



City of Ansonia  
**PLANNING AND ZONING COMMISSION**

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*Madeline A. Bottona*

TOWN AND CITY CLERK  
ANSONIA, CONNECTICUT

March 26, 2012

Regular Meeting

Present: Bart Flaherty, Chairman  
Doug Furtek  
Jared Heon  
Jeff Lawlor

Absent: Michael Bettini  
James Martin

Others Present: Fred D'Amico, City Engineer  
Oswald Inglese, P&Z Consultant  
James Tanner, Zoning Enforcement Officer

The regular meeting of the Ansonia Planning and Zoning Commission was called to order at 7:30 p.m. by Chairman Flaherty.

All Present rose and Pledged Allegiance to the Flag.

The secretary called the roll. There was a quorum present.

**Approval of Minutes**

Mr. Heon made a motion to accept as written and place on file the minutes of the January 30, 2012 Regular Meeting and Organizational Meeting. Mr. Furtek seconded. All in favor, so carried.

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## **Approval of Bills**

Mr. Heon made a motion to pay Oswald Inglese's Invoice's in the amount of \$ 243.75 and \$581.25 if found to be correct. Mr. Furtek seconded. All in favor, so carried.

Mr. Heon made a motion to pay Attorney Tom Welch's Invoice in the amount of \$1109.50 and \$759.10 if found to be correct. Mr. Furtek seconded. All in favor, so carried.

Mr. Heon made a motion to pay Attorney George Boath's Invoice in the amount of \$487.50 and \$187.50 if found to be correct. Mr. Furtek seconded. All in favor, so carried.

Mr. Heon made a motion to pay Connecticut Federation of P&Z Agencies Dues to March 31, 2013: \$90.00 if found to be correct. Mr. Furtek seconded. All in favor, so carried.

## **Correspondence**

Mr. Heon made a motion to accept all of the correspondence received, dispense with the reading, and place them on file. If a member requests one read or acted upon the correspondence will be brought up individually. Mr. Furtek seconded. All in favor, so carried.

1. Prestige Builders request for a release of the bond for Valentine Court (Hunters Landing Subdivision) Dtd. 1/26/12
2. Thomas Welch re; Castle Lane Developers Administrative Appeals Calendar. Dtd. 2/13/12
3. Gregory Stamos re: Ansonia M&L Properties, 420 Main St. Request for variance dated 10/19/11. Dtd. 2/10/12
4. Thomas Welch re: City of Ansonia eta vs. Mohammed Mansur. Dtd. 1/30/12
5. Minutes of the ZBA Meeting dated 2/12/12
6. Ed Phipps Resignation dated 2/7/12
7. Town Clerk re; Reappointment to P&Z Michael Bettini
8. Town Clerk re: Appointment to IWC as P&Z repr. Michael Bettini
9. Town Clerk to Ed Phipps; Thank you for serving
10. Tom Welch re: Paul Kopacz Dtd. 3/7/12
11. Tom Welch re: Mohammed Mansur Dtd. 3/7/12
12. Tom Welch re: Castle Lane Developers Return of Record
13. Tom Welch re: Castle Lane Developers scheduling order Dtd. 3/1/12
14. Tom Welch re: City of Ansonia vs. Andrew Tkacs Dtd. 3/8/12
15. Tom Welch re: Andrew Tkacs Dtd. 2/27/12

**Ann & Barbara Property LLC/Anil C. Patel request for site plan approval for a Subway Sandwich Shop to be located at 350 West Main St. (1/30/12)**

Mr. Carmen DiCenso, Mr. Anil Patel and Mr. Waylon Benbow (286 Foot Rd, Durham, CT) were present.

Mr. Benbow presented a revised map (Rev 2) to the Commission members. He said that half of the customers will come from this area. The Subway will be located between two large commercial shopping centers – Target and the Big Y shopping plaza. There is a little revival in this area and they are pursuing it for their Subway Brand. They will build an up-scale store like the one in Orange on Rt 1. It is a good opportunity to expand their “brand”. Store 43 on Pershing Drive which Mr. Patel owns had no parking. They remodeled the store and now there is a door in the back of the store. It is not a high traffic restaurant. They have Subway’s in New Milford and Ridgefield that are sit down restaurants.

Mr. Benbow said that Mr. Patel wants to be in Ansonia. He has one store in Ansonia and one in Shelton. Half of his employees walk to the Ansonia store. He said Rev.2 Map reduces the customer space. He said that it is hard to read the Revision because of the small print but the square footage is the same.

Mr. Inglese said the square footage is the same. The entrance and bathroom is the same. He said he can’t see any change to the plan.

Mr. Benbow said he thinks that Rev. 2 map is the same as the original map.

Chairman Flaherty said he cannot see any revision to the Rev. 2 map.

Tasha Starkey an employee in the Pershing Ave. store pointed out the change to the map.

Mr. Benbow said they have added a Hostess Stand at the entrance. He discussed the Subway stores in Ridgefield on Rt 7 and Germantown and Rt 35 intersection Bailey Ave.

Mr. Inglese said that Bailey Ave. was a former restaurant and it had seating. They have three Subways’ in Ridgefield.

Mr. Benbow said it resembles the one on Rt 7 and is not a drive through. It is under the same zoning rule. The store in New Milford is near the New Milford Hospital on Rt 202 and is assertive in Zoning on Rt 202. He said the town wanted to keep Rt. 202 more rural. The difference is the podium for the Hostess who gives you a menu and seats you.

Mr. Inglese said that this surprises him given the few seats the Subway has – there are 16 seating places.

Mr. Benbow said they also have a Wait Staff – they are not as busy as you think. People come in for a whole meal. You don’t need 50 or 100 seats for that.

Chairman Flaherty said the table seats are 10% and 90% is walk in. The vast majority of traffic you encounter is walk in and 10% is seating. This is the message that the Commission received from your expert at the last meeting.

Mr. Benbow said he doesn't agree with that.

Tasha Starkey  
58 Grove St.  
Ansonia, CT

Ms. Starkey is an employee of Subway on Pershing Drive and she states that as an employee she sees it as 50%/50%.

Mr. Benbow said Subway doesn't gather statistics and he appreciates what Bill Taylor said but he owns nine (9) Subways and people go in and sit and eat. He said Subway doesn't keep those statistics.

Chairman Flaherty said the Commission was told this.

Chairman Flaherty said for the record you are stating that it is not 10% seating and 90% walk in.

Mr. Benbow said he doesn't agree with those figures.

Chairman Flaherty said your testimony is that the customer traffic is closer to 50% seating and 50% walk in. He said he doesn't know where Mr. Taylor got those statistics that were presented to the Commission at the last meeting.

Mr. Benbow said they have a development company and our position is not capable of doing that data. We have tables for 16. It will take about 10 minutes to get them in and out. They do this four times during the lunch period. They do 60 to 100 units during lunch at Store 43 (Pershing Drive) between 12:00 noon to 1:00 p.m.

Mr. Benbow said there are 70 to 80 transactions in one (1) hour, the tables flip 4 or 5 times in a lunch hour at Pershing Drive. We call this a fast casual restaurant. A typical in and out family restaurant. Lunch is a sandwich.

Mr. Benbow said Bill Taylor will never be here again.

Chairman Flaherty said you are saying this is not a traditional restaurant but a fast turnaround restaurant.

Mr. Inglese said in the absence of table service – the utensils are not reused, there are trays, etc.

Mr. Benbow said fast growing doesn't mean fast restaurant. We offer trays to sit down.

Chairman Flaherty asked Mr. Inglese to read the Zoning Regulations that refer to Fast Food.

Mr. Inglese read the section on Fast Food. He read the section on a drive in and on a restaurant. Both carry distinct parking issues. In analyzing, your use fits the regulation as a drive in restaurant and needs more parking. The site has capacity of 13 parking spaces. You show 15 parking spaces – 2 parking spaces are unusable because you back into a driving lane according to the plans that were received. Those parking spaces should be eliminated.

Mr. Inglese said there are two uses on the site:

1. Office space – 800 square feet – needs 3 parking spaces
2. Vacant space – 1480 square feet – needs 6 parking spaces
3. Restaurant ratio– you need 4 parking spaces if you use only 300 square feet. One space for every 20 s.f. of gross area exclusive of area within building receipt and consumption by patrons - the requirement of 27 parking spaces which you don't have.

Mr. Inglese said this is a good use for the downtown area but the wrong site. In comparison of other towns ratios for parking you don't come up with the parking for that site.

Mr. Inglese said using Ansonia's regulations correctly you come up with four spaces for the restaurant use and rounded up to 300 square feet gives you 4 parking spaces. Ratio for drive in restaurant you will need 37 spaces. Apply the ratios including Ridgefield. I was the City Planner for 33 years in Ridgefield and the gross floor area divided by 50 gives you 37 spaces. 746 s.f. divided by 50 gives you 15 spaces.

Mr. Inglese said Derby requires one space for every 50 s.f. of gross floor feet. In Derby you will need 27 parking spaces. The other area you can explore is fees in lieu of parking. This is the right use for downtown but the wrong site. He said he can't advise the Planning & Zoning Commission to approve this because you can't depend on parking spaces from other areas nearby and it is too far away from the Municipal parking lot.

Chairman Flaherty said he did everything he could to get the parking for this Subway. He had Mr. D'Amico go out and measure the distance to the Municipal parking lot.

Mr. D'Amico said he measured and it is over 800 feet.

Chairman Flaherty said he asked Mr. Inglese to look at the application to eliminate the square footage down to get more advantageous ways to get parking. He said he would like to have the Subway downtown. It would be good for Ansonia.

Mr. Inglese said the rule is you need 17 and you have 15 on the site.

Chairman Flaherty said you can't count the two spaces that back into the driving lane. The Subway needs 15 parking spaces, the 850 s.f. office space needs 3 parking spaces and the 1480 square feet needs 6 parking spaces for a total of 24 parking spaces.

Carmen DiCenso  
7 Jeanetti Drive  
Derby, CT. 06418

Mr. DiCenso said he is the owner of the building. He said they were not given a chance to consider it a restaurant.

Mr. Inglese said we can't because it is not a restaurant.

Mr. Benbow said we are waiting on the tables. He said he disagrees with the fundamental opinion. He said we are a restaurant – a sit down restaurant with a hostess and wait staff. Bill did an awful job of presenting this to you.

Mr. Benbow said what the difference is if he goes down to the Polish Deli on Main Street for a sandwich.

Mr. Inglese said that is a retail store.

Mr. Benbow said you can get a sandwich in there and "I'm not a retail store???"

Mr. Inglese said you call yourself a sit down restaurant.

Mr. Benbow said my business is most similar to the Polish Deli. They and I do the same thing. We sit you down and order and wait on you. I am what they are. You can buy a sandwich and chips there and I'll give you service. I am not a drive in restaurant. I am exactly like that place only I don't make kielbasa.

Mr. Inglese said there is a federal code that reflects the use. What is yours?

Mr. Benbow said I'm not the Federal code, I am a sit down restaurant.

Mr. DiCenso said he came to me with proposals of sit down restaurant. The only way he can work this out is if I do not rent the empty 1480 square foot space. I will not rent the empty 1480 s.f. space in the building. Subway can use the space for storage.

Chairman Flaherty said that is a different application. We worked on the drawings and testimony of the experts that came before the Commission to present the plan. The drawing of the Subway we have did not have a podium. The testimony was 90% drive in. There was no mention of waitress's or hostesses that is why we said Fast Food. Also

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the 1400 s.f. of space which requires 6 parking spaces could be occupied. There was no mention that this store would not be rented. This is a change in the application.

Mr. Benbow said I agree with you. He presented another map showing the adjacent 1450 s.f. as storage for the Subway restaurant.

Chairman Flaherty assigned this new map the identity of Rev 2A.

Chairman Flaherty said the Commission has to act within 65 days or you can grant an extension or withdraw and re-submit to the new configuration. It is up to you. You can give us a 35 day extension and submit the new information.

Chairman Flaherty said would I like to see it – yes. The parking and backing into traffic is a public health and safety issue. He asked if Mr. DiCenso contacted Target to see if there was a possibility of using their parking lot.

Mr. DiCenso said yes, he did contact Target and they said no because they are afraid of the liability and someone crossing over and falling and suing them. He said he contacted Big Y also and they said no because of the liability.

Chairman Flaherty said can you take out an insurance policy for this.

Mr. DiCenso said he suggested that and they still said no.

Chairman Flaherty said the map is inadequate – the commission members cannot read it. He said there are three things they can do:

1. Deny the application
2. The applicant can grant a 35 day extension
3. The applicant can withdraw and resubmit

Mr. Inglese said they must submit a detailed Statement of Use.

Chairman Flaherty said if you withdraw and resubmit you would need the following items submitted with your application:

1. Statement of Use in detail. It should be a total statement of use stating you have full table service, wait staff and hostesses, and you are operating as a restaurant.
2. Letter from Carmen DiCenso stating he is not going to rent out the 1480 s.f. store. This area will be used as storage for the Subway only.
3. Letter to include Mr. DiCenso will only rent out the 850 s.f. office space already occupied and the area for the Subway.
4. The Subway will be a restaurant with hostess and table service/wait staff.
5. Revised maps that are readable.

He said this is totally different concept than what was presented to the Commission. He apologized that he was ill for the last meeting. The cleanest way is to withdraw the application and re-submit a new one. This would negate everything that was presented at the last meeting. It would reset the clock and it allows you to tell us what you are not going to rent and what will happen on the site. This is a significantly different aspect of what Subway is proposing for site plan approval.

Mr. DiCenso said he has received a lot of calls for the use of the 850 s.f. store. He said he doesn't want some of these uses that are being pursued for the rental of the store. He said this is a great retail space but there is a small parking lot. It is in the heart of downtown Ansonia. Subway came to him and they thought it was a good fit.

Chairman Flaherty said we worked on this and we worked to get it to comply. He said if you withdraw the application, you will have to resubmit the application with a statement of use including the hostess station, wait staff and that state that you are operating as a restaurant. That you will not rent out the 1480 s.f. store and it will only be used as an adjunct to Subway.

Mr. Heon said the 1450 s.f. in the middle of the building will be considered part of the Subway restaurant as storage space.

Mr. Inglese said they would have to submit the site plan application with the 1450 s.f. area as part of the Subway restaurant.

Chairman Flaherty said the application before the commission makes no mention of wait staff, hostess, and storage and by our definition it clearly fits into our definition of fast food and we have to act on what was submitted.

Mr. Inglese said the area in red; this area was used to compute parking. The other area is kitchen and the other area is what??? It is reversed of restaurant. The other area 1450 s.f. attached is closer to a restaurant.

Chairman Flaherty said Mr. Benbow would have to submit a bigger map so the commission would be able to read it. The statement of use as discussed the letter from Mr. DiCenso that the 1450 s.f. would be attached to the Subway.

Mr. Benbow asked about the definition of gross area.

Mr. Inglese explained section 410.4 of the regulations.

There was commission discussion regarding the regulation and square footage with regard to parking. Mr. Inglese pointed out the parking regulations from other Towns.

Chairman Flaherty said if you took the operation of 850 s.f. and 1450 s.f. and Subway you would need 42 parking spaces per Derby's regulations.

Mr. Inglese said Ansonia's regulations are very generous.

Chairman Flaherty quoted Derby's parking regulations which are significantly more stringent than Ansonia's regulations.

Discussion on parking spaces and the parking regulations in other towns continued.

Mr. DiCenso said he is withdrawing the application this evening and will resubmit a new application as was discussed this evening.

Chairman Flaherty said to submit a new application with a Statement of Use, a new map that will be easily read and a letter from Mr. DiCenso that he will not rent the 1450 s.f. He said the Commission will waive the fee for the resubmission.

Mr. Inglese asked Mr. Benbow if he needs clearance from Subway to modify the standards.

Mr. Benbow said no, he can use his judgment. This will be a "Subway Café" so no one will mistake it. He said he doesn't need clearance to build our brand.

Chairman Flaherty suggested he prepare his signage for approval.

Chairman Flaherty said that Mr. Bill Taylor did a good job for Subway. He presented the site plan as it was proposed on the map and application. He said he wouldn't want Mr. Taylor to be reprimanded because he didn't do anything wrong. He spoke very well of Subway and how they operate the business. It was a learning experience for him.

Mr. Inglese said you have no way of knowing what percentage of business is take out or sit down.

Mr. Benbow said he will get customer counts for Ansonia – times and hours from two tapes that have data from this town and submit them with the application.

Chairman Flaherty said you are a restaurant – Café. We will look at the new map with the hostess station and wait staff. We will look at it as a restaurant. This is great for Ansonia but P&Z Commission has to take into consideration public health and safety. Ansonia doesn't have parking meters downtown. Ansonia is good to our businessmen. Thank you.

Mr. DiCenso said if the 1450 s.f. is shown on the map do you still need a letter from me.

Mr. Inglese said yes. It should be shown on the map and in the Statement of Use along with a letter from you stating you will not rent this space and that it part of the Subway restaurant.

Chairman Flaherty said that they can contact Mr. Inglese and Mr. Tanner. The secretary will prepare a new application packet for them to pick up tomorrow.

**Reports: City Engineer**

Mr. Fred D'Amico was present.

a. 3 Kiely's Lane/Jewett St.

Mr. D'Amico said there is no problem with the water runoff at this time and they are in the process of finalizing the drainage. The PWD has no money for the drainage which consists of connecting one catch basin to the next catch basin. The applicant said he will work with the PWD on completing this project.

Chairman Flaherty asked if Mr. D'Amico has as-built for the detention basin on the property.

Mr. D'Amico said yes he has the as-built and the detention basin is on that property.

b. Valentine Drive – Wall

Mr. D'Amico said Mr. Grasso said he will come in to the commission with a plan for the wall. There is no Certificate of Occupancy for this house. He is aware that the wall needs a certified plan by an engineer. He is aware that the wall must be built to the certified engineered plan to insure its safety.

c. Coastal Carriers – Curb Cut – Fill measurement (Special Exception)

Mr. D'Amico said Coastal Carriers is supposed to come in to the Commission with a plan for the fill. He needs a measurement of quantity and also he needs IWC approval.

d. Shell Station

Mr. D'Amico said he contacted Tom Land, Permitting & Traffic Engr. for the State of Conn. He said Mr. Land is aware of what is going on with the Shell Station. The Shell Station was supposed to move the "Stop Bar and Configuration ". The State of Conn has his bond and they will either make him do the work or pull the bond and the State will do the work.

Mr. Inglese asked if the Shell Station will paint the curbing they have installed.

Mr. D'Amico said yes.

Mr. Inglese said you cannot see the curbing at night.

Chairman Flaherty said they tried to paint the curbing but the asphalt was too fresh and the paint peeled.

**Reports: Zoning Enforcement Officer**

Mr. James Tanner was present.

a. Violations:

Mr. Tanner said there are no new violations at this time.

Prospect Street

Mr. Tanner said the Prospect Street violation reached an agreement in Court and the remediation will be finished by June 2012. He said the property owner will submit a special exception site plan application to the Commission.

Root Avenue

Mr. Tanner said the Root Avenue violation has an order from the Court to comply by April 13<sup>th</sup>. They are in contempt at this time to remove the fill and restore the area. The remediation cost is estimated at \$5000.

b. Variances

There are no variances this month.

**Reports: Planning Consultant**

Mr. Oswald Inglese was present.

- a. Fences
- b. Temporary Accessory Structures & Membrane Structures
- c. Window Signs
- d. Itinerate Vendors
- e. Clothes Donation Bins
- f. Sidewalks
- g. Dumpsters

Mr. Inglese said that they are working on these items.

**Any other business to come before the Commission**

Prestige Builders request for bond release for Valentine Court (Hunter's Landing Subdivision)

Chairman Flaherty asked Mr. D'Amico to go out to the site and take a look at the detention basin and the drainage especially near the brook and see if everything else (road pins, monuments, etc.) is in order.

Mr. Heon made a motion to table this request for release of bond until the Commission received Mr. D'Amico's report and Mr. Grasso submits the plan for the wall. Mr. Furtek seconded. All in favor, so carried.

Subcommittee on Regulations

Mr. Tanner asked that the Subcommittee on revising the regulations look at the following items first because they need to be revised.

1. Fences: This needs verbiage change. It is really important with regard to the height and setbacks.
2. Clothing Bins: This is an issue in the community and with the business men.

He asked that they make these two things a priority.

Chairman Flaherty stated bins are not allowed. They do not exist in our Regulations.

Joan Radin, Alderman 5<sup>th</sup> Ward  
Wakelee Ave.  
Ansonia, CT

Ms. Radin agreed with Mr. Tanner on the Clothing Bins. She said there are bins out there for books, CD's, Videos, and Clothing. They don't ask for permission to put them on the property.

Mr. Tanner said they just put them in and don't ask anyone. Some business owners see this as a community service but it must be done correctly. They may be allowed in certain locations and they must be maintained.

There was discussion on the Clothing Bins, their location on properties and in the city right of way, and that there is garbage and donations outside of the bin.

Mr. Heon said that Mr. Tanner is doing a really good job, he is following up on things and he doesn't get good cooperation from the other departments.

**Executive Session (Pending Litigation)**

None

**April 2012 Meeting**

The April 2012 meeting will be held on Monday, April 30, 2012 at 7:30 p.m.

**Adjourn**

Mr. Furtek made a motion to adjourn the meeting at 9:11 p.m. Mr. Lawlor seconded. All in favor, so carried.

Respectfully submitted,



Jo-Lynn Flaherty  
Secretary