

NEW HAVEN CITY PLAN COMMISSION SPECIAL PERMIT

RE: 86 FITCH STREET, BLAKE STREET (M/B/P 372/1159/00801, 372/1159/00800, AND 372/1159/01101). Special Permit to allow more than 500 square feet of outdoor storage. (Owner: Fasano Properties, LLC & Boyar Properties, LLC; Applicant: Ruslan Boyarsky; Agent: Joseph Porto of Parrett, Porto, Parese, & Colwell, P.C.)

REPORT: 1514-11

ACTION: DENIAL

Note: Companion CPC Report 1514-05 Inland Wetlands and Watercourses and 1514-06 Site Plan review and Coastal Site Plan Review for the same site.

Previous CPC Actions:

- Zoning Ordinance Map Amendment, petition for zone change from Low Middle Density Residential (RM-1) to Light Industrial (IL) (CPC 1291-01, July 19, 2000)
- Special Permit and Coastal Site Plan Review for storage of towed vehicles in an IL zone (CPC 1428-07, May 20, 2009).

Submission: Received December 15, 2015, including SPR Application Packet including DATA, SITE, CSPR, IW and SPECIAL PERMIT forms, NARRATIVE attached; \$540 application fee (including Coastal Site Plan Review and Inland Wetlands Review application fee).

- Stormwater Drainage Report Dated February 12, 2015 and received February 18, 2016. Revised March 29, 2016. Received March 30, 2016.
- Wetland Delineation Report by Pietras Environmental Group LLC. Dated November 7, 2015, received December 15, 2015.
- Revised Narrative for Special Permit Application, Coastal Site Plan and Site Plan Review received January 12, 2016. Revised and Received March 7, 2016. Revised and Received March 30, 2016.
- Material Safety Data Sheets for mulch chip colorants. 5 sheets, Received January 12, 2016.
- Property and Topographic Survey. Dated 09/21/15, received Dec 15, 2015. Received (duplicate) Feb 18, 2016.* Received (duplicate) March 8, 2016.* Received March 9, 2016 (no revision dates included). Received March 30, 2016 (no revision dates included).
- Parking & Material Storage Plan. Dated 10/13/15, received Dec 15, 2015. Updated 2/10/16. Received Feb 18, 2016.* Received (duplicate) March 8, 2016.* Received (duplicate) March 9, 2016 (no revision dates included). Received March 30, 2016 (no revision dates included).
- Lighting Plan. Dated 2/10/16. Received Feb 18, 2016.* Received (duplicate) March 8, 2016.* Received (duplicate) March 9, 2016 (no revision dates included) (two sheets in this set: 3 of 7 and 5 of 7 are both entitled Lighting Plan). Received March 30, 2016 (no revision dates included).
- Storm Water Management Plan. Dated 2/10/16. Received Feb 18, 2016.* Received (duplicate) March 8, 2016.* Received Revised copy dated March 8, 2016 on March 9, 2016. Received (duplicate) March 9, 2016 (no revision dates included). Received March 30, 2016 (no revision dates included).
- Pavement Plan. Dated 2/10/16. Received March 30, 2016.
- Micro Grading Plan. Dated 3/19/16. Received March 30, 2016.
- Detail Sheet. Dated 3/9/16 and received March 9, 2016. Received March 30, 2016 (no revision dates included).
- Erosion Control Specifications. Dated 3/7/16. Received March 8, 2016.* Received (duplicate) March 9, 2016 (no revision dates included). Received March 30, 2016 (no revision dates included).
- HydroCAD Model. Printed 3/7/2016. Received March 8, 2016.*
- Soil Investigation report. Dated March 1, 2016. Received March 7, 2016.

- Exhibit A: Dust Control Narrative. Received March 30, 2016.
(* indicates plans not signed and sealed)

Other RELEVANT DOCUMENTS:

- Cease and Desist Letter from CNH Building Department dated July 8, 2015.
- Emails from Anne Hartjen (February 3, 2016) and Ted Stevens (February 19, 2016) regarding application deficiencies.
- Letter from Nicholas Mastrangelo of Blake Street Holdings LLC dated January 28, 2016. Received February 3, 2016.
- Letter from John Gabel of Connecticut Consulting Engineers LLC. Dated June 22, 2015. Received February 3, 2016.
- Site Photos from 9/10/2015 and 1-22-16.
- Drone Site Photos from Nicholas Mastrangelo (20 sheets) from 3/13/2016 received March 16, 2016.
- Letter from Nicholas Mastrangelo of Blake Street Holdings LLC dated April 15, 2016. Received April 18, 2016. Includes 5 additional color photos dated 04/14/2016.
- Letter from Victoria Jacobs dated 03/15/16. Received March 16, 2016.

BACKGROUND

Per the City of New Haven zoning regulations Sections 46 and 64, Ruslan Boyarsky has applied for a Special Permit (and Inland Wetlands Review and Site Plan Review including Coastal Site Plan Review; CPC Reports 1514-05 and 1514-06) to have more than 500 SF of outdoor storage relating to an existing landscaping services company.

Current site conditions:

The site sits between Wintergreen and Beaver Brooks in the Westville section of the City. The site is bounded by residentially-zoned properties to the north and east, business and cemetery/school zones to the south. The site sits entirely within the 100 year floodplain as defined by FEMA, Zone AE. The applicant is currently operating the site as a landscape business without the required Special Permit, Site and Coastal Site Plan reviews, and IW review. (These permits and reviews are currently under consideration by the CPC.) A Cease and Desist letter was issued by the Building Department in July of 2015 by Jim Turcio.

Facility description and Proposed Activity:

The applicant proposes to operate his landscaping business, Paradise Landscaping, on the premises. The business conducts landscaping services, including, but not limited to: tree removal, cutting and retail sale of fire wood, snowplowing and sale of mulch in bulk quantities. Wood splitting and cutting is, according to the application, a seasonal activity which runs from June to November. Operations on-site also include the manufacture and coloring of wood chips/mulch and dumpster rentals.

The applicant is requesting to store 9,412 SF of outdoor materials on site, including:

- 1983 SF for Mulch Bins
- 1752 SF for Uncut Wood Bins
- 1416 SF for Wood Splitting and Storage Bins
- 3546 SF for Wood Chips Pile
- 715 SF for Dumpster Storage.

The application states “the operation of the landscaping business will not adversely impact the peaceable enjoyment of abutting or nearby properties.” Testimony from neighbors disputes this claim.

SPECIAL PERMIT

Section 64 of the New Haven Zoning Ordinance states:

Statement of purpose. 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 permits.

| Special Permit Criteria | Comments |
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| a. <i>Burden of proof.</i> A special permit shall not be considered an entitlement, and shall be granted by the Commission only after the applicant has demonstrated to the satisfaction of the Commission that all ordinance requirements are met. | It does not appear to staff that all ordinance requirements have been met. See below. |
| b. <i>Ordinance compliance.</i> The proposed use shall comply with all applicable regulations, including any specific standards for the proposed use as set forth in this ordinance. Any accessory use to a special permit must receive express authorization from the commission. | The site must comply with all zoning regulations, including those for Site plan and Coastal Review and Inland Wetland and Watercourses. Staff has recommended denial of both the SPR/CSPR and IWW because of technical deficiencies, incompleteness and inconsistencies; those approval criteria are discussed under those separate, and related, reports. Accordingly, not all ordinance requirements have been met. |
| c. <i>Comprehensive Plan of Conservation and Development.</i> The Commission shall determine if the proposed special permit's use and improvements comply with the City's development plans. | The site straddles the IL and RM-2 zones, with the landscaping services use permitted within the IL zone. That said, it is a permitted use if limited to the industrial side of the site, subject to the Special Permit requirements. |
| d. <i>Natural features.</i> Special permits must preserve trees and other natural site features to the greatest extent possible so as to minimize their impact upon surrounding properties and the district, and must not have an adverse impact on significant scenic vistas or on significant wildlife or vegetation habitat. | The site is a portion of what was once a larger floodplain area adjacent to the two watercourses. The site has likely been raised via filling over time. It is entirely within the 100 year floodplain susceptible to complete flooding in those conditions. Because the applicant has not adequately addressed petrochemical spill containment or vehicle evacuation, in the event of flooding there could be significant impact on both wildlife and habitat/vegetation. |
| e. <i>Hazard protection.</i> The proposed use shall not have a detrimental impact upon the use or peaceable enjoyment of abutting or nearby properties as a result of vibrations, fumes, odor, dust, erosion, sedimentation, flooding, fire, noise, glare, hazardous material use, storage, transportation or disposal, or similar conditions. | Staff has received indication that the (existing) proposed use may have a significant impact on peaceable use of adjoining properties, mainly through noise and air pollution. In addition, neighbor testimony at the March 2016 CPC meeting details the same (see transcript of meeting 1516). City Plan and the Building Department have received numerous complaints from neighbors. In addition, there remain concerns about fire hazard created by the stockpiling of large quantities of degrading organic material. |
| f. <i>Historic preservation.</i> Features of historic significance shall not be significantly adversely affected by the granting of any special permit. If the subject property is within | There are no above grade historic resources on site. It is located adjacent to or is in the Westville Village State Historic District. |

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| <p>or abuts a historic district, the Commission may request a report from the Historic District Commission regarding those features essential to preserve the historical integrity of a building, district, or site or historical significance.</p> | |
| <p><i>g. Design and architectural compatibility.</i> The operational and physical characteristics of the special permit shall be compatible with the surrounding area and the neighborhood in which it is proposed. Site design and architectural features which contribute to compatibility include, but are not limited to, landscaping, drainage, access, and circulation, building style and height, bulk scale, setbacks, open areas, roof slopes, building orientation, overhangs, porches, ornamental features, exterior materials and colors.</p> | <p>The site is currently kept in a haphazard, disjointed condition with piles of trees, semi-rotted trees and rootballs, mulch, tree stumps and dumpsters scattered around the site. (See pictures) In addition, the Building Department has cited a number of unregistered vehicles on-site, in violation of City Ordinance. The applicant has claimed to be in the process of removing the unregistered vehicles, but this has not been confirmed by staff. Applicant has been unresponsive over the years to both neighborhood complaints and City citations.</p> |
| <p><i>h. Property values.</i> The use and site design shall not have a detrimental effect on the property values in the surrounding area.</p> | <p>Property values may be affected by both dust and ongoing noise pollution, as well as the unkempt condition of the site. Testimony from CPC meeting 1516 from an adjacent rental unit-owner describes his inability to rent apartments next door. (See transcript for CPC 1516.)</p> |
| <p><i>i. Traffic impact.</i> The applicant shall demonstrate how the proposed use will not adversely affect the safety and convenience of vehicular and pedestrian circulation on, adjacent or nearby the site. The Commission may require a traffic impact study be submitted to it by the applicant for any special permit use of land. The study shall consider traffic patterns and adequacy of proposed off-street parking and loading resulting from the proposed development.</p> | |

PUBLIC HEARING: See transcript of Meetings 1516 and 1517 available in the City Plan office.

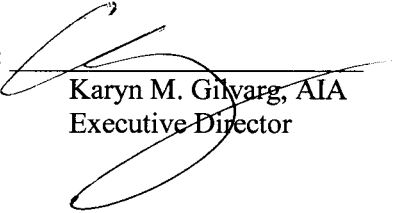
STAFF COMMENTS:

It is appears to staff that this applicant has ignored neighborhood complaints of dust, noise and unsightliness, and has submitted an application that encompasses Paradise Landscaping’s current operations-to-date on this site, including, but not limited to: dumpster rentals, wood cutting, splitting, grinding and coloring, wood storage, mulch storage, and vehicle storage and maintenance. The Commission must consider first and foremost if the request for 9500 SF of storage on this site is appropriate or excessive, and if the uses on-site violate the “peaceable enjoyment” of neighboring properties, most of which are residential. Staff would suggest that the applicant has illustrated his longstanding refusal to address the concerns of the neighbors and the City by not altering his operations in over three years, despite the complaints and three Cease and Desist orders. In addition, there are serious environmental concerns that have not been addressed within related applications for Inland Wetlands and Watercourses and Site Plan/Coastal Site Plan Reviews. It is recommended that these applications are denied based upon technical deficiencies, inconsistencies and incompleteness. Lastly, while the applicant has made some changes to his application materials in response to CPC 1516, these changes are not

significant enough to warrant approval. The burden of proof is upon the applicant to prove he is in compliance with the standards of the Special Permit, and this has not been achieved. For these reasons, the application for Special Permit is DENIED.

ADOPTED: April 20, 2016
Edward Mattison
Chair

ATTEST:


Karyn M. Gilyarg, AIA
Executive Director