

# ***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, May 21, 2013 at 7:00 p.m. in the Aldermanic Chambers, 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, Albert Misiewicz, Steve Jalowiec 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

Chm. Estwan moved to add as Item 9f informal discussion with David Grant regarding Smoke 'N Bones parking lot. The motion was seconded by Mr. Szewczyk and carried unanimously.

## Correspondence

Chm. Estwan stated that he received a letter regarding Items 9a and 9b and would read the letter at the time those items come up on the agenda.

## Public Portion

There was no one from the public wishing to speak.

## Approval of Minutes

A motion to approve the minutes of the March 26, 2013 meeting was made by Mr. Rogers, seconded by Mr. Jalowiec and carried unanimously.

Mr. McEvoy noted that the minutes of the April 16, 2013 meeting should reflect that regarding the application from We Can Do That Signs & Graphics if found that the use was consistent with a contractor's business then no public hearing was necessary. A motion to approve the minutes with the noted correction was made by Mr. Estwan, seconded by Mr. Misiewicz and carried unanimously.

Acceptance of Applications

Mr. Jalowiec moved to accept and schedule for public hearing at the June meeting an application for a special exception and two lot re-subdivision on Ida and Albert Avenues from Frank Pepe. The motion was seconded by Mr. Sewczyk and carried unanimously.

Mr. Jalowiec moved to accept and schedule for public hearing at the June meeting an application for zone text change and zone change for 480 New Haven Avenue from Town Fair Tire Centers of Connecticut, Inc. The motion was seconded by Mr. Szewczyk and carried unanimously.

Mr. Szewczyk moved to accept and schedule for public hearing an application for special exception and site plan approval from Town Fair Tire Centers of Connecticut, Inc. for 480 New Haven Avenue. The motion was seconded by Mr. Jalowiec and carried unanimously.

New Business

(a) Application for Special Exception Modification from We Can Do That Signs & Graphics for 12-14 New Haven Avenue - Application #2013-04-16-01.

There was no one present for the application. A motion to table was made by Mr. Rogers, seconded by Mr. Szewczyk and carried unanimously.

(b) Application for CDD Approval from Midwestern Connecticut Council of Alcoholism, Inc. for 100 Elizabeth Street for counseling service – Application #2013-04-16-02.

Michael Norton, Vice President of Midwestern Connecticut Council of Alcoholism was present and stated that they would like to have a substance abuse treatment center on the second floor at 100 Elizabeth Street. They would be a counseling service. They will have one space in the basement and five spaces in the municipal parking garage which will be used mainly by staff. He stated that the number of individuals that they see during the day is minimal and during evening hours they may have 8 to 10 as a group. He stated that the State of Connecticut Probation Office is located in the same building and a lot of their clients are already coming to that office. The hours would be from 8:30 a.m. to 9:00 p.m. but the evening hours would only be three nights a week. He stated that they are a counseling service only and do not dispense any medications. Mr. McEvoy noted that they are located within 300 feet of the municipal parking garage. A motion to approve the application for CDD approval was made by Mr. Szewczyk, seconded by Mr. Jalowiec and carried unanimously.

Chm. Estwan stated that the applicant had arrived at the meeting for Item 9a and Mr. Szewczyk moved that the table be undone and the Commission hear the matter. The motion was seconded by Mr. Jalowiec and carried unanimously.

(a) Application for Special Exception Modification from We Can Do That Signs & Graphics for 12-14 New Haven Avenue - Application #2013-04-16-01.

Don Masterson, 11 Walter Lane Oxford was present and presented copies of the certified letters sent to abutting property owners. He stated that he received a copy of the Milone and MacBroom review letter and did not have any problems with their recommendations. He stated that he could move the dumpster inside the building. Mr. McEvoy stated that would not be a problem. He stated that he suggested that they move it along the retaining wall between the garage and main building but if it can go inside that would be fine. Mr. Masterson stated that the back building will be used for vehicle storage and storage. Mr. Jalowiec asked the hours of operation and Mr. Masterson stated that it is from 8:00 a.m. to 5:00 p.m. Monday through Friday and occasionally on Saturdays.

Mr. McEvoy went through his review letter and suggested that some improvements be made to the landscaping and have the parking lot striped. He also recommended moving the handicap space slightly to the west. He asked about proposed lighting and Mr. Masterson stated that he was not sure what was there now and would probably want some lighting in the rear for security. There will be no outside storage at the property.

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 We Can Do It Signs and Graphics, on properties shown on Derby Assessors Map 7-6, Lots 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, Special Exception Application, 12-14 New Haven Avenue, Derby, CT"
2. "Property and Topographic Survey – 12-14 New Haven Avenue", prepared by Rose-Tiso & Co., Inc. dated April 15, 2013 and drawn at a scale of 1" = 10'.

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. The dumpster area proposed in the back of the building shall be screened in accordance with Section 195-39.J.(2). The applicant shall submit a revised plan depicting the dumpster enclosure; unless brought inside.

3. Shift proposed handicapped parking to the west  $\pm 5'$ . All handicapped parking shall be provided in accordance with the CT State Building Code.
4. Curb cut at Route 34 – define parking and driveway limits to prevent parking of vehicles within DOT R.O.W.
5. There shall be no outside storage.
6. No certificate of zoning compliance shall issue until inspection is made by the Zoning Enforcement Officer. The Zoning Enforcement Officer shall not issue any certificates until the City Finance Director has verified that all fees have been paid in accordance with the City of Derby Ordinances Section 85-3.
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. Rogers and carried unanimously.

(c) Informal discussion with Matthew Conway, Superintendent of Schools, regarding electronic signs.

Chm. Estwan stated that electronic signs have been an issue for the past few years. He stated that the Commission does not allow animated signs. Matthew Conway, Superintendent of Schools stated that it is their goal to have an electronic sign at the high school and middle school. The information posted on the sign would remain stationary and it would be generated from either the inside of the high school or middle school. He stated that it is more efficient to change the wording electronically. There would not be anything rotating or changing; just like a lettered sign except that it could be changed electronically. Mr. Jalowiec asked where the location of the signs would be. Mr. Conway stated that they would like them at the entrances to the schools. Mr. Rogers asked the size and Mr. Conway stated that it would be 5' x 4' but could be either slightly larger or smaller. He stated that they were open to the Commission's discretion regarding the size. Chm. Estwan stated that this would also reflect the use of such a sign in other locations and the Commission needs to be careful how the regulation is worded. Mr. Conway stated that the sign would have typical school announcements. Mr. McEvoy stated that it should not have any advertising only announcements pertaining to school functions and activities. Mr. Szewczyk asked about possible vandalism to the signs and Mr. Conway stated that the City and the schools have insurance. Mr. McEvoy stated that the regulation needs to be updated to limit the use of these and the impact. Chm. Estwan stated that he would like to see the Commission have control over these.

Don Masterson, We Can Do That Signs & Graphics stated that he has worked throughout the State on these type of signs. He stated that the Commission could consider having them as a monochrome display. Mr. Estwan stated that he would like to have staff prepare a draft regulation and then the Commission could prepare its own application for the regulation.

Keith McLiverty asked what the time frame would be in getting this approved. He stated that the City still owns the property and the Committee would like to close out the project. They could do that without the sign and let the Board of Education take this over but they need to close out the project.

Mr. Estwan stated that the Commission will continue to discuss this next month. Mr. McEvoy stated that the Commission may want to have the electronic sign be a special exception. Mr. Estwan moved that the item be continued to the June meeting. The motion was seconded by Mr. Szewczyk and carried unanimously.

(d) Informal discussion regarding a possible moratorium on flag lots while the City Engineer reviews all aspects of flag lots with respect to zones allowed, size, setbacks, access, etc. to the lots.

Chm. Estwan stated that back in 2006 the Commission regulated flag lots and only allowed them in two zones in the city. He stated that changes were made that allowed them in multiple zones. Mr. McEvoy stated that the regulations before 2006 were not very specific but they were allowed in other zones but there were no real enhanced setback requirements. He stated that he provided copies of the regulation for flag lots that was in place prior to the change. He stated that if a moratorium were desired by the Commission the requirements to do that would be that a public hearing would have to be scheduled. The Commission would need to determine why the moratorium was needed and set a time line. He stated that he wanted to discuss the concerns that the members have regarding flag lots. He stated that other than a moratorium the Commission could move forward with a text amendment application that could be received next month and scheduled for public hearing in July.

Mr. Estwan stated that there is not a lot of developable land left in Derby but things are getting jammed in and very dense developments. He did not think that this was desirable. Mr. McEvoy stated that the Commission could look at density and setback requirements. Mr. Jalowiec felt that the biggest issue is the density of the parcel and there should be language that controls the number of flag lots allowed. Atty. Coppola stated that the Commission could add a special exception on a flag lot. Mr. Jalowiec felt that Mr. McEvoy should come back next month with some options and language changes. Mr. McEvoy stated that he could do that and then have the Commission complete the application and move forward with the public hearing. Mr. Estwan stated that the Commission could discuss this next month with language for their review and then if possible schedule for public hearing. Mr. McEvoy stated that he will work on this for next month. Mr. Estwan moved to continue the discussion next month and have Mr. McEvoy come back with some possible changes. The motion was seconded by Mr. Jalowiec and carried unanimously.

(e) Discussion with Corporation Counsel regarding Vendor Permits on private property with regards to zoning regulations.

Mr. Estwan stated that vendor permits are handled by the Board of Aldermen and there has not been any problems until now. A vendor permit was given for the property on New Haven

Avenue by the Board of Aldermen and that vendor now has permanent electricity and permanent seating. He stated that the owner of the property came before the Commission and they were approved with conditions of approval. He stated that if the vendor permit is on private property they have to have a certified letter from the property owner that they can be on their property. He stated that his concern is that the existing ordinance for permitting overlaps and effects zoning regulations where there already is a permanent use on a property that circumvented the application system and it should have gone through this Commission. He stated that he read through the ordinance and nothing wrong was done but it is something that should be looked at.

Atty. Coppola stated that the problem is not the vendor ordinance but the problem is that the property owner has now changed or added to his use. He stated that it is actually a zoning violation. He stated that Mr. Kopjanski looked at the approval and produce a memo on what is the result of having that trailer hooked up to an electrical source, parking and cable. What effect does it have on the approval. Atty. Coppola stated that what they are doing now is a food service operation. The site plan that was approved had nothing about a semi-permanent food service truck. The vendor permit is a yearly permit. He stated that Mr. Kopjanski felt that the proper thing to do would be to have a site plan amendment. Atty. Coppola stated that the Commission needs to decide if they want to direct Mr. Kopjanski to inform the owner that he has a permanent use in violation of the approved uses that were granted. Mr. Estwan asked what could be done in the future if something comes before the Board of Aldermen on private property that may effect zoning. Atty. Coppola stated that the ordinance discusses bout food vendors throughout the city on both public and private property and it is not dealing with zoning. Mr. Jalowiec stated that there should be a component to the ordinance that if it is on private property it should comply with zoning. Atty. Coppola states that if he gets rid of the permanent nature of the building and only has drive up it would not be a problem. Mr. Estwan asked how many conditions of the approval is he in violation of. He stated that he is trying to prevent this from happening in the future. He stated that in this case the property owner also owns the food truck.

Atty. Coppola stated that the first thing he needs to do if deal with the zoning violations on this property. He stated that he would then look at vendor's permit ordinance and will speak with Dave Kopjanski about sending the property owner a letter. Mr. Jalowiec stated that if it is on private property the use should be in compliance with zoning. Mr. Estwan felt that this is an ordinance issue. Atty. Coppola stated that a letter should be sent to the sub-committee of the Board of Aldermen regarding the ordinance and vendor permit system.

(f) Informal discussion – David Grant – Smoke & Bones parking lot.

David Grant stated that he has an option to buy the property. He stated that the property is contaminated and one of the owners got a grant to clean up the site. He stated that they have spent approximately half of the grant and will be getting more funding from the State. He stated that he spoke with the Mayor and the Economic Development Director about money for the third phase. He stated that they are trying to decide whether to invest in the property and rehab it. He stated that the reason he is here is about parking and in order to rehab that property he would need more parking. He stated that the last time he was before the

Commission he was allowed to have more parking by moving the fence back toward the railroad. He stated that prior to that he had a proposal to lease property going east of the building. There is a lot there which is currently being used by parking under a verbal lease. Mr. Grant stated that he was informed by Mr. Kopjanski that the owner of that property was not in compliance and it would be difficult to get the lease done. He stated that he needs more parking if he is going to rehab the building. Mr. Estwan stated that the owner of the property had a lot of things that they needed to conform to and most of those were done but the property was sold. He stated that the prior owner is still required to bring the site into compliance. Mr. McEvoy stated that Mike Joyce is more aware of what the issues are with this property. Atty. Coppola stated that they have done of the things that needed to be done but parking is still an issue. Atty. Coppola stated that they have notified the property owner that they are not in compliance. He stated that he will need to speak with Mr. Kopjanski to find out what else has to be done to bring the property into compliance. Mr. Grant stated that it became too expensive to move the fence toward the railroad tracks. He stated that he needs more parking and is looking for guidance from the Commission. Atty. Coppola recommended that he file an application with the lease and the approval of the owner.

#### 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.

(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.

Chm. Estwan stated that the applicant submitted a letter requesting another 35 day extension. Chm. Estwan stated that this is the last extension and they have to come to the June meeting with a complete application. Mr. Jalowiec moved that the letter be accepted. The motion was seconded by Mr. Rogers and carried unanimously.

(c) Update on Redevelopment Zone.

Atty. Coppola stated that the Redevelopment Agency met and formally announced that the contract has expired with Eclipse. He stated that there are three developers that are interested and have contacted the City.

#### Executive Session

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

Atty. Coppola stated that there is no need for an Executive Session. He also stated that he is working on blight issues.

Payment of Bills

Mr. Rogers move to approve the payment of the following bills from Moline & MacBroom – Invoice Nos. 63534, 63535, 63536, 63537, 63538, 63539 and 63540. The motion was seconded by Mr. Misiewicz and carried unanimously.

A motion to adjourn was made by Mr. Misiewicz, seconded by Mr. Jalowiec and carried unanimously. The meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Maryanne DeTullio, Clerk

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