

# *Zoning Board of Appeals*

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## **Minutes**

(meeting recorded)

Special meeting: Thursday, May 16, 2019 in the City Hall.

The meeting was called to order at 6:15 p.m.

By roll call, members present: Richard Bartholomew, John Kowarik, Sam Pollastro Jr., Earl Robinson and Jeffrey Bell. Ray Bowers was absent.

Also present: Atty. Barbara Schellenberg.

MOTION made by Sam Pollastro Jr. and second by John Kowarik. Move to nominate Richard Bartholomew as chair. Motion carried with Mr. Bartholomew abstaining.

Members acknowledged the excellent job that Mr. Bartholomew has done and look forward to continued success.

**Applicant: CT Sign Service, LLC, 60 Pershing Drive**, Derby, CT 06418 Location of affected premises Same. Appealing determination of Zoning Enforcement Officer denying expansion of a pre-existing, non-conforming pylon sign to add tenant names.

John Morrison of CT Sign Service LLC was present this evening. He presented the "Certificate of Mailing" slips that were mailed on May 2, 2019 for the file. The statement of hardship is:

*The City of Derby zoning regulations provide for a calculation of 2 sf per foot of building frontage if the storefront is set far back from the road, naturally this takes into consideration store fronts that are set back and harder to see, and provides for a larger sign either on the building or on the road sign. This property is unique because it is so long and narrow, it creates an unusual condition where the store fronts while close to the road, are distant from cars as they approach and pass the entrances to the parking lot before they realize the store they are looking for is now over their shoulder. Our efforts to utilize the existing pylon sign, which is ideally located to feature store names as the public approaches the property, and the sign is situated where it poses no line of site issues. Coming off of Route 8, this change will help alleviate this navigation issue, and make it much safer both for people attempting to get to the stores in Red Raider Plaza, as well as all of the people on the road traveling both directions in this very busy area. We looked at many design options, trying to create an effective navigational aid without making a negative impact on the approach to Derby from the highway. We feel that the proposed design will be a significant improvement over the current conditions, make the property and road out front safer and compliment the*

*area in general. We respectfully request the approval of the zoning board of appeals for this improvement.*

Mr. Morrison reviewed the layout of the parcel and pointed out the difficulties as he has expressed in his hardship. The pylon sign appears to have been abandoned with the recent construction but is in a visual, effective location. The request is reuse the structure creating a 20 foot by 10 foot structure. The original structure is 20 feet by 4 feet. The new sign would have a topper added, the original structure would display "Red Raider Plaza" and below it would be new square footage for individual establishments. The double faced signs would be internally illuminated.

Members reviewed the materials submitted. There were no specific calculations provided and the Building Official was not available this evening to provide further detail into this request. It appears that the current signs within the complex have utilized the specified allotment of square footage of signs. Planet Fitness has also received a variance which expanded the signage on the complex. Members felt that more information was needed to make a decision on this matter. They encouraged the applicant to meet with the Building Official.

Public portion for this application: The Chair asked if there was anyone wishing to speak on this application. No one came forward.

MOTION made by Sam Pollastro Jr. and second by Earl Robinson. Move to table this application to the next meeting. Motion carried unanimously.

**Applicant: Sarita Deli and Grocery, 78 Hawkins Street, Derby, CT 06418** Location of affected premises Same. Appealing determination of Zoning Enforcement Officer denying a zoning permit variance for a permit to sell beer.

The business owner Sarita Vargas and landlord Maureen Monaco were present to speak on this request. It was explained that the business was recently acquired by Ms. Sarita. The beer permit is to encourage business in the store. A list of adjoining property owners and USPS slip was presented for the file.

Ms. Monaco noted that Sarita has been running the Deli for approximately five months. This is a family run business and they commit many hours to this endeavor. The store is now welcoming and clean, offers great food and is welcomed by the neighborhood. This used to be Cappy's Market. The last tenants were evicted due to non-payment.

Mr. Bartholomew questioned whether previous beer permits are transferable as the previous business had permission to sell beer. The establishment has been maintained as a market/deli and he questioned how that would play into any action on this application.

Atty. Schellenberg noted that it is unclear whether the use was abandoned. If not, they may have the right to continue the existing variance. This too required further information from the Building Official.

### HARDSHIP

**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 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 *Be;knap v. ZBA*, 155 Conn. 380, *Whittaker v. ZBA*, 179 Conn. 650, and *Pike v. ZBA*, 31 Conn. App. 155 Conn. 380, *Whittaker v. ZBA*, 179 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 Sarita deli and grocery is a valuable asset to the neighborhood and community in that it provides essential and desirable food products and household supplies to neighborhood residents who often have limited financial and transportation resources to shop outside the neighborhood. This store also provides a wide variety of spanish food and products which are needed and desired in the neighborhood.

This variance if granted will not change the character of or have an adverse affect on the neighborhood of the city. Presently there exists within fifteen hundred feet of a school, church or park, two grocery stores with beer permits, a social club with a full liquor license (AM Club) and two bars with full liquor permits ( Yolanda's derby mini mart, Archie Moores and bar/restaurant at the corner of Fifth Street and Olivia Street.) These establishments have functioned and sold beer without adverse affect on the neighborhood or the community.

The grocery beer permit is necessary for the survival of the Sarita Deli And Grocery, which is a valuable neighborhood and community assets and a traditional mom and business, which should be encouraged and assisted.

Public portion for this application: The Chair asked if there was anyone wishing to speak on this application. No one came forward.

MOTION made by Earl Robinson and second by Jeffrey Bell. Move to table this application to the next meeting. Motion carried unanimously.

**2019 Calendar:**

The Zoning Board of Appeals meeting schedule for the 2018 calendar year shall be the third Thursday of each month:

May 16, 2019  
June 20, 2019  
July 18, 2019  
August 15, 2019  
September 19, 2019  
October 17, 2019  
November 21, 2019  
December 19, 2019  
January 16, 2020

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

Motion was made by Sam Pollastro Jr. and second by Earl Robinson. Move to accept the 2019 calendar, as presented. Motion carried unanimously.

Motion was made by Sam Pollastro Jr. and second by John Kowarik. Move to adjourn the meeting at 6:45 p.m. Motion carried unanimously.

Respectfully prepared,

*Karen Kemmesies*

Karen Kemmesies, secretary

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