

NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT

RE: ORDER OF THE BOARD OF ALDERS- Order of the Board of Alders of the City of New Haven Approving A Recommendation From The New Haven Preservation Trust. (Submitted By: Elizabeth Holt, The New Haven Preservation Trust)

REPORT: 1597-04

ADVICE: The Board of Alders should take **"No Action"**.

BACKGROUND

This request from the New Haven Preservation Trust seeks to have greater consideration given to historic resources within the City of New Haven. The New Haven Preservation Trust suggests that the City of New Haven through its zoning ordinance and the City's Plan Commission does not exercise the full extent of their authority given by Connecticut State General Statute and the Special Act as it relates to historic preservation. Accordingly, the New Haven Preservation Trust seeks to have the City's Zoning Ordinance and the City Plan Commission's purviews include preservation of historic resources.

Current City Evaluation of Historic Resources

The applicant states that according to Section 8-2 of Title 8, Chapter 124 of Connecticut General Statutes, **"Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with reasonable consideration for the existing and potential public surface and ground drinking water supplies."** However, the City of New Haven operates within the guise and derives its authority from the Connecticut State Special Act of 1921 and the Special Act of 1925. Therefore, the City of New Haven does not operate under Section 8-2 of Title 8, Chapter 124 of Connecticut General Statutes.

Section 304 of the Connecticut State Special Act of 1925 states, **"Such [zoning] regulations shall be made with reasonable considerations, as to the character of the district [as it relates to historic preservation] and its peculiar suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most-appropriate use of land throughout such municipality."** Consequently, the City's Zoning Ordinance reviews historic preservation through (i.) Special Permits – Section 64 (Planning Commission's purview); (ii.) 90-day Delay of Demolition – Section 9-50; (iii.) Historic Districts – Section 54; (iv.) Description and purpose of business and industrial districts – Section 41; (v.) Regulation of wireless communications – Section 49; (vi.) Bulk, yard and density regulations for business and industrial districts – Section 43; (vii.) Board of Zoning Appeals – Section 63; and (viii.) Signs – Section 60.3.

Site Plan Review Purview

Section 6-3 of Connecticut Law and Practice states, **"In reviewing and approving site plans, the zoning [planning] commission acts in an administrative capacity."** This means, in accordance with Section 6-3 of Connecticut Law and Practice, **"In reviewing site plans, the [planning] commission has no independent discretion [as it relates to historic preservation] beyond determining whether the plan complies with applicable regulations, which would include zoning regulations incorporated by reference, and it [the planning commission] is under a duty to apply the requirements of the zoning regulations as written."** This means that the Planning Commission does not have the authority to review, assess and/or evaluate historic resources during site plan review because of the administrative nature of the site plan process. Therefore, no discretionary action (historic resource evaluation) can occur.

Special Permit Review Process

Currently, the City's Zoning Ordinance, Connecticut General Statutes, Connecticut State Special Act and the Planning Commission's purview authorizes the Special Permit process as the Planning Commission's mechanism

for reviewing historic resources within the City of New Haven. Accordingly, the Special Permit application has been amended to include a question about the historical nature and/or designation of a property/site.¹

PLANNING CONSIDERATIONS

In accordance with Title I, Article XIII, Section 2(A) of the New Haven Code of Ordinances states, "**Every Ordinance or Resolution of the Board of Alders relating to the location and use of any street, bridge, boulevard, esplanade, square, park, playground, playfield, aviation field, parking space, public building, the facilities or terminals of any public utility, or the establishment or change in the boundaries of or regulations concerning zoning, shall be at once referred to the City Planning Commission and final action shall not be taken on any such Ordinance or Resolution until the commission shall have reported thereon, provided that the Board of Alders may establish by ordinance a period of not less than sixty (60) Days within which the commission shall file its report with the City Clerk and if no report is filed within such period the approval of the commission shall be presumed.**" Accordingly, the Board of Alders seeks guidance regarding the proposal.

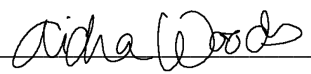
The Board of Alder seeks guidance as to:

- Whether the proposal is aligned with the City's Comprehensive Plan.

ADVICE

While the preservation of historic resources is of great importance to the City, it is equally important that the Planning Commission and the Zoning Ordinance exercises its full authority and purview under Special Act and/or the State statutes. Upon researching this matter from a legal and historical precedent standpoint, the Planning Commission determined that the City **is currently exercising** its full authority regarding historic preservation through the Special Permit Process (the Planning Commission's purview) and the Zoning Ordinance. Accordingly, we, the Planning Commission, recommend that the Board of Alders take "**No Action**" on this matter. This Commission hears the cry of residents to protect historic resources, however, this Commission believes this proposal falls short of the intention to create a meaningful opportunity for residents and others to engage in the process to do so. This Commission recommends that the Board of Alders encourage the proponents to do further work with staff to improve this proposal so that it both meets the intended goals, but also respects the law and the rights of property owners.

ADOPTED: December 1, 2021
Leslie Radcliffe
Chair

ATTEST: 
Aicha Woods
Executive Director, City Plan Department

¹ Planning Staff amended the Special Permit Application to include a question about historic preservation. The draft is attached.

CITY OF NEW HAVEN, CONNECTICUT

CITY PLAN DEPARTMENT | 165 CHURCH STREET, NEW HAVEN, CT 06510-2010 PH 203.946.6378 FAX 203.946.7815

APPLICATION FOR ZONING RELIEF SPECIAL PERMIT

1. CLASS OF RELIEF (Check ALL THAT APPLY).

Special Permit

- 1. Telecommunications Facility (Describe Precisely) _____
- 2. Motor Vehicle Junkyard (Describe Precisely) _____
- 3. Other Matters (Describe Precisely) _____

2. STANDARD BEING APPEALED

Cite the Section(s) of the Zoning Ordinance from which the relief is being sought.

3. PRECISE DESCRIPTION OF RELIEF SOUGHT

Fill in **ZONING AND SITE PLAN SUMMARY DATA TABLE** of the **DATA** Sheet and Describe the Relief in Detail.

4. EXISTING CONDITIONS

A-2 SURVEY NOT MORE THAN 2 YEARS OLD REQUIRED FOR YARD VARIANCES, A LOT SPLIT, ANY USE WHERE THERE IS A CHANGE IN USE CLASSIFICATION UNDER THE STATE BUILDING CODE (BOCA), OR ANY CONSTRUCTION COSTING MORE THAN \$25,000.

List existing Building(s) and Use(s) on the property and list the legal Basis for each using the list below.

Building	◆Basis	Comment
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

◆Basis [Insert appropriate abbreviation]: PR-Permitted by Right; PS-Permitted by Special Exception; PV-Permitted by Previous Variance; CAL-Certificate of Approval of Location for Automotive Uses; NCU-Nonconforming Use at Effective Date of Ordinance or Amendment.

5. Identify whether the site itself or whether the site contains structures listed on the State or National Register of Historic Sites.

No Yes

6. MATERIALS REQUIRED FOR FILING

- A. **EIGHT (8) COPIES OF A SCALED PLOT PLAN** with a North arrow, showing the lot, existing buildings and improvements, and buildings on abutting parcels within 25 feet of property lines.
 - Proposed construction and use of outdoor areas.
 - Proposed structures, driveways, parking layout, loading facilities, utilities.
 - Improvements including signs, fences, walls, dumpsters, outdoor storage areas, outdoor lighting.
 - If applicable, new property lines.
 - Such other information as may be required to define clearly the zoning questions involved.
- B. **SEVEN (7) COPIES OF SCALED FLOOR PLANS AND ELEVATIONS** for each floor and each side of proposed construction, showing the use of all floor areas.
- C. **BUSINESS OR COMMERCIAL USES** shall furnish the days and hours of operation, number of employees, provisions for employee and customer parking, and business sign(s).

7. ZONING HISTORY AT THIS LOCATION [BZA File Numbers, Decision, Date, Proposal Description, Court Decision (if any)]

INSTRUCTIONS

- 1. Please fill in **DATA** and **FORM** or attach information to this application.
- 2. APPLICATIONS FOR RELIEF MAY BE DENIED IF REQUIRED MATERIALS ARE NOT SUBMITTED.