

***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, December 16, 2008 at 7:00 p.m. in the Aldermanic Chambers, New City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 7:10 p.m. by Chairman Ted Estwan. Present were Ted Estwan, David Rogers, David Barboza, Glenn Stevens, Albert Misiewicz, Steven Jalowiec, and Richard Stankye. Also present were Michael Joyce, Milone & MacBroom, Atty. Joseph Coppola and Maryanne DeTullio, Clerk.

Additions, Deletions, Corrections to Agenda

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

Election of Chairman

A motion was made by Mr. Rogers nominated Ted Estwan for Chairman. The motion was seconded by Mr. Jalowiec and carried unanimously with Mr. Estwan abstaining.

Correspondence - None

Public Portion

There was no one from the public wishing to speak.

Approval of Minutes

A motion to table the approval of the 11/18/08 meeting minutes was made by Mr. Barboza, seconded by Mr. Stankye and carried unanimously.

Acceptance of Applications

There were no new applications to accept.

Public Hearings:

(a) Application from White Hills Lawn & Tree Service for special exception approval for 12-14 New Haven Avenue for office for business with accessory interior only parking of vehicles used in business B-2 Zone (Application #2008-9-16-1). Continued from 11/18/08.

Atty. Dominick Thomas, 315 Main Street presented sealed plans for the application. He also stated that they have reviewed the comments from Mr. Joyce and have submitted the plans to him for his review. Mr. Joyce stated that he did review the plans and recommended that a barrier be put in along the parking spaces to prevent anyone from parking in the right-of-way. He also recommended that the handicap space be moved approximately 5' to the east. Atty. Thomas stated that they had no problem putting in curb stops. He also stated that the existing lights on the building will be removed and the building will be painted. There was no public comment on the application.

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

(b) Application for Zone Text Change from Wesleyan Homes of Connecticut, Inc. - Text Amendment to add continuing care retirement community (CCRC) and associated design standards to the I-C Zone and to add standards for private roadways and driveways in Section 195-26Q and LL. (Application #2008-11-18-2).

Atty. Dominick Thomas, 315 Main Street, Derby stated that this is a text change to the zoning regulations and the regulations are the IC Zone and certain standards in the miscellaneous provisions. The proposal effects two areas in the City. There is a large tract of land on the east side of Derby near the Orange/Woodbridge town lines and one on the west side known as Fountain Lake. He stated that presently the uses permitted in the zone are industrial uses, research uses and similar type warehouses. The proposal is to permit an all inclusive community continuing care retirement community, which would be age restricted under federal law applying to the 62 and over age group and it would be allowed in the IC Zone. He stated that they believe that there is a need for this and various types of assisted living, independent living and skilled nursing care. This is an effort to take the burden off of families. He stated that this is not an active adult community or 55 and over community, which are quite different. This is a continuing care retirement community will have recreational and social aspects for its residents. The average age for this type of community is in the 70s'. It would allow for assisted living and there would be a skilled nursing facility.

Atty. Thomas stated that the important thing in the proposal is contained in Section 195-22b6 in which it indicates that all these services must be provided on a single site. Under this proposal someone could not come in and ask for one of these things. It must have independent living, assisted living and skilled nursing facility all in one. He stated that with it would be all the other services social, recreational, medical and retail function for the people on site. Atty. Thomas stated that there is correspondence from the Griffin Hospital indicating that there is a need for

not only to the citizens of Derby but those in surrounding communities. He stated that the IC Zone has two large tracts of land which are surrounded by mostly residential uses. Atty. Thomas stated that under the application and approval procedure that currently exists, which is very detailed, it would allow this residential use to be permitted that would not tax city services and yet generate taxes or a payments in lieu of taxes. It has an economic benefit to it.

Atty. Thomas stated that also in the proposed change there is a change to 195-26 to permit a private road. This would permit an applicant to come in and not have to deal with the issue of frontage on landlocked parcels. The conditions of the private road gives the City substantial control over that private road. If it is a private road, the City does not have to maintain it and the security over it would be the responsibility of the applicant.

Mr. Stankye asked if all three living sections would have to be developed and if someone did not want to develop all three what would happen. Atty. Thomas stated that they would have to request a zone change. Mr. Stankye asked about the "pilots" and if they would be a lump sum or paid over time. Atty. Thomas stated that the "pilots" are generally negotiated with a city before a project goes forward and they are payment in lieu of taxes so they are paid on an annual basis.

Mr. Jalowiec asked who would be paying the "pilots". Atty. Thomas stated that the developer would.

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

Tom Greene, 49 Belleview Drive stated that Atty. Thomas referred to one of the parcels being bordered by a dump. He did not know that there was a dump in the City, but a transfer station and he asked if that was what he meant. Atty. Thomas stated that it is the transfer station located off of Belleview Drive.

Anita Coscia, Elizabeth Street read from the Plan of Conservation and Development and stated that quite a bit of this land is located in a conservation area and according to the Plan it is to be used for conservation purposes. She stated that she did not think that the IC zone should be changed. She stated that it is a good idea but was opposed to the location.

Ron Schgrin stated that he hopes the project goes through as it would benefit a lot of the elderly. He stated that two access points would be required for this type of building and under recent State law no town can refuse to accept a driveway from another town's project based on traffic concerns.

Dan Waleski, 21 Elm Street stated that he felt that the environmental impacts would be minimal. He stated that he did not feel that the objections expressed were well founded or based on actual facts. He felt that it is a well designed, well thought out by responsible people who have an excellent reputation along these lines and he was in favor of the zone change and the project.

Marc Garofalo, 95 Academy Hill asked if there is a design plan for this project. Chm. Estwan stated that there is no design before the Commission. Mr. Garofalo stated that he is opposed to this text change because of the way the whole process has been undertaken. He stated that there was an article in the New Haven Register in June, 2008 stating that a retirement community is planned for Derby. He stated that there have been other projects brought forth by this developer which have never been done. He stated that there is no information on file except for a press release from the Mayor. There is no information on the "pilot" arrangements.

Atty. Thomas stated that there is no "pilot" agreement without this change being approved. This is only a text change and the first step is the text change and if that is not approved there is nothing else.

Atty. Coppola read from the 6/26/08 Board of Aldermen minutes which indicated that a motion was made to have the Mayor and City Attorney research and negotiate a "pilot" program for the United Methodist project to be located on the Hitchcock parcel. The pilot is subject to P&Z and Inland Wetlands approval and the final approval by the Board of Aldermen. He stated that at some point the Mayor and City Attorney were given the authority to negotiate a "pilot" and has nothing to do with the zone text change.

Chm. Estwan stated that this is an application for a zone text change and if it is approved there still has to be a full application to follow where a lot of this will be discussed and brought before the public.

Mr. Garofalo stated that it was represented at a meeting in Woodbridge that it was in place and the Commission has knowledge because it was in the newspaper. He asked what data has been used to establish the need for this project. He stated that the only thing he heard was that the President of The Griffin Hospital sent a letter indicating a need for this type of project. He asked what research data was used to determine that there is a need for this in these particular zones.

Chm. Estwan stated that this is an application for a zone text change and if an applicant has taken it this far they have done the proper studies before coming forward with this application. Atty. Thomas stated that the applicant and their planners have done an extensive marketing analysis and determined that there is a need in this area for this type of development. He stated that as far as the need within a specific zone you do not do that, you do a need for a specific area and there is substantial need in this area. Then you look at the sites that would meet the standards of the land use requirements of the area.

Mr. Garofalo stated that in 2002 the City undertook a comprehensive endeavor to update the Plan of Conservation and Development. These are the last two large tracts of land that we have and are critical to the town's future and it was specifically left out housing developments in those areas based on community input and the highest and best use for those areas. He felt that this would be a dangerous precedent to include residential use. He felt that there would be community input and should look at what benefits the City best. He also felt that the inclusion of retail is somewhat inappropriate. Planning & Zoning Commission

He stated that the terms of the "pilot" are unclear but certain representations have been made

with large numbers which he felt misrepresent what may be case here. He stated that we are talking about both sides of the City and he felt that more of these developments could be put in and that would be a big burden on the City. He stated that the other issue is the private road aspect. He stated that this invites the issue of interior lots which have been a problem. He also stated that the City could end up maintaining that road. He stated that he lack of frontage could be problematic. He asked that the public hearing be kept open and the comments from the South Central Regional Planning be considered. He felt that this was proposed without thoughtful planning and think about the housing aspects . He felt that it is shortsighted and that it has less to do with Derby then with other neighboring communities. He stated that we are not talking about specifics but a general concept for the City and it is not clear to people.

Chm. Estwan stated that the towns of Woodbridge, Orange, Shelton, Seymour and Ansonia were notified by certified mail as well as the South Central Regional Planning Agency and VCOG. South Central Regional Planning has responded and stated that it does not appear to cause negative inter-municipal impacts to the towns in the south central region. However, the proposed zoning amendment authorizing development on private roadways may cause negative inter-municipal traffic impacts by authorizing development not available under current regulations.

Chm. Estwan read a letter from P. Charmel, President of the Griffin Hospital in support of this CCRC proposal. He stated that this is a public hearing so that items like this can be discussed in public.

Mr. Rogers asked about the private roadways and being accepted as a city street. He was concerned about setting a precedent with something like that. Mr. Joyce stated that the way it is written it states that if in the future it were developed to the standards for a town road then it could be accepted. There are other standards for a private road.

Robert Congdon representing Wesleyan Homes stated that a reference was made to retail uses. He stated that these would be a gift shop and small convenience store for the residents and would be within the main building.

Mayor Staffieri stated that he visited a similar type project at the invitation of the Governor and Congresswoman DeLauro. The residents were very happy and this type of development would benefit senior citizens and improve their quality of life. He also stated that the City has a long history of negotiating “pilots” and preliminary discussions were made in the past with developers and nothing has been done in any contrary way. He stated that economics effect projects and in this case United Methodist Homes is developing the property. He stated that Derby has Osbornedale State Park, Witek Park and Onopiak Park which are all open space areas. He stated that he welcomes a project like this that will not drag down City services or have an impact on the school system. It is a total benefit to the community.

Leo Moscato, 34 Lewis Street stated that he was surprised that someone would deny seniors a place to live.

Tom Greene, Belleview Drive asked if there was any guarantee that the residents of Derby will have preference for this project. Atty. Thomas stated that this is a zone text change application

and those issues would be discussed with the site plan. It would attract people from an entire area.

Mr. Joyce stated that with regard to the private roads he asked if the applicant could provide some traffic generations from a similar type of project which may answer some questions being raised. Atty. Thomas stated that they can provide that information. He also stated that the services with regard to social, recreational, retail are for the residents and staff only and not for the general public.

Anita Coscia stated that there are other parcels that could be developed after the road is put in and the Commission should be considerate of that. She stated that there is a need for this but not where it is being proposed and the downtown needs to be developed.

Dan Waleski, 21 Elm Street stated that this applicant made a presentation at a Board of Aldermen meeting and it was very interesting. He felt that this is something that will benefit the City. He also complimented the administration and Planning and Zoning Commission on how they are handling this.

Marc Garofalo, 95 Academy Hill asked if there will be preference given to Derby residents. He stated that the issue is about the text change and being done without data and the public does not know what is going to be built here. He stated that only some people have access to the information. Chm. Estwan stated this is the process and Mr. Garofalo is well aware of the process and the Commission is following it. He stated that this should be rejected because it should be done in a comprehensive way and look at all types of housing.

Mr. Joyce asked if there is a certain size needed to create this type of development area. Atty. Thomas stated that he will provide more information on this for the next meeting.

Sheila O'Malley, Economic Development Director stated that Derby has high unemployment and this will improve the quality of living for the elderly residents. She also stated that the data to support this project is numerous and is available for anyone to look at.

Mr. Jalowiec asked if some examples of how other towns dealt with this type of development could be provided.

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

New Business:

(a) Application for CDD Approval from Jerry Key for 196 Elizabeth Street for use as a second hand store (Application #2008-11-18-1).

Jerry Key was present and stated that he will have 4 to 5 employees, with three being on at one time and the hours of operation will be 9:00 a.m. to 5:00 p.m. Mr. Joyce asked if there will be any changes to the signs. Mr. Stankye asked about parking and Mr. Key stated that there is street parking available. Mr. Joyce stated that the use is similar to what was there before. A motion to approve the application was made by Mr. Barboza, seconded by Mr. Jalowiec and carried unanimously.

(b) Application from White Hills Lawn & Tree Service for special exception approval for 12-14 New Haven Avenue for office for business with accessory interior only parking of vehicles used in business B-2 Zone (Application #2008-9-16-1).

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

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 White hills Lawn & Tree Service, on properties shown on Derby Assessors Map 7-6, Ltos 108A and 109 subject to the following conditions:

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

1. "Statement of Use - 12-14 New Haven Avenue, Derby, CT"
2. "Interior Floor Plan - White Hills Lawn & Tree Service - 12-14 New Haven Avenue".
3. "Property and Topographic Survey - 12-14 New Haven Avenue", prepared by Rose-Tiso & Co., Inc. dated Aug. 28, 2007 and drawn at a scale of 1"=10'.
4. Request for Waivers - 12-14 New Haven Avenue, Derby, CT, proposed Crown Point Real Estate Investors, LLC - Owner, White Hills Lawn & Tree Service, LLC - Applicant.
5. Correspondence from the Fire Marshal.
6. Correspondence from Milone & MacBroom, Inc. dated October 20, 2008.
7. Testimony provided by the public, City Staff, Commission members, and the Applicant and their representatives during the public hearings which were held on October 20, 2008, November 18, 2008 and December 16, 2008.

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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. Upon completion of the proposed improvements the applicant shall furnish the City with an as-built drawing of the property depicting the constructed parking improvements, removed lighting, pavement markings, pavement stops, etc.
3. As indicated by applicant, existing building shall be painted - light grey.
4. Shift proposed handicapped parking to the east +/- 5' without blocking access to existing overhead door.
5. Define parking and driveway limits to prevent parking of vehicles within DOT R.O.W.
6. A performance bond in an amount and form acceptable to the City Engineer and Corporation Counsel shall be posted prior to any construction activities associated with the site. The amount of the bond shall cover the following improvements.
  - a. As-built drawing.
  - b. Painting of building.
  - c. Parking lot and pavement marking improvements.
7. Any modifications to the above referenced drawings shall be submitted to the Planning & Zoning Commission staff for review.

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

(c) Application for Zone Text Change from Wesleyan Homes of Connecticut, Inc. - Text Amendment to add continuing care retirement community (CCRC) and associated design standards to the I-C Zone and to add standards for private roadways and driveways in Section 195-26Q and LL. (Application #2008-11-18-2).

A motion to table because the public hearing is still open was made by Mr. Stevens, seconded by Mr. Jalowiec and carried unanimously.

(d) Adopt meeting schedule for 2009.

Mr. Barboza moved that the 2009 meeting schedule be adopted with meetings held on the third Tuesday of each month at 7:00 p.m. The motion was seconded by Mr. Misiewicz and carried unanimously.

Old Business

(a) Update on Redevelopment Zone



There was nothing new to report at this time.

(b) Request for Release of Maintenance Bond for Hidden Woods Subdivision.

Mr. Stevens moved that this item be tabled to the next meeting. The motion was seconded by Mr. Barboza and carried unanimously.

Payment of Bills:

There were no bills presented for payment.

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

Attest:

Maryanne DeTullio

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