



# City of Ansonia

253 Main Street  
Ansonia, Connecticut 06401

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**ZONING BOARD OF APPEALS  
REGULAR MONTHLY MEETING, MONDAY, November 9, 2015  
ALDERMANIC CHAMBERS, 7:00 PM**

The Ansonia Zoning Board of Appeals held its regular monthly meeting on Monday, November 9, 2015. The meeting began at 7:08 p.m. and the following applications were acted upon.

Roll Call:

Claudia Degnan	Present
Jeff Gould	Absent
Robert Brown	Present
Diana Maurice	Present
Elizabeth Gaudet	Present
David Williams	Present
Ken Moffat	Present

6 Present, 1 Absent

Also present: City Planner David Elder  
Atty. Greg Stamos

A quorum was present.

Mrs. Degnan declared the meeting open at 7:00. The meeting began with the pledge of allegiance to the flag.

Mrs. Degnan asked for motions to approve the minutes of the previous meeting. Ms. Maurice made a motion to approve the minutes. The motion was seconded by Mr. Brown. All were in favor of the motion.

Mr. Moffatt made a motion to go into executive session to discuss pending litigation. The motion was seconded by Mr. Williams. The Board went into executive session at 7:05.

The Board ended executive session at 7:30. Mrs. Degnan stated for the record that no votes or motions were taken during the executive session.

1. Ansonia M & L Properties LLC, 1 Chestnut Street, Ansonia for property located at 420 Main Street, Ansonia, seeking relief from the Zoning Regulations, Section 222.06 to allow a contractors yard in the City Center Overlay Zone.

Atty. Timothy Lee is here representing Mr. Mark Tice. He is here with Mr. Jim Swift, Project engineer. Atty. Lee stated that this lot was purchased in 1999. At the time, there was environmental contamination on the property. It had been the site of the former Latex Foam Company. There was contamination that originated from the Farrell Company. The site had been vacant for a while before Mr. Tice purchased the land. Mr. Tice worked with the DEP once he acquired the property to clean it up. He brought in fill to level it up to about 4 feet and put a cap on the contaminated portion of the property.

When he purchased the property, it was located in a heavy industrial zone which at the time would have allowed a contractors yard. Mr. Tice approached the town in the mid 1990's and got approved for a contractor's yard at the site. Under zoning laws, that approval lapsed after 5 years, since he didn't build before that, the approval lapsed.

The property lay vacant for a few more years. Mr. Tice attempted to get the approval once again once he got a new tenant. Unfortunately in the mid to late 2000's, the Town Planning and Zoning Commission enacted the City Center Zoning Regulation. The City Center Regulation is an "overlay zone" that was put over the downtown commercial area and included Mr. Tice's property. The City Center District limits certain uses which are not allowed in that District. One of the uses that are not allowed in that district is a contractor's yard.

They are here asking for a variance for the provision of the City Center Zoning Regulation that disallows a contractor's yard. They have a number of hardships which he believes support the application. First is the fact that the application of the City Center to this property. This property was formerly located in a heavy industrial zone. The property is burdened with environmental contamination and this limits the attractiveness of the property to a great number of potential users.

Mr. Swift showed the Board some maps of the property. Atty. Lee indicated that the property has an "odd shape". They are proposing to add a 15, 000 square foot building on one section of the property and add some bays for storage. He then indicated that Mr. Tice owns the adjoining property and has buildings on that property as well. He stated that part of the problem is that he has limited access to the property. There is a traffic light that services the Target building and would have them create a curb cut into the property located at 420 Main Street, which is very difficult to do. The DOT doesn't grant curb cuts in such a location. The only entrance that they have is via Chestnut Street and through the neighboring property to Mr. Tice's other property.

Atty. Lee stated that another hardship is that the property is up against the river, the fact that it's not suitable for commercial uses and the fact that in order to access the property, you would have to go through another commercial property to get to the property in question. The property is not suitable for the uses in the City Center district. It's not suitable for retail. It doesn't have good visibility. It doesn't have good access. The only thing that Mr. Tice has found that is suitable for this property is a contractor's yard.

Mrs. Degnan asked how Mr. Tice is currently using the property now. She was told by Atty. Lee that there is no use now. He explained that there is construction equipment there. Mrs. Degnan then stated that in that case it's a construction yard because he's parking his equipment there. Mr. Williams then stated that he's been storing some rocks and fill on the property as well. Mr. Tice was nodding his head in agreement. Atty. Lee stated that he was not sure how long that had been there. Mr. Tice then stated that they do have

piles of screened top soil and piles of debris. He further stated that if the application is approved, the materials would be used to match the mounds along the property line of Target's property so as to not be seen from Main Street.

Ms. Gaudette asked what the development is going to be used for. Atty. Lee stated that they do not have current tenants. However, they had a former tenant, Yankee Gas. They hope to attract Yankee Gas to return. They would be able to use one of the bays to store some of their roadwork debris until they can recycle it and use it. Atty. Lee stated that Mr. Tice has the other buildings on the adjoining property totally rented out to a number of different uses. Mrs. Degnan stated that one of the tenants is Valley Cab on the adjoining property. Mr. Tice further stated that the southern parcel has three buildings and they are fully occupied: Valley Cab and the other two are cross fit. Valley Cab was not the intended tenant for that property. That property was sold to another entity. "Adell owns 488 Main Street". They also have International Stone, Cross Fitness, he explained that they moved into the old Yankee Gas building and they were doing very well. He stated that there is also a Garden Center located in it as well as Lamotex, a Duct cleaning business and his own office.

Mr. Elder stated that on the application the hardship was that the zone changed after he purchased the property from an industrial zone to a City Center District. Atty. Lee stated that was one of them. Mr. Elder then said that they stated that the property is contaminated and that the unusual configuration of the lot which limits them for using the property for an approved use. Atty. Lee stated that Mr. Elder is correct. Atty. Lee then stated that they have limited frontage along Main Street and the fact that Target has an entrance and a traffic light so it makes it difficult for the DOT to approve another curb cut in that location. Due to that, they are unable to properly access the property through Chestnut Street.

Mr. Elder then asked specifically about the contamination on the property. He asked if when he bought the property was it already underway in remedial ... Mr. Tice stated that when they purchased the property they met with the DEP and DEP stated that the product that is on the property is oil. It leaked out of Farrell's. Farrell's had an above ground tank that leaked a 50 or 80,000 gallon tank of oil which leaked on to this property. There is product beneath the ground. It is not migrating or moving. They have monitoring wells all over the property. He further stated that he bought the property for cash from Myron Yudkin.

Mr. Tice further stated that he would have built the building that he had been approved for back in 2006-2007 but none of the banks would give him any financing on it because of the contamination. That was also before Planning and Zoning instituted the City Center Overlay zone. He further stated that that Main Street used to be located on the west side of the Big Y shopping center. He stated that because of this there are no utilities near the lot except near Chestnut Street. This particular lot is only available for utilities through that area. He indicated that they do have sewer on the lot because the City has an easement through it. There is no way that they can get anything off of Main Street for the lot for services. Mr. Elder stated that Mr. Tice already owns the property on Chestnut Street. Mr. Tice then stated that it's only good to him or he could grant it to someone else. He further stated that it was useless to Mr. Yudkin because he had no access to anything, to anyone's lot. Mr. Elder then stated that Mr. Tice knew that he was going to have some challenges with the site from the, with the contamination when he purchased it. Mr. Tice stated that is why they razed the site. Atty. Lee stated that it had originally been heavy industrial use. Turning the lot into a contractor's yard would have been consistent with the environmental contamination. They

would have had to dig down to have residential. It was only when they enacted the City Center zone that prevented those types of uses that limited the use that really, that the hardship came into play. Mr. Moffitt asked when the City Center plan had the Public Hearing, was Mr. Tice aware of it? Mr. Tice stated that he was not aware of it and he found out later that they don't have to notify property owners. It only has to be posted in the newspaper according to state statute. Mr. Moffitt stated that he was on Planning and Zoning at the time and he indicated that there were about 50 people that attended the hearing. Mr. Tice reiterated that he was never notified. He then stated that it was partially his fault however, he never would have purchased the property if it wasn't the same zone as everything else he owned.

Atty. Lee stated that Mr. Tice had said that before he bought the property there was no use on the property. He had just been using it for his equipment storage, material storage and that type of stuff. Atty. Lee stated that he wasn't able to attract someone.. Mr. Tice stated that he has been working with Ms. O'Malley to try and find someone for the property.

Mr. Elder asked about the curb cut, had Mr. Tice applied and been denied for the curb cut? He was told that it's not an SDC matter because it is not big enough. They applied for a curb cut in one area and they were working with the district to try and figure out some way to get that to work, but they were hemmed in due to the shopping center on one side and Target on the other side. They didn't want to deny it, but they worked with them for about a year and a half. They did "everything they could to just try and make it impossible for us to do it." They never said "no" and they never said "yes" (regarding obtaining a curb cut).

Mrs. Degnan asked if anyone else had any other questions. Mr. Elder asked if they had ever thought about merging the two parcels. Mr. Tice stated that his former attorney had advised him to form M & L Properties because of the contamination of the site and to keep it separate from his other sites. The other sites are already cleaned and not contaminated. That is why it's separated even though was all one zone.

Mr. Williams asked if this was going to be a contractor's yard, what size trucks would be accessing Main Street? He was told that it would be the same size trucks that are currently accessing Main Street now. Mr. Williams then asked if there were going to be more trucks than there are currently. He was told that there would not be an increase in the number of vehicles. If Yankee Gas were to return there would be an additional 35 vans or trucks. They would include a tri- axel, single axel and a few trailers. Mrs. Degnan then asked if it would only be Mr. Tice's vehicles hauling in or out. Mr. Tice stated that they would only be coming in at the end of the day to bring materials back or have to load up in the morning. Trucks coming in and out of the site are not going to happen unless he gets FedEx as Rental Company that rents the building. In that case, he would have more trucks. Atty. Lee stated that the location is too small to have a large trucking company in that location. As it is, we only have a few areas that they can tuck trucks and trailers in. They do not have a large area to work with. Mr. Williams then asked how much of an increase of traffic would cause on the South Main Street side. He further stated that you would get traffic from a company like Yankee Gas back and forth.

Mrs. Degnan asked if there were any further questions. There were no further questions. Mrs. Degnan then asked if there was anyone that wished to speak in favor of the application.

Mr. Tom Maffeo, 7 Ford Road stated that he wanted to thank all of the members of the Board for their time and service to the city. He then stated that his company Lamotex has been a tenant of Mr. Tice's for the

past 15 years. He stated that Mr. Tice and his brother are excellent landlords. They do what they say; they have a quality building there. It looks as good today as the day it was built. They were attracted to this location because they do have companies that come in from out of state and out of town to visit. They are very proud to be able to say to come and visit at their location because the facilities there “look so wonderful”. He believes that if anyone could make this parcel of land work for the city of Ansonia, they believe that Mr. Tice could do it. It’s a very tight and narrow property. It’s very restricted. It’s a good use for the city and Mr. Tice. It could be a plus for us.

Mrs. Degnan asked three times if there was anyone else that wished to speak in favor of the application. There was none. Mrs. Degnan then asked if anyone wished to speak against the application.

Mr. Randolph Carroll, 410 4<sup>th</sup> Street, stated that he served on the Inland Wetlands and the Conservation Commission. He stated that this is a contaminated parcel. He asked if he had a copy of the environmental report. He explained that he is asking about the clean-up report. Mrs. Degnan stated that this board does not have that document. He then stated that he attended the City Center planning meetings. He further stated that there were public hearings. This had been on the agenda. He further stated that this does not conform to the city plan at all. The trucks that would be coming in and out will be going down through Main Street. It’s in a pedestrian zone. There is a big intersection at this location with a crosswalks. He asked if the application is filed with the maps and the application. He stated that he went to the Land Use office and requested to look at the application and the map and he was told that they don’t have a copy of the map. Mrs. Degnan stated that they have new personnel in the Land Use office and they are moving things around and she stated that there is some confusion regarding where the records are to be kept. Mr. Elder stated that this map does not have to be filed in the Town Clerks office. The agenda has to be filed in the Town Clerks Office. The application and the maps do not have to be filed there. Mr. Carroll reiterated that he is concerned that this application does not meet the city center plan, there will be an increase in trucks coming in and out of that area, there will be an increase in traffic in that area. He also believes that these vehicles will increase the problems with the traffic flow in the south Main Street area which already has problems; this will only make it worse. It will be dangerous with pedestrians. It’s just not conforming to the Zoning regulations.

Mrs. Degnan asked three times if there was anyone else that wished to speak against the application. There was none.

Mr. Moffatt made a motion to close the Public Hearing. The motion was seconded by Mr. Williams. All were in favor of the motion.

Mr. Elder stated that he did look at the city center zone and its encouraging professional offices, restaurants retail use. He also looked at the prohibited uses one of them is building contractors and subcontractor’s yards. Also, if this had been a non-conforming use, registration is required in the Town and City Clerk’s Office. This was not done. According to the application as stated the hardship is that the zone was changed after they purchased the property and before they were able to use it as they had been approved to do. He stated that this does happen. The parcel is oddly shaped. The applicant has the opportunity due to the fact that he owns the abutting property, to have access to the property. There is environmental contamination. He does not know the extent of the contamination. He does not have a copy of the report, but he is aware of the fact that the applicant was already aware of that when he purchased the property.

That is his assessment of the regulations of the permitted uses and the prohibited uses. They are contained on pages 21.2 and 21.3 of the zoning regulations. He doesn't have anything else he would like to add at this time. Mr. Elder stated that the board doesn't have to act on the application at this time. They could vote to postpone the application until the December meeting, but they cannot reopen the Public Hearing without additional notice. They can have additional limited discussion with the applicant, but they cannot have any further public comment. The Board can ask questions about anything that was introduced today to the applicant. No additional information can be entered.

Mrs. Degnan then asked for motions.

Ms. Maurice made a motion to table the application until the December 14<sup>th</sup> meeting. The motion was seconded by Mr. Williams. All were in favor of the motion.

Mrs. Sardinha introduced the proposed meeting schedule for 2016. She requested that the members review the schedule and vote on accepting the schedule or not accepting the schedule.

Ms. Gaudette made a motion to approve the schedule as presented. Mr. Brown seconded the motion. All were in favor of the motion.

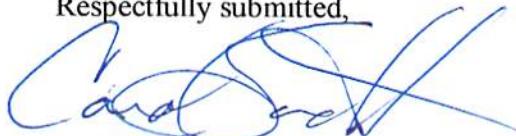
Mrs. Degnan stated that Mrs. Sardinha's job duties have changed and she is no longer responsible for putting together the packets that are sent to the members and sending them out. They are also moving around where the records are being kept so members of the public have complained about not being able to access the applications or the maps. The map Mr. Carroll was referring during the meeting had been filed in the Town Clerks office when the application was submitted. (Secretaries note: the map and application had not been removed from that location since it had been placed in the filing cabinet in the Town Clerk's office and is still located there.)

Mrs. Degnan asked if the members received the court's ruling regarding the property located on the corner of Hill and Spring. The judge upheld the ZBA's decision.

There was no other business to come before the board. Mrs. Degnan asked for motions to adjourn. Ms. Maurice made a motion to adjourn. Mr. Moffatt seconded the motion. All were in favor of the motion.

The meeting ended at 8:15.

Respectfully submitted,



Carol Sardinha  
Secretary