

***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, May 20, 2008 at 7:00 p.m. in the Aldermanic Chambers, New City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 7:00 p.m. by Chairman Ted Estwan. Present were Ted Estwan, David Rogers, Glenn Stevens, Albert Misiewicz, Steven Jalowiec, Richard Stankye and Raul Sanchez. Also present were Michael Joyce, Milone & MacBroom and Maryanne DeTullio, Clerk.

Additions, Deletions, Corrections to Agenda - None

Correspondence

Mr. Estwan read a letter from the City of Derby Parking Authority that Hill Health Center has entered into an agreement to have their employees park in the municipal garage.

Public Portion

There was no one from the public present wishing to address the Commission.

Approval of Minutes:

A motion to approve the minutes of 04/15/08 meeting was made by Mr. Jalowiec, seconded by Mr. Stevens and carried unanimously with Mr. Stankye abstaining.

Acceptance of Applications:

There were no new applications to accept.

Public Hearings:

(a) Application for Special Exception Use from ABC Learning Center, LLC for daycare facility at 328 Derby Avenue, Derby. (Application #2008-2-25-2), Continued from 3/18/08

Mr. Estwan read a letter from Atty. Joseph Rini asking that the application be continued to the June meeting.

(b) Application for Special Exception Use from Marcucio Gardens LLC for nursery within residential zone, 480 New Haven Avenue, Derby - R-3 Zone (Application #2008-2-25-3),
Continued from 4/15/08

Atty. James Cohen stated that the only change on the map is the addition of an eight space parking area on the border of the commercial and residential zones and within 30' of the commercial zone as required by regulations. He stated that this will serve to replace any other parking in the commercial zone and will be used by employees and customers. The plan also provides for relocation of the bins formerly used to store mulch which will be used in connection with the construction of the proposed parking area. He stated that the statement of use submitted this evening reflects those changes. The statement of use also includes a statement which was made at the last public hearing that there will be no exterior lighting on the residential zone. The propane station has been relocated to the commercial property and the barn has been dismantled. He presented photographs of the site and indicated that one shows the 25' buffer area from the Hughes which will be planted with a dense white pine buffer.

Jim Rotundo, stated that the eight space parking area will be directly behind the garden center utilizing concrete blocks which were the storage bins. The parking area will be gravel and located within 30' of the commercial zone or property line.

Mr. Estwan stated that it shows on the map the non-encroachment area and there is a lot of room between the Jupin and this property but behind the Hughes there is a planting berm. He stated that he would like that included as a non-encroachment area. Atty. Cohen stated that there would be no problem with that and will be only for maintenance. Mr. Estwan stated that he would like to have it marked that the area is a non-encroachment area. Atty. Cohen stated that they will mark it.

Mr. Jalowiec asked about the hours of operation and felt that it should be moved up to 8:00 a.m. or 9:00 a.m. on Saturday and Sunday. Atty. Cohen stated that the subject of noise arose at the Wetlands Agency regarding noise from sprinkler systems and they are prepared to indicate that they will not use those type of sprinklers from any distance less than 75' of any residential property. Mr. Michael Marcucio, 211 Sentinel Hill stated that most of the use in the early hours are the employees arriving to work and they could limit the use of machinery to 8:00 a.m. Mr. Estwan stated that we have heard a lot about past practice so that is why we are being very particular about having everything stated in this application. Atty. Cohen asked for some clarification regarding the opening time and felt that the garden center can open at its regular time but they can understand the use of machinery during the early hour. Mr. Estwan stated that the proposed fence along the Hughes property and he would like to have that match the existing fence. Mr Rotundo stated that it is a wood stockade fence and they will maintain and continue that type of fence. Mr. Estwan asked about the color of the proposed shed and greenhouse and felt that they should match. Michael Marcucio stated that the greenhouse will be plastic on both sides. He stated that they are not sure about the shed but it will be a neutral color.

Mr. Joyce stated that the purpose of the shed is to store equipment and the eight spaces will not be used for equipment. He stated that it should be identified as parking area so that no other area on the residential property will be used for parking. Atty. Cohen stated that there is language in the revised statement of use which states parking in the designated area only. Mr. Joyce asked about the wall and guardrail. Mr. Rotundo stated that based on the grade change there, the wall from finish grade to top will be about 3 feet. He stated that there should be a guardrail there and they used natural material to build guardrails in other locations on the site and that will be done with this wall. Mr. Misiewicz asked if there will be a mulch area and Mr. Rotundo stated that the area indicated will be soil piles with filter fabric around it. The nursery recycling area will be shrub products.

Mr. Joyce felt that it might be helpful to have the dimensions of the non-encroachment line and have it marked so that it will be easy to determine where it is. Mr. Rotundo stated that they could look at the location of them and make it an easy measurement. Mr. Stevens asked about the details of the stone filtration trench. Mr. Rotundo stated that is an existing trench that was installed a little while back. He stated that they are going to maintain that and just below that they are installing a new storm drainage system and at the end of that trench they will run a pipe tying it to the catchbasin. He stated that they are proposing in the area of the landscape berm some re-grading in association of that berm so surface will be directed back to the basin. Mr. Stevens asked about runoff from the shed roof and Mr. Rotundo stated that it will sheetflow off onto the ground and they could put gravel around it as an erosion control.

Mr. Joyce asked about the bank on the southside which is exposed and it will be taken down to a 3 to 1 slope and Mr. Rotundo stated that it will be. Mr. Stankye asked about the catchbasin in the proposed parking area and asked if it will be hooded. Mr. Rotundo stated that they are proposing catchbasin inserts and runoff that goes through the catchbasin top it goes through a filter. Mr. Joyce asked if the entire top of the hill is gravel and Mr. Rotundo asked that it is and Mr. Joyce asked if they would consider making the pipe in that area perforated and Mr. Rotundo stated that they could do that.

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

Ted Baltes, 23 General Wooster Road asked if the shed is going to be used to store commercial equipment. Atty. Cohen stated that it will be equipment used in the nursery operation. Mr. Baltes stated that the greenhouse is going to be expanded to 128' long and Atty. Cohen stated that it will be 128' by 28'. Mr. Baltes stated that it seems to be that more is added on at each meeting and they do not know about the changes until the meetings. He stated that they are concerned with what they are going to see from the hill. He stated that he wants to be assured that the Commission understands the feelings on the people living on the hill and keep the uses in the commercial zone.

Mr. Estwan stated that the shed came forth from comments made during the public hearings about equipment being left all over. He stated that one of the ways to address that was that anything used in the operation be stored in the shed. He also stated that parking has been an issue and there was no designated parking area in the back and

they were encouraged to add this area further away from the residential zones. Mr. Estwan stated that this Commission is here to regulate the use of the property and afterward there is a process to follow and it is not with this Commission. This is a way to clean up everything on this property. Mr. Joyce stated that accessory structures tied to a use in the zone can be allowed.

Bonnie Baltes, 23 General Wooster Road stated that what was said was that the Commission is trying to get this back to a state where everyone is happy. Mr. Estwan stated that at some point there was a nursery use behind a commercial zone and at some point it became something much more. He stated that the way he views this application is that if we get back to a traditional use of a nursery and if that is what it is used for he did not think anyone had a serious problem with that provided there were no violations and it was a true nursery use by our definition in the zoning regulations. He stated that we have an application before us that if it is a true nursery use and they follow the rules does it compliment the commercial use in front of it. This abuts a commercial zone and compliments the use in the front provided it is used as a nursery use by our definitions. He stated that the applicant had come before the Commission before and applied for a zone change which was denied because that it not what this Commission wanted for this property.

Mrs. Baltes stated that if it is regulated properly and in the past it was not regulated properly and no one did anything about it. How can the neighbors be assured that it will be done properly and be regulated. Mr. Estwan stated that this Commission is not to enforce and if someone does not get satisfaction through the normal course a person can take legal action. Mrs. Baltes stated then they would have to hire an attorney and she felt that should not have to do that but the City should protect them. Mr. Estwan stated that there is a legal system in the town and it is not with this Commission for enforcement.

Mr. Jalowiec asked about the floor in the shed and Mr. Rotundo stated that from a maintenance standpoint it will be a concrete floor. Mr. Jalowiec was concerned about that if something spilled. Mr. Joyce stated that Inland Wetlands approved the application with conditions and that area was not flagged as wetlands. He stated that they could be required to have a spill prevention kit. Mr. Rotundo stated that this is a low intense use and there will be no floor drains within the shed or any water to wash things out. He stated that a simple spill prevention plan could be put in place. He stated that the type of machinery stored there is small and the larger equipment is stored off site. Mr. Stevens asked where the backhoe is going to be stored and Michael Marcucio stated that it is stored off site. He stated that it is there now for the relocation of the propane tank and other work on the site.

Atty. Cohen stated that he told his clients that he would handle this matter for them if the non-agricultural, non-nursery use of land in the residential zone was going to stop. He stated that they agreed to do that. He stated that they agreed to create the non-encroachment area to demonstrate that there are areas on this land which will be specifically marked off and delineated on a map and the ground that they could not use for any type of their nursery operation. He stated that they agreed to present this kind of Planning & Zoning Commission

application and modify it as it went along and to go through this process and state that they have

to do it correctly. He stated that they have put everything they have to do on a map and statement of use and state that it complies with the regulations. He stated that the applicants want to continue a family business and do it right.

A motion to close the public hearing was made by Mr. Stevens, seconded by Mr. Rogers and carried unanimously. A motion to add this to the agenda as Item 10d was made by Mr. Jalowiec, seconded by Mr. Rogers and carried unanimously.

(c) To consider amendments to the City of Derby Plan of Conservation and Development.

Mr. Joyce stated that the City of Derby was approached by the VCOG to update their Plan of Conservation and Development to be consistent not only with the regional plan of conservation and development, but the general statutes regarding municipalities and their plans. The original proposal by VCOG was to draft on behalf of several communities some revisions to reflect some new rules that the State has handed regarding plans of conservation and development. He stated that what has been proposed to date are some minor revisions, which has been done at no cost to the City. He stated that when the City goes out for funding applications they can make the statement that their plan is consistent with the State's plan. He stated that some of the items in the current plan have changed over the years. He stated that he went through the plan and marked all the sections that he felt need dialogue with the Commission. He stated that this effort can either be a comprehensive effort by the City to update the entire document or to simply take the recommendations that VCOG and incorporate those or do nothing. He also stated that new census data will be available in a few years that could be used to update the document. He stated that the City is not required to do anything at this time.

Mr. Joyce stated that a new growth and management principles are things that should be in the plan. He stated that growth areas regarding open space, mixed use development and new housing sources are other areas that could be discussed and included. He stated that a lot of things have already been done regarding education and recreational resources, but preservation of historic buildings is something that should be done. He stated that there are a lot of updates that could be incorporated and suggested keeping the public hearing open to continue this dialogue.

Mr. Misiewicz felt that there are simple things that could be updated. Mr. Estwan felt that the obvious areas should be updated but felt that the Commission should wait for the census data before revising the entire plan. He suggested taking the VCOG recommendations, the State items and some glaring issues and have those discussed.

A motion to keep the public hearing open and have the City Engineer summarize changes was made by Mr. Stevens, seconded by Mr. Misiewicz and carried unanimously.

New Business:

(a) Application for Modification of Special Exception from Whitey's Marina for 412 Roosevelt Drive (Application #2008-3-18-1).

Mike Stahl and Sue Giordano were present. Mr. Stahl stated that most of the work proposed is inside work and the exterior work is mostly cosmetic. Mr. Joyce stated that there are not too many changes to the outside of the building. He stated that the parking and uses at the property needed to be cataloged and they would with him on doing that. Mr. Joyce stated that they had to identify where the doors will be and there will be no parking in front of the doors. The dumpster will be enclosed. They are proposing a less intensive use downstairs, which will now be an office use. There is a marina there and it is a shared use that does not conflict. Mr. Joyce stated that he reviewed the revised plans.

Mr. Estwan moved that pursuant to Section 195-50, the Derby Planning & Zoning Commission determined that the proposed modification of the existing special exception is minor in nature and does not impact the substance of the original approval and therefore does not warrant the calling of a public hearing. Also, Commission finds that the application and supporting documentation as presented is in accordance with Section 195-48 (subsections A through E) of the Derby Zoning Regulations (the Regulations).

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 of an Existing Special Exception for Whitey's Marina, LLC on property shown on Derby Assessors Map 10-3, Lot 9 and issues a flood compliance permit pursuant to Article XV of the Regulations and Chapter 92-6C of the Charter of the City of Derby subject to the following conditions:

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

1. Statement of Use - new Offices Buildings B & C - Whitey's Marina.
2. "Property Boundary - Zoning Location Dependent Resurvey - Whitey's Marina, LLC - 412-418 Roosevelt Drive, Derby, Connecticut", prepared by Clarke & Perason Associates, Inc., dated 9-19-07 and revised through 5-14-08, scale 1"=20'.
3. "Whitey's Marina - Building B & Office Floor Plans Upper and Lower Levels - Sheet A1", prepared by Joseph A. Raiola, P.E., dated 3/2/08, scale 3/16"=1'0".
4. "Whitey's Marina - Existing Building B & C Zoning Information - Sheet Z1", prepared by Joseph A. Raiola, P.E., dated 3/15/08, scale 3/16"=1'0".
5. "Photo Rendering - Marina & Retail Center - View from Rear - Sheet 6", prepared by H&R Design, Inc., dated 6/20/06.
6. "Photo Rendering - Marina & Retail Center - View from Street Looking South - Sheet 11", prepared by H&R Design, Inc. dated 6/30/06.
7. Correspondence from Milone & MacBroom, Inc. dated April 11, 2008.

additional items have been completed. He would recommend that the current bond be reduced from \$54,000. to \$27,000. A motion to approve the bond reduction for Prestige Builders, Frank Gates Lane Subdivision from \$54,000. to \$27,000. was made by Mr. Jalowiec, seconded by Mr. Stankye and carried unanimously.

(c) Request for Bond Release LMC Estates, Lot #8.

Mr. Joyce submitted a memo stating the remaining outstanding items associated with the development of Lot #7 have been resolved and he recommended the release of the bond. A motion to approve the release of the full bond for LMC Estates Lot #8 was made by Mr. Stevens, seconded by Mr. Stankye and carried unanimously.

(d) Application for Special Exception Use from Marcucio Gardens LLC for nursery within residential zone, 480 New Haven Avenue, Derby - R-3 Zone (Application #2008-2-25-3),
Continued from 4/15/08

Mr. Estwan stated that the Commission has heard a lot regarding this application from the public, members about past practices on this lot and it has been an admirable job by the applicant to undue the wrongdoings. He commended the three children of the owner and applicant of the property for their efforts to correct the situation. Mr. Estwan stated that he has some concerns with this application and wanted to get comments from the Commission members. Mr. Jalowiec stated that he was concerned about the hours of operation on Saturdays and Sundays. This would pertain only to the residential area. Mr. Stevens stated that there is a noise ordinance in the City regarding diesel operations before certain hours. He asked if violations due occur is there anyway to revoke the special exception. Mr. Joyce stated that there is an enforcement avenue available which would be a cease and desist and legal actions. Mr. Stevens stated that this is a straight forward application but the history of the property does not go away which makes this more difficult. He stated that he appreciates the efforts of the next generation but what guarantees does the Commission have that violations will not occur again.

Mr. Estwan stated that the applicant has addressed some of the issues. There is now a non-encroachment line which is an improvement and they have also addressed some of the neighbor's concerns. He stated that the machinery and tools are addressed with the shed. The parking situation has been addressed as well as additional drainage being installed. He stated that anything that has been asked of the applicant they have agreed to. He stated that he was for the nursery use as stated and documented, but does not want a commercial use on this property. He stated that the use can be accessed through an existing commercial use and can fit in this area.

Mr. Misiewicz stated that it was not the best situation but we did what we thought was the best possible outcome with conditions. He felt that it would benefit the town to have the nursery terre as long as it follows the stipulations that we put on.

Mr. Estwan moved pursuant to Section 195-48 the Derby Planning & Zoning Commission finds that the application and supporting documentation as presented and as conditioned herein are in accordance with Sections 195-48 (A through D).

9. Testimony provided by the Public, City staff, Commission Members, and the Applicant and their representatives during the public hearings which were held on March 18, 2008, April 15, 2008 and May 20, 2008.

With the following stipulated conditions:

1. The Special Exception approval shall not be effective until it is filed in the Derby Land Records along with any conditions in accordance with the General Statutes of the State of Connecticut.

2. In accordance with Section 195-62(8)(a) of the Derby Zoning Regulations, the buffer area along property of N/F Hughes (as shown on the drawings) shall be recorded on the deed of the property as a restrictive covenant and shall be maintained by the property owner. Said deed shall be filed in the land records of the Town Clerk.

3. In the southwestern corner of the property, the proposed non-encroachment line shall be extended to the south to meet the 25' landscaped buffer line (N/F Hughes) and shall follow said buffer to the east to the northeastern corner of property of N/F Hughes.

4. Prior to any construction activities, the proper installation of all sediment and erosion control measures and non-encroachment markers indicated on the above referenced plans shall be performed and reviewed and approved by the City Engineer and Zoning Enforcement Officer.

5. The use of quiet or "non-nuisance" style irrigation systems shall be required within 75' of adjacent residential properties.

6. To allow for easier field verification the proposed non-encroachment line along the eastern property boundary shall be dimensioned from the northern side of the proposed greenhouse.

7. The color of the proposed nursery shed shall be left up to staff for review and approval.

8. Details for the construction of the proposed parking area shall be submitted for review and approval prior to construction. Information shall include but not be limited to details for the construction of the proposed block retaining wall, guiderail and/or fencing, etc. The applicant shall arrange for a professional engineer to certify the adequacy of the proposed wall to support the intended vehicle loading.

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9. The proposed 8 space parking area shall provide parking for the nursery personnel and overflow garden center parking only as stated in the Statement of Use. Parking on the subject property in areas other than the 8 spaces proposed shall be prohibited. Locate no parking signs as approved by staff. Nursery and overflow garden center parking only.

10. Details for the proposed fence along property of N/F Hughes shall be submitted for review to match existing fencing.

11. The applicant shall arrange for the removal and proper disposal of all material excavated from the site.

12. The hours of operation for activities associated with the proposed nursery shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Friday; 8:00 a.m. to 7:00 p.m. Saturday, Sunday and holidays. Mr. Estwan stated that this was also covered in the Statement of Use and condition of approval.

13. Upon completion of the proposed improvements the applicant shall furnish the City with an as-built drawing of the property depicting the nursery operations, non-encroachment boundaries, restored detention basin, etc.

14. A performance bond in an amount and form acceptable to the City Engineer and Corporation Counsel shall be posed prior to any construction activities associated with the site. The amount of the bond shall cover the following improvements:

- a. Storm Drainage improvements.
- b. Landscaping and site restoration and installation of non-encroachment markers;
- c. Detention basin as-built drawing (following improvements)

15. Any modifications to the above referenced drawings shall be submitted to the Planning & Zoning Commission staff for review.

Mr. Stankye stated that he would like to add as a condition - no use of commercial vehicles and equipment, i.e backhoes, bulldozers, trailers, dump trucks, etc. relative of size on the property except to maintain the detention pond. Mr. Estwan stated that oil be condition #16.

Mr. Stevens asked what will be required to maintain the detention basin. Mr. Joyce stated that part of what was discussed as part of the Inland-Wetlands approval was that the bottom of the basin be restored using a wetland seed mix. That will now provide some water quality measures to the basin. As part of that they are going to prepare a detention basin maintenance plan. It would require maintenance yearly or twice a year and the wetland seed mix does not encourage the big tough growth. Mr. Joyce stated that he understood what he was driving at but there are certain pieces of equipment that are needed to maintain the nursery use are necessary. Mr. Estwan

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stated that the application is to run a nursery not to maintain a detention basin. He asked if there is a defined definition of what is needed to run a nursery but he did not think so. Mr. Stankye stated that he did not want to see a dump truck pulling a trailer or a trailer. Mr. Joyce stated that there is an equipment shed and if a vehicle can fit in the door of the shed then it can be there. Mr. Estwan stated that something was brought up in the public hearing regarding the type of construction equipment and the applicant mentioned that there was an off-site storage for larger equipment. If it is used in the nursery it is not stored. If something is needed for the nursery operation, it is okay, but it should not be stored there. It should be taken off-site. Mr. Rogers

stated that the applicant stated that they have gone to the smallest size equipment necessary to maintain the nursery and it will be stored in the shed. Mr. Stankye stated that he still has a concern with the size of the vehicles. Mr. Estwan stated that everyone understands the concern and it was mentioned before the size of the vehicles that would stay on the property and anything that was used will be removed and not stored on the property. He stated that we have an application for a nursery and not detention basin maintenance and there is an area on the map that is delineated for a drop off area.

The revised Condition #16 shall be that no commercial vehicles beyond the area delineated as proposed delivery truck unloading, turnaround crushed stone surface shall be allowed.

Mr. Jalowiec stated that he would like Condition #17 to be that the applicant shall submit for approval by staff a spill prevention control and containment plan. This requirement includes any equipment or design features that staff deems necessary to support the plan.

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

Old Business

(a) Update on Redevelopment Zone

There was nothing new to report at this time and the matter is in mediation..

Payment of Bills:

A motion to pay all bills submitted was made by Mr. Stankye, 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 9:05 p.m.

Attest:

Maryanne DeTullio

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