



Planning and Zoning Commission City of Derby

Theodore J. Estwan, Chairman
Albert Misiewicz
Raymond Sadlik

Steven A. Jalowiec, Vice Chairman
Raul Sanchez
Cynthia Knopick – Alternate

David Kopjanski
Glenn H. Stevens
vacancy – Alternate

Regular Meeting Minutes – 7:00 p.m. – Tuesday, October 15, 2019

Derby City Hall, Aldermanic Chambers: 1 Elizabeth St., Derby, CT

1. Call to Order

Chairman Estwan called the meeting to order at 7:04 PM

2. Pledge of Allegiance

Chairman Estwan led the Pledge of Allegiance

3. Roll Call

Members present:

Theodore Estwan, Steven Jalowiec, Raul Sanchez, Albert Misiewicz, Glenn Stevens, David Kopjanski and Raymond Sadlik

Cynthia Knopick was excused.

Also present: Atty. Timothy Herbst, City Engineer Ryan McEvoy and Building Official Carlo Sarmiento.

4. Communications

Nothing was presented.

Additions and deletions to the agenda (added)

MOTION by Theodore Estwan and second by Glenn Stevens. Move to add 8B. 249-251 Roosevelt Drive – Bad Sons Beer Company – Application for Site Plan approval and 8C – PDD text change – discussion and possible action regarding the south side of Main Street.

Noted correction of the agenda that 7C should read for a Zone MAP change, not text change.

Noted that 10 will include carryovers from last month, discussion of detention basins maintenance and culvert maintenance.

5. Public Portion

No one came forward

6. Approval of Minutes

MOTION by Albert Misiewicz and second by Glenn Stevens. Move to approve the minutes of the monthly meeting on September 17, 2019. Motion carried unanimously.

7. Receipt of Applications:

A. 23 Factory Street – Parcel 8-3 3 & 8-5 179 Derby Downtown LLC – Application for a Site Plan Approval for 192 one bedroom units, 17 two bedroom units, 9 studios, and first floor commercial space with apartment amenities throughout.

B. 23 Factory Street – Parcel 8-3 3 & 8-5 179 Derby Downtown LLC – Application for a Special Exception for 192 one bedroom units, 17 two bedroom units, 9 studios, and first floor commercial space with apartment amenities throughout.

C. 23 Factory Street – Parcel 8-3 3 & 8-5 179 Derby Downtown LLC – Application for a Zone Map Change to change the current zone (CDD) to a Planned Development district (PDD) Zone.

A letter was read into the record from Steven J. Lepore, MEM of Derby Downtown LLC dated October 15, 2019 which states:

**Derby Downtown LLC
23 Factory Street
Derby, CT 06418**

October 15, 2019

Planning and Zoning Commission
City of Derby
1 Elizabeth Street
Derby, CT 06418

RE: Attached applications, (3) applications, (8) pages total

Dear Commission Members,

Derby Downtown LLC, the applicants, hereby withdrawal, without prejudice, the attached applications.

Thank you for your consideration in this matter.

Steven J. Lepore, MEM
Derby Downtown LLC

Without objection the withdrawal was accepted.

8. New Business:

A. 656 New Haven Avenue – Big Y Plaza –Discussion and possible action to approve the widening of the Big Y Plaza entrance on New Haven Avenue.

City Engineer McEvoy explained that during the approval process, the applicant is obligated to seek CTDOT approval, in this case an encroachment permit. Generally, it is handled by OSTA. Part of the process requires the local authority to review and decide on the application. He noted that Derby was silent on the widening in the original application taking no exception to the presented design. Generally speaking, the CTDOT has final say but the local authority does have the opportunity to present revisions possibly more restrictive than presented by the State. This modification is seeking local acceptance of the revisions sought by the State.

**STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
BUREAU OF HIGHWAY OPERATION**

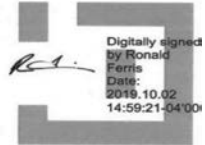
**TOWN: Derby
Re: Big Y World Class Market
656 New Haven Ave. (Route 34)**

Date: October 2, 2019

To: Michael Shepley, PE, PTOE .

**Email: mshepley@blcompanies.com
mdion@blcompanies.com
jschmitz@blcompanies.com**

**From: Mr. Aron Steeves
Special Services Manager
359 South Main Street
Thomaston, CT 06787**



This office has reviewed the plans submitted entitled, "Big Y World Class Market 656 New Haven Avenue, Derby, Connecticut. Off Site Improvements dated 6/17/19, revised 7/9/19, Traffic Signal Plan Date Plotted 10/1/19 and have no further comment.

THE PROPOSED PROJECT SHALL NOT START WITHIN THE DEPARTMENT OF TRANSPORTATION'S RIGHT OF WAY UNTIL AN ENCROACHMENT PERMIT HAS BEEN SECURED. TO OBTAIN AN ENCROACHMENT PERMIT, PLEASE COMPLETE THE FOLLOWING STEPS.

An encroachment permit will be issued upon receipt of the following:

1. Documentation of city/town approval.
2. A completed encroachment permit application (State form PMT-I Rev 10/13)
3. A bond (State form CLA-5 Rev. 8/00) in the amount of twenty five thousand dollars (\$25,000.00) in the owners/contractors name.
4. A Certificate of Insurance requiring Bodily Injury Liability and Property Liability of \$1,000,000.00 each Accident or Occurrence and Aggregate of \$2,000,000.000.
5. A check or money order in the amount of \$100.00 made payable to the "Treasurer, State of Connecticut."
6. Should you have any questions please contact Mr. Ronald Ferris of the Office of Permits at 203 591-3627.

MOTION by Theodore Estwan and second by Steven Jalowiec. Move to approve the widening of the Big Y Plaza entrance on New Haven Ave, as stated:

Application: Big Y Plaza
Application for modification to approval
656 New Haven Ave.

Motion: Following review of the plans and supporting documentation submitted in support of the proposed driveway modification shown on Derby Assessor's Map 3-2, Lot 34A, the Derby Planning & Zoning Commission determines that in accordance with Section 195-39.D.(6), the proposed curb cut dimensions for the Big Y Plaza need not be more restrictive for the radius and width allowed or approved by the Connecticut Department of Transportation (ConnDOT)

It was suggested to add the documentation listing to the motion – motion was amended to include (made by Theodore Estwan and second by Glenn Stevens)

This determination shall be based upon the following document submitted in support of this request:

1. Plan entitled "Offsite Improvements Plan, Sheet OS-1, Big Y World Class Market, 656 New Haven Avenue, Derby, Connecticut", drawn at a scale of 1"=20', dated June 17, 2019, prepared by BL Companies.

Motion carried unanimously.

9. Old Business:

A. 249-251 Roosevelt Drive – Bad Sons Beer Company – Application for Site Plan approval to add a room to the existing assembly use for charity and private events – enforcement of site work without proper permitting.

A question was asked of Corporation Counsel whether the Planning and Zoning Commission had any enforcement oversight of the building of this room without prior approval or permitting.

It was determined that zoning enforcement lies with the enforcement officer not the Commission. Atty. Herbst indicated under the Connecticut General Statutes 8-2 it states that the Planning and Zoning Commission acts in a legislative and administrative capacity and the commission is responsible to consider public safety, health and welfare in the adjudication of applications that come before them. The Commission is the appointing authority to assign duties to an enforcement officer. It is then his/her obligation to enforce the regulations. If an applicant contests the decision, it is the Zoning Board of Appeals that would then adjudicate the action.

A letter from the Derby Police Department was read into the record.



Derby Police Department

125 Water Street
Derby, Connecticut 06418
Tel. (203) 735-7811
FAX (203) 736-1499
Email: jerry.narowski@derbypd.org



TO: Members of the Planning and Zoning Commission

FROM: Chief Gerald Narowski

SUBJECT: BADSONS

DATE: 15 OCT 19

BADSONS has an application with P&Z for consideration on 10/15/19. First and foremost, I will acknowledge that this company has not acted in good faith with any of the City's ordinances or regulations. My position is to act as a caretaker of the public, their trust, and quality of life. My only concern here is the issue of parking. I am fearful that we as a city will have a parking disaster, not unlike THC, at BADSONS where public safety, quality of life, and parking are a draw on public resources for a local businessperson to benefit financially at the expense of the taxpayer. My concern is simple. The following section is antiquated and using it to make a decision at tonight's meeting is concerning. I am formally putting my concerns in a public document. The following zoning regulation concerns parking at the establishment:

§ 195-54. *Parking spaces; number and location. (Amended 11/15/2000) A. For each use of land, buildings and other structures, off-street parking spaces shall be provided in such number and in the location specified as follows: Use Minimum Required Parking Spaces Church; synagogue; auditorium; theater; places 1 space per 4 seats of worship or assembly.*

Other uses not listed above See Section B. (3) below.

B. Interpretation of required parking spaces. (1) The parking required herein is in addition to space for storage of trucks or other vehicles used in connection with a business, commercial or industrial use. (2) Where fractional spaces result, the parking spaces required shall be construed to be the next highest whole number.

(3) The parking space requirements for a use not specifically listed in this section shall be determined by the Commission based on parking demand generation for a listed use of similar characteristics or based on data provided by such authoritative sources as the Urban Land Institute or the Institute of Transportation Engineers. (Amended 11/15/2000).

This is not a place of assembly. This is a brewpub or a beverage dispensary. The bulk of other municipalities treat this similarly to a restaurant and require 1 space per 2 seats. I implore you to invoke subsection B (3) above and let the commission determine the parking demand. This will not change the recommendation to approve the application. It will, however, ensure that the applicant doesn't abuse the parking requirements,

The applicant uses some of these spaces for food trucks and at times closes them off to host events with tents in the parking lot. Most recently an event pushed overflow parking to a lot near North Avenue. Unfortunately, Park Avenue and the surrounding streets were littered with vehicles that impact the quality of life for residents.

By the commission using section B (3) and not lumping a brewpub into the same category as a church or synagogue, it will not allow the applicant to stray from the original intent of the application and continue to expand the property use such as a retail marijuana dispensary on the property.

Please feel free to contact me with any concerns you have of me.

Respectfully,

Gerald D. Narowski



Chief of Police

Derby Police Department

Mr. McEvoy presented his October 10, 2019 review noting that:

1. The site plan includes text regarding the location of a silo. However, the dimensions of the silo, including its height, should be provided.
2. Per discussions with the Commission, the parking plan now includes 826 square feet of patron floor area exterior to the building. Based on our discussions with the owner, it is our expectation that impervious surface within the fenced-in area would be considered for the parking count of the patron floor area. The square footage used as a basis for the revised calculation seems to reflect our observations at the property, but the plan should indicate what areas are included in the computation.

Communication was received from Dew Drop Inn permitting overflow parking on their property.

JKG INVESTMENTS LLC

To Whom It May Concern

Please be advised that JKG Investments LLC, the owner of the lot located at the corner of Park & North Ave in Derby CT, hereby grants permission to Bad Sons BEER Co LLC for use of the lot for special events and during normal business hours.

Sincerely,
Jason Carlucci
Jason Carlucci
(914) 619-6391
Owner of the Dew Drop Inn

Members discussed how the outside seating areas impact parking ratios. It was questioned whether a special exception would be needed for such outdoor use. It was noted that the original application does not speak specifically about the outdoor seating. There is also a seating area around a fire pit. There are food trucks utilizing parking spaces when they are on the site.

William da Silva was present this evening. He stated that fire pit and outdoor use was always included in plans. Liquor Control permitting included the tap room and the fenced in outdoor area. Atty. Herbst felt the city approval and the permitting represented conformity. The question still remaining would be the issue of special exception for the outdoor seating. It was determined that the original application was approved under the original I-1 zone for the brewery and the tasting room was considered an accessory use. The food truck came in later under the MDD zone. Members had many recollections of the initial approval and it was decided that the staff will review the materials and come forward with any recommendations.

Atty. Herbst clarified that the application currently under review is for the additional room. This application does not appear to include the outdoor use. Members questioned whether the concerns do need to be resolved with this application as there are revisions being made to the site plan. There is also the question of the cease and desist and whether there are any outstanding fines due to the action. It was understood that it would be the Building Official/Enforcement Officer who would determine the status of the fines, working with Corporation Counsel; and take actions consistent with the permitting process.

Chief of Staff Andrew Baklik speaking on behalf of the Mayor's office stated that the office fully supports this application and finds this business to be a good neighbor for the neighborhood.

Town Clerk Marc Garofalo suggested that the real question is that the applicant agrees to follow the rules going forward. Chairman Estwan stressed that compliance is always expected and required.

MOTION by Theodore Estwan and second by Steven Jalowiec. Move to approve the **Site Plan Approval Application** to add a room to the existing assembly use for charity and private events for William da Silva on property shown on Derby Assessors Map 9-4, Lot 6 subject to the following conditions:

Application: William da Silva.
Application for Site Plan Approval
251 Roosevelt Drive

Motion: Following review of the plans and supporting documentation submitted in support of this application, the Derby Planning & Zoning Commission hereby approves the Site Plan Application for William da Silva on property shown on Derby Assessors Map 9-4, Lot 6 subject to the following conditions. The approval shall be based on the following documents submitted in support of this application:

1. Derby Planning and Zoning Commission application for Special Exception Use and/or Site Plan Approval
2. Letter from William da Silva with statement of use, revised, undated and received on September 11, 2019
3. Plan entitled "First Floor Plan, Sheet A-2.0," scale: 3/32 = 1 foot, dated January 13, 2017, revised to August 15, 2019, prepared by Gregg Wies & Gardner Architects, LLC
4. Plan entitled "Existing Parking Plan, Sheet PP-1," scale: 1 inch = 20 feet, dated August 21, 2019, revised to October 1, 2019, prepared by HRP Associates, Inc.
5. Plan entitled "Proposed Floor Plan, RCP & Restroom Details, Sheet A-2.0," scale: not noted, dated July 16, 2019, revised to August 13, 2019, prepared by Gregg Wies & Gardner Architects, LLC
6. Letter from Milone and MacBroom, Inc. dated September 3, 2019, revised October 10, 2019.
7. Letter from 251 Roosevelt Drive, LLC giving consent to the application, undated and received on September 11, 2019
8. Letter from the Derby Fire Marshall office
9. Sketch of silo entitled "10' Diameter Brewer's Grain Bins" dated March 10, 2015, prepared by Meridian Manufacturing
10. Letter from JKG Investments, LLC regarding available parking in adjacent parcels, undated and submitted electronically on September 24, 2019.
11. Testimony from the Applicant, City Staff and the Commission at the regularly scheduled meetings on September 17, 2019 and October 15, 2019
12. Letter from the Derby Police Department dated October 15, 2019

With the following stipulated conditions:

1. If needed, the applicant shall within 90 days submit an application for special exception to address parking ratios associated with outdoor patio uses that can include but not be limited to shared parking agreements with nearby property owners.
2. Referenced document #4 shall be revised to include the following:
 - a. The applicant/owner shall provide a revised plan to include the removal of the existing barbed wire fence within the Roosevelt Drive right of way and Park Avenue, and provide additional screening in the form of landscaping and/or fencing along Roosevelt Drive and Park Avenue, located within the parcel limits. The screening shall consist of

- vegetative buffer including native trees of 2" caliper minimum spaced 50' apart, supplementing existing vegetation where it may exist currently.
3. The Zoning Enforcement Officer and City Engineer shall have the authority to direct the applicant, to install sediment and erosion control measures as conditions may warrant.
 4. Any modifications to the above referenced drawings shall be submitted to the Planning and Zoning Commission for review and action if necessary.
 5. The Building Official shall not issue any building or zoning permits on the lots until the City Finance Director has verified that all fees have been paid in accordance with City of Derby Ordinance Section 85-3.

Motion carried unanimously.

Mr. Kopjanski requested that all documents from previous approvals for this applicant be brought to the next meeting for members to review.

8. C – added to agenda – PDD discussion on text and possible action

Mr. Estwan explained the disparity of the PDD text noting that the language for the parcel size to be a minimum of five acres is unrealistic and should be reduced to a more working size. The three applications withdrawn this evening were done so because the proposals are below the minimum lot size.

Mr. McEvoy indicated that during ongoing study of the lower Main Street development zone, taking into account street layouts and best use of the parcels in this area; it appears that a more reasonable parcel size would be in the range of 1.5 acres. The PDD eligibility is a liberal and flexible vehicle for the development of this area. It allows for management of space and density consistent with the City's Plan of Conservation and Development.

MOTION by Theodore Estwan and second by Steven Jalowiec. Move to recommend to the Board of Alderman and Alderwoman to waive permit fees for Derby Downtown LLC for the resubmittal of the applications withdrawn this evening explaining the need for language change in the PDD. Motion carried unanimously.

10. Updates on Previous Approvals

Big Y has a temporary certificate of occupancy for the purpose of stocking the shelves and making preparation for the anticipated opening on November 3rd. The Fire Marshall will be performing his final inspection and the final certificate of occupancy should be issued within the week.

The driveway over the culvert between Lowes and Burger King is sinking again. The owner of the property went before the Army Corp of Engineering seeking permission for approval of emergency work to repair or replace the culvert. He is still awaiting action.

The report on the detention basins is being prepared.

11. Payment of bills

MOTION by Theodore Estwan and second by Steven Jalowiec. Move payment of the following invoices to Milone and MacBroom for professional services for the period September 1, 2019 to September 31, 2019:

Invoice #93754 dated October 09, 2019 for Application review	\$481.25
251 Roosevelt Dr. HRP Associates Site plan	
And Application review	\$726.25
251 Roosevelt Dr. Bad Sons Beer Co. Site plan	
For a TOTAL of	<u>\$1,207.50</u>

Invoice #93755 dated October 09, 2019 for General consultation & administration	\$612.50
Reimbursable expenses	23.20
For a TOTAL of	<u>\$635.70</u>

13. Adjournment

MOTION by Glenn Stevens and second by David Kopjanski. Move to adjourn the meeting at 8:33 PM.
Motion passed unanimously.

Respectfully submitted;
Karen Kemmesies

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