

Zoning Board of Appeals

Minutes

(meeting taped)

Monthly meeting: Thursday, August 19, 2010 in the City Hall Aldermanic Chambers.

The meeting was called to order at 6:38 p.m.

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

Alternates Earl Robinson and Sam Pollastro, Jr. will be serving as voting members this evening.

Building Official David Kopjanski was present.

Motion made by David Manley and second by Sam Pollastro, Jr. Move that Angelo Dirienzo serve as acting chair for this evening in the absence of the chair. Motion carried unanimously.

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 David Manley and second by Sam Pollastro, Jr. Move to accept the minutes of the July 15, 2010 meeting, as written. Motion carried unanimously.

Application No. 326 – 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.

It was noted for the record that there is only four voting members present this evening. Four affirmative votes are required for a variance to be granted. The applicant has the right to postpone to the next meeting if he so chooses. The applicant chose to go forward.

Yovani Collado and Angelica Baez were present. Mr. Collado stated that he purchased the business unaware that the liquor permit had lapsed. Having the business is a dream for him; he is trying to make a life for his family. There are other establishments in the area permitted to sell liquor and they are trying to remain competitive and serve their customers. The hardship stated with the application states:

“The applicant is suffering a personal hardship as a result of not being able to sell beer at the subject location. Many if not most of the surrounding business establishments that compete with the applicant are able to sell beer to their clients. As a result they provide a broader range of services to the public than the applicant can. That puts the applicant at a competitive disadvantage. The prior owner of the business had a liquor permit but allowed it to lapse before selling the business to the applicant. Because of that third party’s action’s the applicant is now in a position of not being able to acquire a liquor permit and compete on equal footing with other small grocery stores absent a variance. As noted in *Belknap v. ZBA*, 155 Conn. 380, *Whittaker v. ZBA* 170 Conn. 650, and *Pike v. ZBA*, 31 Conn. App. 270,276, where an applicant acquires a property without knowledge of the problem and the hardship arises out of the actions of someone other than the applicant, the ZBA may grant a variance based on personal hardship particularly where the request use was once permitted use.”

The establishment is within 1,500 feet of St. Mary’s Church, Irving School and Yolanda’s Market.

The applicant stated that they often will order products at the request of a patron. They were aware that beer was sold at that store previously. Their request is only for the sale of beer.

Mr. Kopjanski indicated that the applicant, if the variance is granted, would have to apply to the State of CT for a grocery/beer permit for the establishment. The State would regulate what products could be sold under the permit. The local Fire Marshall would have to inspect the premises. The reason a variance is needed is due to the location of the premises. Regulations state that no establishment within 1,500 feet of a church, school or other establishment selling alcohol, shall be allowed to sell alcohol.

At this time the hearing was opened for public comment. No one came forward, the public portion was closed.

Action on the application:

Mr. Kopjanski indicated that he did not know the reason for the lapse in the permit by the previous owner. He encouraged the members to consider the viewpoint for why the restriction was written into the regulations when they were established.

Jose Mendosa of 303 Broad Street, Meriden; for the applicant, stated he understood that the previous owner lost their permit after selling beer to minors.

Motion made by David Manley to move to deny the application. No second was heard and the motion failed.

Motion made by Earl Robinson and second by Sam Pollastro, Jr. Move to grant the variance for application 326 – Yovani Collado, applicant; to allow a grocery beer license within 1,500 feet of a church, school, park and other liquor dispensing establishment with the hardship being that the loss of the previous license was beyond the applicant’s control.

Angelo Dirienzo NO
David Manley NO
Earl Robinson YES
Sam Pollastro, Jr. YES

Motion failed. The variance is **not** granted.

Without objection a brief recess was taken at 6:55 p.m. to allow the next applicant to prepare for presentation. The session returned at 6:57 p.m.

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 and Fred D’Amico, engineer were present. The chair asked for the certified letter receipts of this application. It was discovered that certified letters without receipt requests were sent to the adjoining property owners.

Motion made by David Manley and second by Earl Robinson. Move to table application 331 due to the lack of proper notification of effected property owners. Motion carried unanimously.

Motion was made by David Manley and second by Sam Pollastro, Jr. Move to adjourn the meeting at 6:59 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies, secretary

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