

Planning and Zoning Commission City of Derby

Theodore J. Estwan, Jr., Chairman

Steven A. Jalowiec

David J. Rogers

Richard A. Stankye

Albert Misiewicz

Glenn H. Stevens

Raul Sanchez

Maryanne DeTullio, Clerk

The regular meeting of the Planning and Zoning Commission of the City of Derby was held on Tuesday, November 15, 2011 at 7:00 p.m. in the Aldermanic Chambers, City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 7:00 p.m. by Chairman Ted Estwan. Present were Ted Estwan, Albert Misiewicz, Steven Jalowiec, Glenn Stevens, Richard Stankye and Raul Sanchez. Also present were Attorney Joseph Coppola, Corporation Counsel, Ryan McEvoy, Milone and MacBroom and Maryanne DeTullio, Clerk.

Additions, Deletions, Corrections to Agenda

Mr. Stankye moved to add as Item 10d informal discussion regarding 12-14 New Haven Avenue. The motion was seconded by Mr. Jalowiec and carried unanimously.

Correspondence

There was no correspondence received. Mr. Estwan noted that Raul Sanchez is now a regular member of the Commission.

Public Portion

There was no one from the public wishing to speak.

Approval of Minutes

A motion to approve the minutes of the 10/18/11 meeting was made by Mr. Jalowiec, seconded by Mr. Stevens and carried unanimously with Mr. Stankye abstaining.

Acceptance of Applications

Mr. Stankye moved to accept and schedule for public hearing an application from Signs Unlimited for zone text change to allow by special exception animated signs. The motion was seconded by Mr. Stevens and carried unanimously.

Mr. Jalowiec moved to accept and schedule for public hearing at the January 17, 2012 meeting an application for special exception from Walgreen Eastern Co., Inc. for property at 60 Pershing Drive for a retail/pharmacy. The motion was seconded by Mr. Jalowiec and carried unanimously.

Public Hearing

(a) Application for 4 Lot Subdivision from Belleview Homes, L.L.C. for 35 Belleview Drive, Lot #14, Map 2-5 (Application #2011-08-16-03). Continued from 09/20/11 and 10/18/11

Raymond Sadlik, applicant, was present and went through the 10/28/11 review letter from Milone & MacBroom. He stated that regarding Comment #3 regarding Belleview Drive being a looped road and the number of homes already on it; he demonstrated by way of several letters submitted that there is no safety issue there. He also stated that he was told that this regulation was put in for public safety and the houses were already there when it was passed. He also stated that the lot lines have been changed on this parcel and an additional house was built after the regulation. He stated that a traffic report was submitted and there will be no negative impact to traffic.

Mr. Sadlik stated that Comment #7 is regarding the existing gas easement and the fact that he needs to provide written confirmation from the company that they have no concerns with a storm drainage pipe crossing the easement. He stated that he was on the property with a representative from the gas company and test pits were dug to verify where the pipe crossing will be. It will be a minimum of 2' over the top. They indicated that they had no problem with this and assured him that a letter will be forthcoming.

Mr. Sadlik stated that Comment #8 pertains to landscaping. He stated that there are quite a few mature trees on the property and he would like to leave as many as possible. It would be agreeable to have the trees tagged and also would have no problem adding some additional trees. Comment #12 is regarding the conditions of the Inland Wetlands Agency approval and the only remaining item is the easement in favor of the homeowners' association. He stated that a homeowners' association will be formed and that could be a condition of this approval.

Mr. Sadlik stated that Comment #13 is regarding the location of the existing stone wall near the Madura parcel. He stated that this was discussed last month and he agreed to remove it if it is necessary. He also stated that if possible he would attempt to re-work the end of the wall so that it did not have to be removed. Mr. McEvoy stated that a new subdivision road needs to be properly graded and it is their opinion that with the wall left as it is there is not adequate area for a proper snow shelf. Mr. Sadlik stated that he discussed this with Ron Culmo, Public Works Director, and it should be pushed back somewhat.

Mr. Sadlik stated that Comment #14 concerns parks and recreation area. He stated that there is a lot of easements on the property plus the wetlands area all of which could be included as open space.

Mr. Misiewicz stated that the applicant has addressed most of the neighbors' concerns, but he still had some issue with the proposed detention being on another lot and the homeowners being responsible for the maintenance. Mr. Sadlik stated originally they had proposed on site detention on each lot but that did not satisfy the other commissions and they changed the design. Mr. Estwan stated that this has been discussed in detail and there are other detention basins in town on other pieces of property, not part of the subdivision itself; and unfortunately some of them are issues. He stated that the biggest concern is that the homeowners'

association is in place before we move forward so that there is something legal attached to this detention basin. Mr. Sadlik stated that obviously there is no homeowners' association now. Mr. Estwan stated that one of the conditions, if this is approved, would be that it is formed and established. Mr. Sadlik stated that there has to be a legal document that states that the homeowners' association is responsible for the maintenance of the basin. Atty. Coppola stated that it would be structured that both the property that has the detention basin has to enter in an agreement with the four property owners that are on the subdivision. It would allow the property owners to go on to the property to do whatever maintenance is needed.

There was no one from the public wishing to speak.

Mr. Stevens asked if the snow shelf were a driveway would it be an issue. Mr. McEvoy stated that he would be less concerned if it was a driveway. He stated that when the City takes ownership of the road they will also take ownership of the wall and the maintenance and upkeep of it.

A motion to close the public hearing was made by Mr. Stankye, seconded by Mr. Stevens and carried unanimously.

(b) Application for Zone Text Change from Signs Unlimited, Inc. for amendment to Section 195-71C to allow by special exception animated signs. (Application #2011-10-18-01).

Alan Esposito, Signs Unlimited was present. He submitted an information packet on animated signs. He stated that they are looking for regulations for newer message center type signs. He stated that they would change messages and come and go. He thought that it would a good idea for the Commissioners to read over what he submitted so that they would have a better understanding of his request. He stated that he had the review letter from Milone & MacBroom. He stated that there are sections for alternate signage program, but is really nothing written about what an alternate signage program is. Mr. Esposito stated that most towns have not addressed these signs at all; they go by the existing code. He felt that there is a place for these type of signs and should be regulated. He stated that there are a lot of good things with these signs and it is all in the report that he submitted. He stated that they could be used for an amber alert which would help the public. He stated that there is a lot of ways that the message can be changed and all this is explained in the report. He felt if the members read the report it could be discussed in more detail at the next meeting. Mr. Estwan stated that this is a new regulation for Derby and it needs to be very specific. Mr. Estwan asked if there were any of these type of signs in the Valley. Mr. Esposito stated that on the sports complex on River Road in Shelton has this type of sign.

Mr. McEvoy stated that this was referred to Valley Regional Planning and Valley Council of Governments but no responses have been received at this time. There was no one from the public wishing to comment on the application.

A motion to continue the public hearing to the next meeting was made by Mr. Stevens, seconded by Mr. Misiewicz and carried unanimously.

New Business

(a) Application for Special Exception Modification from New Cingular Wireless for 50 Olivia Street. (Application #2011-10-18-02).

Attorney Neil Alexander was present for the applicant. He stated there are currently nine antennas on the roof and they will be reconfiguring the antennas and will have nine different types. There will only be changes to the equipment. They will be adding some new equipment along side the antennas which will be the same height as the antennas.

Mr. McEvoy stated that in his review letter dated 11/2/11 one of the recommendations is that the Commission consider requiring the applicant to provide a sight line study to facilitate their understanding of the appearance of the proposed antennas post construction. Mr. Estwan stated that he has not seen anything submitted on what it will look like. Atty. Alexander stated that the antennas have been there for a number of years and will only shift slightly. There is only one facility of theirs in town. This is not a new facility but an upgrade to what is there already. He stated that they will submit full scale drawings. He also stated that he is submitting a colored sheet showing the current coverage area.

Mr. Estwan moved that pursuant to Section 195-27, the Derby Planning & Zoning Commission finds that the application and supporting documentation as presented is in accordance with Sections 195-27. Additionally, the Derby Planning and Zoning Commission finds that the proposed antennas will preserve architectural character of the building.

Therefore, following review of the plans and supporting documentation submitted in support of this application, the Derby Planning & Zoning Commission hereby approves the Application for Special Exception for New Cingular Wireless PCS, LLC on properties shown on Derby Assessors Map 8-5, Lot 3 subject to the following conditions:

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

1. "Application for Special Exception Use and/or Site Plan Approval", dated October 14, 2011.
2. Letter from AT&T to the City of Derby.
3. September 15, 1998 meeting minutes from the Derby Planning and Zoning Commission meeting.
4. FCC license information of the applicant.
5. Property deed from the Derby Land Records.
6. "Radio Frequency Exposure Report, Pocket Smart Wireless, NHCT0087c, 33 Elizabeth Street, New Haven, CT", prepared by C Squared Systems, LLC, November 20, 2008.

7. "Maximum Permissible Exposure Study, AT&T, Site Number CT2210, 50 Olivia Street, Derby, CT 06418", prepared by SAI Communications, dated September 14, 2011.
8. Letter from Centek Engineering to AT&T Mobility aka Cingular Wireless, dated May 25, 2011.
9. Plans entitled "AT&T, Wireless Communications Facility, CT2210, Derby-Olivia Street, 50 Olivia Street, Derby, CT 06418", prepared by Centek Engineering, dated 3/30/09 with the following attached drawings:
 - a. "Title Sheet – Drawing T-1", not drawn to scale.
 - b. "Notes and Specifications – Drawing N-1", not drawn to scale.
 - c. "Plans, Elevations, and Details – Drawing C-1", drawn at varying scales.
 - d. "LTE System Antenna Plans and Details – Drawing C-2" drawn at varying scales.
 - e. "Antenna Mounting Details – Drawing C-3", drawn at varying scales.
 - f. "Electrical Details and Notes – Drawing E-1", not drawn to scale.
 - g. "Electrical Details – Drawing E-2" not drawn to scale.
10. Letter from Milone and MacBroom dated 11/2/11.
11. Letter to David Kopjanski from Neil Alexander dated 11/9/11 regarding AT&T Wireless OCS, LLC, Amended Site Plan Approval & an Amended Special Permit.
12. Letter to Tim Burke from Centek Engineering dated 6/23/11.
13. Color coded Current Coverage Sheet (undated).

With the following stipulated conditions:

1. The Special Exception approval shall not be effective until it is filed on the Derby Land Records along with any conditions in accordance with the General Statutes of the State of Connecticut.
2. Subsequent to the initial operation of a wireless telecommunication antenna, the owner of such facility shall conduct an actual measurement of the electromagnetic emissions and submit a report prepared by a licensed RF engineer to the Zoning Enforcement Officer. This report shall be submitted on a frequent basis not to exceed one per calendar year. When there is more than one source of electromagnetic emissions at a location the above mentioned report should measure the cumulative emissions from all sources.
3. If the wireless telecommunication antenna is not in use for 12 consecutive months, it shall be removed by the service facility owner. This removal shall occur within 90 days of the end of such 12 month period.

4. The approval of an application for special permit shall be void and of no effect unless installation of the antenna commences within one year from the date of the approval granted by the Commission. The Commission may grant up to two six-month extensions of this period upon written request by the applicant. The Commission shall withhold approval of any or all extensions unless the development plan is brought into conformance with any relevant zoning regulations, which have been amended subsequent to the original approval and if the applicant fails to provide adequate evidence that construction is able to begin within the extended time period sought. This evidence shall include, but not be limited to, the acquisition of any or all required government approvals and project financing.

5. Any modification to the above referenced drawings shall be submitted to the Planning & Zoning Commission for review and action if necessary.

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

(b) Discussion and possible action – Application for 4 Lot Subdivision from Belleview Homes, L.L.C. for 35 Belleview Drive, Lot #14, Map 2-5 (Application #2011-08-16-03).

Mr. Estwan stated that this has been reviewed and discussed thoroughly. He stated that his major concern is the gasline crossing. Mr. Jalowiec asked if we would be setting precedence with the conservation easement in this case. Atty. Coppola stated that the Commission is setting precedence by using the easement over the gasline for open space. Mr. McEvoy stated that they are not proposing the gas easement to be the conservation easement. They are proposing that the gas easement itself be counted in the calculation for open space. He read the regulation about open space. Mr. Estwan stated that there could be a monetary contribution in lieu of open space. Mr. Estwan stated that this is a small subdivision and in small subdivisions we could ask for a monetary payment. He also stated that there are enough areas on the property that have easements and will be untouched. Mr. Estwan suggested that Mr. Ryan prepare a draft motion for next month that could be discussed. He also suggested reviewing what has been done in the past regarding open space. Mr. Stevens moved that the discussion and possible action be continued to next month. The motion was seconded by Mr. Jalowiec and carried unanimously.

(c) Application for Zone Text Change from Signs Unlimited, Inc. for amendment to Section 195-71C to allow by special exception animated signs. (Application #2011-10-18-01).

A motion to continue this item to the next meeting was made by Mr. Stankye, seconded by Mr. Stevens and carried unanimously.

(d) Informal Discussion - 12-14 New Haven Avenue.

Attorney Dominick Thomas, 315 Main Street, Derby stated that he represents White Hills Lawn & Tree Service. They have been in this location for approximately three years. They operate a tree cutting service and made improvements to the building. He stated that the property is located in the B-2 Zone. He stated that they were approved under a special exception. He stated that they have been busy lately and have done a lot of tree cutting. They have brought wood back, split it, stored it and have delivered cords of wood to customers. He stated that his

clients were approached by Mr. Kopjanski that they could not do that under their approval. Atty. Thomas stated that in reviewing this he found that in a B-2 Zone under special exception a construction contractor's business with a screened, paved storage and equipment pavement area. He stated that one of the issues is that they are storing outside and in Section 126-cc1 it states that there shall be no outside storage in business districts. He stated that there is a contradiction in the regulations. He stated that his clients would like to be able to bring the wood back, store in outside even if it has to be under tarps and split it. The wood is delivered; there is no retail business there. He stated that they are looking for some direction from the Commission and staff on how to reconcile the contradiction in the regulations and allow his client to be able to do this with some guidelines.

Mr. Peter Botti, owner of White Hills Lawn & Tree Service stated that he has an over abundance of wood at this time. The wood is stored and cannot be seen from the road and it will be kept under cover. He stated that he has not received any complaints from the neighbors.

Mr. Estwan suggested that they submit an application to amend the special exception. Attorney Thomas stated that they only want to store the wood outside. The equipment will be stored inside and this part of the business will only happen for about three months a year. Atty. Thomas stated that it would really be an amended statement of use. They have a special exception which has been recorded on the land records.

Old Business

(a) Application for Site Plan Modification from A. Winslow Quality Landscaping for Water Street Derby for relocation of storage bins and parking, planting plan and addition of sign – I-1 Zone (Application #2011-09-20-01).

Alan Shepard was present for the applicant and stated that revised site plans were submitted. They would like to flip the storage area with parking area. They also have added a planting plan. He stated that the sign that was put on the building has been taken down. The proposed sign is 40' long and 3 feet high and will be unlit. It is a low profile sign. Mr. Estwan asked if the size falls within the allowed size. Mr. Shepard also submitted a letter from the property owner granting permission to put up the sign.

Mr. Shepard also stated that he had a bond estimate for the fencing and landscaping. It would be \$2,000.00 for landscaping and \$1,000.00 for fencing – total \$3,000.00.

Mr. McEvoy stated that with the previous approval included obtaining approval from the Lower Naugatuck Valley Health District for the septic system and an as built be submitted. He recommended that if it is approved tonight that included in the conditions would be approval of location survey indicating that the proposed changes have been made. Also that the bond estimate be reviewed by the corporation counsel and city engineer and shall include landscaping, fencing around the dumpster and cost and improvement of location survey. Also that evidence of approval of the septic system by Naugatuck Valley Health District. Mr. Shepard recommended increasing the bond by \$1,500.00 for the improvement survey.

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 A. Winslow Quality Landscaping on property shown on Derby Assessors Map 8-5, Lots 170, 171, subject to the following conditions:

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

1. Statement of Use, A. Winslow Quality Landscaping, Water Street, Derby, CT.
2. Plan entitled "Revised Parking and Storage Plan, Prepared for A. Winslow Quality Landscaping, Water Street, Connecticut", scale: 1" = 20', dated November 11, 2010, revised to November 15, 2011, prepared by Nowakowski, O'Bymachow & Kane Associates.
3. Plan entitled "Map of Property, Prepared for Derby Water Street, LLC, Water Street, Derby, Connecticut", scale 1"=60', dated February 18, 2010, prepared by Nowakowski, O'Bymachow & Kane Associates.
4. Bond Estimate Form dated 11/15/2011, prepared by: Nowakowski, O'Bymachow & Kane Associates.
5. Photograph of Site from Rotue 8 with 3'x40' sign hand drawn on photo, not dated.
6. Sample of proposed 3'x40' sign appearance.
7. Letter from Mike Tracz granting Winslow Landscaping and Winslow Oil permission to install a 3'x40' roof sign at 139 Water Street, dated 11/15/11.

With the following stipulated conditions:

1. The applicant shall obtain the approval from Naugatuck Valley Health District for use of the existing septic area prior to the issuance of a certificate of occupancy.
2. The applicant shall furnish the City with an improvement location survey of the property depicting the completed site including all site features including the proposed changes.
3. All handicap parking shall be provided in accordance with Connecticut State Building Code.
4. All lighting shall comply with Derby zoning regulations.
5. A performance bond in an amount and form acceptable to the city engineer and corporation counsel shall be posted prior to any construction activities associated with the site. The amount of the bond shall cover the following improvements: improvement locate on survey and fencing block walls and buffer landscaping.
6. Any modifications to the above mentioned drawings shall be submitted to the Planning & Zoning Commission staff for review.

8. The plans shall be revised to clarify the dimension of the roof sign size.

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

(b) Update on Redevelopment Zone.

Atty. Coppola stated that the Redevelopment Agency met and has accepted the plan presented by the developer. The developer and the City must now engage in an agreement with the time line for the commencement of construction and so on.

Executive Session

(a) Update on Enforcement issues; discussion of pending litigation.

Atty. Coppola stated that there are no updates since last month and therefore the Commission did not go into Executive Session.

Payment of Bills

Mr. Stankye moved that the bills from Milone and MacBroom be paid. The motion was seconded by Mr. Jalowiec and carried unanimously.

A motion to adjourn was made by Mr. Stankye, seconded by Mr. Jalowiec and carried unanimously. The meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Maryanne DeTullio, Clerk

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

***Aquifer Protection Agency
(Planning and Zoning Commission)
City of Derby***

Theodore J. Estwan, Jr., Chairman

Steven A. Jalowiec

David J. Rogers

Richard A. Stankye

Albert Misiewicz

Glenn H. Stevens

Raul Sanchez (Alternate)

Maryanne DeTullio, Clerk

The regular meeting of the Aquifer Protection Agency was held on Tuesday, November 15, 2011, in the Aldermanic Chambers, City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 8:30 p.m. by Chairman Ted Estwan. Present were Ted Estwan, Albert Misiewicz, Glenn Stevens, Steven Jalowiec, Richard Stankye and Raul Sanchez. Also present were Attorney Joseph Coppola, Corporation Counsel, Ryan McEvoy, Milone and MacBroom and Maryanne DeTullio, Clerk.

Additions, Deletions, Corrections to Agenda

There were no additions, deletions or corrections to the agenda.

Correspondence - None

Public Portion

There was no one from the public wishing to speak.

Approval of Minutes

A motion to approve the minutes of the 10/18/11 meeting was made by Mr. Stevens, seconded by Mr. Misiewicz and carried unanimously.

Acceptance of Applications

There were no new applications to accept.

A motion to adjourn was made by Mr. Stevens, seconded by Mr. Jalowiec and carried unanimously. The meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Maryanne DeTullio, Clerk

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