

# ***Planning and Zoning Commission City of Derby***

Theodore J. Estwan, Jr., Chairman

Steven A. Jalowiec

David J. Rogers

Richard A. Stankye

David Barboza II

Albert Misiewicz

Glenn H. Stevens

Raul Sanchez (Alternate)

Maryanne DeTullio, Clerk

The regular meeting of the Planning and Zoning Commission of the City of Derby was held on Thursday, January 20, 2011 at 7:30 p.m. in the Aldermanic Chambers, City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 7:30 p.m. by Chairman Ted Estwan. Present were Ted Estwan, David Rogers, Albert Misiewicz, David Barboza and Raul Sanchez. Also present were Atty. Joseph Coppola, Ryan McEvoy, Milone & MacBroom and Maryanne DeTullio, Clerk.

## Additions, Deletions, Corrections to Agenda

Chm. Estwan stated that Item 11B would be moved to the end of the agenda.

## Correspondence

Chm. Estwan stated that he received a letter from Lowe's requesting a bond reduction. Mr. Rogers moved that it be on the agenda for the February meeting. The motion was seconded by Mr. Barboza and carried unanimously.

## Public Portion

There was no one from the public wishing to speak.

## Approval of Minutes

A motion to approve the minutes of the 11/16/10 meeting was made by Mr. Barboza, seconded by Mr. Misiewicz and carried unanimously.

## Acceptance of Applications

There were no new applications to accept.

Public Hearing

(a) Application for Special Exception from Cellco Partnership, d/b/a Verizon Wireless for modifications to an existing telecommunications antennas at 150 Minerva Street (Application #2010-11-16-01).

Attorney Kenneth Baldwin, Robinson & Cole was present for the applicant. He presented copies of the certified mailings. He stated that the antennas have been in operation since 1993 when originally approved. They now need to modify the equipment to be able to provide additional wireless services. They will be removing the existing 15 antennas and install new antennas to provide services at all operating frequencies. There will no other new equipment added.

Carlos Santoro, engineer stated that there are currently five antennas at each base and those will be all replaced. They will be similar to what is there now. He stated that there was a concern by the city engineer of the varying sizes of the antennas. They will now all be the same size. They will sit within the two cornices that are there now and will be painted to match. They will be a little higher.

Mike Libertine presented photographs of what is existing now and also simulations of what is being proposed. The new antennas will not significantly change or alter the look of the church. He stated that the church is listed on the National Historic Register and he felt that the antennas will be consistent with the historic nature of the building.

Atty. Baldwin also submitted a report from C2 Systems which demonstrates that the facility will operate within FCC standards.

Mr. McEvoy asked that since the church is on the Historical Registry if they contacted the State Historical and Mr. Libertine stated that they have been in discussions with them and provided the simulations to them.

There was no public comment on the application. A motion to close the public hearing was made by Mr. Rogers, seconded by Mr. Misiewicz and carried unanimously.

New Business

(a) Discussion and Possible Action – Application for Special Exception from Cellco Partnership, d/b/a Verizon Wireless for modifications to an existing telecommunications antennas at 150 Minerva Street (Application #2010-11-16-01).

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

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 Cellco Partnership d/b/a Verizon Wireless on properties shown on Derby Assessors Map 8-5, Lot 94 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 November 16, 2010, prepared by Robinson & Cole LLP."
2. Cover letter to Chairman Estwan with waiver requests, dated November 3, 2010, prepared by Robinson & Cole, LLP
3. "Statement of Use".
4. FCC license information of the applicant.
5. Plans entitled "Cellco Partnership d/b/a Verizon Wireless, Wireless Communications Facility, Derby CT, 123 Minerva Street, Derby, CT 06418", prepared by Centek Engineering, LLC, dated 6/1/10 with the following attached drawings:
  - a. "Title Sheet – Drawing T-1", not drawn to scale.
  - b. "Plans, Elevations, and Details – Drawing DE-1", drawn at various scales.
6. "Product Specifications", prepared by CommScope Company.
7. "Adjacent Owners within 500 Feet".
8. "Calculated Radio Frequency Emissions, Verizon Wireless, Derby, CT, Immanuel St. James Episcopal Parish, 123 Minerva Street, Derby, CT 06418", prepared by C2 Systems, dated 1/18/2011.
9. "Photographic Documentation and Simulations, Proposed Wireless Telecommunications Facility, Derby, CT, 123 Minerva Street, Derby, CT", prepared by Vanesse Hangen Brustlin, Inc.

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. Subsequent to the initial operation of a wireless telecommunication antenna, the owner of such facility shall conduct an actual measurement of the electromagnetic emissions and submit a report prepared by a licensed RF engineer to the Zoning Enforcement Officer. T his report shall be submitted on a frequent basis not to exceed one per calendar year. When there is more than one source of electromagnetic emissions at a location the above mentioned report should measure the cumulative emissions from all sources.
4. 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.
5. The approval of an application for special permit shall be void and of no effect unless installation of the antenna commences within one year from the date of the approval granted by the Commission. The Commission may grant up to two six-month extensions of this period upon written request by the applicant. The Commission shall withhold approval of any or all extensions unless the development plan is brought into conformance with any relevant zoning regulations, which have been amended subsequent to the original approval and if the applicant fails to provide adequate evidence that construction is able to begin within the extended time period sought. This evidence shall include, but not be limited to, the acquisition of any or all required government approvals and project financing.
6. Any modifications to the above referenced drawings shall be submitted to the Planning & Zoning Commission for review and action if necessary.

The motion was seconded by Mr. Rogers. Mr. Rogers asked about the Historic designation. Mr. Estwan stated that the City of Derby does not have a historical agency and therefore there is to enforcement and the City has no jurisdiction over this. Mr. Estwan then amended the motion to include the following condition.

7. The applicant shall report back to the Zoning Enforcement Officer the findings of the dialogue with the State Historic Commission.

The amended motion was seconded by Mr. Rogers and carried unanimously.

(b) Discussion – Zoning Regulations Re: Parking, Section 195-55 – Correspondence received from David Kopjanski.

Mr. Barboza moved that this item be moved to the end of the agenda. The motion was seconded by Mr. Rogers and carried unanimously.

(c) Adoption of Meeting Schedule - 2011

Mr. Barboza moved that the Planning & Zoning Commission meet on the third Tuesday of each month at 7:00 p.m. in the Aldermanic Chambers, City Hall. The motion was seconded by Mr. Rogers and carried unanimously.

Old Business

(a) Discussion and possible action – Application from Belleview Homes, LLC for zone change for Map 1, Block 3, Lot 2 and Map 2, Block 5, Lot 14, Belleview Drive – IC/R3 to R-3 (Application #2010-09-21-01).

Mr. Estwan stated that based on the change of date of the meeting and that there are three members absent this evening he felt that any action should be tabled to the next meeting. He stated that he would like to have the full board present to discuss this matter. He also stated that the applicant will need to give an extension to the next meeting in order to do this. Raymond Sadlik was present and stated that he would grant that extension. He submitted a written extension to the February meeting. Mr. Rogers stated that Attorney Coppola was going to check in the number of votes needed because of the petition submitted. Mr. Estwan stated that this was reviewed and a standard majority is necessary. A motion to table this to the February meeting was made by Mr. Barboza, seconded by Mr. Rogers and carried unanimously.

(b) Update on Redevelopment Zone.

Atty. Coppola stated that there was no meeting held and therefore nothing new to report.

(c) Update on Enforcement issues

Atty. Coppola stated that they have been very busy and are in litigation regarding an illegal apartment. .

13. Payment of Bills

There were no bills presented for payment.

Mr. Rogers moved that the Commission take a short recess. The meeting was recessed at 8:05 p.m. and reconvened at 8:20 p.m.

New Business

(b) Discussion – Zoning Regulations Re: Parking Section 195-55 – Correspondence received from David Kopjanski.

Mr. Estwan stated that some documentation was submitted from David Kopjanski, the Zoning Enforcement Officer and the City Engineer. There is also a comment and e-mail from Attorney Dominick Thomas who requested that this be put on the agenda.

Attorney Dominick Thomas, 315 Main Street, Derby presented copies of a map of the properties in question but stated that it is for illustration purposes. He also presented copies of the zoning regulations that deal with parking. He stated that this is a piece of property that was a free split. His client was told that he needed to have another parking space. Atty. Thomas stated that these are smaller houses and have a one car garage and he wanted them to pave or gravel what amounted to the yard. He stated that since Lot 1 has two frontages they would have had to have another parking space behind the house and Lot 2 could possibly have the space along the side. Mr. Kopjanski cited Section 195-55 and that section states that in all residential zones, no off-street facilities shall be designed and/or located in any required front yard except for the paved portion of the driveway which gives access to said facility. He stated that most people would park in front of the garage. He also stated that the word facility is not defined in the regulations; however, in other sections of that regulation it refers to parking facilities.

Atty. Thomas stated that the dispute he had with the ZEO is that Section 195-55 does not mean that you cannot have a parking place in the driveway that leads to the garage. He stated that if you are going to have off-street parking that is not in the front setback is to have a driveway. He stated that if it is not legal to park in the front setback in a driveway then everyone who parks there is violating the zoning regulations. He stated that Mr. Kopjanski's interpretation was that the regulation states that you cannot have a parking space but it does say that you cannot park there. If you can't have a parking space there, you can't park there. Atty. Thomas stated that the word "except" was included in the section to mean that you can't have a parking space, a tandem space, in the driveway leading to parking space. He stated that in the case at hand the spaces are tandem – one in the garage and one in front of the garage. Atty. Thomas stated that if there is a concern to keep the interpretation, then his clients will put dotted lines on the map to show the second parking space. He stated that since the interpretation is that all you have to do is show that second space, you can still park in front of the garage, they will show them on the map. They would rather do that then tear up grass and put down gravel. He stated that he feels that the interpretation is that you cannot have a parking space in the driveway.

Carl DeCarli, the developer, stated that there is a little bump out in the driveway so that there is plenty of room for a second car.

Mr. Estwan read into the record a letter dated 12/06/2010 from Mr. Kopjanski asking for clarification of Section 195-55 of the zoning regulations. He also read a memo from Mr. Kopjanski dated 1/18/2011(copies attached). Mr. Estwan stated that the regulations do not prohibit you from parking in the front yard setback but your designation needs to be outside that area. So that based on that an e-mail from Attorney Thomas was sent to Atty. Coppola requesting to be on the agenda for clarification of that subject. Mr. Estwan stated that he asked for

comments from Milone & MacBroom for clarification of that section. He read into the record comments from Milone & MacBroom dated 1/20/2011 (copy attached). It stated that they support the opinion and interpretations offered by Mr. Kopjanski that Section 195-55A does not prohibit the parking of vehicles in the portion of the driveway that is within the front yard setback, but it does prohibit the use of that same portion of the driveway to satisfy the off-street parking requirements in residential zones.

Mr. Estwan stated that there is no application before the Commission from an applicant that is looking for a change. He stated that an applicant could come before the Commission for a zone text change; zone change or modification if they feel that this is in error. He stated that what the Commission needs to discuss is the zoning regulations and what the intent was when it was drafted. He stated that the Commission can interpret the regulation for the benefit of Atty. Thomas and if he does not agree he has other options to explore.

Atty. Thomas stated that the job of the Commission is to interpret the regulations and it is before the Commission because there was a disagreement and the ZEO referred it to the Commission for interpretation. He also stated the original regulation stated no parking in the front setback and this one states no parking except for the paved portion of the driveway which gives access to said facility. Mr. Kopjanski stated that as long as you have two designated off street spaces you can park anywhere. Atty. Thomas stated that all they have to do is simply designate a second space on the map and show where it is. He stated that once the two spaces are designated, they can park anywhere. Mr. Estwan stated that two spaces are needed and the spaces cannot be designated in the front yard setback. Atty. Thomas stated that they are going to revise the plot plan and simply draw a parking space in the back of Lot 1 and a space on the side of Lot 2 and both of those will be out of the front yard setback. They will designate the parking spaces. Atty. Coppola stated that they can designate but if Mr. Kopjanski rules in a manner that they don't agree with they can appeal to the ZBA. Atty. Thomas stated that as long as they can designate a space outside of the front yard setback and there is no prohibition of the parking facility being in the front yard setback they will show the parking spaces on the map. Atty. Coppola stated that there is no specific application before the Commission so that if the ZEO does not accept what is proposed, they can appeal his decision.

Mr. Estwan stated that you cannot have a designated parking area in the front yard setback. He stated that this is what is wanted to clarify. Atty. Thomas stated once the spaces are designated in any residential area beyond the front setback, you can park in the front yard setback.

A motion to adjourn was made by Mr. Barboza, seconded by Mr. Rogers and carried unanimously. The meeting was adjourned at 8:55p.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

David Barboza II

Albert Misiewicz

Glenn H. Stevens

Raul Sanchez (Alternate)

Maryanne DeTullio, Clerk

The regular meeting of the Aquifer Protection Agency was held on Thursday, January 20, 2011, in the Aldermanic Chambers, City Hall, 1 Elizabeth Street, Derby.

The meeting was called to order at 8:05 p.m. by Chairman Ted Estwan. Present were Ted Estwan, David Barboza, David Rogers, Albert Misiewicz and Raul Sanchez. Also present were Atty. Joseph Coppola, Ryan McEvoy, Milone and MacBroom and Maryanne DeTullio, Clerk.

Additions, Deletions, Corrections to Agenda

None.

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 11/16/10 meeting was made by Mr. Barboza, seconded by Mr. Misiewicz

Acceptance of Applications

There were no new applications to accept.

A motion to adjourn was made by Mr. Rogers, seconded by Mr. Barboza and carried unanimously. The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Maryanne DeTullio, Clerk

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