

# NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT

**RE:** 10 WEST STREET (MBP: 302-0063-00400), Special Exception for a neighborhood convenience use (ice cream/candy store) in a RM-2 zone (Owner/Applicant: Kelly B. Moye, BZA #10-52-S)

**REPORT** 1441-11

**ADVICE:** Denial

## PRINCIPAL APPLICABLE REGULATIONS

**Section 31(d). Convenience Goods and Services** . New convenience goods and services uses may be established and existing uses expanded only by Special Exception.

**Section 63(d)Special Exceptions**. The development and execution of a comprehensive zoning ordinance is based upon the division of the city into districts, within which the use of land and structures and the bulk and location of structures in relation to the land are substantially uniform. It is recognized, however, that there are certain uses and features which, because of their unique characteristics, cannot be distinctly classified or regulated in a particular district or districts, without consideration, in each case, of the impact of such uses and features upon neighboring uses and the surrounding area, compared with the public need for them at particular locations. Such uses and features are therefore treated as special exceptions.

## ZONING HISTORY:

Information available from Building Department files indicate that the space in question may have been used as some type of store up to the early 1950's. Later building permits issued (up to the late 1980's) refer to the structure as a three family dwelling.

## BACKGROUND and ZONING INFORMATION

Applicant seeks a Special Exception, for a small neighborhood convenience use (ice cream/candy shop) in a RM-2 zone.

### Proposed Site Plan:

The submitted site plan (a copy of a portion of a City of New Haven Tax Map) shows a 3600sq.ft. structure on a .09 acre. parcel. The front of the structure is set back no more than two or three feet back from the street line. There is no available off street parking on the property; however, as a retail use of under 600sq.ft. there is no actual parking requirement for this proposal. The existing structure contains three residential dwelling units, and a first floor Family Day Care facility.

### Floor Plan:

The floor plan apparently shows a store area of less than 400 sq.ft. The storefront will be located in the southwest portion of the first floor. The presence of a microwave oven, sink and refrigerator indicate that food will be prepared in the store. It is not clear as to whether or not secondary access will be provided. Customer service will be either at an interior counter or through an exterior window. The window opens up directly on the City sidewalk and would require its use by customers.

Present use of the proposed store space cannot be determined from submitted information. There is also no information concerning hours of operation.

## SPECIAL EXCEPTION CONSIDERATIONS

### Section 31 Convenience Goods and Services

New uses of the above types may be established, and existing uses expanded, only by special exception under subsection 63(d) of this ordinance, subject to the following applicable standards:

*(1) There must be a finding by the City Plan Commission that space for such a use is not available in nearby areas which are zoned for business, and that such new use or expansion of an existing use is necessary to serve the immediate neighborhood adequately with convenience goods or services, giving due consideration, among other things, to the character of the neighborhood, the density of development, the shopping habits of neighborhood residents, and the availability of public and private transportation. The clustering of two or more uses of diverse types, rather than scattering of such uses, shall generally be regarded as an advantage, but the existence nearby of a use of the same type as one which is proposed shall require a more extensive showing of necessity for the proposed use .*

*As a general rule, clustering of uses shall not exceed 10,000 square feet of net floor area for all uses in a cluster.*

This property is located in an RM-2 zoning district. The nearest non-residential district is located approximately 800 feet away from this property. There are a number of existing non-conforming convenience uses located within 200 feet of this property, all in the immediate vicinity of the intersection of Washington Avenue, and West, Hurlburt and Putnam Streets.

*(2) The net floor area used for sales or other business purposes in any establishment (excluding space used for storage and similar purposes) shall not exceed 1,500 square feet.*

The application as submitted appears to show a space of under 400sq.ft. in area.

*(5) No business shall be conducted, and no goods, materials or equipment shall be stored, except in a fully enclosed building.*

Compliance with this provision is difficult to ascertain based on the application materials provided

*(7) The exterior presentation and design of storefront(s) shall be submitted as part of the special exception review. The following shall not be allowed on the exterior of a building or grounds: telephones; on-premises or off-premises signs, banners, or temporary advertising materials except those permitted pursuant to section 29(a)(9) [these regulations]; security gates covering window and door openings; and vending machines.*

Recent photos of the front of the building indicate a security gate attached to the front door. No proposed elevations have been submitted to the Board.

*(8) The ground-floor storefront shall consist, at a minimum, 50% non-opaque visible windows.*

Current window coverage appears to be in the 30-40% range.

### **Section 63(d)(3) General Special Exception Considerations**

*Special exceptions shall be granted only where the Board of Zoning Appeals finds that the proposed use or feature or the proposed extension or substantial alteration of an existing use or feature is in accord with the public convenience and welfare after taking into account, where appropriate:*

*a. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of structures:*

The 3600 sq.ft. structure on the lot currently contains four residential dwelling units. It does not appear as though the store will replace any of these existing units but rather serve as an additional use of the structure.. There is no on-site parking currently existing or proposed for the site. The extremely small size of the proposed store (120 sq.ft.?) makes it difficult to understand how a retail business could not only sustain itself but also offer any meaningful level of service to the surrounding neighborhood. The

*b. The resulting traffic patterns and adequacy of proposed off-street parking and loading;*

The narrowness of the one way street coupled with the absence of off street parking would seem to indicate that on-street parking and loading /unloading issues would be exacerbated and could cause problems for West Street residents.

*c. The nature of the surrounding area and the extent to which the proposed use or feature might impair its present and future development;*

West Street is a local street and due to the physical characteristics of such a street (narrow width, parking on both sides of the street) cannot generally accommodate even smaller commercial operations such as this., especially without on-site parking and loading /unloading spaces. Most neighborhood convenience uses are best located on collector and minor arterial streets, for example the nearby neighborhood convenience uses on Washington Avenue.

*d. The proximity of dwellings, churches, schools, public buildings and other places of public gathering;*

The nearest school, Hill Central, is approximately 600 feet away. This proposed store, however, is located next door to La Primera Iglesia De Dios, an 1,800sq.ft. church.

### **PUBLIC HEARING**

Mr. Moye presented the application. It will be a small candy and ice cream store, along with microwavable food items. It will be open six days a week.

Mr. Kevin MacFarlane, third floor resident of 10 West Street, spoke in favor of the application. He felt that it served a public need.

Ms. Leslie Radcliffe, 20 King Place, Ms. Annie Clark (second floor resident and operator of the first floor daycare) and Pastor Robert MacRae, pastor of the church at 4 West Street, all spoke in opposition. They expressed concerns about congregating and illegal activities that uses of the type proposed often facilitate, and about a commercial establishment on the same floor as a daycare facility. They also pointed out the existence of four nearby stores already addressing the neighborhood's commercial needs.

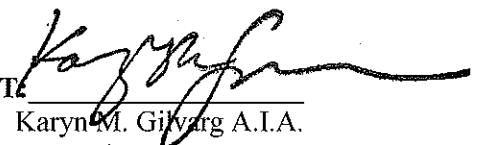
#### **FINDINGS AND RECOMMENDATIONS**

The neighborhood convenience use regulation is intended to function as a means by which residential neighborhoods can have internal access to limited commercial services that meet basic neighborhood needs in a manner that enhances residential quality of life. This application does not appear to serve a need for or represent an enhancement to the neighborhood for the following reasons:

- The proposal does not include required façade plans. In addition, it does not appear as though the front façade contains the minimum 50% building coverage.
- The location of the site on a narrow, one way local street, along with the lack of any on-site parking or loading spaces could create significant traffic and parking issues for nearby residents.
- The two proposed service windows, especially the one located on the front façade, virtually guarantee that most customer activity related to this use will take place directly on and adjacent to the City sidewalk. Any proposal featuring such a probable sustained level of commercial activity on a public sidewalk in a residential area would almost inevitably have some untoward impact on the surrounding neighborhood.
- There are existing businesses on Washington Avenue that to a considerable degree serve the same neighborhood needs as this proposed use. It has not been demonstrated that this proposed use located on this property is necessary to adequately meet the commercial needs of the neighborhood

For all these reasons the Commission advises the proposal is not in accord with the public convenience and welfare and recommends denial.

**ADOPTED:** June 16, 2010  
Edward Mattison  
Chair

**ATTEST:**   
Karyn M. Gilvarg A.I.A.  
Executive Director



