ZONING BOARD OF APPEALS
REGULAR MONTHLY MEETING, MONDAY, January 9, 2012
ALDERMANIC CHAMBERS 7:00 PM

The Ansonia Zoning Board of Appeals held its regular monthly meeting on Monday, January 9, 2012. The meeting began at 7:00 p.m. and the following applications were acted upon.
Roll Call:

Peter Marcinko	Present
Claudia Degnan	Present
Laura Gagnon	Present
Nicolas Gentile III	Absent
Joe Jaumann	Present
John Sanza	Absent
John Erlingheuser	Absent

4 Present, 3 Absent
A quorum was present.

Also present: James Tanner, Zoning Enforcement Officer

Mr. Marcinko declared the meeting open at 7:00. The meeting began with the pledge of allegiance.

Mrs. Degnan made a motion to all of the minutes from February until now. The motion was seconded by Mr. Jauman. All were in favor of the motion. The motion was approved.

1. Ansonia M & L Properties, LLC, 1 Chestnut Street, Ansonia, for property located at the same address, seeking relief from the Zoning Regulations, Section 222.06 of the City Center Overlay Zone to allow the construction of a proposed storage shed on said property.

Attny. John Spondheimer, from Hoyle and Spondheimer, 277 Wakelee Avenue is here representing the applicant, M & L Properties, LLC. Mr. Mark Tice, the Chief Officer of the company is here as well. Attny. Spondheimer stated that they are looking at a rendering of the proposed building shed that will house materials on the lot in question. Mr. Jim Swift, the architect for the project will speak next to explain the general setup.

Mr. Jim Swift, 102 Village Drive, Shelton stated that he is a professional engineer and landscape architect licensed in the state of Connecticut. He stated that the parcel in question is directly across the street from the Bob's in the Big Y shopping center. Mr. Tice owns some property just south of this. This is currently a vacant lot. Target is immediately adjacent to the property in question. It is a flat site. There is an existing hedge across the front of the piece. They are proposing for the storage shed is to be located towards the rear of the site. The access to the shed will be off of Main Street. The particular access has been reviewed by the Connecticut District Office. They just need to pull a permit for the site. The pavement ends just inside the site, stabilizing it for when they come off the road. In the back, the surface is a gravel access way for trucks to use and it ties into a parcel that Mr. Tice owns to the south of the site.

The structure will be about 95' x 31'. The storage of materials is accessed from the rear of the structure. This will allow they can minimize the amount of visual impact. They are also going to bury the first four feet of the structure. So that it doesn't seem as tall as it does from the rear. They are going to plant a line of hedges along the side of the structure to make it less visual to the street. They are not proposing any pavement other than the state highway pavement. This will drains back into the site. There will be no runoff from the site. All the water that falls and that they generate will remain in the site. They are not proposing to put in any new drainage units at the site.

Attny. Spondheimer asked if any of the board members had any questions for Mr. Swift at this time.

Mrs. Degnan asked to see the rendering showing the structure. She asked if the building would be enclosed. She was told that it would not be. He was then asked how high the structural wall would be. It would be about 22' including the roof. It would be the same height as the existing structures on the property.

Mrs. Gagnon questioned why the building would be open halfway up the structure. She was told for the air to circulate through the building. They also felt that it was visually less intimidating than if the structure was solid.

Mrs. Degnan stated that with the dimensions as they are, they could park vehicles inside each bay. Would they be parking any vehicles inside the structure and used as a carport? She was told that was not the intention. Mrs. Degnan stated that the board needs to know this since this is supposed to be a shed. Mr. Tice stated that they are building it for one of their tenants, Yankee Gas. They need to store materials inside the building. This will be construction material. Mr. Tice added that they may in fact park one of the pieces of large machinery inside one of the bays if it was empty. He stated that one bay is for loom, one is for process, one for spoils and the last one is for coal patch. They can't get coal patch easily in the winter any longer.

Mrs. Gagnon stated that basically the storage area goes no higher than the four feet. She was told that it may go up a little bit higher. A large truck will dump the material there and then they will push it around. You may see material 4 or 5 feet higher than the side walls. Just remember that this structure is only 24' deep. So, it's not a big structure. It's long, but it's not a very big structure. They felt that by doing it this way, it would be better than if they enclosed three sides.

Mrs. Gagnon stated that she is concerned about the containment of the materials that would be deposited. She was told that it wouldn't get too high because they want to keep the materials separate from each other. Mr. Jaumann asked how far from the street would the structure be located. He was told that it would be approximately 195 feet from one corner and 210 feet from another corner. He stated that they are trying to make it as invisible from the street as possible. Mr. Marcinko asked if it was going to be a concrete slab or what? He was told that there will be some type of slab underneath the roof part. They do not want to dig into the dirt and mix that into the materials.

Mr. Spondheimer stated that Mr. Tice will make a more formal presentation, but he is answering the board members questions.

Mr. Mark Tice, Ansonia Tice Properties, Ansonia, M & L Properties and Tice Brothers, located at 1 Chestnut Street, Ansonia stated that in 1999, he and his brother came to Ansonia and looked at the former Blake Bus building. They went to contract with Ken Blake on that piece of property. At that time, they came before the ZBA and were granted approval to store construction equipment and make it a contractor storage yard at that location. The following year, he asked permission to build a 10, 000 square foot building to house some of the construction equipment and other tenants. It became so successful that they were able to have future tenants wanted more space to store items. As a result, they were never able to put his own items into that building. He then purchased 488 Main Street, from Harold Yudkin. It was the former Yudkin Fuel building. A year later, Yankee Gas moved into that building. They got approval from P & Z to allow Yankee Gases construction and meter division into that building. There was enough land at 488 Main Street to construct another building at 1 Chestnut Street. They went for approval to build another 11, 000 square foot building that currently houses International Stone. They then purchased 420 Main Street. In 2003, they got approval from P & Z to build a 21, 000 square foot building on the site in question. They were unable to find a tenant quickly and they were unable to construct the building due to financial constraints. Unfortunately, since they were unable to build at that time, they let the approval lapse. They would like to retain Yankee Gas as their tenant and they are requesting the storage bins. They have no other place to put the bins that were requested. They are trying to put them in the rear of the lot and would like to build another building in front of this proposed structure. They have been using the area as construction storage yard since they purchased it in 1999. It was originally zoned heavy industrial when they purchased the property so it was allowed at that time. He stated that there is an overlay zone on the property and this is the reason they are requesting the variance.

Attny. Spondheimer stated that there are a number of people that are present that wish to address the board regarding how they feel about this project.

Mr. Marcinko asked if there was anyone that wished to speak in favor of the application.

Mr. Tom Maffeo, 7 Ford Road, Ansonia and Tony Testa, 32 Mountain View Road, Ansonia stated that they are in favor of the application. They stated that they are tenants of Mr. Tice. They are owners of Lamotex Inc. They have been tenants for the past 10 years. It is a graphic arts distributorship. They have been located in Ansonia for 25 years and 10 years ago when they needed additional space, they discovered Chestnut Park. They requested that the Tice Brothers build an office on the second floor of the building and they did that for them. They have been honorable landlords. The property is very well maintained. It's neat and orderly. They have done everything that they have said that they would as landlords. They further stated that you will not find two guys with more integrity as the Tice brothers.

Mr. Marcinko asked if there was anyone else that wished to speak in favor of the application.

Mr. Frank Capasso, 80 Scenic Hill Lane, Monroe, stated that he owns the building next door to the property in question, Valley Lighting/Valley Electric. They have been in Ansonia since 1963. They have been at that location since 1999. When they first moved into their building, the site in question was not in great shape. All of the properties were vacant. Since they have been there it has been nothing but an improvement. The whole area has gotten so much better. There's a lot more traffic that's very good for business. The building has always been very well maintained. All in all they have been great neighbors.

Mr. Marcinko asked if anyone else wished to speak in favor of the application.

Mr. Richard Henry, 680 Main Street, Ansonia, Riverview Super Service, stated that he agrees with the previous speakers. They have done business in the past with the Tice Brothers. They have always kept the property nice. If anything he feels that this would be an improvement, rather than having the open lot. His wife mentioned that she doesn't notice anything at the site and she drives into Target on a daily basis.

Dave Conti, 311 Main Street, Ansonia (Arrow Printers), stated that he is in favor of the application. He further explained that the applicant is a "class act". Everything that he does is good quality.

Desire and William Pidlipchak, 49 Bissel Place, Seymour, stated that she has known the applicants for many years. Mr. Pidlipchak has been employed by the Tice Brothers for many years. In addition, she has frequented the site on numerous occasions since the parcel was purchased. The site has only improved since they purchased it. The applicants are trustworthy. When they give their word, they keep it. She stated that she has fought against applications in the past, but in this case, I believe that they will only make things better.

Mr. Marcinko asked if there was anyone else that wished to speak in favor of the application.

Attny. Spondheimer stated that he wished to add that there are a few other issues. He stated that this site has been subject of some zoning issues previously with clean ups and things such as that. To the extent that Mr. Tice went before the Planning and Zoning Commission unrepresented a number of years ago and sought a special exception. That is different from a variance. That was totally different from what the applicant is requesting now. Since he represented himself, he did not mention that the parcel had been used in the same capacity for many years. It had been a construction site where in fact he did store materials and he did store his vehicles on the site in question. Attny. Sponheimer stated that they do not have to allege anything that was done in the past. They are asking the board to vary the regulations as they now exist. Attny. Timothy Lee who represented Mr. Tice in the appeal (for the prior case with P & Z), would like to address the board.

Attny. Timothy Lee, 388 Orange Street, New Haven, stated that he represented M & L Properties with respect to a Zoning appeal to the Superior Court in 2009. Mr. Tice had applied to Planning and Zoning for a special permit in order to have stockpiling and sale of fill material on the property. Planning and Zoning approved his application subject to the condition that he not be

permitted to stockpile and sell (tape ended)

Please note this section is from the Secretary's notes. Judge Hiller denied the appeal stating that there was no evidence that the site was used as storage.

Mr. Marcinko asked if anyone else wished to speak in favor of the application.

Mr. William Purcell, President of the Greater Valley Chamber of Commerce, 61 Orchard Road, Woodbridge, CT stated that they need to encourage businesses to come into and stay in the area.

(Tape resumes here) In the aftermath of the loss of Latex Foam, the downsizing of Ansonia Copper and Brass, the downsizing of Farrell Corporation. These were the bookends of that supported the "center core", and they're gone. Fortunately we have a national retailer in Target that occupies the space that Latex was located on. We need to encourage these kinds of investments.

Mr. Marcinko asked three times if there was anyone else that wished to speak in favor of the application. There was no one else that wished to speak.

Mr. Marcinko then asked if there was anyone that wished to speak against the application.

Attny. George Boath, Zanella Boath Associates, 1129 Essex Place, Stratford stated that he has been retained by the Planning and Zoning Commission to speak to the board about the application and to express to the board, as you have seen from a letter that they have sent to you, their reasoning behind why the board should deny the application. As he heard the presentation, he didn't hear much in the way of a hardship argument. As you know as a board, one of the things you must do in order to find a variance, is you must find that there is an undue hardship that is presented by the property that prevents the applicant from using his property in strict adherence to the zoning regulations. He stated that he believed that he heard that Mr. Tice explained that he has a tenant that needs to expand and needs to have some storage. That is a financial hardship. Financial Hardships, as you may know are very, very, very rarely accepted by the courts as valid hardships, upon which variance may be granted. Another point he wanted to raise is there are two sections in your regulations. The first is the City center overlay zone itself, specifically precludes this kind of development. What the applicant is asking you to do is to take that off the table and essentially rewrite the zoning map and amend the city plan, the city center plan zone. This is not a good idea because, what you are doing is breaking up the harmony in the district by allowing this kind of development. This is not a situation where, I don't think anybody in town would disagree that Mark Tice is a nice guy and he puts together a quality product. I don't think that's the issue here at all. The main issue is, you have a job before you. You have to analyze this proposal. You have to determine whether or not there is a hardship, and if that hardship is sufficient to merit the granting of a variance. I would submit to you that the City Overlay zone deprives you of that opportunity to grant a variance in this particular case. As the regulations state, "Any application concerning a development of a parcel in the City Center zone, requires site plan approval before the Planning and Zoning Commission.

Another section which he believes arguably deprives the ZBA from jurisdiction to decide the variance in the first place. This is located in Section 260.3.5. It essentially says, "You cannot grant a variance for uses that are specifically prohibited by the regulation." Attny. Lee spoke to the board briefly about the decision of Judge Hiller and he is accurate in his assessment of what Judge Hiller found. Attny. Lee alluded to the fact that they have been using the property for a number of years. Your Zoning Officer has a detailed history of the applications and the approvals that have been granted for this particular piece.

If he understands it correctly, the site is located at 420 Main Street? He was told by Mr. Tice that it was. He further stated that with Mr. Tanner's presentation, the board will see that there has never been an approval given by anybody to allow that property to be used as a contractor's yard. This is very significant. The law, as Judge Hiller pointed out in his memorandum of decision that I believe Mr. Tanner has a copy of, it says, "in order to be grandfathered as a prior non-conformer, pre-existing non-conforming use, the use must have had been legal and it must have had been in existence at the time the City Overlay zone was adopted in 2007. I don't believe that you will find any approvals for a contractor's yard that were given by any municipal agency in the city. So there's an issue there. But that's for the board to take a look at.

The fact that Mr. Tice may have been using the property as a contractor's yard for the past 10 or so years does not get him into that grandfather status. Again that use must be legal permitted use. Mr. Tanner should also point out to you that this property was also the subject of a cease and desist order for this kind of activity. Throughout the earlier zoning appeal that process was put on hold so that the appeal could be decided. Mr. Tanner has that information for you. There's also a transcript of the hearing that occurred on May 15, 2009 which was Mr. Tice's proposal. You will see the comments in there specifically on pages 9 and 10 from Mr. Ingles about the fact that Mr. Tice had not been given any approvals to conduct contractor's yard activity on that property.

Mr. Marcinko asked Attny. Spondheimer if he wished to address anything that was just stated, but he added that he "will not allow this to go back and forth all night long".

Mr. Spondheimer stated that he understood that. He then stated that they are not trying to get this approved as a pre-existing use. If they were trying to get it approved as a pre-existing use, we wouldn't even have to come to seek a variance. They are seeking a variance of the regulation which will falls within the prevue of your charges as members of the Zoning Board of Appeal. They are asking to vary the regulation. There is a difference. The hardship is a strict adherence to the City Center Overlay Zone would not allow this proposed use of the property within the boundary of the proposal. Attny. Boath is correct as far as the court case which went before Judge Hillman. That was an application for a special exception. This is not an application for a special exception. This is an application to vary a certain section of the Zoning Regulations of the City of Ansonia which the board has every right to do as a Zoning Board of Appeals. That is what the proposal clearly states. The hardship is clear. Without the granting of the variance, this proposed storage shed would not be able to be built on this particular property. Throwing the legal arguments out for a second, if you spoke to anyone, there's absolutely nothing here with

this proposal which is not in conformity with the area, which in any way would interfere with any proposed use in the area. It certainly speaks well as far as the use of the vegetation in far as keeping it back from the street. It's actually a perfect use of the property. It will provide for a very important continuation of an existing business. But you do have the right. They are not looking for a variance based on economic hardship. They are asking for a variance so they can be able to use the property. This board has done many times in the past. You have to separate A from B. A being the previous application, this was background material we gave you to show how long Mr. Tice was in fact using this property as a contractor's yard. He has stored stuff there, and obviously if there was a cease and desist something says that your using it the way it's prohibited now by the new regulations, by the City Center Overlay. They want you to stop using it as a contractor's yard. Obviously he was using it as a contractor's yard. Because we were told to please stop using it. They are not fighting the war from the past. What they are attempting to do now is find the best possible use for this property through the ability of your board to grant the variance for it.

Mr. Marcinko asked three times if there was anyone else that wished to speak against the application. There was no one that wished to speak. He then closed the meeting to the public and requested Mr. Tanner to address the board.

Mr. Tanner stated that back in 2002, the proposed use was for a 25, 000 square foot office building. In 2009, there was an application for a special exception which was approved for grading but not for storage and sale of materials. The approval was denied. The approval was appealed in Superior Court. In 2010 the Zoning Enforcement Officer issued a cease and desist order which was appealed to the ZBA. Ultimately this was withdrawn with the understanding that there would be an application for an approvable site plan from Planning and Zoning which was submitted in December 2010 and withdrawn in 2011. There was then a court case that Attny. Spondheimer mentioned that denied it because there was no approval of use predating 2009. There are also two cease and desist orders and there are the minutes from Planning and Zoning meeting from the May 18, 2009 where the applicant acknowledged that he's been using the property without zoning permission. There was never a use there and what they are asking for tonight is to ignore Section 260.3.5 which does not allow the board to grant such a variance that is prohibited already in another section. He then submitted some photos of how the property was kept at the time that they went to make that statement. (He then submitted some photos of the property.)

Mrs. Gagnon stated that the definition that they have used for a hardship is that it has to do with the size, shape or contour of the land. It does not have to do with exceptions from our regulations.

Mrs. Degnan stated that the hardship is because of the property.

Mr. Marcinko stated that is where he is leaning more to speaking with Corporation Council regarding this. He is unclear as to whether or not the board has the authority to move on this for the purpose of if it is part of the board's decision. He understands that there are certain regulations that can be varied. He would be hesitant only because of all of the information that is

before the board. He is not so clear as far as the specifics. For the most part, the hardship is because of the property. This application is in regard to the use of the property. Mrs. Degnan stated, therefore it doesn't qualify as one of their hardships. So… Mr. Marcinko stated that he would like a letter from Corporation Council stating whether or not this is something that should be before the board. Mr. Marcinko stated that he understands that Mr. Tice, from the outpouring of support alone, is a nice guy, but if Mr. Tice were to sell the property in 10 years, the decision of the board is based on the property alone, not the owner. The Board has to base their decisions on the future. Mr. Jaumann stated that he agrees that the board needs further guidance from Corporation Council regarding this issue specifically because section 260.3.5 specifically prohibits the board from doing certain things and he feels that they need a little more guidance to see if they even have the authority to grant a variance in this particular case. Mr. Marcinko stated that he feels that the board should table the application until the next meeting so that Corporation Council can research the issues that the board has concerns about.

Mr. Jauman made a motion to table the variance. Mrs. Degnan seconded the motion.

Roll Call:

Peter Marcinko	yes
Claudia Degnan	yes
Laura Gagnon	no
Nicolas Gentile III	Absent
Joe Jaumann	yes
John Sanza	Absent
John Erlingheuser	Absent

3 Yes, 1 No
The motion did not pass.

Mrs. Gagnon stated that the board has had such a difficult time getting the boards members to make the meetings in the first place. She would not be happy if the time limit were to run out because there was the lack of a quorum.

Mr. Marcinko stated that he understands how she feels. Mr. Jaumann stated that he is hesitant to act upon this variance because he is afraid that it will end up in court unless they have guidance from council. Mrs. Degnan stated that she just can't see what the hardship is. Mr. Marcinko questioned, if the board was not able to act on the application, then why did it? If this is something that slipped through the cracks, and they are not supposed to act on it, he doesn't want to do so. This is why he is looking for guidance from Corporation Council.

Attny. Spondheimer suggested that since there are three lawyers present, maybe they can discuss this and come to a decision. Mr. Marcinko stated that he appreciates the offer, but the meeting is closed to the public.

Mr. Jauman made a motion to table the variance. Mrs. Degnan seconded the motion.

Roll Call:

Peter Marcinko	yes
Claudia Degnan	yes
Laura Gagnon	no
Nicolas Gentile III	Absent
Joe Jaumann	yes
John Sanza	Absent
John Erlingheuser	Absent

3 Yes, 1 No
The motion did not pass.

Mrs. Gagnon stated that it is a very difficult situation. Mrs. Degnan stated which is why they need guidance. Mrs. Gagnon doesn't feel that the application meets the definition of a hardship. Secondly, she is afraid of not having a quorum for the next meeting. Mrs. Degnan stated that they have to rule based on what is before the board, not on what is happening or has happened with the board in the past.

Mr. Jaumann stated that the concern is what the regulation itself says and the language is specifically why they need direction from Corporation Council. 260.3.5 says "Therefore under no circumstances shall the Board of Appeals grant a variance to permit a use not generally permitted in the district involved or any use expressly or by implication prohibited by the terms of the ordinance in this district."

Mr. Marcinko then stated that another problem is that if they do vote "no" that means that the board accepted the fact that they had the ability to vote on the application and if they don't have the ability to vote on it, then the board voted wrong to begin with, which is again another way for them to get back in court. Mrs. Degnan and Mr. Marcinko both stated that they feel that guidance from Corporation Council is the only option that the board can take at this time.

Mr. Jauman made a motion to table the variance. Mrs. Degnan seconded the motion.

Roll Call:

Peter Marcinko	yes
Claudia Degnan	yes
Laura Gagnon	yes
Nicolas Gentile III	Absent
Joe Jaumann	yes
John Sanza	Absent
John Erlingheuser	Absent

4 yes
The motion passed.

Attny. Boath requested that the audio tapes be available or could be transcribed. He added that if necessary he will pay for the transcription. The Secretary stated that there is a small section that did not record but most of the transcripts are good.

Mr. Marcinko asked if there was anything further that needed to come before the board. Mrs. Sardinha stated that the board has to adopt the meeting schedule for the year.

Mrs. Degnan made a motion to approve the schedule. The motion was seconded by Mr. Jaumann. All were in favor of the motion.

Mr. Marcinko stated that he would like a letter to be sent to Corporation Council regarding the issues that the board needed clarification.

There was nothing further to come before the board.

Mrs. Degnan made a motion to adjourn. The motion was seconded by Mrs. Gagnon. All were in favor of the motion.

The meeting ended at 8:15.

Respectfully submitted,

Carol Sardinha
Secretary