

# ***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

Anthony Szewczyk, Alt.

Maryanne DeTullio, Clerk

The regular meeting of the Planning and Zoning Commission of the City of Derby was held on Tuesday, June 19, 2012 at 7:00 p.m. in the Aldermanic Chambers, City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 7:05 p.m. by Chairman Ted Estwan. Present were Ted Estwan, Richard Stankye, Raul Sanchez, Steven Jalowiec, David Rogers, Glenn Stevens and Anthony Szewczyk. Also present were Attorney Joseph Coppola, Corporation Counsel, Ryan McEvoy, Milone and MacBroom and Maryanne DeTullio, Clerk.

## Additions, Deletions, Corrections to Agenda

Mr. Rogers moved to add as Item 10c Request from Belleview Homes for 90 day extension. The motion was seconded by Mr. Stankye and carried unanimously.

## Correspondence

Mr. Estwan stated that no correspondence had been received.

## Public Portion

There was no one from the public wishing to speak.

## Approval of Minutes

A motion to approve the minutes of the 05/15/12 meeting was made by Mr. Szewczyk, seconded by Mr. Jalowiec and carried unanimously with Mr. Stevens and Mr. Rogers abstaining.

## Acceptance of Applications

Mr. Stevens moved to accept an application for CDD approval from Paul Yacovelli d/b/a Canvas Products for 23 Factory Street. The motion was seconded by Mr. Stankye and carried unanimously.

Mr. Rogers moved to accept an application from Smoke and Bones BBQ for site plan review for parking expansion at 1 New Haven Avenue. The motion was seconded by Mr. Stevens and carried unanimously.

Mr. Rogers moved to accept and schedule for public hearing at the July meeting an application from Cello Partnership d/b/a Verizon Wireless for modification to existing telecommunications antenna at 123 Minerva Street. The motion was seconded by Mr. Stevens and carried unanimously.

Mr. Stankye moved to accept and schedule for public hearing at the August meeting an application from Bookside Village, LLC for 8 lot subdivision with flag lots at 401 Sodom Lane. The motion was seconded by Mr. Szewczyk and carried unanimously.

Public Hearing:

(a) Application from BAMF Homes, LTD for 5 lot subdivision at 16 John Street (Application #2012-02-21-02) – Continued from 5/15/12.

Atty. Dominick Thomas was present for the applicant and stated that a letter was received from the Fire Marshal dated June 19, 2012 indicating that the 12' wide driveway with 18" gravel shoulders would be acceptable for fire and emergency access. Atty. Thomas stated that the application has gone through some analysis and testing was done. He stated that based on the discussions that four lots in the front with one in the rear could be done, a plan was done that way. This was reviewed by the city engineer and corporation counsel. Atty. Thomas stated that with that plan there would be a decrease in the disturbance in the upland review area. He stated that test pits were done to see if this would be feasible and they were satisfactory. He stated that under Section 8-26c, the Commission has the opportunity to approve or approve with modifications. He stated that both layouts comply with the zoning regulations and they have decided to present them both to the Commission. He stated that either layout is acceptable to the applicant. He stated that they would have to advise Inland Wetlands of the change. They have received a report from the soil scientist that the new site plan will have no negative impact on the site.

Jim Rotondo, engineer stated that the alternate site plan shows four lots fronting along John Street with one flag lot. He stated that they did additional test pits and found suitable soils to put in the chambers to collect the roof runoff. He stated that Lot #4 was adjacent to the upland wetlands area. He stated that everything would be out of the regulated area and they all meet the lot standards for the zone. He stated that he spoke with the Fire Marshal and reviewed the proposal for the 12' wide driveway with 18" gravel shoulders on either side and it would be a suitable travel area. He stated that in response to some of the concerns with runoff from the driveway on Lot 4 they are proposing a trench drains with collect runoff from the driveway itself from entering John Street. He stated that on Lot 4 they are adding an additional sub-surface infiltration chamber to provide some additional storage volume to collect more of that runoff from entering John Street.

Mr. McEvoy stated that he did review this alternate plans and he stated that they are requesting additional infiltration measures cross the property of Kemmesies. He stated that they would also request that some of the lot lines on the alternate plan be modified to create a more standard lot configuration. He stated that this would be particularly the side lot lines between Lot 3 and Lot 4 and Lot 2 and the rear lot accessway to Lot 5. He stated that other

than that the plans seem to meet the standards. Atty. Thomas stated that all those changes were made.

Mr. Szewczyk stated that no matter what type of drainage system is installed it will depend on the maintenance of the system. He stated that the water coming down the hill is going to gather speed and the neighbors are concerned that their properties will be flooded. He suggested a short stone wall on some of the properties to prevent the water from going onto their properties.

Mr. Rotondo stated that the situation begins in John Street. He stated that the typical road construction would consist of a crowned roadway and as the water came into the roadway it would sheet off and into the gutters. He stated that John Street has a cross slope from the westerly curb line straight across to the easterly curb line with no crown so that all water comes from the westerly side just across John Street. He stated that they did an analysis of the site to look at the overall drainage situation. He stated that currently much of the upper area of the site is not thickly vegetated. It is gravelly which from a runoff standpoint doesn't retard the flow of the surface runoff as it is leaving the site. He stated that in a developed condition and what is being proposed here is that all of the development will be lawn which will allow water to be infiltrated back into the soils. He stated that they looked at the impervious surfaces which are the roof areas and driveways. He stated that there are some roof areas and driveways on the site at this time which went into that calculation. He stated that they are installing sub-surface infiltration chambers in which all of the roof leaders will be channeled into, which are sized for the 100 year storm. He stated that by doing that and looking at the overall site hydrology they satisfy the criteria for zero increase in runoff from the site. He stated that there was a concern about runoff from the driveways onto John Street. He stated that the water crosses John Street and gets caught in the gutter line. He stated that they are installing trench drains on the three driveways and sub-surface infiltration chambers so that the water will be caught and allowed to infiltrate.

Mr. Sanchez stated that he was concerned about the first house being in the upland area and the first two houses are not getting side yards or rear yards before they get to the conservation lines. He stated that they are only getting a ten foot side yard. He stated that the front property line is 413 long and you are supposed to get 100 feet width. He stated that it appears that a 100 feet frontage in the R-3 zone is not being satisfied. He felt that the most you could get would be three lots.

Mr. Rotondo stated that they are aware of the regulations and each lot fronting on John Street in each proposal were measured along the front yard setback. He stated that when you are at the setback you actually have greater distance. He stated that each lot has 100' or more frontage. The rear lot is 243'.

Chm. Estwan asked for any public comment on the application.

Alice O'Doy, 26 John Street asked who should they believe about the lot width. Mr. McEvoy stated that the lot width is measured at the front setback and in this case Lot 1 has frontage on both John Street and Sodom Lane. He stated that it appears that they satisfy the lot width requirement.

John Oraziotti, 56 Sodom Lane asked if Mr. McEvoy agreed with the statements regarding the frontage. Mr. McEvoy stated that he cannot verify that until a subdivision map is presented, but looking at the lot it appears that it meets the requirements. Mr. Estwan stated that this is the first time the Commission has seen the alternate plan and have not had any subdivision drawings. Mr. Oraziotti asked what the property footage is for a side yard. Mr. McEvoy stated that it is 16'. Mr. McEvoy stated that given the proximity of the house to the wetlands the Inland Wetlands had required that a fence be put up. He also stated that they do demonstrate that they have the correct setbacks. Mr. Oraziotti stated that the area cannot handle the water that is there now and he is very concerned about the drainage. There should be a plan to make sure that the runoff does not come down into the neighboring properties.

Karen Kemmesies, 25 John Street stated that the alternate plan has only been presented this evening and the public has not had a chance to see it. She did not see how the Commission could accept so much data in the hearing process. She felt that they should withdraw their application and present this as a new application or maintain the original one that has been discussed for the past several months. She stated that a stone wall would not work in her front yard which is relatively small. She stated that there is no crown in the road which causes a lot of the problems. She stated that the test pits were done but it has been very dry and did not feel that they were really accurate. She did not think that trench drains would serve the purpose during the 100 year storm. She felt that there are too many driveways coming down into the road. She stated that the rear lots are by special exception and they are not a positive outcome for the area. She felt that the plan should be reduced to only three houses in the front.

J. Lipke, 16 John Street stated that whenever there is a heavy storm water comes down and the area cannot handle it. He also stated that there is ledge along the front of John Street and that will prevent detention chambers from working. He stated that there will be a major issue with runoff and drainage.

Drew Perry, 27 John Street stated that he agrees with his neighbors on the water issues. He also felt that there will be more issues in the winter with snow and ice.

J. Lipke, 16 John Street stated that he did not see any water brought in when they did the test pits. Mr. McEvoy stated that they were dug and filled with water.

Mr. Stankye asked that the upper portion of the property in its current condition the water just runs off the site. Mr. Rotondo stated that was correct. He stated that there is some vegetation but it is very sparse and you can still see the gravel surface. Mr. Stankye stated that the wood chip area seems to be getting thicker. Mr. Rotondo stated that they will be putting topsoil in that area and the area will be seeded and planted. Atty. Thomas stated that the wetlands were illegally filled. He stated that after discussions with Inland Wetlands they felt that they would be creating a wetlands plantings are which will be better.

Mr. Estwan stated that the developer has a right to develop his property but he has an issue with the interior lots. He stated that he felt that they are jamming to much in there. He stated that he is torn between the application with the original application and the second application. He stated that he would like to see the rear gone and the four front lots spaced out a little

further. He stated that there are water issues on John Street but those have been there for many years. He stated that the Commission needs to allow people to develop their properties within the regulations and also protect anything more negative in the area. He stated that they have addressed some of the concerns with the runoff from the driveways and adding the drains going into the ground also helps. He further stated that by planning grass and more vegetation that will also address it. He stated that the only issue he really has is with the two rear lots.

Mr. Stankye stated that he agrees with Mr. Estwan. He suggested seeing if the developer would be willing to put up a construction bond and have it left in place to take care of any water problems within five to ten years.

Atty. Thomas stated that John Street is in the R-3 Zone and under the law when a zone is laid, the infrastructure in the zone supports the uses. He stated that the problem with John Street is that the drainage comes down and goes into a neighbor's property and does not go into the street. He stated that the road design is defective. He stated that they will be cleaning up the site and add homes. He stated that the rear lots are under special exception and they comply with every requirement in the regulations for interior lots. He stated that drainage calculations were done and reviewed and found to be correct. He stated that they have addressed the issue of drainage. Atty. Thomas stated that the alternate plan was drawn up based on comments of the engineer, Commission members and general public. He submitted the report on the revised plan from the soil scientist, Otto Thiel dated June 19, 2012.

John Oraziotti, Sodom Lane stated that the Commission should take the suggestion of having them put a bond in place for a number to take care of any problems.

Mr. Estwan stated that a bond is done at the time of approval and set by the corporation counsel and town engineer.

Karen Kemmesies, 25 John Street stated that something needs to be done to deal with the runoff from the driveways and suggested a detention basin on site.

Mr. Estwan stated that his concern is that the drainage issues do not become more negative than what they are now. Mr. McEvoy stated that with regard to the alternate plan submitted. He stated that, as Atty. Thomas mentioned a decrease in regulated activities but you have regulated activities in areas where they weren't proposed before. The Wetlands Commission needs to see these changes and make a decision about those changes. This Commission should be in a position to act on the application when Wetlands has determined, if this revised plan is something that the applicant wants to pursue or if this Commission wants to entertain.

Mr. Estwan asked the Commission members which plan they preferred. Mr. Jalowiec stated that he agreed that the site appears to be over developed with five houses. He stated that the rear house is complicating the area. He stated that he would prefer the alternate to the first plan.

Mr. Szewczyk stated that he agrees that the alternate plan is preferable.

Mr. Estwan stated that they have two plans before us. The one that was filed with the application and an alternate plan that was borne out of the public hearing. The Commission should give direction to the applicant. He also stated that because of the change there still needs to be a Wetlands review.

Atty. Thomas stated that under Section 8-26c the Commission has the power to approve tonight or modify the plans. He stated that it is his position that the Wetlands Commission because of the soil scientist report and the reduction in the upland review area, they need to be advised of the change of plan. He stated that he would ask to be on their agenda to advise them that the alternate plan is pending.

Mr. Stevens stated that he does not like the four houses in the front and would like to have the rear lots removed. He stated that he does not like the alternate as it is too congested.

Mr. Rogers stated that it is more congested with four houses in the front but he felt that having two driveways for the rear lots will cause more problems and felt that the alternate was a better plan.

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

### New Business

(a) Application from BAMF Homes, LTD for 5 lot subdivision at 16 John Street (Application #2012-02-21-02).

A motion to table this application was made by Mr. Stevens, seconded by Mr. Stankye and carried unanimously. The Commission took a recess at 8:15 p.m. and the meeting was reconvened at 8:25 p.m.

(b) Application for CDD Approval from M. Jacobs & Sons for signs on the building and on a building on adjacent property. The property is located at 2 Factory Street (Application #2012-05-15-01).

Atty. Dominick Thomas was present for the applicant. He stated that he represents several property owners who have businesses in that area. He stated that they have experienced many times where their customers did not know that they were still open. He stated that this applicant has been putting up signs advertising his business. He received a letter indicating that he needs approval for the signs. He stated that he will be removing the sign that is on the building at 106 Main Street. One of the signs is on the front of the Housatonic Lumber building and the other two are the signs on the building. He stated that he reviewed the regulations and got an e-mail from the city engineer that the large sign on the 2 Factory Street building is illegal because under area there are specific requirements regarding the size of a sign.

He stated because of the proposed redevelopment what he is really asking for is temporary signage. He stated that the other issue is that the area signage at the street front issue is that way so that you don't have a large size where traffic runs by. He stated that there is no traffic in that area except for people going to his business. He stated that there is ambiguity in the sign regulations which would permit the Commission to allow the sign. He presented photos of the signs.

Mr. Estwan stated that he has not discussed the floating billboard that is on the side of a truck and has been parked at different locations.

Atty. Thomas stated that the application is based on what was in the letter that his client received. He stated that those are not in the CDD zone and are not part of this application. He stated that the sign on 106 Main Street will be removed. Mr. Estwan stated that he puts up signs wherever he feels like it as long as no one says anything. He stated that they have been cited by the zoning enforcement officer.

Mr. Szewczyk stated that he had no problem with the signs as long as they were temporary.

Mr. Estwan stated that there has been no development on Main Street for many years and could be temporary but could end up being temporary for a long long time. He stated that there are three before the Commission this evening but there are others that are moved around town. He felt that there are billboard type signs.

Mr. Jalowiec stated that they are an established business and there should be some signage but this looks like it has gotten out of hand.

Mr. Estwan stated that signs in the CDD zone are totally at the discretion of the Commission. Mr. McEvoy stated that you have a sign that is three times larger than what would be allowed in another zone for a wall sign. Atty. Thomas stated that the regulation is geared for where traffic is going by. Mr. Jalowiec stated that if the business owners in that area are trying to get people to know where the businesses are he suggested putting up a directory type sign at the corner for those businesses. Mr. Estwan stated that could be done but would have to be done tastefully. He asked Atty. Thomas how many of the businesses in that area he represents. Atty. Thomas stated that he represents several of the businesses and he could certainly approach them regarding this type of sign. He stated that there may be an issue with the corner of Caroline and Main Street. Mr. Jalowiec stated that it could be placed at the corner of Main and Factory Streets.

A motion to table the application to the July meeting was made by Mr. Stevens, seconded by Mr. Stankye and carried unanimously.

(c) Request from Belleview Homes for 90 day extension.

Mr. Estwan stated that Mr. Sadlik, Belleview Homes requested a 90 day extension to file the subdivision map. Mr. Stankye moved to grant the 90 day extension for Belleview Homes. The motion was seconded by Mr. Jalowiec and carried unanimously.

Old Business:

(a) Application for CDD Approval from Angelo Giordano for 59-65 Elizabeth Street for renovations for 14 apartments – Application #2012-03-20-01.

Atty. Dominick Thomas, 315 Main Street, Derby was present for the applicant. He stated that this application is a site plan request in the CDD Z one. He stated that he presented a response letter to the Milone and MacBroom review letter. He stated that residential uses are permitted in the CDD Zone. He stated that the regulation is written for site plan approval. The applicant is requesting 14 apartments with commercial use on the first floor on Elizabeth Street. The upper area will be converted to the apartments which will be one, two and studio apartments. Parking will be inside. Atty. Thomas stated that the Milone and MacBroom letter addresses the fact that if the property is located within 300 feet of a municipal parking garage the off street parking requirements are waived for the existing commercial use on Elizabeth Street. Atty. Thomas stated that the commercial uses are existing so there is no need to demonstrate that the municipal parking garage has the capacity for the existing uses. He stated that they are not adding anything commercial and are replacing the office use with residential. He stated that there no question of capacity with respect to the garage because there will be no changes to the commercial establishments. He stated that the on-site garage has a space for a handicapped space in a couple of locations. He stated that they will be interior spaces for residential uses. He also stated that the Parking Authority could be approached for a designated handicap space on the street in front of the building.

Atty. Thomas stated that one of the comments in the review letter had to do with the finished treatment of the building above the third floor and he stated that the current will remain and there is no change to the upper area. The letter also asks for clarification of what is proposed if anything for the floor space above the proposed apartment units on Minerva Street. Atty. Thomas stated that if permitted by the building code mechanicals for the upper apartments will be there and if not permitted it will remain empty. He stated that the Minerva Street section has been office space and has been vacate and Mr. Giordano has been unable to rent them. This will allow enhancement to the building. He stated that there is a demand for apartments in the downtown area. Mr. Estwan stated that the entire center of Shelton is filled and this Commission's intent was to have mixed use in the downtown area. He stated that the intent was not to have all residential. Atty. Thomas stated that this is a permitted use and he is preserving the retail and putting residential on the upper floors. He has not been able to rent the office space and Minerva Street is really more of a residential area. Mr. Estwan stated that he is not saying that it is not a permitted use but there are other sections that need to be considered and the Commission needs to look at what the intent of the regulations are.

Atty. Thomas stated that he is proposing eight apartments on Minerva Street which is relatively a residential area.

Mr. Stankye stated that at the last meeting the applicant relayed some of his concerns with trying to fill the commercial space. He was instructed to provide some information to the Commission that there is a need for the apartments. Atty. Thomas stated that a study was done in 2004 and shown a shortage of alternate housing and that is what these apartments are. Mr. Estwan stated that he tended to agree that the Minerva Street is more of a transitional



area but hated to give up the office space on Elizabeth Street. Mr. Jalowiec stated that he felt that this does meet the intent of the regulations. Atty. Thomas stated that there is not a market for office space and office space on the second floor is especially not appealing to rent. He stated that there is clearly a market for apartments.

Mr. McEvoy stated that no plan was ever submitted for the handicap space. Atty. Thomas stated tht they could accommodate the handicap space inside.

Mr. Szewczyk moved to approve the application with the condition that the parking layout be reconfigured to demonstrate conformance with Connecticut Building Code regulations for accessibility. The motion was seconded by Mr. Jalowiec and carried unanimously.

(a) Update on Redevelopment Zone.

There was no report on the redevelopment zone.

Executive Session

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

A motion to go into Executive Session to discuss pending litigation regarding enforcement issues and have Atty. Coppola and Mr. McEvoy attend was made by Mr. Jalowiec, seconded by Mr. Stankye and carried unanimously. The Commission went into Executive Session at 9:30 p.m. and the regular meeting was resumed at 9:35 p.m.

Payment of Bills

Mr. Stankye moved that the following bills from Milone and MacBroom be paid. – Invoice #59460, #60179, #60180 and #60181 be paid. The motion was seconded by Mr. Jalowiec and carried unanimously.

A motion to adjourn was made by Mr. Jalowiec, seconded by Mr. Stevens and carried unanimously. The meeting was adjourned at 9:40 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

Anthony Szewczyk (Alternate)

Maryanne DeTullio, Clerk

The regular meeting of the Aquifer Protection Agency was held on Tuesday, June 19, 2012, in the Aldermanic Chambers, City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 9:40 p.m. by Chairman Ted Estwan. Present were Ted Estwan, Albert Misiewicz, Richard Stankye, Raul Sanchez, David Rogers, Glenn Stevens and Anthony Szewczyk. Also present were Atty. 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 05/15/12 meeting was made by Mr. Stankye, seconded by Mr. Jalowiec and carried unanimously with Mr. Stevens abstaining.

Acceptance of Applications

There were no new applications to accept.

A motion to adjourn was made by Mr. Jalowiec, seconded by Mr. Stankye carried unanimously. The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Maryanne DeTullio, Clerk

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