

NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT

RE: ZONING ORDINANCE TEXT AMENDMENT
Amendment to the New Haven Zoning Ordinance to delete section 42.1 (g) regarding restriction of sale of alcoholic liquor, defined area exempt from distance provision. (Alders)

REPORT: 1505-07

ADVICE: Approval

BACKGROUND

Alders Holmes and Santana have submitted a proposal to amend Section 42.1 of the Zoning Ordinance to no longer permit the exemption of properties formerly the site of Malley's and Macy's department stores as well as the Chapel Square Mall from zoning regulations that require a minimum separation distance of 1500ft between establishments that sell alcoholic beverages at retail for off premises consumption (i.e., Package Stores and Grocery Stores). This amendment would result in these properties becoming subject to the same distance related requirements as all other properties in the City. It proposes no new language, simply the removal of Section 42.1(g)

TEXT

Current Language:

ARTICLE V: Business and Industrial Districts

Section 42.1. - Restriction on sale of alcoholic liquor.

(a) *Definitions.* As used in this section, the following definitions shall apply:

ALCOHOLIC LIQUOR: The term shall have the same definition as that term has in the Liquor Control Act of the State of Connecticut, as said Act may be amended from time to time. Said definition at present appears in Section 30-1(3) of the General Statutes of Connecticut. The definition of alcoholic liquor shall in any event always include alcohol, beer, spirits, and wine.

PACKAGE PERMIT: The term shall include a package store permit, a package store beer permit, a grocery store beer permit, a druggist liquor permit, or any combination of same, as issued or to be issued from time to time by the State Department of Liquor Control. For the purposes of clarity, the permits referenced herein are at present defined and found in Sections 30-20(a), (b) and 30-36, respectively, of the Connecticut General Statutes. In addition, the term package permit shall include any other permit which shall from time to time be authorized by the Connecticut General Statutes and issued by the State Department of Liquor Control, which permit shall be for the purpose of permitting the sale of any type of alcoholic liquor in sealed containers at retail for consumption off the premises.

(b) *Measurement of distance between package permits.* The distance between package permits shall be measured from outside entrance to outside entrance. However, where a package permit is located within a structure of more than 50,000 square feet, the outside entrance of such location shall be the outer perimeter of the selling area under the permit, as shown on the approved floor plan signed by the Zoning Enforcement Officer.

(c) *Distance restrictions.*

(1) *Distance limit to school.* No package permit shall be permitted to locate, relocate or remove to any location where the outside entrance of such location is within 500 feet from the property line of any public or private elementary or secondary school.

(2)*Distance limit between package permits.* No package permit shall be permitted to locate within 1,500 feet of another package permit, except as provided in section 42.1. (d)

(d)*Relocation or removal of permits.* Except as prohibited by the distance restrictions to a school in subsection 42.1(c) (1) above, a package permit may be relocated or removed as follows:

(1)*Permit relocation limit.* A permittee may relocate a package permit within a five hundred (500) foot radius, provided said relocation shall be in accordance with the said Liquor Control Act and the rules and regulations of the State Department of Liquor Control.

(2)*Removal due to condemnation for public or semi-public use.* The relocation distance of a package permit that is removed from such use for a public or semi-public use by condemnation proceedings may be increased to a radius of 750 feet from the present site provided said removal shall be in accordance with the Liquor Control Act and the rules and regulations of the State Department of Liquor Control.

However, where there are practical difficulties or unnecessary hardships in the way of carrying out the provisions of this subsection 42.1. (d)(2) concerning the removal of any package permit only as a result of condemnation proceedings for public or semi-public use, the Board of Zoning Appeals may, after public notice and hearing in a specific case, waive said provisions provided that the requirements set forth below are met:

- a. The proposed location shall not be within a radius of 500 feet of another package permit; and
- b. Sufficient evidence shall be presented to prove that no suitable location is available within a radius of 750 feet of the original location; and
- c. Said removal shall be in accordance with the said Liquor Control Act and the rules and regulations of the Liquor Control Commission.

(e)*Renewal of nonconforming package permit allowed.* A permittee holding a package permit as a nonconforming use within the aforesaid 1,500-foot radius may continue the nonconforming use (at that location only) when the permit expires and application is made and granted for renewal of the same exact type of permit.

(f)*Change of permit type prohibited.* Any change from one type of package permit to another type of package permit shall not be permitted except in conformance with the distance restrictions of section 42.1. (c).

(g)*Defined area exempt from distance provision.* Any and all provisions of this section (42.1) shall not apply to the area bounded north by Chapel Street, east by Church Street, south by the Oak Street Connector, and west by Temple Street

Proposed Language to be removed:

(g)Defined area exempt from distance provision. Any and all provisions of this section (42.1) shall not apply to the area bounded north by Chapel Street, east by Church Street, south by the Oak Street Connector, and west by Temple Street.

PUBLIC HEARING

Hearing scheduled for May 20, 2015... (POST REPORTING WILL RECORD HEARING)

PLANNING CONSIDERATIONS

Given the physical boundaries involved, review of existing Section 42.1 (g) leads the Commission to believe that its current exemptive language for this area is based on two particular circumstances common to all properties lying within the defined boundaries at the time of enactment. They are:

1. The defined area at the time of enactment contained (eventually) two large department stores and a shopping mall. The inward facing nature of all of the buildings (as well as the uses contained therein) and its virtual elimination of pedestrian/business interaction over any extended length of the public sidewalk may have eliminated concerns about the nature and type of atmosphere a proliferation of alcohol related retail uses located in close proximity at street level that may have otherwise existed.
2. Because of the properties affected were, by their nature, subject to a system of comprehensive internal (i.e. ,private sector) management it may have been assumed by the City that such management would, in recognition of its own best interests, effectively regulate these types of uses.

Forty years or so later, the conditions that allowed for the consideration of the current exemption no longer exist. The department stores, the mall and much of the centralized management that lent itself to an effective self-regulation of Package Permits are gone and with them the conditions that justified the regulatory exceptionalism that the current standard represents. Because the conditions that necessary for self-regulation no longer exist, because of the centrality of the subject area and because of the relative difficulty of establishing new package stores in almost any other part of the City, it is not unreasonable to believe that these establishments will proliferate in this area. This in turn would limit the ability of this part of the City to provide the public with the variety of retail and commercial uses necessary for the sustaining of a central business district. Eliminating the exemption for this area and subjecting Package Permits to the same 1500 ft separation as in all of the rest of New Haven will restore a level of stability to this area that current regulation does not provide.

ADVICE

The Commission finds that the proposed zoning text amendment will make the Zoning Ordinance more reflective of current land –use realities in the Central Business District and will contribute in a very real manner to the continuing economic viability of that area and will, in addition, enhance the quality of experience for those who work, live or visit this area. The Commission further finds the proposed amendments serve a substantial government interest; are in the public interest; and promote the health, safety, and general welfare of the community without unreasonable limits on land use and therefore recommends approval.

ADOPTED: May 20, 2015
Edward Mattison
Chair

ATTEST: 
Karyn M. Gilvarg, AIA
Executive Director