

NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT

RE: 601-603 ORANGE STREET MBP: 212-0369-06000, 591 ORANGE STREET, 355 HUMPHREY STREET, Special Exception and Variances to expand and existing neighborhood convenience use and to permit off site parking in a RM-2 zone (Owner: PTR, LLC. Applicant: Anthony v. Avallone, 10-35-V, 10-36-S).

REPORT: 1439-18

ADVICE: Special Exception: Denial

Variances: Denial

BACKGROUND

Anthony Avallone, on behalf of Nica's Market, seeks a Special Exception, and associated variances, to expand a neighborhood convenience use (grocery/deli) in a RM-2 zone.

Zoning History:

- 86-102-V. Granted. Dimensional variances.
- 03-41-S; 03-42-V. Granted. Use Variance for whole pizza sales & Special Exception for limited outdoor seating from May 15th to October 15th.
- 05-90-V. Granted. Use Variance to permit a parking lot at 611 Orange Street in support of adjacent business at 601 Orange Street.
- 05-90-V & 06-76-V. Granted. Variance to arrange parking into a double row of 15 spaces subject to site plan review by CPC (1385-11, attached).

Compliance with Prior Approvals:

03-41-S; 03-41-V:

- *May 2004, 1-year review: No record of compliance.*
- *Food license to be filed with BZA: No record of compliance.*
- *Seating shall be 2 tables of 4 seats each: Not in compliance. On a site visit March 24, 2010 staff counted 12 tables of 4 seats each.*
- *Outdoor seating permitted between May 15th – October 15th. Not in compliance. Outdoor seating in place on March 24th.*

05-90-V & 06-76-V:

- *15 parking spaces consented to by applicant: Not in compliance. On a site visit April 1, 2010 staff counted 19 parking spaces on site. 18 spaces are shown on submitted site plan.*
- *611 Orange St. permitted maximum 3 dwelling units. *Certificate of Occupancy #1297, dated August 19, 1963 approved five dwelling units: 2 in the basement, 1 each on 1st, 2nd & 3rd floors. Assessor's record indicates 6 dwelling units. The density may be out of compliance with the Certificate of Occupancy.*
- *Curb cut in front of 601 shall be closed off. Curb cut not closed off, meaning a new curb has not been installed, but three ornamental trees planted in city planting strip. No record of tree species being approved by city officials.*
- *Parking lot to be screened according to Section 29 standards. Not in compliance.*

CPC 1385-11. Parking lot site plan approval.

- *Conditions of Site Plan Approval. Not in compliance.*

At the BZA hearing of April 13, 2010, Mr. Avallone presented the proposal explaining the Variance and Special Exception requests in that order. He said the variances were needed because the lot and building are both pre-existing nonconforming and that any addition would require zoning relief.

The first floor addition included expanded retail and kitchen space. A second story was to have a larger office, seating for 12 persons and a covered mechanical room. A small open area facing the street was not going to be used for business purposes and would remain a roof.

As to the hardship Mr. Avallone stated that the nature of neighborhood convenience uses have changed over the years but the zoning regulations have not moved along with that changing nature and are thus obsolete. In addition he stated the store isles are narrow causing congestion problems for customers shopping and/or waiting for food orders and that customers have asked for indoor seating to shelter them from the rain. Mr. Sabino (owner) added the building had been pieced together over the years and could not accommodate his clientele. A petition supporting the proposal with approximately 2,000 names was submitted.

As to traffic the business sees 1-2 small delivery trucks a day, usually in the morning or late afternoon and 1-2 large delivery trucks per week. No significant traffic problems were anticipated because the proposal also included an off site parking decongestion plan.

The parking plan was for 9 spaces at 591 Orange Street (a condominium), accessed via a small separate driveway sized lot off of Humphrey Street (361 Humphrey St. owned by Frank A. Beckley as shown on the Assessor's records). A portion of 355 Humphrey Street (7th Day Adventist Church) will also be used to access the parking area.

Mr. Maturo, who was stated to be the owner of 591 Orange Street, agreed to the parking plan and offered that Pastor Stevens of 7th Day Adventist Church (355 Humphrey) had also agreed. However no written agreement, lease or easement was submitted.

** The Commission notes that Assessor's records do not show Mr. Maturo as one of the owners of the condominiums. Instead it shows that 591 Orange Street, LLC is the owner of the property. Mr. Maturo might be the owner of a parcel of land that does not show up on Assessor's records. If so, this parcel of land, which is otherwise landlocked and nonconforming, may not have been legally created.*

Zoning Director Thomas Talbot stated the proposed parking plan was not properly scaled and was unworkable because it could not meet the parking regulations and that the overall proposal exceeded the scope of a neighborhood convenience use. Mr. Avallone responded that the expansion was convenient to patrons of the market.

No persons spoke in favor, 5 persons spoke in opposition.

Gregory Gallo of the Pellegrino Law Firm stated the zoning regulations read that nonconformities are to be abolished, not expanded, the existing building already exceeds lot coverage and that the proposal violates many of the Building Requirements of the district. Mr. Gallo pointed out the market has not complied with many conditions of previous zoning and site plan approvals. He also stated that a hardship had not been demonstrated.

Thomas Morgillo, owner of 595-597 Orange Street (the property directly abutting Nica's Market), pointed out that his building is only a few feet from the market and that the second floor addition would crowd his building possibly making one unit unrentable. He complained about the loud sound of the existing coolers and mechanicals and the ongoing trash removal problem.

Douglas Kysar, 591 Orange Street, LLC Condominium Association President, said the land proposed for parking was supposed to be turned over to the condominium if not developed into a separate unit. He was also afraid that persons would trespass through the condominium on their way to the market.

Rachel Fields, condominium owner, said the proposed parking would be disruptive and encourage trespassing and that trespassers would be walking directly past bedroom windows.

Gregory Cohen, condominium owner, agreed with the others about trespassing and added a safety concern because persons would be in a position to break into the condominium from the rear.

PLANNING CONSIDERATIONS

Proposed Site Plan:

The submitted site plan shows the existing market with the proposed expansion to the rear of the building. Eighteen parking spaces, including one handicapped space are shown in the parking lot at #611 Orange St. The proposed addition will be five feet from the east lot line, built on the south lot line and between ½ foot and 1-1/2 feet from the north lot line. An A-2 survey was submitted the date of the public hearing. This survey showed 19 parking spaces.

Floor Plan:

The floor plan notes indicate the following:

- The existing market has 2,446 s.f. of sales/service area and 410 sq.ft. of office space on a small second floor.
- On the first floor the applicant proposes to add 740 s.f. of kitchen space, 900 sq.ft. of market space, 114 s.f. for stairwells and 600 sq.ft. for new coolers. In total 2,354 s.f. will be added to the first floor.
- On the second floor the proposal is for 1,028 s.f. of office space, 532 sq.ft. for indoor seating and 338 s.f. for restrooms, corridors and storage. In total, 1,898 s.f. will be added to the second floor.

** An open area on the second floor measuring 15'x36'-6" (the same dimension as the indoor seating) is shown just west of the indoor seating at the front of the building. The applicant's agent informed City Plan Department staff that this area would not be used. It will remain a roof.*

- A large covered mechanical room is shown on the rear of the building above the coolers.

Variances:

Section 14(a)(1) Relating to Building Requirements (yards, height, and coverage): These are required because the building and lot are both nonconforming. Adding anything to the existing structure of any size requires zoning relief.

However, the house abutting to the south (595-597 Orange St.) is approximately 1-1/2 feet from the existing building. Adding height and depth to Nica's would compound an already bad situation by restricting, to an even greater degree, the ability of light and air to circulate between the two buildings. Plus, the newly expanded market would almost literally be in the living room of the abutting house.

Although the lot and building both pre-date current zoning, an existing condition does not automatically create a hardship. In this case expanding the building would create a serious crowding problem with the abutting house. The Commission advises the requested setback, height and lot coverage variances have not been justified.

Section 31(c)(3): The applicant seeks to alter a structure that would increase an existing nonconformity. The application reads that the purpose of the expansion is to serve existing customers, not draw more into the store, but that any increase in the customer base would be minimal.

The existing building has 2,856 square feet of floor area. The proposal would add 4,252 square feet of floor space including a partial second floor. The existing building nonconformity would be greatly expanded.

The Commission advises that if the existing customer base is large enough to justify a significant expansion of the building to serve them, then, in light of the lot constraints, the business has outgrown the site. The Commission reminds the Board that the RM-2 zone permits *convenience* uses, not full service uses. Nica's is transforming into something more than a convenience use; it is outgrowing the *type* of business the zone permits.

Section 31(b)(13): A maximum of 15 indoor and outdoor seats (combined) is permitted. A previous approval (03-41-S) permitted 8 seasonal (May 15th to October 15th) *outdoor* seats around 2 tables. The submitted plan shows 12 new *indoor* seats, 5 more *total seats* than this regulation permits.

When staff visited the site on March 24, 2010, 12 tables with 4 seats around each table (48 total seats) were observed on the outside patio. The number of tables and seats greatly exceed what previous zoning permitted. Also, the fact that those tables and seats were available for customers prior to May 15th was a violation of the same relief.

Section 31(d)(2): This regulation limits the sales/service area of neighborhood convenience uses to 1,500 s.f. The current sales/service area of approximately 2,446 s.f. is a pre-existing condition. The applicant seeks to expand this by approximately 1,432 s.f. (900 sq.ft. 1st fl. sales area plus 532 sq.ft. 2nd fl. dining). When Nica's Market started operations it already exceeded the maximum sales area by 946 s.f. An expansion is not justified.

Special Exceptions:

Section 31(d):

In order to expand a convenience use the provisions of Section 31(d)(1) must be satisfied.

- A finding must be made that space for such use is not available in nearby business zones. A portion of State Street zoned BA is located within 1,500 feet. Although the applicant is looking to expand, not open a second store, an expansion of the magnitude contemplated could amount to a second store. There is nothing in the application to demonstrate that space is not available in the nearby BA zone.
- That such use is necessary to serve the immediate neighborhood taking into consideration the character of the neighborhood, density, shopping habits of residents, availability of public/private transportation. The Commission notes a number of businesses very much like the applicant's are located up and down Orange Street. These include Orange Street Market (717 Orange St.), Romeo & Caesar's (771 Orange St.), Café Bravo (794 Orange St.), Lulu's Café (49 Cottage St.) and Café Romeo (528 Orange St.). This neighborhood appears to have reached a saturation point in the number of grocery/markets operating. It is already well served by the five existing markets.
- Clustering of two or more diverse types is advantageous but the existence nearby of the same type of use requires more extensive showing of necessity. Although Nica's puts itself forward as a market, in reality it is operating as a market/restaurant, (there are about 48 seats on the patio). While the regulations consider clustering of diverse uses in a positive light this is conditioned on there not being nearby uses of the same type. Several blocks up the street there are two other similar uses; a market/deli just like the applicant's at 771 Orange St. (Romeo & Caesar's) and Café Bravo (a restaurant) at 794 Orange St. In addition, Café Romeo is now operating at 528 Orange Street. The Commission advises a reasonable number of market/deli/restaurant type uses already exist. An expansion of the present use absent a more extensive showing of necessity is not justified in light of these facts.

Section 63(d):

- Nature of the Proposed Site: 601 Orange Street is narrow, but fairly deep. The existing building is built virtually lot line to lot line. Presently, there is approximately 48' between the building and the rear lot line. The proposal expands the existing building to five feet of the rear lot line. The south side yard remains at zero with the north side yard between 1-2 feet. Lot coverage will increase from approximately 52% of the lot to approximately 85% of the lot. If built as proposed the building will almost cover the entire lot displacing an existing loading area.
- Resulting Traffic Patterns: Orange Street runs from the base of East Rock to George Street in downtown. Upper Orange Street, where the market is located, is a busy street in which auto, bus, and bicycle traffic moves back and forth from downtown. Staff has observed delivery trucks parking on Orange Street in front of the market. These trucks obstruct traffic creating dangerous conflict points.

One of the reasons for granting the previous variance for the parking lot was to move some of the delivery trucks into the parking lot thus making Orange Street a little safer. That rationale is not proving itself to be true. Observational evidence does not indicate that delivery trucks use the parking lot on a regular basis.

An increase in retail space and addition of indoor seating (to the already extensive and illegal outdoor seating) can only exacerbate pedestrian/vehicular/bicycle safety concerns and complicate existing traffic problems.

- Nature of the Surrounding Area: From Trumbull Street in the south to Mitchell Street in the north Orange Street is a RM-2 (High Middle Density residential) zone. A BA (General Business) zone is located to the east on State Street. Between Trumbull Street and Canner Street there are approximately 24 parcels classed commercial by the Assessor. The area is under a constant threat to its residential character. An increase in traffic or clientele to this already busy store may push the character of the area towards business and away from residential.
- Proximity to Public Buildings: There are no nearby public buildings.
- The Comprehensive Plan: The Comprehensive Plan, in Section II.26, advises this area remain medium-density residential, characterized as lots having approximately 6,000 s.f. with development designed in a manner compatible with the prevailing neighborhood character.

A new proposed land use category found in Section II.27 is called "Neighborhood Mixed Use". This is characterized as a mix of traditional housing and sporadic commercial development. This area

of Orange Street can be identified as such right now. But the Plan of Development does not advise this portion of Orange Street be reclassified "Neighborhood Mixed Use". Clearly the plan seeks to arrest any further commercial development of Orange Street by proposing it remain medium-density residential. Therefore, this proposal runs counter to the advice of the Comprehensive Plan.

Off Site Parking (Sec. 14(b):

Three parcels under separate ownership are involved in the off site parking proposal; MBP: 212-0369-06000 (a.k.a. 361 Humphrey St.); 591 Orange St; 355 Humphrey St. as shown on the accompanying map. An agreement between these three parties and Nica's was not included in the application.

The submitted plan (scaled as 1"=20', but not quite accurate) shows a single 10' wide entry over 361 Humphrey (owned by Mr. Beckley) running for 75', then over land owned by 591 Orange St. LLC for another 60', then onto land owned by the LLC located behind the church. The Parking area measures approximately 90'x21'.

The plan shows the parking area in a hatched pattern, but the spaces are not marked out. Also, this area is shown to be a separate lot via the inclusion of an 11' lot line on the northeast corner of 591 Orange Street not shown on the city's GIS. The application contains no information to explain this confusion. The geography of the area makes it impossible to access the parking area without trespassing onto church property.

The application does not contain any information as to how, or even if, 591 Orange St. LLC is using this area. Absent any information regarding existing or pending easements or the possibility of joint-use parking (requiring further zoning relief) it is impossible to assess the merits of this proposal.

Additional Considerations

Based on the information provided in this report it is apparent that any hardship here is completely regulation based as opposed to land based. This application represents a request to the Board for permission to operate outside of nearly all the standards of Section 31 of the New Haven Zoning Ordinance. It explicitly bases this request upon a desire to meet a public need, however, examination of public need in slightly broader terms means looking at the entire concept of neighborhood convenience uses and how this application relates to that concept.

Generally, the neighborhood convenience use regulation is intended to function as a means by which residential neighborhoods can have internal access to limited commercial services in a manner that minimizes residential quality of life trade-offs. The chief means by which to achieve this is through regulatory limits on the size and scope of such businesses. In addition to minimizing traffic, noise and visual impacts this size limitation also serves to increase the diversity of services available to residents as well as opportunities for the small business community. This proposal runs counter to all of these intended effects.

It should be recognized that there is a sense of near inevitability about applications like this. Successful small service-based businesses that through hard work and good business practice are able to grow significantly are naturally averse to moving away from the client base that made them successful. The rational business-based response is to stay and grow in place. Unfortunately, in a largely residential neighborhood such as this, as the scale of these individual commercial uses increase beyond permitted levels it will be increasingly at the expense of residential quality of life.

ADVICE

The Commission finds the applicant not in compliance with the conditions of approval of previous zoning relief and site plan approval. The Variance and Special Exception requests of the current application do not satisfy requirements of the zoning regulations: The Commission recommends denial for the following reasons:

The Applicant has not complied with the following conditions of previous approvals:

03-41-S; 03-41-V: (*Conditions of Approval in italics*).

- *The applicant must file for May 2004 meeting for, 1-year review:* **Not in compliance.**
- *Food license from the New Haven Health Department for on site consumption of food to be filed with BZA:* **Not in compliance.**
- *Seating shall be 2 tables of 4 seats each:* **Not in compliance. On a site visit March 24, 2010 staff counted 12 tables of 4 seats each.**
- *Outdoor seating permitted between May 15th – October 15th.* **Not in compliance. Outdoor seating in place on March 24th.**

05-90-V & 06-76-V:

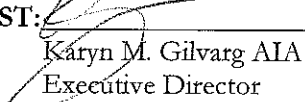
- *15 parking spaces consented to by applicant as of May 2, 2006 as submitted on site plan March 20, 2006:* **Not in compliance. On a site visit April 1, 2010 staff counted 19 parking spaces on site. 18 spaces are shown on submitted site plan.**
- *Curb cut in front of 601 shall be closed off.* **Not in compliance. Curb cut not closed off. No record of tree species being approved by city officials.**
- *Parking lot to be screened according to Section 29 standards.* **Not in compliance.**

Reasons for denial of current application:

- The existing building currently exceeds permitted lot coverage, height and side yard setbacks. The proposed addition would greatly increase these nonconformities. A hardship for these variances has not been demonstrated.
- The abutting house at #595-597 Orange Street is approximately 1-1/2 feet from the subject property. Adding additional building area and height would diminish light and air circulation between the two buildings.
- Extending the building to within 5 feet of the rear lot line would displace a loading/dumpster area. Its relocation is not shown on the site plan.
- A previous approval (03-41-S & 03-42-V) permitted 8 seasonal outdoor seats and 2 tables from May 15th to October 15th. A site visit on March 24, 2010 (51 days prior to the approved date) showed the market in violation of that previous relief. On that day 12 tables and 48 seats were outside on the front patio. Permitting indoor seating in light of the prevailing violation is not warranted.

- The existing floor area for sales already exceeds what the regulation permits. This proposal would significantly add to that existing nonconformity.
- The applicant did not demonstrate an increase of this use was needed to serve the immediate neighborhood, especially when many similar uses already serve the neighborhood.
- An increase in the size of the use will increase deliveries to the store adding to an already hazardous situation for motorists, pedestrians and bicyclists.
- The proposed off site parking does not include an easement or lease between all the parties.

ADOPTED: April 21, 2010
Edward Mattison
Chair

ATTEST: 
Karyn M. Gilvarg AIA
Executive Director