**NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT**

**RE:** **374-380 WHITNEY AVENUE,** Special Exception to permit zero parking spaces where 8 are required and a Use Variance to permit a tavern in a RH-1 zone (Owner: Young H. Park. Applicant: Jason Sobocinski, 1069-V; 10-70-S).

**REPORT:** 1442-19

**ADVICE:** Use Variance: Approval with Conditions
Special Exception: Approval

**BACKGROUND**

Jason Sobocinski seeks a Use Variance to permit a tavern in the RH-1 zone and a Special Exception for zero parking spaces for same. "Tavern" is a defined term within the Liquor Control regulations and a tavern license permits sale of beer and wine only, no hard liquor. Mr. Sobocinski is the proprietor of Caseus, a nearby restaurant (Trumbull and Whitney Ave.) All food will be prepared at Caseus and transported to this location.

PUBLIC HEARING

At the BZA hearing on July 13, 2010, Hank Silverman, the applicant's attorney, presented along with the applicant Jason Sobocinski. Mr. Silverman gave a brief discussion regarding proposed outdoor seating omission from submitted site plans. In the final analysis there will be 22 interior seats with a deficiency of 6 parking spaces, according to the applicant. (The submitted plans show 30 interior seats). An additional plan was submitted at the hearing showing outdoor seating. The applicant stated they were unable to secure off street parking arrangements within a 300' walking distance. A special exception for outdoor seating and additional parking relief could be sought later.

Submitted materials show the tavern will be named Bibere and offer artisanal beer, wine, coffee, tea and house made tonics. A typical menu would be cold plates such as olives, cured meats, raw cheese, bread & butter, pickled vegetables, nut butter & jams, and salads. The tavern will be open Wednesday through Saturday. The hours of operation are not stated in the application. There will be five employees.

Atty. Silverman noted the proposed use is not a negative encroachment into the neighborhood due to the fact the building predates zoning, has housed several different retail uses since it was built, and the interior that is the subject of this application is only 860 square feet. In addition, sound deadening material will used within.

The applicant objected to proposed condition # 4 concerning a ban on outdoor seating stating that the neighboring grocery currently enjoys outdoor seating.

Supporting testimony: Eight persons raised hands in favor of the application. Heather Gerken spoke and made reference to the submitted 76-signature petition and noted her assessment that there is overwhelming tavern support in the neighborhood. The new owner of 299 Lawrence Street, who is moving into New Haven, is pleased that the tavern is behind his house and noted parking is not a problem given that most homes along Lawrence Street have driveways.

Opposing testimony: A representative of the *Daughters of Isabella* at 375 Whitney Avenue is concerned that truck deliveries may become a liability on Whitney Avenue. She noted that property damage might occur due to those hanging around outside the premises in the evening.. Lastly she noted wine tasting might continue beyond the State liquor store closing of 9:00 p.m. John Lapides, an abutter to the rear on St. Ronan street questioned the hours of operation, as young children in surrounding residences may be disturbed at night by patrons, and he noted the use contradicts the purpose statement of the RH-1 zone. The neighborhood would be changed, as the proposed tavern hours are similar to a bar, and are more extended than the adjoining liquor or grocery store hours. This non-conforming use may later be bought in the future by a more offensive use (i.e. a bar).

Mr. Anthony Cuomo, owner of an apartment building at 401-409 Whitney Avenue said the proposed use is against the City's Plan of Development, is not appropriate to a residential area, will not have adequate parking and will promote noise into the evening hours.

Petitions and letters were submitted for the record.

## PLANNING CONSIDERATIONS

The building at 374-380 Whitney Avenue has housed neighborhood convenience type uses for decades, pre-dating the 1963 adoption of major revisions to the Zoning Ordinance. Assessor's records show the current building dates from 1946. However, the zoning history dates to 1927, indicating there may have been an earlier commercial building on the same site. There are two current uses here: The Wine Thief package store and Manna Food Market. A third storefront that most recently was a beauty salon, now vacant, is the location for the proposed tavern. The Use Variance is necessary because there is no history of any previous eating or drinking establishment at this particular location. The Use Variance will run with the property and is not particular to this operator or this establishment.

Mr. Sobocinski has applied to the state for a Tavern Permit. Section 30-26 of the Connecticut General Statutes defines this as: *"A tavern permit shall allow the retail sale of beer and of cider not exceeding six percent of alcohol by volume and wine to be consumed on the premises of a tavern with or without the sale of food. "Tavern" means a place where beer and wine are sold under a tavern permit. The annual fee for a tavern permit shall be two hundred forty dollars".* Spirits and beer and/or cider exceeding 6% alcohol by volume cannot be sold under a tavern permit.

The adjoining property to the north is quite close to the property line; to the west this property has a deep rear yard, as do the abutting properties on St. Ronan Street., buffering the commercial uses from the residential ones.

While the lot is deep, there is no access to the rear yard, and there is no curb cut in front of the building and therefore there is no off street parking for any of the uses in this building. The Transportation Department notes that on street parking is permitted in the area on Whitney Ave., and that residential parking zones are in effect in the area on side streets and are enforced.

The submitted floor plan scale reads 1 drawing inch = 5 ft. The layout shows a small lounge area with a couch seating two, four benches seating two each, three tables with four seats each, and a consumer bar with eight bar stools. Based on the seating estimated capacity is approximately 30 persons which would require 8 parking spaces. As no exterior seating was shown, no calculation for additional parking requirement was made. A lavatory and kitchen are also shown.

Assessor's information indicates there are two upstairs apartments and 3,557 gross square feet on the entire first floor. The regulations required one parking space for every 200 sq.ft. of sales/service area for retail businesses between 600 and 5,000 square feet. The package store and grocery store combined require approximately 15 parking spaces. The proposed tavern mostly resembles a restaurant. The floor plan submitted at the hearing showed 22 seats, requiring six parking spaces. All together the uses here require about 21 parking spaces. None exist.

The area in front of the businesses measures sixty-four feet wide and about thirty-eight feet deep. There is no curb cut and it doesn't appear that one ever existed. On site parking is not available for any use, nor are there any provisions for off-street loading, and this appears to be a pre-existing condition. Parking is available along Whitney Avenue.

However, the lack of on site parking doesn't seem to have caused problems. The existing grocery and wine store are long standing successful entities. The third space has seen different uses over the years, but that turnover does not seem to be related to a lack of parking because the other uses are larger and successful despite the lack of parking. Since the location seems to work as it is, it is reasonable to assume it will continue to function without parking problems into the future.

<u>Use Variance Considerations:</u>

- *The zoning regulations allow no reasonable use to be make of the property for reasons peculiar to the property and not applicable to the area as a whole.* Assessor's records show the current building dating from 1946, but commercial uses at this site date from about 1927 as evidenced by zoning history, there some commercial uses are pre-existing non-conforming. The ground floor was built for commercial purposes and it is reasonable that a commercial use continue; however the use variance is necessary because there is no history of restaurant or tavern use in the particular storefront which is the subject of this application.

The City has an interest in controlling the location of liquor permits. The type of establishment and type of liquor permit is an important factor in determining suitable locations. In this case the applicant is specifically seeking a tavern permit which does not allow the sale of hard liquor. Furthermore the type of business, as evidenced by the submitted materials, indicates a niche clientele: Patrons were described as those who would favor hard-to-find artisanal drinks, gourmet-style food, and quiet conversation in a very small establishment. This business model will not attract those who prefer going to the larger, noisier, dance and sports themed bars found in the downtown. With residential dwellings upstairs a business that is both small and quiet is very important.

- *The use proposed is the minimum variance necessary in order to allow a reasonable use of the property.* Other businesses of the neighborhood convenience type have come and gone at this location. The proposed business is a departure from the neighborhood type that were located here previously (Laundromat, beauty salon). This change in approach represents a reasonable attempt to find a use that will succeed.

- *The use will not impair the essential character of the area or the objectives of the comprehensive plan of the city.* The proposed business will be located in a very small space, with a small capacity. While the adjacent structures at #372 and 382-4 Whitney are residential much of the immediate area as shown on the included map is classed non-residential:
  - 389 Whitney – Office bldg.
  - 362 Whitney – Commercial
  - 375 Whitney – Non-profit
  - 357 Whitney – Commercial
  - 352 Whitney – Fire Dept.
  - 345 Whitney – Office Bldg.

The proposed use will not impair the character of the area because the immediate surroundings are largely commercial.

The Comprehensive Plan advises the area become Special High-Density Residential, designed to prevent the encroachment of office or commercial uses and inappropriately scaled residential buildings. However, in this instance a new commercial use is not encroaching into the zone where none existed. This location has been used for businesses since at least 1927. This application can accurately be called a continuation of a business use where one has always existed.

Special Exception Considerations:

- *Nature of the Proposed Site:* Assessor's record show the current building dates from 1946. However the zoning record shows that businesses have operated here since 1927. The building was either constructed or remodeled for business use long before the adoption of current zoning. The lack of parking also predates current zoning.

- *Resulting Traffic Patterns:* The proposed use is very small. The Commission doubts a new business with less than 400 square feet and requiring only eight parking spaces will impair traffic on Whitney Avenue.

- *Nature of the Surrounding Area:* The proposed business will be located in a very small space, with a small capacity. Though the adjacent buildings are residential much of the immediate area as shown on the included map is classed non-residential:
  - 389 Whitney – Office bldg.
  - 362 Whitney – Commercial
  - 375 Whitney – Non-profit
  - 357 Whitney – Commercial
  - 352 Whitney – Fire Dept.
  - 345 Whitney – Office bldg.

The proposed use will not impair the character of the area because the immediate surroundings are mixed commercial and residential.

- *Proximity to Public Buildings:* A Fire Department station is located at 352 Whitney Avenue, about 200 feet to the south.

- *The Comprehensive Plan:* The Comprehensive Plan advises the current zoning become Special High Density Residential, a more restrictive zoning designation to prevent the encroachment of office or commercial uses and inappropriately scaled residential buildings. However, in this instance a new commercial use is not encroaching into the zone where none existed. This location has been used for businesses since at least 1927, and the applicant does not propose any increase in the commercial area of the building. . This application can accurately be called a continuation of a business use where one has always existed.

**ADVICE**

**Use Variance:** The Commission advises approval of the Use Variance for the following reasons and with the following conditions:

- The building was constructed circa 1946 for commercial uses on the ground floor continuously since then. Two neighborhood convenience uses were located in this storefront but either failed or moved to other locations. The present application represents a reasonable attempt to find a use that will work in this location.
- The relief sought is the minimum necessary. The applicant is only asking for a tavern permit which permits only allow the sale of wine and beer, not hard liquor. No cooking will be done on premises.
- The proposed use will not impair the character of the immediate area because many other commercial uses are located on this block.

Conditions:

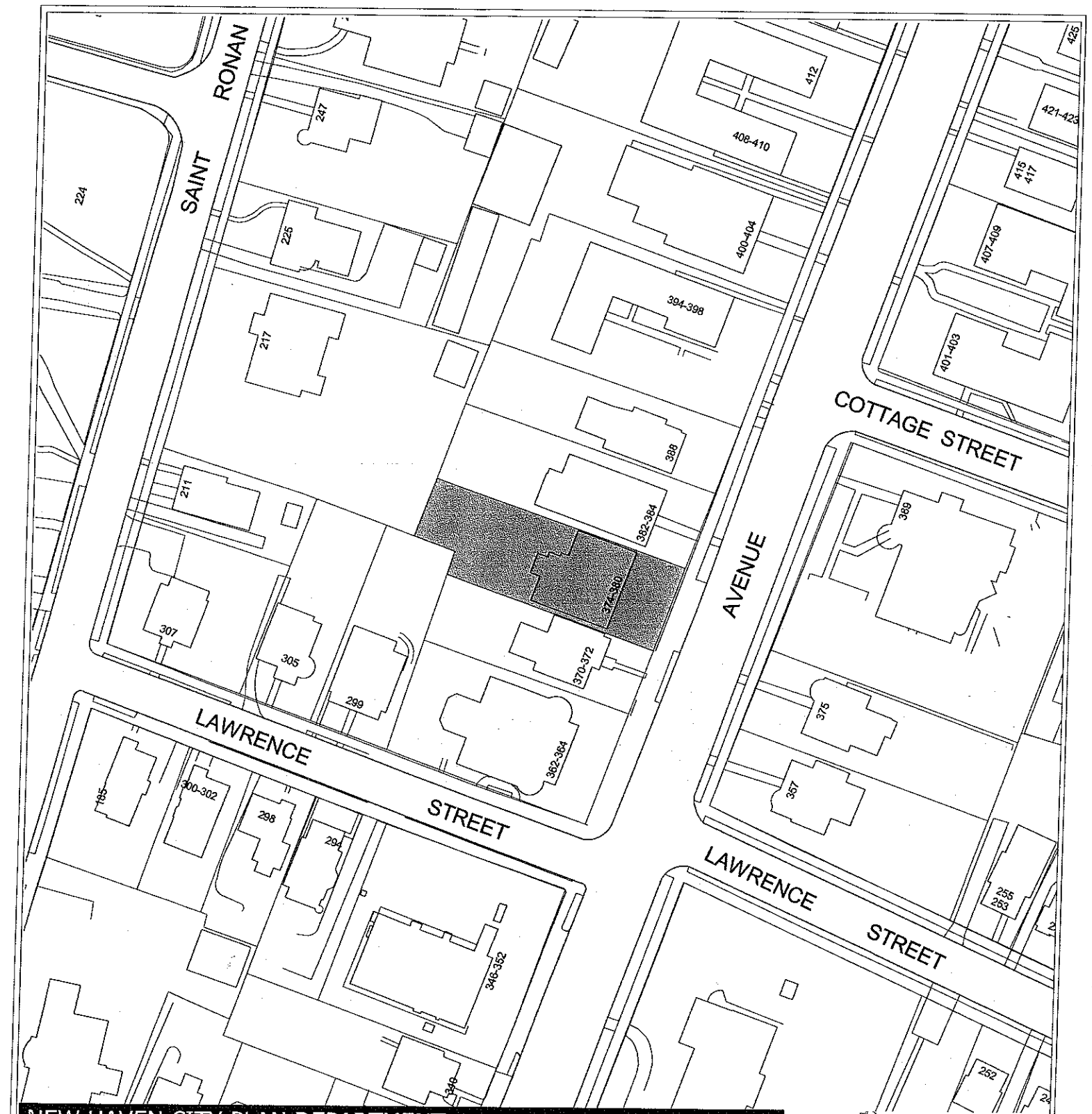
1. Approval is for a tavern in accordance with Section 30-26 of the Connecticut General Statutes.
2. The days and hours of operation shall not exceed Wednesday through Saturday from 11:00 am to 12:00 midnight.
3. The sign shall conform to Section 27(a)(9) of the Zoning Ordinance.
4. Signs and/or advertisements placed inside the windows shall not obscure more than 20% of the windows.
5. Outdoor seating shall not be permitted unless applied for and approved.
6. Live entertainment and outdoor speakers shall not be permitted.
7. Sound attenuation between this use and the residential tenants above shall be employed.
8. Venting and any mechanical equipment shall not be placed on the side of the building, and if placed in the rear yard shall be screened for noise.

**Special Exception:** The Commission advises approval of the Special Exception for zero parking spaces for the following reasons:

- The site was developed in 1946 without a parking area. This is a pre-existing condition.
- The proposed tavern requires only eight parking spaces for the 30 seats it will have. Parking is available along Whitney Avenue.
- The other two businesses, which are larger, also do not have parking, but that fact has not caused traffic problems.

**ADOPTED:** July 21, 2010
Edward Mattison
Chair

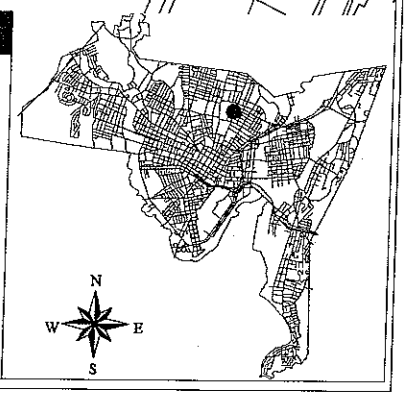
**ATTEST:**_____
Karyn M. Gilvarg AIA
Executive Director




# NEW HAVEN CITY PLAN DEPARTMENT

## 374 WHITNEY AV

FILE
ADDRESS 374 WHITNEY AV
MBP 220 0410 03300
OWNER PARK YOUNG J 1/2




1"= 100 feet

0 50 100 150 Feet

This map is based on 1997 aerial mapping. The City of New Haven cannot accept any responsibility for accuracy or completeness of this map. There are no warranties, expressed or implied.
Plot date: Jun 22, 2010; C:\CPCBZA\cpcbza_2_1_b.apr