

# 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  
David L. Savo (Alternate)  
Joseph Gruttadauria III

Maryanne DeTullio, Clerk

(Alternate)

A meeting of the Planning and Zoning Commission of the City of Derby was held on Tuesday, September 18, 2007 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 Ted Estwan. Present were Ted Estwan, Steven Jalowiec, David Rogers, David Barboza and Albert Misiewicz. Also present were , Atty. Joseph Coppola, Mark Kinsley, Milone & MacBroom and Maryanne DeTullio, Clerk.

## Additions, Deletions, Corrections to Agenda

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

## 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 August 20, 2007 meeting was made by Mr. Rogers, seconded by Mr. Misiewicz and carried unanimously with Mr. Estwan abstaining.

## Acceptance of Applications

Mr. Barboza moved to accept an application for site plan amendment from Fr. McKenna St. Vincent dePaul Society of Shelton for 237 Roosevelt Drive for retail sales and food bank. The motion was seconded by Mr. Misiewicz and carried unanimously.

Mr. Rogers moved to accept an application for CDD approval from Clark Development LLC for 148-156 Main Street for commercial use with supporting offices. The motion was seconded by Mr. Misiewicz and carried unanimously.

Mr. Barboza moved to accept and schedule for public hearing in October an application from VDAR, LLC for zone text change. The motion was seconded by Mr. Jalowiec and carried unanimously.

Public Hearing:

Application for Amendment to Special Exception from Derby Shopping Center for 500 New Haven Avenue for blasting work.

Atty. Fran Teodosio was present and stated that the application was approved in April, 2007 and this is an amendment to that approval. The primary purpose is to modify the way the excavation will be done. He submitted copies of the certified mailings to abutting property owners.

John Plante, Langan Engineering stated that they did a detailed review of the approval process and conditions of the approval. They looked at different things and evaluated the restriction on blasting. The neighbors were concerned with blasting and how it would impact their lives. He stated that they wanted to do whatever was necessary to reduce that, but after looking at it, it was clear that in order to perform the work necessary to build the project with the restriction of no blasting the impacts would be more than if they blasted. They can reduce the impacts to the neighbors by blasting and nothing else has changed with the site plan. The lefthand side of the building where it is being redeveloped encroaches on the rock slope. Blasting would reduce rock cutting area and pull it further back in this area. He stated that if they did not blast it would take a much longer time to do the rock cutting and blasting would be a significant reduction in the amount of time. He stated that they would be willing to do pre-blasting surveys within 500' of the blasting area. They will do exterior inspections of the houses and document that. He also stated that they will be exterior and interior inspections of homes within 200' of the project area. This will all be done in coordination with the Fire Marshal. The inspections will be done to be a complete record of the pre-blasting conditions. They will also place seismographs around the area to track the activity of the blasting to make sure that right methods are being followed. He stated that the technology and methodology for blasting has improved and it is done in a very controlled manner. There will be much less disturbance on the neighborhood during the process.

Mr. Estwan read a letter from the Fire Marshal dated 9/5/07 and also from Milone & MacBroom dated 9/18/07 (copies attached). Mr. Plante stated that they also submitted a memo detailing what would be required from any contractor working on the site. They anticipate the excavation process to take from 4 to 6 weeks with 1 to 2 charges per day, but most likely it will be one charge per day. The hours of operation proposed are 10:00 a.m. to 4:00 p.m. with no work on weekends or holidays.

Mr. Barboza asked if the slope will be different with blasting and Mr. Plante stated that the limits of the slope will be significantly different. Mr. Rogers asked how they propose to stabilize the rock face. Mr. Plante stated that it will be very stable after excavation and an expert will map the entire rock face and analyze any area that may need further treatment.

Chm. Estwan asked for public comment on the application.

Renee Llanos, 13 General Wooster Road asked who will be liable for any damage to any property and how an individual can prove that damage occurred. Mr. Plante stated that the pre-blasting survey and inspections will document everything. Mrs. Llanos asked about erosion to the slope and Mr. Plante stated that a retaining wall at the top of the rock face will provide stability.

Dorothy Krager, 21 General Wooster Road stated that the houses are built on filled land and there is a lot of rock underneath their property. She did not want anything to happen to her home and even though she is outside of the 200' limit she would like to have an interior inspection done of her home.

Mayor Staffieri stated that anyone who has any damage it would be the responsibility of the developer. He also stated that he is aware of the blasting work that was just recently done on the Griffin Hospital site and there were no problems with that. He stated that it is now done in a very controlled manner. Mr. Plante stated that it is a commitment of Lowe's to minimize impacts to the neighbors.

Arlene Yacobacci, Lombardi Drive read from an article regarding damage from blasting to homes. She also asked if a survey would be done of wells and what the time line would be for filing a claim.

Paul Delandro, 27 Commodore Hull Drive stated that he would like to have seismographs on individual properties. Mr. Plante stated that it does not make sense to have one on every property and that they will be strategically placed to get proper readings and if the readings are high the work will stop. Chm. Estwan stated that the Commission will insure that they adhere to the regulations and the work is monitored by the Fire Marshal.

John North, Commodore Hull Drive he felt that the seismographs are placed in strategic locations to make sure that the entire radius is covered. Mr. Plante stated that they plan on using five seismographs. Mr. North asked if there will be any changes to the fence and Mr. Plante stated that there will be none. He also stated that the finish treatment of the rock face will be determined when excavation is complete and evaluated.

Ernie Lagoa, 73 Franklin Avenue speaking for his parents residing at 336 David Humphreys Road. He asked if they looked at the water table or springs in the area and Mr. Plante stated that a geotech report was done and no water table will be effected. He also asked how often the rock face will be evaluated and Mr. Plante stated that it will be routinely done. Mr. Lagoa stated that there are different types of blasting that can be done and Mr. Plante stated that the blasting company will have to operate within certain parameters. The project will go out to bid with specific considerations.

Dina Weissman, 26 Caldwell Drive made comments regarding the effects of blasting and wanted assurances that if there is a problem it will be stopped. Mr. Plante stated that they are taking measures beyond what is required to make sure that there are no problems and the site will be monitored. He stated that there will be considerably less disturbance to the neighborhood with blasting.

Carl Yacobacci, 10 Lombardi Drive felt that geotechnical studies should be done and testing of the wells. He stated that he would like to see something in writing about assurances to the neighbors. He was concerned about the retaining wall and well on his property and submitted a picture of the wall. He also stated that he would like to have a survey done on his property and his well tested.

Phil Marcucio, Jr., Marcucio Gardens, New Haven Avenue stated that there is a natural brook that runs between both his property and the applicant's. He wanted to make sure that the water flow and amount of water is not effected. Mr. Plante stated that the accommodations made for the stream will be the same.

Chm. Estwan asked if the applicant would be opposed to doing exterior and interior inspections to all houses within the 500' area. Mr. Plante stated that he is not really authorized to do that and they are already going beyond what they have to do. He stated that the State does not require that done in a 500' area.

Mr. Rogers stated that he asked about blasting when the application was first brought before the Commission and was assured that blasting would not be required. He was concerned about that and feels that blasting work can be felt.

Don North, Commodore Hull Road stated that he is just outside the 500' area and felt that he will not have any problems. He asked that if he took digital pictures of his foundation could they be submitted. Chm. Estwan recommended that they be given to the Fire Marshal.

Carl Yacobacci, Lombardi Drive asked what could be done about wells and he wanted to make sure that he will have recourse if there is damage to his well. Mr. Plante stated that they are pulling the existing rock fact back and not changing any water table.

A motion to close the public hearing was made by Mr. Barboza, seconded by Mr. Jalowiec and carried unanimously. A motion to add this application to the agenda as Item 10c was made by Mr. Jalowiec, seconded by Mr. Misiewicz and carried unanimously.

#### New Business:

(a) Application for CDD Approval from TEAM for 30 Elizabeth Street for use as a dental office and child/guidance counseling office.

Richard Knoll and Carol DellaRocco were present. Mr. Knoll stated that they would like to renovate 7000 s.f. on the second floor in order to address community needs for a dental care clinic. They will be increasing the office space for child guidance and counseling service. There is a dumpster in the rear on Olivia Street which they will bring in from the street and put in on a pad with screening. They anticipate 26-27 parking spaces which are available in the parking garage and they will submit something in writing regarding that.

Mr. Estwan suggested that they screen the dumpster with a vinyl fence instead of a chainlink fence. Mr. Knoll stated that they will be happy to look into that.

Mr. Estwan moved that following review of the plans and documentation submitted in support of this application, the Derby Planning & Zoning Commission hereby approves the CDD application for TEAM, Inc. on property shown on Derby Assessors Map 8-5, Lot 62A subject to the following conditions:

The approval shall be based upon the documents submitted in support of and during the review of this application and shall include the following stipulated conditions:

1. The applicant shall provide a summary of parking demand associated with the uses proposed with this application. While the off-street parking requirements are waived due to the property's proximity to the municipal parking garage, documentation of the parking demand will assist with tracking the parking needed to support the downtown businesses and the ability of the parking garage to support those needs. Documentation regarding parking calculations will be submitted.
2. The dumpster improvements along Olivia Street shall be coordinated with the City Engineer, Department of Public Works and the Parking Authority. The applicant's engineer shall coordinate the design and implementation of these improvements directly with the City Engineer.

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

(b) Application for CDD approval from Tom D'Addario for 100 Elizabeth Street for office space.

Mr. D'Addario stated that he will be leasing out the first floor (1500 s.f.) to a single tenant for office use and will be making improvements to the parking garage below. There will be 17 spaces available.

Mr. Estwan moved that following review of the plans and documentation submitted in support of this application, the Derby Planning & Zoning Commission hereby approves the CDD application for Tom D'Addario on property shown on Derby Assessors Map 8-5, Lot 57 subject to the following conditions:

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

1. Statement of Use - dated and signed 8/13/07.
2. "First Floor Architectural Plan-Proposed Offices for CSSD Adult Supervision", prepared by State of Connecticut Judicial Branch Facilities Office, dated July 19,2007 and drawn at a scale of 1/8"=1'0".

With the following stipulated condition:

1. This approval is based upon development and occupancy of the first floor only. The

existing on-site parking will accommodate the parking requirements proposed for the first floor and therefore the use of the municipal parking garage to support the use proposed in this application will not be required. Development or occupancy of the second floor or modifications to the use currently proposed will require subsequent review and approval of the Planning & Zoning Commission.

(c) Application for Amendment to Special Exception from Derby Shopping Center for 500 New Haven Avenue for blasting work.

Mr. Estwan stated that he made notes on previous blasting done with another application and it was about a 40 to 50' straight up wall. They took away a lot of ledge probably about the same amount. He stated that he wanted to see what they did regarding the properties and they were closer than these properties. He stated that in light of the comments made this evening from residents he thought that interior and exterior surveys done for all properties within 500'. He also stated that all the supporting documentation, pre-blast surveys be done and if there is an individual outside of the 500' area that wants one the applicant agreed to that. He stated that Mr. Yacobacci from Lombardi Drive wanted one done and Mr. North from Commodore Hull Road stated that he will take his own photographs. He was also concerned that the stream remain the same as it is now. He also stated that they had discussed post-blasting schedule to be submitted to the city engineer and ZEO. It was recommended that yearly inspections be done for five years but it should be based on the treatment of the wall. Mr. Rogers asked if there is a problem with the stream and it dries up. Mr. Estwan stated that the stream starts further up and if it does dry up there would be more problems. Mr. Estwan stated that his concern was that it be kept clean and free and clear and he did not think that blasting would dry it up. Mr. Estwan felt that the hours of operation should be 10:00 a.m. to 4:00 p.m. with no work on weekends or holidays. Mr. Jalowiec stated that he felt that the surveys should be done to everyone within the 500' area and make sure that all homes are included. He also felt that the comments from the City Engineer in his letter dated 9/18/07 should be included. Mr. Estwan stated that blasting is the more efficient way to do the project.

Mr. Estwan moved that 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 approved temporary special exception for Derby Shopping Center, LLC on property shown on Derby Assessors Map 4-3, Lot 39 subject to the following conditions:

The approval shall be based upon the following documents submitted in support of this application and shall be included with the original application documents or used to replace drawings which are no longer current:

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1. Correspondence from Langan Engineering to the Derby Planning & Zoning Commission dated August 10, 2007.
2. Cover Sheet - Drawing 00.01 - "Proposed Lowe's of Derby - Amendment to Temporary Special Exception", with the following drawings:

- a. "ALTA/ACSM Land Title Survey, Property/Boundary Survey", prepared by Meehan & Gooding, Sheets 1 of 2 and 2 of 2.
- b. "Topographic & Utility Survey", prepared by JMC, drawings TS-1, TS-2, TS-3 and TS-4.
- c. "Site Plan - Drawing 20.01" prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.
- d. "Grading Plan - Drawing 21.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.
- e. "Drainage Plan - Drawing 21.02", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.
- f. "Soil Erosion and Sediment Control Plan - Drawing 22.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.
- g. "Soil Erosion and Sediment Control Notes and Details - Drawing 22.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.
- h. "Landscape Plan - Drawing 24.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.
- i. "Landscape Notes, Details and Schedule - Drawing 24.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.
- j. "Culvert Repair - Drawing 40.01", prepared by Langan Engineering & Environmental Services, dated 8/14/07.
- k. "Culvert Repair Notes and Details - Drawing 40.02", prepared by Langan Engineering & Environmental Services, dated 8/14/07.

The original conditions of approval for the Lowe's Home Improvement project still apply unless otherwise revised by the following conditions which shall only apply to this request for modification:

1. The modification of 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.

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2. As indicated in the supporting documentation, pre-blast surveys shall be performed for all properties in accordance with the August 10, 2007 correspondence to the Commission from Langan Engineering, which will include everyone internal and external surveys within 500 feet, unless other additional or more extensive pre-blast surveys are required by others or agreed upon

by the applicant. Mr. Estwan noted for the record that Mr. North was here and did not require one but Mr. Yacobacci was here and specifically asked for one and he asked that the applicant abide by that request.

3. The hours of operation for blasting shall be limited to 10:00 a.m. to 4:00 p.m. Monday through Friday and no activities Saturdays, Sundays or legal holidays.
4. The flow of the existing intermittent watercourse from the rear of the Kmart site toward and along the western property boundary will be maintained to simulate the existing condition as indicated on the revised grading and drainage plans and as previously required.
5. The Cross Section drawing 27.06 included in the original site plan application shall be revised to reflect the current excavation proposal.
6. Drawings 40.01 and 40.02 regarding the Culvert Repair shall be removed from this amendment request.
7. A complete set of current project drawings showing all of the current work proposed shall be provided to the Zoning Enforcement Officer, Derby Inland Wetlands Agency and City Engineer.
8. Any modifications to the above referenced drawings shall be submitted to the Planning & Zoning Commission staff for review.
9. A post blast report for inspection schedule shall be brought back to this Commission for their approval.
10. Drawings 40.01 and 40.02 regarding the Culvert Repair shall be removed from this amendment request. The Two Mile Brook culvert repair drawings were required as a condition of the Derby Inland Wetlands Agency approval and have been reviewed separately. See correspondence from our office (Milone & MacBroom) dated September 13, 2007.

Mr. Estwan then read into the record letter dated September 18, 2007 from Milone & MacBroom as follows:

Pursuant to your request, we have reviewed the maps, plans and data submitted in support of the above referenced application. Our office received the following documents:

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- a. "ALTA/ACSM Land Title Survey, Property/Boundary Survey", prepared by Meehan & Gooding, Sheets 1 of 2 and 2 of 2.
- b. "Topographic & Utility Survey", prepared by JMC, drawings TS-1, TS-2, TS-3 and TS-4.
- c. "Site Plan - Drawing 20.01" prepared by Langan Engineering & Environmental

Services, dated revised through 8/14/07.

d. "Grading Plan - Drawing 21.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.

e. "Drainage Plan - Drawing 21.02", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.

f. "Soil Erosion and Sediment Control Plan - Drawing 22.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.

g. "Soil Erosion and Sediment Control Notes and Details - Drawing 22.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.

h. "Landscape Plan - Drawing 24.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.

i. "Landscape Notes, Details and Schedule - Drawing 24.01", prepared by Langan Engineering & Environmental Services, dated revised through 8/14/07.

j. "Culvert Repair - Drawing 40.01", prepared by Langan Engineering & Environmental Services, dated 8/14/07.

k. "Culvert Repair Notes and Details - Drawing 40.02", prepared by Langan Engineering & Environmental Services, dated 8/14/07.

Based upon the documentation we offer the comments:

1. Drawings 40.01 and 40.02 regarding the Culvert Repair shall be removed from this amendment request. The Two Mile Brook culvert repair drawings were required as a condition of the Derby Inland Wetlands Agency approval and have been reviewed separately. See correspondence from our office (Milone & MacBroom) dated September 13, 2007.

2. Our office has reviewed the proposed blasting procedures outlined in the correspondence from Langan Engineering dated August 10, 2007. Based upon the revised drawings, it appears that the use of blasting will allow the applicant to increase the distance between adjacent residential structure and the proposed cut slope. The use of blasting will also reduce the duration of rock excavation activities in this corner of the

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site. As indicated in earlier reviews and in the geotechnical report which was submitted as part of the original application, extreme care shall be taken when performing the excavation activities on this site. Whether blasting or no-blasting methods are used, a detailed pre-blast or pre-excavation survey is critical to document the existing conditions of the surrounding properties prior to any activities in this area. The proposed use of line and channel drilling, cushion blasting, pre-splitting, smooth wall blasting and excavation vibration control as referenced in the applicant's reprot are supported as methods to help minimize the effects of

excavation and blasting outside of the required excavation limits. Equally important to the methods used to remove the material are the methods which will be used to provide permanent stabilization of the excavated rock face and the slopes around the above the excavated areas. The original and current drawings indicate that a retaining wall will be constructed above the excavated slope to support the slope and the methods to stabilize the exposed rock face may include methods such as rock pining, netting, etc. as originally indicated in the approved application. The final method of slope stabilization shall be determined as soon as the site conditions allow. Should you have any questions or concerns, please do not hesitate to contact our office. Very truly yours, Michael J. Joyce.

Mr. Estwan then added that the internal and external inspections that we required for everyone within 500', if they allow them to. This was indicated in their letter dated 8/10/07 to the Commission that they will do internal inspections with video taping should the homeowner accept. Mr. Estwan stated that if a homeowner does not want his home video taped, it should not hold up this operation. If someone does refuse then the applicant should obtain a written statement from that homeowner that they do not want to have video taping done.

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

Old Business:

(a) Application for Site Plan Modification from VDAR LLC for Commerce Street to provide for six additional parking spaces - I-1 Zone.

Don Smith representing the applicant stated that he is here for informal purposes only. He stated that they have submitted an application for zoning text amendment. Revised plans to reflect that zone text amendment will be done and if the amendment is approved it would have four additional spaces.

(b) Update on Redevelopment Zone.

Atty. Coppola stated that a meeting was held and they are in the process of reviewing the GAP analysis. The developer has been given the task to see if he could modify the plan in an effort to reduce the GAP. He was given 60 days to investigate that and come back. The modification would involve some tweaking to the plans.

(c) Discussion - Architectural Review Board.

Mr. Estwan stated that the Community Relations Sub-Committee has been trying to establish an architectural review board. He stated that he has attended a number of meetings regarding and a lot of research has been done as to where these fit in. He stated that he has not found a town where it does not fit under the planning and zoning commission. He stated that his comments at the meetings were to establish an architectural review board as a sub-committee of the planning and zoning commission. He felt that anytime you establish anything that creates standards to

our regulations there is a public hearing and the public can give their input. Mr. Estwan stated that if wanted to get the feelings of the full board on record regarding this.

Mr. Jalowiec stated that he felt that everyone on the commission takes these things into consideration with every application. He stated that he felt that it would create an extra burden and nothing shows that we have had a problem in the past. The Commission has proven that we take into consideration architectural issues regarding an application.

Mr. Estwan stated that there was a separate planning and zoning commission in the past and they were put together to streamline the process. He stated that with past applications efforts were taken to make sure that it was done properly.

Mr. Barboza felt that it would create problems for this board and if it were established we would have to wait for their input. Mr. Estwan stated that it is usually non-binding, they just offer comments.

Mr. Rogers stated that the Commission spends a lot fo time on applications and how a project will look. He felt that a lot of thought goes into the review of an application.

Mr. Misiewicz felt that the town should have standards for downtown and feels an architectural review board would have a good tool to develop those standards. He felt that if you set up a board you may get professional people with expertise to serve on it and standards would be a huge help for someone coming into town with a project.

Mr. Estwan stated that if you are looking for standards then this Commission can add another section to their regulations with standards and we do not need another board that a developer would have to go through. If another section were added, it would have to be done through a public hearing. He stated that he does not believe we need an architectural review board. We need standards to be added to our regulations that the Planning & Zoning Commission will work with.

Mr. Misiewicz stated that if you want to create standards it would be a useful tool to have. He felt that it would make it easier for this board to have standards and if a board is created you can get a group of individuals together to create the standards.

Mr. Estwan stated that we have had appropriated in the capital plan to redo the subdivision regulations. We have had a pln to do this and were asked to hold off on that capital plan. He stated that he would like to go back through the capital plan to establish

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architectural standards. He felt that it will take a professional company to do this for the Commission.

Mr. Jalowiec felt that the members as a commission sent a letter to the Board of Aldermen and mayor that the board is in general agreement that we are opposed to adding another board but in favor of establishing such standards under the zoning regulations. He felt that it should be included in that letter projects where the board took a lot of time reviewing the application and reviewing the architectural details of the project.

Mr. Misiewicz asked what kind of budget it would take to have a company come up with standards. Mr. Estwan stated that it would be put out to bid. He stated that he will draft a letter for everyone to review.

#### Payment of Bills

A motion to pay all bills was made by Mr. Barboza, seconded by Mr. Jalowiec and carried unanimously.

A motion to go into Executive Session to discuss litigation with Atty. Coppola present was made by Mr. Barboza, seconded by Mr. Jalowiec and carried unanimously. The Commission went into Executive Session at 9:20 p.m. and the meeting was adjourned thereafter.

Attest:

Maryanne DeTullio

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