

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 18, 2013 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, David Rogers, Albert Misiewicz, Richard Stankye 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. Stankye moved to add as Item 10d, discussion with Brian Griffith regarding property on Commerce Street. The motion was seconded by Mr. Szewczyk and carried unanimously.

Correspondence

Chm. Estwan stated that no correspondence was received by 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 May 21, 2013 meeting was made by Mr. Szewczyk, seconded by Mr. Roges and carried 4-0-1 with Mr. Stankye abstaining.

Acceptance of Applications

Chairman Estwan stated that there were no new applications to accept.

Public Hearings

(a) Application from Frank Pepe for a two lot subdivision at Ida Avenue and Albert Avenue – R-2 Zone (Application #2013-05-21-01).

Fred D'Amico was present for the applicant and presented the copies of the certified mailings. He stated that his parcel was left over from the previous Hidden Woods subdivision. It is approximately 2.9 acres in size. The application is to split the parcel into two building lots, one fronting on Ida Avenue and one fronting on Albert Avenue. He stated that they have approval from Inland Wetlands and there are no wetlands on the property.

He stated that there will be one driveway off of Ida Avenue and the other off of Albert Avenue. The lot on Ida Avenue is considered a flag lot and it meets all the requirements. The lots will be serviced by city sewer and water. He stated that the adjoining parcel is open space and owned by the City of Derby and there is also a piece of open space on the side. Mr. D'Amico stated that the other lots in the area are all basically 10,000 s.f. in size and these will be 66,000 s.f. each and will be much larger. He stated that the property slopes from the east to the west toward the open space and there is no ledge so there will be no blasting.

Chm. Estwan asked if they received the review letter from Milone & MacBroom. He also read the letter from the Fire Marshal dated 6/18/13 which indicated that he had some concerns pertaining to fire and emergency accessibility. The Fire Marshal indicated that the proposed driveway is only 12' wide and it should be at least 15' wide. Mr. D'Amico stated that they could easily widen the driveways to 15'.

Mr. McEvoy read his review letter into the record (copy attached). Chm. Estwan noted that when the previous application for the subdivision was approved it was deemed that this parcel was not a building lot. Mr. D'Amico stated that it was not a building lot at that time and they decided to hold the property to a later date and come in with a new subdivision application for that parcel.

Chm. Estwan stated that there are grading issues and he was concerned with run off from that property. He stated that even though they are larger lots it seems that it would be better to have one lot off of Albert Avenue. Mr. D'Amico stated that the slope meets the regulations and with their drainage plan they will be able to control the runoff. He stated that the grading was redone after the Inland Wetlands review. He stated that there will be no detrimental runoff from the site.

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

Kathy Norwood, Lanzieri Court stated that she is very concerned with runoff from this site. He stated that the property at the end of Ida Avenue was clear cut and it has too great of a slope. She also stated that no one maintains the detention basin for the Hidden Woods subdivision. She was concerned that the work on this subdivision will not be done properly and is totally against the application. She asked where they will hook up the sewers and she will not give them any permission to hook up on her property or go through her property.

Rita Biga, 14 Harold Avenue stated that property has been clear cut and was done before anything was approved. She is against the application.

Frank Pepe, 59 Harrison Avenue stated that he called the Building Department and was told that trees could be cut as long as the stumps were not taken out. The work was inspected by both the Building Inspector and City Engineer. He also stated that someone moved 200 cubic yards of dirt from the corner of the property before he did anything there. Mr. Pepe stated that when Ida Avenue was paved a curb cut was done for the proposed lot.

Julia Garcia, 2 Harold Avenue stated that she could not understand why they had to come through Ida and Albert Avenues.

Dan Waleski, 21 Elm Street stated that he was very concerned about water runoff and also the grades at this property. He stated that there is a brook that runs down through there. He urged the Commission to carefully consider this application.

Atty. Michael Bologna representing D. Basin Inc. asked where the sewer hook up will be. Mr. D'Amico stated that there will be one on Ida Avenue and another at a different location.

Sarah Casey, 7 Harold Avenue stated that she has many concerns with this project and it will negatively change the character of the neighborhood.

Mr. Szewczyk stated that it appears that this area has a lot of water problems and asked if anyone knew what caused those problems.

Mr. D'Amico stated that there may be drainage problems downstream but they will be containing any runoff. He stated that the lots in the area are much smaller than the two that they are proposing.

Mr. Stankye asked about the detention system and where will it spill off. Mr. D'Amico stated that the detention will be leached into the ground water but there is also high level overflows with riprap at a considerable distance from the property line.

Mr. Estwan stated that typically he would not see any issues but the topography of this site and the fact that there are already 22 lots on a cul-de-sac and our subdivision regulations specifically limit that to 20; although it does give us a little leeway to add an additional lot. He stated that he would like to look at the original subdivision and why that was not approved as a building lot.

Mr. D'Amico stated that the review letter from Milone & MacBroom is pretty straight forward. He stated that as far as the additional lot there would always have been some access to that cul-de-sac.

Mr. McEvoy asked the volume of material needed to construct the driveway to Lot 2. Mr. D'Amico stated that he will get that information for Mr. McEvoy.

Attorney Michael Bologna asked that the public hearing be kept open to get more information.

Mr. Szewczyk moved to continue the public hearing to the July meeting. The motion was seconded by Mr. Stankye and carried unanimously.

(b) Application from Town Fair Tire Centers of Connecticut, Inc. for Zone Change for 480 New Haven Avenue (rear) from R-3 to B-1 Zone – Application #2013-05-21-02.

(c) Application for Special Exception Use and Site Plan Approval from Town Fair Tire Centers of Connecticut, Inc. for 480 New Haven Avenue for the retail sale of tires and wheels and the installation/servicing of tires, wheels and alignment – Application #2013-05-21-03.

Atty. Dominick Thomas, 315 Main Street, Derby was present for the applicant. He submitted the certified mailings and also pictures of the posted sign regarding the zone change application. He also stated that they held a neighborhood meeting and sent out notices to all people impacted by the detention basin. He submitted a letter from the owner of the property, Philip Marcucio, who has agreed to all land use approvals. Atty. Thomas presented copies of the maps.

He stated that this site is 480 New Haven Avenue plus a parcel of property which has an address of New Haven Avenue that is identified as 4-3 37 and 4-3 37A. He stated that his clients are under contract to purchase the entire site. The rear portion of the property is comprised of a piece of property from Cornfield Estates subdivision that was left as open space in the name of the developer. The large below that has the detention basin which was to be maintained by the developer. The developer entered into a contract to sell that property to Philip Marcucio. This proposal focuses on 480 New Haven Avenue with a request that there be a lot line revision and a zone line to increase the size of that lot. He stated that the reason that they are increasing the size of the lot is to better facilitate the placing of the Town Fair Tire building on this site. Atty. Thomas stated that to address issues relating to Two Mile Brook and the required buffers that area is used right now by the current owner. He stated that by extending it and extending the lot line revision they were able to locate the building so that the bays face Dunkin Donuts and not the residences. He stated that there is a maintenance agreement that a certain number of lots pay a fee for the maintenance of that basin. That issues has been addressed and Town Fair Tire has told those owners that as long as they own it, they will not charge any fee and they will maintain the basin. Atty. Thomas stated that in speaking with Ryan McEvoy regarding this application it was discovered that there are no easements on the property. The appropriate drainage easement to the City of Derby and access easement to the rear will be given. He stated that with respect to the other applications they were before Inland Wetlands and agreed to hold a public hearing at their July meeting. He stated that Town Fair Tire has a limited repairers license, which is limited to changing tires and alignment. The Department of Motor Vehicles requires that an application for the new location must go to the ZBA for approval. He presented aerial photographs of the property, the adjacent property. He also presented a floor plan of the building showing the location of the bays and lift pads.

Michael Barbero, Sr. Vice President Town Fair Tire stated that they have been in their current location for over 30 years. They received a call from the landlord that they have other intention for the site and their lease would not be renewed. He stated that they want to remain in Derby.

The business is just tires and custom wheels, there is no automotive work down. They are opened six days a week and the hours of operation are from 8:00 a.m. to either 6:00 p.m. or 7:00 p.m. the latest. The installation center will have six bays; five service bays and one for alignment work. The used tires are kept in an enclosed cage with a roof and are taken away by a company who picks them up during business hours. All deliveries are once a day also during work hours.

Jim Rotundo, Engineer presented maps and pointed out the zone line and stated that the zone line is being moved back and extended over. The new Town Fair Tire building will be 7,144 s.f. and located centrally to the property. The access will be from Route 34 where the current driveway is and go around the building. They are proposing 49 parking spaces. The service bays will be along the easterly portion of the site facing Lowe's and Dunkin Donuts. The dumpster is in the rear and it will be screened. They will be excavating to the rear and there will be a tiered double wall. The tire cage will be located in the northeast corner with a roof and chainlink fence around it. There will be landscaping in the front with trees along the front of the building. There is a 25' buffer area in rear with a double row of pine trees. He stated that along the westerly property line they will be planting additional pine trees and screening in that area. He stated that as part of the lot line revision in order to maintain the back lot there will be a 25' accessway to the rear, but it is not part of the development of the Town Fair Tire. That will lead into the detention basin the rear which they will maintain. He explained the storm water management system. There is an existing pipe from the basin that discharges into Two Mile Brook which will be relocated around the building and intercepting the existing pipe. There will be catchbasins throughout the site and a proposed detention system in front of the building. They are proposing a storm water quality basin for treatment of that water which will be released at a reduced rate. The site will be served by public water and sanitary sewers. He stated that they have also provided a soil and erosion control plan which will be implemented prior to construction.

Mr. Rotundo presented a site cross section map. He stated that there is approximately a 60 foot grade change between the most northerly property line and the proposed building. He stated that the Milone & MacBroom review letter has several items that deal with storm drainage and are taking care of those.

Mr. Estwan stated that there are a lot of parking spaces proposed and asked if there is any thought of cutting down on that. Atty. Thomas stated that ten spaces are required and that does not really fit for this type of operation. He stated that issue was also raised at Inland Wetlands and are in discussion with Town Fair Tire regarding that and the traffic flow around the building. Mr. Estwan stated that there were preliminary meetings on this application and he stated that this location of the building with the bays facing away from the residences is outstanding. Mr. Barbaro, Town Fair Tires stated that there will be at least 12 employee cars on the site. He stated that they over the course of the day most of the spaces will be filled. Mr. Estwan asked how many spaces they now have and Mr. Barbaro stated that they have probably 30 spaces. Atty. Thomas stated that from a traffic point of view this operation is a relatively low traffic generator.

Mr. Estwan asked what the intention is for the lot behind the building. Atty. Thomas stated that their intention is to allow it to return to its natural state with the understanding that the detention basin has to be maintained. They have no intention of any activity occurring there other than maintenance of the basin.

John Wypychoski, Town Fair Tire, presented photos of what the building will look like. The building will be bricks and all lights will be down lit. The mechanicals on the roof will be screened.

Mr. Misiewicz stated that he was also happy that they moved the building so that the bays were not facing the residential properties.

Mr. Stankye asked about the proposed buffers and accessway. Mr. Rotuno stated that there will be a right-of-way and they will be adding a buffer in the rear. The parcel is B-1 but it is a residential use so there will be a buffer. He also noted that Town Fair Tire will put the detention basin back into the condition that it should be in. He stated that a few years back work was to be done of the detention basin and it was cleaned out and widened on one side. The area around it has used materials which will be cleaned out and allowed to grow back in its natural state. Atty. Thomas stated that it can be vegetated and they will comply with all aspects of the maintenance agreement.

Chm. Estwan read the letter from the Fire Marshal dated June 18, 2013 which stated that he had some concerns with accessibility to the detention basin area. He also had some concerns with the width of the detention basin accessway. He also read letter from South Central Regional Planning Agency indicating that there will be no negative impacts from this development. He also read the letter from Valley Council of Governments which indicated that they had the same finding of no negative impacts. Chm. Estwan stated that a letter was sent to the Town of Orange regarding the application but no response was received from them. Mr. Rotundo stated that they can address all items in the Fire Marshal's letter.

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

Ken Hughes, 470 New Haven Avenue stated that he was happy that Town Fair Tire is staying in Derby and felt that they have been very honest and straightforward with their plans. He stated that they discussed putting a chain link fence around the commercial use. He stated that at times he has had people wandering into his property from this parcel. He asked if it would be possible to have a fence along his property line. He also asked about the level of noise from this operation and what the neighbors can expect. He had some concerns with lighting going onto the neighboring properties.

Robert Mastrony, 848 ½ Derby Avenue, Orange, stated that he lives across the street from this property and his only concern is with traffic and lighting. He asked what the time line for the construction and completion will be.

Ted Baltes, 23 General Wooster Road stated that with Marcucio Gardens there is not a lot of activity there in the winter months. He was concerned with the back lot area.

E. Conyers, 15 General Wooster Road stated that his concerns were with lighting and seeing the building.

Ron Conyers, 15 General Wooster Road wanted to make sure that the wetlands remain as they are. Mr. McEvoy stated that the application is currently in front of Inland Wetlands and they have jurisdiction for any activity that would occur in or near the wetlands.

Paul D'Andrea, 27 Commodore Hull Drive was concerned with noise.

Dan Waleski, 21 Elm Street stated that there are some wetlands in the area and that is a concern.

Sharon Jupin, 464 New Haven Avenue stated that there is a fence there now and she would like the applicant to make sure that it is secure.

Atty. Thomas stated that with respect to any possible expansion in the rear but the property is zoned for residential and there is a restriction in the land records that it has to be residential. He stated that they will comply with the detention basin maintenance agreement.

Michael Barbaro, Town Fair Tire stated that they would be willing to put a fence between the properties. He also stated that the lighting will go off around 10:00 p.m. or 11:00 p.m.; they do not stay on all night. He stated that as far as the noise levels the equipment that they use is much quieter than in the past. He stated that there is all new technology and did not think that it would be an issue. Mr. Barbaro stated that the construction should take about four to five months and they anticipate opening in spring of 2014.

Atty. Thomas stated that all lighting will be shielded and will be down lit.

Susan Mastrony, 848 ½ Derby Avenue, Orange asked about the traffic.

Atty. Thomas stated that this is not a high traffic generator and they did not see any problems with that.

Chm. Estwan asked if there were any major outstanding issues and Mr. McEvoy indicated that there are some bookkeeping matters to deal with. Chm. Estwan commended the applicant on an exceptional job and stated that the City appreciates their business and the fact that they want to stay in Derby.

Mr. Estwan moved to continue the public hearing to the July meeting. The motion was seconded by Mr. Stankye and carried unanimously.

New Business

(a) Discussion and possible action – Application from Frank Pepe for a two lot subdivision at Ida Avenue and Albert Avenue – R-2 Zone (Application #2013-05-21-01).

Mr. Rogers moved that the item be tabled as the public hearing is still open. The motion was seconded by Mr. Stankye and carried unanimously.

(b) Discussion and possible action - Application from Town Fair Tire Centers of Connecticut, Inc. for Zone Change for 480 New Haven Avenue (rear) from R-3 to B-1 Zone – Application #2013-05-21-02.

(c) Discussion and possible action – Application for Special Exception Use and Site Plan Approval from Town Fair Tire Centers of Connecticut, Inc. for 480 New Haven Avenue for the retail sale of tires and wheels and the installation/servicing of tires, wheels and alignment – Application #2013-05-21-03.

Mr. Rogers moved that both these items be tabled to the July meeting as the public hearings are still open. The motion was seconded by Mr. Stankye and carried unanimously.

(d) Discussion with Brian Griffith – Commerce Street building

Brian Griffith, 15 Copper Penny Lane, Shelton stated that he has been looking for a location to re-establish his firing range business. He stated that the building at 38 Commerce Street is owned by Anthony Defala and he has authorized Mr. Griffith to speak about the property. He stated that the business needs to be in an area where it will be a nuisance. There are no residences or schools in this area and the property is along the River. The range will be steel and the air management system will also be a major expense. Chm. Estwan asked about noise and Mr. Griffith stated that it will be contained on four sides by concrete and the shooting will be a steel trap and will capture the projectiles. The ceiling will also be steel. He stated that between the steel ceiling panels there will be sound deadening material. Mr. Stankye asked about capacity. Mr. Griffith stated that they are proposing 10 lanes. He stated that there will always be a safety official on site. The hours of operation would be seven days a week from 11:00 a.m. or noon to 5:00 p.m. or 8:00 p.m. Sunday hours would be from noon to 5:00 p.m.

Chm. Estwan asked if it would be for private clientele or open for law enforcement and the public. Mr. Griffith stated that at his other location he had law enforcement personnel who used the range for training. Chm. Estwan asked if there would be a retail component and Mr. Griffith stated that there would be a small retail shop. Mr. Szewczyk asked if they would have firearms available for someone to use if they did not have their own. Mr. Griffith stated that they would but the individual would have to possess a valid permit or have completed training. Mr. Szewczyk asked if they would offer courses and Mr. Griffith stated that they would. Mr. Stankye stated that he had been at the business next door to his former location and it was not noisy at all.

Chm. Estwan stated that Mr. Griffith is looking for some direction from the Commission and at this point the next step would be the application process. Mr. McEvoy stated that the property is located in the I-1 Zone and there are special exception use for indoor recreational facility. He stated that he would like to speak with Dave Kopjanski about the use. Chm. Estwan stated that Mr. McEvoy will speak with Mr. Kopjanski and then direct Mr. Griffith on how to proceed.

Old Business

(a) Application for Site Plan Modification from Sprint spectrum Realty Co. for 137 Derby Avenue – Replacement of existing antennas and equipment – Application #2013-02-19-04.

Attorney Scott Muska was present for the applicant and presented certified mailings. He stated that this is a modification of a special exception. He stated that they received the review letter from Milone & MacBroom and have complied with it. Mr. McEvoy stated that he has seen all the updated material. Mr. Estwan stated that originally the concern was with the size of the antennas and these will be much smaller. They are asking for a waiver of the A-2 survey requirement.

Gordon Govalet, KMB Design Group stated that they are technically upgrading the site. There were four antennas originally and now there will be two and four boxes.

Chm. 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.

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 Sprint Nextel Corporation on a property shown on Derby Assessors Map 7-8, Lot 80 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 February 6, 2013.
2. Statement of Use.
3. Letter from Sprint Nextel regarding Statement of Non-Interference of Sprint Site CT33XC609 to be located at 137 Derby Avenue, Derby, CT dated 1/22/13.
4. Letter from KMB Design Group, LLC regarding Structural Evaluation Letter dated September 7, 2013.
5. Report entitled "Structural Analysis Report for 137 Derby Avenue, Derby, CT, Site ID: CV03XC120" dated 7/25/2012, revised to 5/10/13, prepared by KMB Design Group.

6. CT03XC120 Coverage Maps (not dated)
7. Existing and Proposed Site Photograph Location Maps, dated 1/10/13, revised to 5/10/13.
8. Affidavit of Ralph Borrás, Radio Frequency Engineer Expert, dated 9/14/2012.
9. Quit Claim Deed from Derby Land Records.
10. Letter from Milone and MacBroom dated 2/25/13.
11. Response to letter from Milone and MacBroom from Brown Rudnick, LLC dated June 5, 2013.
12. List of abutting property owners and a copy letter sent to each abutter.
13. Lease agreement with property owner.
14. Plans entitled "Sprint, Network Vision, 137 Derby Avenue, Derby, CT 06418" prepared by KMB Design Group, dated 4/23/12, revised to 5/15/13 with the following attached drawings:
 - a. "Sheet A01, Cover Sheet", drawn at varying scales.
 - b. "Sheet C01, General Notes 1 of 2", not to scale.
 - c. "Sheet C01A, General Notes 2 of 2", not to scale.
 - d. "Sheet C02, Compound Plan", at a scale of 1/8"=1'-0"
 - e. "Sheet C02A, Elevation", at a scale of 3/16"=1'-0"
 - f. "Sheet C03, Equipment Plans", at a scale of 3/8"=1'-0"
 - g. Sheet C03A, Equipment and Antenna Specifications", drawn at varying scales
 - h. "Sheet C04, Antenna Plans (All Sectors), at a scale of 3/4"=1'-0"
 - i. "Sheet C04, Site Details", drawn at varying scales
 - j. "Sheet C05A, Site Details", drawn at varying scales
 - k. "Sheet C06, RF Schedule", not to scale
 - l. "Sheet C07, AAV Drawings Cover Sheet", not to scale.
 - m. "Sheet C07A, AAV Drawings Site Photos", not to scale.
 - n. "Sheet C07B, AAV Drawings Compound Plan", at a scale of 3/8"=1'-0"
 - o. Sheet C07C, AAV Drawings Details", not to scale
 - p. "Sheet E01, Electrical Notes", not to scale
 - q. "Sheet E01, Electrical and Grounding Details", not to scale

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. That the applicant is granted a waiver of Section 195-33 of the Zoning Regulations requiring a Class A-2 Survey for the final site plan.

3. That the proposed panel antenna shall not exceed five feet in height per Section 195-27F, Sub-section 4.
4. Prior to installation, the applicant shall submit the color to the Zoning Enforcement Officer to verify that the proposed mounted equipment matches the color of the existing church steeple.
5. Subsequent to the initial operation of an updated wireless telecommunication antennas, 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 on 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.
6. 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.
7. The approval of an application for modification to the 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.
8. Any modifications to the above referenced drawings shall be submitted to the Planning & Zoning Commission for review and action is necessary.

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

(b) Application for Site Plan Modification from Sprint spectrum Realty Co. for 134 Roosevelt Drive – Replacement of existing antennas and equipment – Application #2013-02-19-05.

Atty. Scott Muska was present for the applicant and presented the certified mailings. He stated that this is a modification of a special exception. They received the comments from Milone and MacBroom and have complied with all of them. They are asking for a waiver of the A-2 survey requirement. He stated that they are proposing to reduce the size of the antennas and will be removing three of the existing ones and replacing those with new ones.

Gordon Govalet, KMB Design Group stated that originally there were six antennas and a dish and they will be replacing three of those and adding some equipment. Mr. McEvoy stated that there will be approximately nine pieces of equipment on the smokestack and the color needs to be shown prior to installation.

Chm. 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.

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 Modification to the Special exception for Sprint Nextel Corporation on a property shown on Derby Assessors Map 9-4, Lot 1 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 February 6, 2013.
2. Statement of Use.
3. Letter from Sprint Nextel regarding Statement of Non-Interference of Sprint Site CT33XC609 to be located at 134 Roosevelt Drive, Derby,CT dated 1/22/13.
4. Letter from KMB Design Group, LLC regarding Structural Evaluation Letter dated September 7, 2013.
5. Report entitled "Structural Analysis Report for 134 Roosevelt Drive, Derby,CT, Site ID: CV03XC120" dated 7/27/2012, revised to 5/10/13, prepared by KMB Design Group.
6. CT03XC120 Coverage Maps (not dated)
7. Existing and Proposed Site Photograph Location Maps, dated 5/15/13.
8. Affidavit of Ralph Borrás, Radio Frequency Engineer Expert, dated 9/14/2012.
9. Letter from Milone and MacBroom dated February 25, 2013.
10. Letter from Brown Rudnick, LLP in response to letter from Milone and MacBroom dated June 5, 2013.
11. Copy of letter sent to abutting property owners
12. Lease agreement with property owner.
13. Plans entitled "Sprint, Network Vision, 134 Roosevelt Drive, Derby,CT 06418" prepared by KMB Design Group, dated 4/24/12, revised to 5/15/13 with the following attached drawings:
 - a. "Sheet A01, Cover Sheet", drawn at varying scales.
 - b. "Sheet C01, General Notes 1 of 2", not to scale.
 - c. "Sheet C01A, General Notes 2 of 2", not to scale.
 - d. "Sheet C02, Compound Plan", at a scale of 1/8"=1'-0"

- e. "Sheet C02A, Elevation", at a scale of $3/16"=1'-0"$
- f. "Sheet C03, Equipment Plans", at a scale of $3/8"=1'-0"$
- g. Sheet C03A, Equipment and Antenna Specifications", drawn at varying scales
- h. "Sheet C04, Antenna Plans (All Sectors), at a scale of $3/4"=1'-0"$
- i. "Sheet C04, Site Details", drawn at varying scales
- j. "Sheet C05A, Site Details", drawn at varying scales
- k. "Sheet C06, RF Schedule", not to scale
- l. "Sheet C07, AAV Drawings Cover Sheet", not to scale.
- m. "Sheet C07A, AAV Drawings Site Photos", not to scale.
- n. "Sheet C07B, AAV Drawings Compound Plan", at a scale of $3/8"=1'-0"$
- o. Sheet C07C, AAV Drawings Details", not to scale
- p. "Sheet E01, Electrical Notes", not to scale
- q. "Sheet E01, Electrical and Grounding Details", not to scale

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. That the applicant is granted a waiver of Section 195-33 of the Zoning Regulations requiring a Class A-2 Survey for the final site plan.
3. That the proposed panel antenna shall not exceed five feet in height per Section 195-27F, Sub-section 4.
4. Prior to installation, the applicant shall submit the color to the Zoning Enforcement Officer to verify that the proposed mounted equipment matches the color of the existing smokestack.
5. Subsequent to the initial operation of an updated wireless telecommunication antennas, 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 on 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.
6. 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.
7. The approval of an application for modification to the 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.

8. Any modifications to the above referenced drawings shall be submitted to the Planning & Zoning Commission for review and action is necessary.

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

(c) Discussion – 155 New Haven Avenue – food truck.

Atty. Dominick Thomas and Michael Klein were present. Atty. Thomas stated that Mr. Klein received a vendor permit under the ordinance. He met with the sub-committee of the Board of Aldermen and Corporation Counsel for the approval. He stated that at the present time there are 45 spaces provided at this site and it is over parked. He stated that there never were any cars in the location where the food truck is parked. The food truck is not hardwired there is electricity available and it is plugged in. The tables are located in an area where no one parks. He stated that he did not feel that an application was required.

Chm. Estwan stated that the Commission is not against the food truck but there is an issue between the ordinance and the Planning and Zoning regulations. He stated that the Commission would like the ZEO to sign off on the permit application to make sure that the approved zoning use is not impacted. This site plan had conditions of approval which the Commission was told had not been done. Mr. McEvoy stated that there may need to be a site plan amendment for parking. Chm. Estwan read the memo from David Kopjanski and Atty. Thomas stated that he will now be able to address the issues.

(d) Discussion – Electronic Signs

Mr. McEvoy stated that he reviewed the potential zone text change with the planning group at his firm. He presented some information for the Commission to review and stated that he could prepare an application for a zone text change. Chm. Estwan suggested that the members read over the materials submitted by Mr. McEvoy and the matter will be discussed at next month's meeting.

(e) Discussion – Flag Lots

Mr. McEvoy presented some information regarding changes to the flag lot regulations for the Commission to review. Chm. Estwan stated that the members should review this and it will be on the agenda again next month.

(f) Update on Redevelopment Zone

Atty. Coppola stated that there was a meeting and there are two or three developers who are interested in the area.

Executive Session

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

Atty. Coppola stated that there is no need for an Executive Session. He stated that the Schrad case was won but it is being appealed. He also stated that he has been focusing on blight issues.

Payment of Bills

Mr. Stankye moved to approve the payment of the following bills from Moline & MacBroom – Invoice Nos. 63870, 63871, 63872 and 63873. The motion was seconded by Mr. Rogers and carried unanimously.

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

Respectfully submitted,

Maryanne DeTullio, Clerk

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