously.

Approved Application No. 354 – Applicant: Kevin J. Curseaden, attorney for Mohamad Janaid Awan. Location of affected premises – 10 Rockwell Place, Derby, CT 06418. (approval 3/21/2013) The map was prepared by Land Surveying Services, LLC of 135 Fairchild Ave, Fairfield, CT 06825 titled "Easement Map prepared for Mohammad Junaid Awan, Carolyn L. Pinney and Joan Marie Mouning, 10 Rockwell Place & Lot No# 55, Derby CT dated August 8, 2012 with revision dates 05-03-13, 05-23-13 and 12-08-13". Members reviewed the map and understood that all parties were agreeable to the final depiction. The filing of the easement map was a stipulation for the completion of the application.

Motion made by John Kowarik and second by Harvey Finkel. Move to accept the easement map for 10 Rockwell Place, as presented. Motion carried unanimously.

Motion was made by Harvey Finkel and second by John Kowarik. Move to adjourn the meeting at 7:59 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies

Karen Kemmesies, secretary

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