

## *Planning and Zoning Commission*

### *City of Derby*

Theodore J. Estwan, Jr., Chairman

Steven A. Jalowiec

David J. Rogers

David Barboza II

Richard A. Stankye

Albert Misiewicz

Glenn H. Stevens

Raul Sanchez (Alternate)

Maryanne DeTullio, Clerk

A meeting of the Planning and Zoning Commission of the City of Derby was held on Tuesday, March 18, 2008 at 7:00 p.m. in the Aldermanic Chambers, New City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 7:05 p.m. by Chm. Ted Estwan. Present were Ted Estwan, Steve Jalowiec, Glenn Stevens, Albert Misiewicz, David Rogers, Richard Stankye, David Barboza and Raul Sanchez. Also present were Atty. Joseph Coppola, Michael Joyce, Milone & MacBroom and Maryanne DeTullio, Clerk.

#### Additions, Deletions, Corrections to Agenda

A motion to move Item 10(a) New Business - Application for Site Plan Approval from City of Derby for new Middle School and site improvements; Nutmeg - P Zone before the public hearing was made by Mr. Stankye, seconded by Mr. Jalowiec and carried unanimously.

#### Correspondence

Chm. Estwan stated that a letter was received from UCOON Cooperative Extension System indicating that David Barboza has completed the core sequence of courses in the Connecticut Land Use Academy Program.

#### Public Portion

There was no one from the public wishing to speak.

#### Approval of Minutes:

A motion to approve the minutes of 02/25/08 meeting was made by Mr. Stevens, seconded by Mr. Misiewicz and carried unanimously with Mr. Jalowiec abstaining.

#### Acceptance of Applications:

Mr. Jalowiec moved to accept an application for modification of special exception use from Susan Giordano/Whitney's Marina, 412 Roosevelt Drive. The motion was seconded by Mr. Barboza and carried unanimously.

Planning & Zoning Commission

March 18, 2008

The motion was seconded by Mr. Jalowiec and carried unanimously.

#### New Business:

(a) Application for Site Plan Approval from City of Derby for new middle school and site improvements, Nutmeg Avenue - P Zone (Application #2008-2-25-1).

Jeff Gebrian and Dan Westin were present. Mr. Gerbian stated that the drawings have

been revised and they have worked with staff on some of the issues that came up. He stated that they received approval from Inland-Wetlands Agency and have met with the Fire Marshal regarding some of his concerns.

He stated that the entire site is approximately 48 acres and Nutmeg Avenue will become a driveway through the property. The property line along Chatfield Street has been adjusted.

The Fire Marshal had concerns with fire access, signage and the fire lanes. He was also concerned with access to the existing hydrants off Chatfield prior to the relocation of the water lines and that has been corrected. The plans have been changed to show the things he was concerned about. He spoke on the parking situation and stated that it has been modified and the number of spaces will be 349 which is a 26.4% reduction that is being requested. He stated that they will be essentially providing zero runoff from the site.

There are additional plantings and he pointed out the screening around the dumpster. Mr. Gebrian spoke on the gas turban complex and where it is going to be located. He stated that it will be screened and they will also look into other options to reduce decibel levels.

Mr. Joyce stated that his letter is a summary of the dialogue with the applicant in the review of the application. He stated that they will need to have a construction staging plan. The soil and erosion control review was done under the Inland Wetlands review. He stated that they will want to look at the wall at the rear of the property for further screening.

Mr. Estwan read a letter dated 3/18/08 from the City of Derby that the City and Board of Education understand that there is a joint use of the parking areas at the site. He also read a letter dated 2/28/08 from the Fire Marshal and stated that the issues have been addressed by the applicant.

Mr. Joyce stated that in the event additional parking is needed there is an area where future parking can be located. The regulations allow for up to a 50% reduction in the parking and they are asking for a 26.4% reduction. Mr. Barboza stated that he would like

to see a note on the plans where the future parking may be.

Mr. Estwan moved that following review of the plans and supporting documentation submitted in support of this application, the Derby Planning & Zoning Commission hereby approves the Site Plan Application for construction of a new Derby Middle School on property shown on Derby Assessors Map 9-6, Lot 2 subject to the following  
Planning & Zoning Commission March 18, 2008

conditions:

The approval shall be based upon the following documents submitted in support of and during review of this application:

1. Plans entitled "New Construction of Derby Middle School" with the following attached drawings dated 2/6/08 and revised 3/4/08 and 3/19/08:
  - a. "Cover Sheet"
  - b. "Overall Site Plan - Drawing L.0", scale 1"=100'
  - c. "Site Preparation Plan" - Drawings LSP. a, b and c, scale 1"=20'
  - d. "Site Layout Plan" - Drawings L.1.a, b and c, scale 1"=20'
  - e. "Site Grading Plan" - Drawings L.2.a, b, c and d, scale 1"=20'.
  - f. "Site Planting Plan" - Drawings L.3.a, b and c, scale 1"=20'.
  - g. "Site Details - Drawing L.4.a and b", not to scale.
  - h. "Site Erosion & Sedimentation Control Plan" - Drawings C.2.a, b, c and d, scale 1"=20'.
  - i. "Site Civil Details" - Drawings C.3.a, b and c, scale 1"=20'.
  - j. "Floor Plans" - Drawing A-101, scale 1/16"=1'0".
  - k. "East & West Exterior Elevations" - Drawing No. A-201, scale 1/8"=1'.
  - l. "North & South Exterior Elevations" - Drawing No. A-202. scale 1/8"=1'.

2. "Existing Conditions - Derby High School/Middle School - Nutmeg Avenue - Derby, CT" prepared for the City of Derby, prepared by Nafis & Young Engineers, Inc., and dated February 5, 2008, scale 1"=100'.
3. "Record Map-Derby High school/Middle School-Nutmeg Avenue-Derby, CT", prepared for the City of Derby, prepared by Nafis & Young Engineers, Inc., dated February 5, 2008, scale 1"=100'.
4. "Storm Drainage Report", prepared by Clark Engineering, dated 2/8/08 and revised 2/28/08.
5. "Memorandum from CR3, LLP, dated March 13, 2008."
6. "Correspondence to State Traffic Commission from Traffic Engineering Solutions, P.C. dated January 9, 2008."
7. "Correspondence from Milone & MacBroom, Inc. dated March 18, 2008."
8. "Correspondence from Ken Hughes, dated March 18, 2008, Re: Joint Parking".
9. "Derby Sound Data".
10. "Correspondence from Fire Marshal dated 2/28/08.

Planning & Zoning Commission

March 18, 2008

With the following stipulated conditions:

1. Prior to the issuance of a certificate of zoning compliance, the applicant shall have the following items both completed by a qualified party and verified as complete by the City Engineer, Corporation Counsel and/or Zoning Enforcement Officer:

a. Finalize the required Joint Parking Agreement and arrange for the filing of the agreement on the Derby Land Records.

b. Provide evidence that the partial abandonment of Nutmeg Avenue and land transfer along Chatfield Street has been properly executed and that an A-2 survey map of the updated right-of-way and property boundary has been filed on the land records.

c. Arrange for the filing of this approval on the Derby Land Records.

2. Prior to any earthmoving activities, the proper installation of all sediment and erosion control measures indicated on the above referenced plans.

3. The plans shall be revised in accordance with the comments offered in correspondence from City Engineer Milone & MacBroom, Inc. dated March 18, 2008.

4. The "Zoning Tabulations" shown on Site Layout Plan Sheet L.1a shall be updated to reflect the current parking analysis and request for reduction.

5. The existing and proposed landscape buffers, screening and/or fencing shall be reviewed and approved in the field by the Zoning Enforcement Officer and/or City Engineer whom shall have the authority to direct the applicant, developer and/or contractor to provide additional plantings, fencing, etc. in order to maintain the intent of the regulations. Also, the city shall have the authority to

require additional sound damping measures (i.e. screening, etc.) for all proposed outdoor mechanical equipment.

6. Pavement repair and restoration within any and all City streets shall include the full width mill and overlay of the existing pavement within the limits of the area of disturbance. Contractors working within any city right of way shall be insured and bonded appropriately and all work shall be coordinated with the Derby Department of Public Works.

7. All site improvements, including but not limited to pathways from all proposed building exits, shall be designed and constructed in accordance with the Fire

Planning & Zoning Commission

March 18, 2008

Marshall and CT State Building Code.

8. The lighting photometric plan shall be updated to depict the existing (and proposed where applicable) property boundary for the school campus. A review of the finished lighting condition shall be performed by city staff to identify if additional illumination shielding is appropriate, especially along adjacent properties.

9. Plans showing the final sequence of construction for the site shall be submitted to the City Engineer prior to the start of construction. These plans shall include at a minimum, perimeter construction and safety fencing, lay down and staging areas, construction access, phased sediment and erosion control measures, material stockpiles, etc.

10. Any significant changes or modifications to the plans presented will require subsequent review and approval by the Planning & Zoning Commission.

The motion was seconded by Mr. Misiewicz and carried unanimously.

Public Hearing:

(a) Application for Special Exception Use from ABC Learning Center, LLC for daycare facility at 328 Derby Avenue, Derby. (Application #2008-2-25-2).

Atty. Joseph Rini, Danielle Bradshaw and John Rak were present. Atty. Rini submitted the certified mailings and Statement of Use. He stated that his client currently runs a daycare facility that services families in Ansonia and Derby. The facility is currently housed in a church in Ansonia and the church has determined that they need to use that space and she has to move. The daycare facility will be located in the rear building at 328 Derby Avenue. The exterior of the building and lighting will remain the same. He stated that Mr. Kopjanski was concerned about the parking plan which has been devised. He stated that the only major change will be the playground area. He stated that they will not rip up the asphalt but will put a special material over the asphalt and fence the area. The traffic flow has been identified on the site plan and there are 12 spaces for staff. He stated that there are state regulations which they must adhere to. There is no sign proposal at this time and no additional lighting. He stated that this is a good use for the property. He did state that the Commission may want to determine that it is a one way flow to the drop off area. The hours of operation will be from 6:30 a.m. to 6:30 p.m. Monday through Friday. He also stated that the primary hours for drop off and pick up are 6:30 to 8:30 a.m. and 4:00 to 6:30 p.m. They cannot have more than 63 children at any one time.

Mr. Joyce stated that he has not reviewed this application and he needs some additional information. He stated that the walkway in the rear needs to be shown on the plans. He was also concerned about the sight lines on this road. He also stated that

Planning & Zoning Commission

March 18, 2008

the Commission needs to look at the nature of this use and the other uses on the site. Mr. Estwan stated that this is a great concept but the Commission needs to look at the location and is this a good site for this use. It is a heavily traveled roadway and children



will be there everyday. Mr. Barboza stated that he was concerned with the traffic on the road and leaving this site and making a left turn.

Mr. Stankye asked about the circular driveway which he had mentioned and was not shown on the plans. Atty. Rini stated that he will look into that. Mr. Stevens stated that he was concerned that there was no additional lighting especially with the oil company on site and their trucks coming in and out when it is dark. Mr. Stankye asked about an exit plan for the children in the event of a fire in another building. Atty. Rini stated that he did not know but would look into that. Mr. Stankye also pointed out that all the doors open in and he also asked about the guardrails along the walkway. Mr. Estwan stated that it is a great use but there are concerns about whether this fits this property. It will intensify the use of this site. Mr. Joyce asked if the other tenants have been involved with how this use may effect their business. Atty. Rini stated that they have not been. Mr. Jalowiec stated that the total parking count is not shown on the plans and he also felt that perhaps a traffic study might be needed. Ms. Bradshaw stated that the traffic does not enter or exit the site at one time it is phased in. Mr. Estwan stated that some of the concerns are the traffic, parking, lighting, drop-off area, driveway all need to be shown on the plans.

Mr. Joyce stated that their review letter will be ready by the end of the week. He also stated that it is up to the Commission if a traffic study is needed. He also stated that anyone who changes anything on this site in the future will have to get a modification of the special exception.

There was no one from the public wishing to speak on the application.

A motion to continue the public hearing was made by Mr. Barboza, seconded by Mr. Jalowiec and carried unanimously.

(b) Application for Special Exception Use from Marcucio Gardens, LLC for nursery within

residential area, 480 New Haven Avenue, Derby - R-3 Zone (Application #2008-2-25-3).

Atty. James Cohen, 315 Main Street, Derby was present for the applicant. He submitted letters from individuals to the Planning & Zoning Commission in reference to this application. Mr. Estwan stated that the Commission received letters from the following in favor of this application - Scouts and Families of Troop 907, Woodbridge, Lee Seidman, Maureen Lyden, Kris Treat, Jessica M. Worrell, John and Marianne Lyden, John DeBarbieri, Paul Sessions. Atty. Cohen also submitted the certified mailings for the public hearing.

Atty. Cohen stated that for almost 100 years the Marcucio family has had an agricultural  
Planning & Zoning Commission March 18, 2008

presence in the City of Derby. Atty. Cohen stated that the applicant Philip Marcucio would also like to read a letter to the Commission. Philip Marcucio stated that he is applying for a special exception use in a R-3 Zone. He stated that he was granted an agricultural tax relief and he thought that he was operating within that agricultural use. He stated that he realized that he was wrong and apologized to the neighbors along his

property line. He felt that he was a good neighbor and now understands that the selling

of mulch and the storage bins was not appropriate without approval in an R-3 Zone. He stated that he has been growing and selling plants and shrubs all his life and would like to pass this on to his children so that they may realize and achieve the joy that he has been awarded over the 60 years. He also stated that he will comply with any and all zoning regulations that are granted to him with the special exception.

Atty. Cohen stated that they have come before the Commission on a request for a special exception to ratify the use of the Marcucio's to conduct a nursery in a R-3 zone. He

stated that they have filed an application with the Inland-Wetlands Agency concerning the activities that were related to touching and concerning the detention pond that is on these premises at the rear portion of this property. He stated that as part of the Cornfield Subdivision Mark Nuzzolo was required to construct a detention pond for the storm water runoff from the upland development. In February, 1998 the Marcucio family purchased the detention pond parcel from Mr. Nuzzolo which is contiguous to their commercial land fronting on New Haven Avenue. The City indicated to them they have never received an as-built of the detention pond so there is no way to know exactly what was constructed at that time. He stated that their engineers have been able to determine that the detention pond as it presently exists does not comply with what approved by the city boards many years ago. The Marcucios applied to the Wetlands Agency for the reconstruction of the pond to its original dimensions as well as for the proposed relocated and expansion of the greenhouse on their property. The Wetlands Agency has scheduled a public hearing on that application at their April meeting. Atty. Cohen stated that they are requesting a special exception to allow the operation of a nursery in this zone; which process is going by Article 6 of the Derby Zoning regulations which provide that certain uses listed in a list of allowed special exceptions.

Atty. Cohen stated that the definition of a nursery in the regulations is defined as land or greenhouses used to raise flowers, shrubs and plants for sale, see "greenhouse". The definition for greenhouse says that it is a building whose roofs and sides are made largely of glass or other transparent material and in which temperature and humidity can be regulated for the cultivation of delicate plants for subsequent sale or personal enjoyment. He stated that all of this deals with agricultural and the section states that agriculture is defined as the production, keeping or maintenance for sale, lease or personal use of plants and animals. He stated that after these sections he advised his clients that the non-agricultural, non-nursery uses in the land in question in this residential zone, specifically the mulch being brought in and sold from bins on this

Planning & Zoning Commission

March 18, 2008

portion of the property must be discontinued. Mr. Marcucio has indicated that they have

agreed with this recommendation and as a result the revised statement of use and revised plans which has been submitted will indicate that this is the intention of the applicant.

James Rotondo, Rotondo Engineering, 25 Brook Street, Shelton presented revised drawings and engineering report reflecting the changes. He stated that the parcel is approximately 7.6 acres and was originally part of the Cornfield Subdivision. He stated that there is approximately an one acre parcel included in the 7.6 acres designated as open space in the northerly portion abutting the Cornfield Subdivision. The parcel is a flag lot with access is to New Haven Avenue. He stated that this access way is actually located in the B-1 Zone. The B-1 zone lots is basically coincident with the rear of the lots lines, the existing garden center lot line and the adjacent Hughes property which are in the B-1 zone. The remainder of the parcel is in the R-3 zone. The parcel is subject to a 25' green buffer where it abuts the residential uses. He stated that the site contains the existing detention basin which collects runoff from the north and provides detention for that runoff prior to discharging down to the Two Mile Brook. The site also in its existing condition contains a greenhouse. There are areas throughout the site for nursery stock and also concrete block bins which were used for storage and sale of mulch and access drives. He stated that the proposal for this site is to relocate the greenhouse out of the side yard setback and to expand its size. It is currently approximately 28' wide and 96' long and they would like to expand that to 128' in length and bring it into conformance with the side yard setbacks. The mulch bins will be removed and not utilized on the site and it is reflected on the revised drawings. They are also proposing to modify the existing detention basin and the grading is shown on the site plan. This will provide the basin volume which was approved as part of the original subdivision. The driveway access into the site is from New Haven Avenue and the site lines coming out are very clear. It is a gravel drive and currently along the drive parking is provided for the garden center. Overflow parking is provided within the R-3 portion of the property within the gravel drive area. He stated that they are also proposing to extend two wooden fences on the site so that intersect and provide a screening in that whole area of the residential use. There are no lights proposed in the R-3 parcel. There is one existing light along the driveway which is a flood light aimed at the garden center.

Mr. Stevens asked about the existing temporary storage area shown on the plans and stated that there is no outside storage allowed in the R-3 zone. Mr. Rotondo stated that it is garden commodities that they have on pallets temporarily and then they move them out. Mr. Estwan stated that there is no outside storage allowed in a R-3 zone even if it is temporary. Mr. Rotondo stated that would have to be removed.

Mr. Estwan stated that there is something not shown on the plans and he did not know the plans for it. It is a propane filling tank in the corner of the property and he asked where that was going because it is not allowed in a R-3 zone. Atty. Cohen stated that a permit was issued by the City of Derby to install it and it was inspected and he submitted a copy of the inspection report from Mr. Kopjanski dated 4/15/99. He also

Planning & Zoning Commission

March 18, 2008

submitted the dimensions of it from Pioneer Gas, the inspection by the Fire Marshal and signed off by Mr. Kopjanski that his inspection was approved.

Mr. Stankye asked about the parking in the R-3 zone which is there when needed, but that parking is not allowed. Mr. Rotondo stated that they are asking that it be allowed and it is only used during times of high volume at the garden center.

Mr. Misiewicz asked if heavy equipment will be used in the operation and Mr. Rotondo stated that it is smaller loading type equipment to move nursery stock around. Michael Marcucio, 113 Sunset Drive stated that the only heavy equipment used is to maintain the detention basin. Mr. Misiewicz asked where it is stored and Mr. Marcucio stated that is stored away from any customers but in the R-3 parcel. Mr. Jalowiec noted that it is not allowed. Mr. Rotondo stated that they would have to make provisions to keep it in the B-1 zone. Mr. Misiewicz asked about the proposed temporary nursery recycling area and he was concerned that the materials put there would attract rodents. Mr. Rotondo stated that it could be restricted but to his knowledge what was there was old shrubs and then mulched.

Mr. Stevens asked if they are new gravel driveways because they are not gravel now. Mr. Rotondo stated they called them gravel but it is a recycled asphalt material protecting the surface. Mr. Stevens stated that he noticed that there are haybales there to prevent runoff from coming down off the hill. Mr. Rotondo stated that he did not notice that but will look at it. He stated that in the Wetlands application it was noted that there is an infiltration trench that comes along the bottom of the basin and they have observed some of the runoff patterns and add more infiltration basins where necessary.

Mr. Estwan stated that concerning the propane filling station he is going to direct Corporation Counsel to find out how an approval for this could have been issued in a residential zone. He stated that a commercial use of this is not allowed in a residential zone. Atty. Cohen stated that the document is from 1999 and Mr Estwan stated that it was not allowed in 1999 and he wants to know how this was allowed. Atty. Cohen stated that Mr. Marcucio has indicated that the propane is used for the heating of the greenhouse and for the forklifts and their own operation. Mr. Estwan asked if there was sale of propane and Mr. Marcucio stated that there is. Mr. Estwan stated that if it is used for their purposes but the commercial use of that is an issue.

Mr. Stankye asked if they are looking for a special exception for use as a nursery and Atty. Cohen stated that it was. Mr. Stankye asked him to explain "not limited to" which he felt leaves a wide variety of operations. Atty. Cohen stated that there is nothing that can be done other than the agricultural, nursery uses specifically provided in the regulations for this zone. He stated that the regulations are clear as to what can be done. Mr. Estwan stated that the definition in the regulation for nursery is land or greenhouses used to raise flowers, shrubs and plants for sale. He then says see greenhouses and then refers back to the nursery. Mr. Stevens asked if that is a special exception and how did the greenhouse get there now - do they have a permit. Atty.

Planning & Zoning Commission

March 18, 2008

Cohen stated that they are here to say that what is there now will not stay there. He

stated that this application is to say that they want to have a nursery in this zone and the Commission has the ability to dictate what will be done on that site. There is in fact a nursery which is in a wrong area in the setbacks and he does not know how it is there, but part of this application is to relocate that greenhouse in an appropriate area and greenhouses are allowed in nurseries. Mr. Stevens asked if there was a permit for the greenhouse. Atty. Cohen stated that he has no knowledge of whether there was a permit.

Mr. Joyce stated that they provided a letter dated March 10, 2008 and there are now new plans that need to be reviewed. He stated that a lot of the review is based on what the Commission will and identify as the use on the site. The review and understanding of what the regulations allow is going to dictate what is going to end up there. Mr.

Estwan read the statement of use (copy attached). He stated that in his opinion the statements - "Operations to include, but not limited to, the selling of nursery stock and other agricultural, horticultural, floral, plant and garden commodities, including the use of existing and proposed structures and greenhouses, and machinery needed to perform nursery operation." is far beyond what the definition of a nursery is. Commodities can be anything associated with any of the above which is not in the regulations, referring back to it is nursery - land or greenhouses used to raise flowers, shrubs and plants for sale. It doesn't include block, mulch, bales of hay, it doesn't include any of the above. It is very simple but based on this application it is very specific to the use in a residential zone.

Mr. Jalowiec stated that it will be hard to make a real detail study of this application until we have a determination from Inland Wetlands. He stated that from what it looks like on the map the entire area is wetlands and there must be restrictions as to what is allowed on wetlands. Mr. Estwan stated that the question came up whether we should open the public hearing this evening because Wetlands has determined that it required a public hearing and he felt that there was so much detail involved so he wanted to get this started at least discussing it with the Commission members and public. He stated that there are certain things that we can address that are not necessarily addressed by Wetlands and

one of those is the use and he wanted to get to the fact of what is the real use of this. Mr. Misiewicz stated that we have to take the definition of nursery and not add agricultural to it and just restrict it to just what a nursery is as defined in the regulations. Mr. Stevens stated that he has concerns with included but not limited to garden commodities, equipment and felt it should be limited to a nursery. Atty. Cohen stated that the definition permit the growth and sale of agricultural products on this site and the word commodities is not intended to enable them to sell blocks or the other items that are being talked about. We are talking about things that can be grown, it is not intended to include anything other than agricultural items.

Atty. Cohen stated that there really are very few Derby businesses that have survived the test of time and this application is a result of significant effort to clear up these bad feelings, questions and issues that have arisen over the years. This is in fact a clean  
Planning & Zoning Commission March 18, 2008

slate before the Commission and what matters is the nursery use. He stated that those things that were wrong they are prepared to correct; those things that this Commission finds offensive they are prepared to change. Atty. Cohen stated that in reading the criteria in Section 195.45 demonstrate clearly that the only structures on the R-3 property will be greenhouses. The proposed non-commercial agricultural use will in fact be harmonious with the neighborhood. There is no issue with access or traffic. He stated that they respectfully request that the Board act favorably to allow a nursery in this zone.

Mr. Estwan stated read from the regulations, Section 195-11 - Residential R-3 Zone, permitted uses shall be as follows and under that Item 3 states non-commercial agricultural or horticultural so if the applicant has an agricultural designation for his property in that area, that is a permitted use in a R-3 zone for non-commercial agricultural, horticultural. This special exception application is for a nursery and no where does it mention commercial agricultural. Mr. Estwan also read a letter from the



Fire Marshal dated 2/28/08 stating that there would be no problems to fire department accessibility or protection to this property. Mr. Estwan then opened up the public portion of the hearing.

Ted Baltes, 23 General Wooster Road presented a packet to the Commission and he stated that he became involved with this property in March 2007. He stated that as a neighbor he cannot understand how this business has evolved over the last few years. The property has had storage, large equipment, garden supplies and a concrete mulch storage area. He submitted a petition with 11 names requesting that all zoning regulations be followed and enforced regarding this property. He also submitted pictures of the site with the mulch bins, tractor trailer trucks making deliveries and heavy equipment being used on the site. Also included were copies of letters from Cohen & Thomas indicating that an application would be filed for this property. He also included copies of a letter from Mr. Kopjanski citing zoning violations and another letter from Cohen & Thomas that the trailers were removed and the structures dismantled. Mr. Baltes stated that he submitted letters dated in March, 2008 asking why the zoning violations have not been enforced and no action taken. He stated that he wants to have this resolved as soon as possible.

Joseph Bomba, Chestnut Drive, Third Ward Alderman stated that zoning regulations are put in place to protect residents and businesses in the City. He stated that during the last several years the neighbors surrounding this property have not been afforded this protection. They have seen an illegal commercial use continue without any interference by the City even though everyone was made aware of the problems. He stated that he is not against the business but against the questionable attitude shown to the homeowners. He also submitted several pictures.

Frank DeCaprio, 23 Pleasant View Road stated that the Marcucio business is not an eyesore and the Marcucios' have helped many people and organizations. He felt it would be unfortunate to take the away from them.

Michael Marcucio, Sentinel Hill submitted a petition signed by 350 people stating they support Marcucio Gardens and their application for a nursery permit in a R-3 zone and would like to see them continue to operate.

Bonnie Baltes, 23 General Wooster Road stated that she lives in the backyard of the Marcucio property and has a different perspective of the site and the violations need to be corrected.

Rosemary Hughes, New Haven Avenue stated that she is concerned about this property and if it is purchased by someone else in the future.

Mary Ellen LoRocco, 17 General Wooster Road stated that she is concerned about the zone being changed and asked to keep the public hearing open so that the public can commit if there are any changes to the plan. He stated that the neighbors purchased their homes knowing that there was a commercial shopping center but there is now a commercial encroachment onto their properties. There is no way to screen this activity from the residential homes. She stated that they only have the right to plant nursery stock, shrubs and trees and not the established of structures or do any filling of the wetlands. She stated that if they decide to sell their property then anything can go there in the future.

Carol Marcucio, 211 Sentinel Hill stated that her family owns and operates the garden center and they are a small family business. She stated that they have many loyal customers and have been a positive influence and an asset to their neighbors and the community. She felt that their business is the best possible use of this property, having the least negative effect on the neighbors. She asked for support to continue to operate their business.

Leslie Morgan, 299 David Humphreys Road stated that he has been a customer for many

years and the City needs family businesses and they should do whatever they can to keep the business.

John Saccu, 34 Homestead Avenue stated that his property borders the Marcucio property and has always known them to be considerate of the neighbors. He stated that he does not hear a lot of noise from the property. He stated that they have indicated that they are willing to do whatever is necessary to comply with the regulations.

Carol Duhaine, 25 Elm Street stated that the Commission has a responsibility because they are looking at a special exception to correct an existing violation. The Commission needs to figure out if the special exception is not granted what will happen to the violations. She stated that the regulations need to be applied consistently throughout the City. She was concerned with what will be done to correct the violations.

Renee Lanos, 13 General Wooster Road stated that she is concerned about the value  
Planning & Zoning Commission March 18, 2008

of their homes and felt that there is a negative impact because of this business. She felt that the regulations need to be enforced.

George Jupin, 464 ½ New Haven Avenue spoke about the infiltration trench shown on the plans and stated that it does not show an outlet. He stated that all that water runs off onto his property. He submitted pictures of his property. He stated that the overflow parking area is gravel with mill gratings and there is no way for the water to runoff of that. There are no catch basins and outlets and the water just runs off the site. He stated that nothing is being done about the water runoff. He also asked who will maintain the buffer area. He is concerned with what will happen to the rest of the parcel. He also stated that it is very noisy from the equipment being used on the site and they have to deal with diesel fumes. He felt that it was an incomplete site plan.

Sharon Jupin, 464 ½ New Haven Avenue stated that their quality of life will continue to be

compromised. She was concerned about the decrease in property values. She stated that they would be landlocked on two sides. They support this business on the commercial land but not on the residential portion.

Mrs. Morgan, 299 David Humphreys Road stated that she was in support of the Marcucios and we need family businesses. She stated that she does not see a problem with them and wants to see their business stay in Derby. She stated that she has never had a problem with noise from their property.

Delores Cremonie, 15 Homestead Avenue stated that she is concerned about things being modified on residential land. She said we are here to figure out why he is conducting an illegal activity on wetlands. She is against having a special exception granted to Marcucio Gardens. She stated that the regulations state no outside storage and the applicant has stored merchandise, machinery and supplies and wanted to know why this was not regulated by the City. She stated that the applicant has not adhered to any zoning regulations for the last several years and who will be responsible for enforcing new regulations. She was also concerned about runoff going into Two Mile Brook and contaminants leaving the property. She was also concerned about air quality and noise from the property.

Bill Purcell, President, Greater Valley Chamber of Commerce, 900 Bridgeport Avenue, Shelton stated that this is a family business and a leader in the greening of the Valley. They are operating in a mixed commercial/residential zone with the front of the property being zoned commercial. They have operated professionally and as a good neighbor. He stated that there are many oversights and the City can take responsibility for those oversights. He stated that it would be an injustice to not allow this business to continue to operate. He stated that perhaps can look at the rear portion and create a buffer to the neighbors.

Dorothy Krager, 21 General Wooster Road stated that she bought her property and thought

it was a small family business. She stated that living on property that borders

Planning & Zoning Commission

March 18, 2008

the Marcucio property is different and she sees the violations. She stated that we do not need any more commercial property in our backyard.

Chris Thompson, 74 Sunset Drive, Shelton stated that it is a small family business that should be allowed to continue to operate.

Gino Sardo, 15 Holinski Drive, Ansonia stated that they are doing what they know they can do. They have tried to address all the concerns. He stated that a lot of the customers do not want to go to large stores. Revenue comes into the City from this business and they pay taxes.

Gary Sosinski, Shelton stated that he has sold and serviced their equipment and they are very concerned about buying quieter equipment and the decibel levels of the equipment. They are attempting to maintain with minimum impact.

Nick Serni, Pleasant View Road stated that a lot of things were done on their property that should not have been done and the City allowed.

Diane Serni, Pleasant View Road stated that we should work together to keep the business there.

Ben Judd, Milford stated that they have a beautiful area and it is a family business. He stated that they are willing to change and to what needs to be done to correct the problems.

Keith McLiverty, 15 Academy Hill stated that enforcement of the regulations in the City is the real problem.

Frank DeCaprio, Pleasant View Road stated that noise levels will be greater from Lowe's and suggested a buffer between the residential and commercial areas.

Ken Hughes, 470 New Haven Avenue, President of the Board of Aldermen stated that he was concerned because he heard a lot about the City and asked for some direction on where the City can go from here.

Ted Baltes, 23 General Wooster Road stated that when you border the property it is different. This is a residential zone and people need to realize that.

Dan Waleski, 21 Elm Street stated that this is an extremely important application and he asked that the Commission continue the public hearing for future dates. Mr. Estwan stated that the public hearing will continue.

Mary Ellen LoRocco, 17 General Wooster Road was concerned about what could happen in the future if it is changed.

Bonnie Baltes, 23 General Wooster Road asked why nothing has been done to address  
Planning & Zoning Commission

March 18, 2008

the violations that are there today.

George Jupin, New Haven Avenue asked when the questions that have been raised tonight answered.

Mr. Estwan stated that the public hearing will be kept open until next month. There were a lot of issues and concerns brought up this evening and will direct, staff, city engineer or corporation counsel to look into them.

Gary Sosinko, Howe Avenue, Shelton asked if it is an R-3 zone could he fertilize the property as he pleased as a garden.

Harold Fearnley, 28 General Wooster Road was concerned that a greenhouse could be put up with no permit.

Mr. Estwan stated that the Commission is here to plan for the future and we have zoning regulations and a plan of conservation and development. If there is a violation we have a building official and ZEO which they go to. He reviews the concerns, a letter is sent out.

After that it goes to the Mayor's Office or corporation counsel for enforcement of the violations. He stated that enforcement does not fall within this Commission. He would direct people with complaints to bring those to the ZEO. He also commented on farming and personal use versus commercial. Personal use and planting a garden with manure is far different than commercial use. We have rules and regulations that govern both.

Commercial use is not allowed in that residential zone. He also spoke on the propane filling station and stated that the applicant submitted documents regarding this. If it is for personal consumption or use it is allowed, but it is a commercial use to sell propane and it is not allowed in that zone. That has been referred to corporation counsel to investigate this. Comments regarding the detention basin and water drainage, the Inland Wetlands public hearing opens next and suggested anyone who had concerns or comments regarding those issues go to that board.

Mr. Stevens stated that a cease and desist order was issued in May 17<sup>th</sup> and the ZEO received a letter back that the owner was going to comply. He asked where does the ZEO's responsibility end and someone take it up. Mr. Estwan that it would go to the Mayor's Office or corporation counsel. He stated that there was a comment made that we are covering up the issue of someone being in violation for so long and if this is approved will it make it all right. The special exception as a nursery use is very well defined and so is greenhouse and although the property has a tax assessor's designation of agricultural; agricultural in a R-3 zone is only permitted use for non-commercial use. Therefore, he cannot have agricultural to sell. A lot regarding the greenhouse in the wetlands will be addressed in the Inland Wetlands public hearing. We have a process that someone can come before us with an application for either permitted or special exception use. It is this

board's job to determine whether that use is good for the town or not. Regulations have to be followed. In an R-3 zone a nursery is a permitted use by special exception and that is what is before us and what the

Planning & Zoning Commission

March 18, 2008

commission will determine is this a nursery use. If we determine that there is a nursery use here, it is a very defined use which will be designated on the maps. If we determine that it is not, we will find out. We will find out all the facts before making a decision.

A motion to continue the public hearing to the April meeting. The motion was seconded by Mr. Jalowiec and carried unanimously.

#### New Business

(b) Draft Update - 2008 Derby Plan of Conservation and Development.

Mr. Estwan stated that everyone received a copy of the proposed plan of conservation and development. Mr. Joyce stated that the region is updating their plan of conservation and development to reflect any guidelines established by the State. This plan was adopted in 2002 and the next mandatory update is in 2112. He stated that VCOG has incorporated the revisions they are making to their plan and distributed those revisions to the rest of the communities in the region so they have an opportunity to update their plan. The benefit of updating the plans is that when the City goes out for funding they can indicate that they are complying with the current strategies proposed by the State. He stated that the Commission can accept these revisions and incorporate them, can add their own revisions and make changes that have occurred since 2002. Mr. Jalowiec asked if there was any downside to accepting these modifications and Mr. Joyce stated that there really was not.

Mr. Joyce stated if the Commission feels it is appropriate to move forward with the update to the plan, it would be referred to the Board of Aldermen and VCOG and then a public hearing would be conducted to adopt those changes. He stated that it would be appropriate to schedule the public hearing for next month.



Mr. Barboza stated that he is the VCOG representative and we do not have to do this but some changes have been made that could effect the City. He stated that VCOG is looking to get everyone on the same page. This is a no lose situation and most of the work has already been done for us.

A motion was made by Mr. Jalowiec to refer this to the Board of Aldermen and appropriate regional planning agencies and schedule for public hearing in April. The motion was seconded by Mr. Stevens and carried unanimously.

**Old Business:**

(a) Update on Redevelopment Zone.

Atty. Coppola stated that a mediator has been chosen at this time.

Payment of Bills:

Planning & Zoning Commission

March 18, 2008

A motion to pay bills from Milone & MacBroom and Civitelli's was made by Mr. Stankye seconded by Mr. Stevens and carried unanimously.

A motion to adjourn was made by Mr. Stankye, seconded by Mr. Jalowiec and carried unanimously. The meeting was adjourned at 10:10 p.m.

Attest:

Maryanne DeTullio

*These minutes are subject to the Commission's approval at their next scheduled meeting.*