

# *Zoning Board of Appeals*

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## **Minutes**

(meeting recorded)

Special meeting: Wednesday June 29, 2016 in the City Hall. (Note – The regular meeting for June 16, 2016 was cancelled and rescheduled to this special meeting.)

The meeting was called to order at 6:12 p.m.

By roll call, members present: Richard Bartholomew, John Kowarik, Sam Pollastro Jr., Ray Bowers and Jeffrey Bell. Phyllis Sochrin arrived at 6:52 p.m. Earl Robinson was excused. It was noted that the alternates will be full voting members this evening making for the five member compliment.

Also present – Atty. Majorie Shansky (arriving at 6:20 pm) and Building Official Carlo Sarmiento.

### **Election of chair:**

A motion was made John Kowarik and second by Sam Pollastro Jr. Move to nominate Richard Bartholomew as Chairman of the Zoning Board of Appeals. Motion carried unanimously.

No other nominations were received. The floor was closed.

**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 December 15, 2015 meeting, as written. Motion carried unanimously.

**Application** – Applicant: Fernando P. & Sally M. Guerra. Location of affected premises – 131 Dirienzo Heights, Derby, CT 06418. Appealing Section 195-13 E (2) of the Derby Zoning Regulations, requesting a lot area variance of 538 square feet in order to convert a one family house into a two family house in the R-5 zone. Communication from Atty. Eugene A. Skowronski, representing the applicant, was received requesting that the public hearing be held at a later date as he was unable to attend.

Motion made by John Kowarik and second by Sam Pollastro Jr. Move to table the application for 131 Dirienzo Heights. Motion carried unanimously.

**Application** – Applicant: Franchise Realty Interstate Group for McDonalds Drive Thru Restaurant. Location of affected premises – 44 Division St., Derby, CT 06418. Appealing

Section 195-71 C (3), 195-69 B (3) and 195-69 B (4) of the Derby Zoning Regulations, requesting variances to sign area requirements.

Present this evening – Alan J. Micale, P.E. of Ayoub Engineering, representing the applicant. Mr. Sarmiento received the certified letter receipts. Mr. Micale reviewed the plans for the project. He explained that the building will be razed and a new structure will be built that will deal with existing issues such as drainage as well as creating an updated building with a two-lane drive thru. This two-lane concept has proven successful. The new design has been reviewed and approved by the Derby Planning and Zoning Commission. He is present this evening to request variances for signs that will be placed on the building as well as free-standing on the parcel. Per the plans prepared by Ayoub Engineering dated 12/23/15 for project no. 4621.115 -

<b>Description</b>	<b>Qty</b>	<b>Overall sq ft</b>	<b>Illuminated</b>	<b>Comment</b>
ID sign	1	182.7 sf	Yes	Will replace existing sign
Wordmark "McDonalds"	2	65.6 sf	Yes	Front and SE side of building
Wall Arc	3	42.0 sf	Yes	Sides and rear of building
Welcome	2	5.2 sf	No	At entrances of building
Gateway	1	13.2 sf	Yes	Entrance of drive-thru
Customer Order display	2	8.0 sf	Yes	Within drive-thru area
Menu Board	2	80.2 sf	Yes	Within drive-thru area
Pre-Sell Board	1	10.2 sf	Yes	Entrance of drive-thru
Directional	2	11.6 sf	Yes	Welcome
Directional	1	5.8 sf	Yes	Drive-thru
Directional	2	10.6 sf	Yes	Thank-you

Mr. Micale explained that the ID sign was discussed at the Planning and Zoning Commission and the existing reader board located under the main sign would be eliminated. By this elimination, there is a reduction in non-conformity by 12 square feet. Each directional sign is under 6 square feet and he understood from the regulations that they would then not be included in the square footage calculations. In terms of calculating the allowed square footage, Mr. Micale questioned which measurement is used in the calculation. He explained that the design of the building is such that the front of the building is shorter in length than the side length. The actual main entrance is located on the side of the building. If the measurement is the side facing the road the calculations would be figured off of a length of 45 feet. If the side main entrance is used, the calculations would be figured off of a length of 97 feet. Further, as there are two drive-thru lanes there is a need for two menu boards and customer order displays rather than the existing single ones currently existing. The wordmark signs and wall arc signs will be located on the building and as the building is viewable from all sides by patrons, McDonalds is seeking this determined level of visibility. Mr. Micale explained that the hardship for this request is that the parcel places the building's main entrance on the side resulting in the measurement of square footage requirements being reduced if the shorter frontage is taken. Further, the mixed types of signs needed to be clarified. He understood that the directional

signs did not seem to fall under the measurement but is the height restriction sign directional? Are the menu boards informational or do they also have to be included within the calculations? The Planning and Zoning Commission acknowledged the reduction of the non-conformity with the removal of the reader board but they did not discuss the sign classifications as a whole.

Members discussed all of the points raised by the applicant. It was noted that the parcel is located in a commercial district.

Motion made by John Kowarik and second by Ray Bowers. Move that the menu boards do not count. Discussion on the motion. Members discussed the clarification of the menu boards. They felt that past determinations and further research would be needed to resolve this question.

Motion made by John Kowarik and second by Ray Bowers. Move to withdraw the motion. Motion carried unanimously.

The Board requested that the applicant work with the building department to create a table that could show what is existing, what is proposed, what is to be included in the calculation and what is being sought for relief of the regulations. Also, past practices on the determination of menu boards or other signage would be helpful.

Motion made by John Kowarik and second by Sam Pollastro Jr. Move to continue the application to the next meeting. Motion carried unanimously.

**Application** – Applicant: Pershing Partner, LLC for Popeye’s Louisiana Kitchen. Location of affected premises – 76 Pershing Dr., Derby, CT 06418. Appealing Section 195-67 H of the Derby Zoning Regulations, requesting a variance to sign requirements to add a free standing pylon sign

Jerry A Nocerino and construction contractor James Farrel were present. Mr. Sarmiento received the certified letter receipts. Mr. Nocerino noted the uniqueness of the parcel. The main pylon sign at the entrance will have the names of all the businesses in the complex. The Popeye’s building is approximately one thousand feet from this sign. A patron would be entering the complex and turning right to go to the building and directional signs could be displayed but the distance still provides a visual deficiency for the tenant. Further, the parcel runs parallel to the ramp to Route 8 and the building would be seen as you are already on the ramp with no opportunity to turn around. The customary signage for the building is not a part of this request as all signage for the building will conform to the regulations. What is being requested is the placement of a pylon sign at the entrance to the Popeye pad. The building elevation itself will be approximately 22 feet. The requested sign would 30 feet in height. It was noted that the Italian Pavilion sign is approximately 60 feet in height. The sign includes a 9’ 3” height round “Louisiana Kitchen” insignia and 3’ 113/8” height “POPEYES” sign and a reader

board sign displaying “DRIVE-THRU”. The calculation for the sign = 140.2 sq. ft. as the reader board would only have the one line stating Drive-Thru. A representation of the sign was presented for review. The drawing was prepared by Sign Services Group of Nashville Tennessee prepared on December 1, 2008 for Popeye’s Louisiana Kitchen titled P-130 pylon sign with readerboard design titled HRB-48.

Motion made by John Kowarik and second by Ray Bowers. Move to approve the variance to allow for the placement of a pylon sign at the entrance of the pad for Popeye’s Louisiana Kitchen with the square footage of the sign to be no greater than 140.2 square feet and will be as described. Discussion on the motion. Mr. Pollastro recalled concerns expressed by the owners of the ShopRite plaza regarding signage when the complex was before the Planning and Zoning Commission. It was noted that the certified letter sent to the owners of ShopRite had been received and additionally, Mr. Nocerino had a letter from them indicating that they were favorable to the requested variance. There was no public comment at the meeting either for or against this application. The hardship presented is that there are visual and safety concerns due to the location on the parcel. As Ms. Sochrin arrived after the start of this application she was not included in the vote and the two alternates continued to be voting members. Motion carried with Sam Pollastro Jr. opposed.

**Appeal of Cease and Desist Order** for parcel Map Block No. 7-10 20B - B1 Zoning District – Complaint ID#1601 addressed to Mr. William Korolyshun, Tekla Vartelas, Maureen Miller, f/k/a Maureen Monaco (c/o Gregory J. Stamos, Esquire) and Eugene Micci, Esq., Trustee.

Communication dated June 13, 2016 was received from Attorney George W. Boath, Jr. of Zanella, Boath and Associates, LLC representing the property owner. He stated that he would be unable to attend the meeting and would ask that the same be postponed. Further, the petitioner will waive the decision period set forth in Section 8-7d of the Connecticut General Statutes.

Motion made by John Kowarik and second by Sam Pollastro Jr. Move to table discussion of the appeal of the cease and desist order for parcel Map Block No. 7-10 20B - B1 Zoning District. Motion carried unanimously.

Motion was made by Sam Pollastro Jr. and second by Ray Bowers. Move to adjourn the meeting at 7:30 p.m. Motion carried unanimously.

Respectfully prepared,  
*Karen Kemmesies*  
Karen Kemmesies, secretary

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