

REVISED NEW HAVEN CITY PLAN DEPARTMENT ADVISORY REPORT

This report has been prepared in response to the requirement of section 63.E.2 of the Zoning Ordinance. Following the public hearing this matter will be referred to the City Plan Commission. Upon receipt of the Commission report the Board of Zoning Appeals will consider the matter and render its decision.

RE: **47 Dayton Street, 1122, 1130, 1138, 1144 , 1146, 1150 Whalley Avenue.** Special Exceptions to allow a Gasoline Station and a 24-Hour convenience store. Zone: BA. Owner: Dayton Whalley Realty LLC; Applicant: First Hartford Realty LLC

FILE: **13-97-S**

HEARING: December 10, 2012

ADVICE: Special Exception- Gasoline Station: Denial
Special Exception 24 Hour operation of Gasoline Station and Convenience Store- Denial

PRINCIPAL APPLICABLE REGULATIONS

Section 63(d). - The Board of Zoning Appeals may grant a *Special Exception* if the proposed use is in accord with the public convenience and welfare, and may attach conditions and safeguards deemed necessary to protect the neighborhood.

Section 63(d)(6)

In the following types of special exception cases, which involve more than conventional questions of *use* and may have a significant impact on surrounding areas and a substantial relationship to the comprehensive plan of the city, the Board of Zoning Appeals shall, following its hearing, refer the case including all exhibits to the City Plan Commission, which shall submit an advisory report, on such factors as it may deem relevant, to the Board within 30 days after receiving all records and documents in the case. This report of the City Plan Commission shall be taken into account in the decision of the Board.

Section 42.5. -Special provisions for certain uses operating between 11:00 p.m. and 6:00 am.

These provisions exist in order to minimize conflict of businesses with adjacent residential uses and the surrounding area, and to assure the peace, tranquility, health and safety of the public. It is recognized that some uses because of their nature have serious objectionable operating characteristics, particularly when close to residential uses, thereby having a deleterious effect on the use and enjoyment of adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or deterioration of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing or limiting late night traffic, noise, loitering, littering and crime in business places which are located adjacent to residential uses.

(a) *Applicability.* The standards contained herein shall be applied to certain uses found in the Section 42, Use regulations for business and industrial districts, except if located in a Business D or Business D-1 District: (1) All uses found in Section 42.C: Sale of food, drink and pharmaceuticals.

BACKGROUND

The applicant has submitted a proposal to construct a 4,560sf convenience store and gasoline station on a 1.33 acre site located at the southeastern corner of the intersection of Dayton Street and Whalley Avenue. The site is located in a General Business (BA) District with properties to the north, east and northwest also located in a BA District. Adjacent properties to the south are located in a High -Middle Density (RM) Residence District.

The proposed site is made up of seven parcels currently occupied by seven principal structures and four accessory structures, some in better physical condition than others. Four of the principal structures are located within 10ft of the streetline, reflecting the building line along much of that portion of Whalley Avenue. Existing uses of the structures are primarily residential and retail storefronts both in single and mixed use form.

The convenience store will be located on the east side of the site at least 150ft away from Dayton Street and 50ft from Whalley Avenue but less than 25ft from abutting residential properties. There are 15 parking spaces on two sides of the store and a patio presumably for outside dining.

In addition to the convenience store (a use permitted by right on the property) the proposal also includes a 12 position self service gasoline and diesel fuel station on the western portion of the site covered by a single canopy that extends to about 26ft from Whalley Avenue and no more than 50ft from Dayton Street. This use requires a Special Exception from the Board .

There are three proposed two-way curb cuts shown on proposed plans, two on Whalley Avenue and one on Dayton Street. In addition the applicant is proposing anew right turn lane on Dayton Street running north from the proposed Dayton Street driveway approximately 150ft to the intersection of Whalley Avenue.

The applicant is requesting 24 hour operation of both the convenience store and the gasoline station.

Prior BZA Actions: None

PLANNING CONSIDERATIONS

Submitted plans include a site plan package with an T-2 class survey showing the existing and proposed conditions prepared by Vanesse HangenBrustlin, Inc Latest Issue:11/15/13 as well as a traffic impact study prepared by Fuss and O'Neill.

Special Exceptions:

Section 63(d) of the New Haven Zoning Ordinance states that "*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:*" (**Gasoline Station Only**)

Review of the proposal in relation to the particular criteria of this section results in the following comments:

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

The arrangement of this site specifically in respect to its proximity to residences is problematic. The level of outside activity proposed on a twenty four hour basis will, regardless of landscaping and other buffering shown significantly impact residences along Dayton Street. Also, the removal of the existing building line on these properties along Whalley Avenue, which in effect now buffers these residences from all the impacts of a four lane avenue (primary related to sound and light) and its replacement with a large area of unenclosed space (the fueling area) will result in an increased level of exposure to those impacts, particularly in rear yards.

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

Parking appears adequate. Staff is concerned however about the impact of the relatively large number of additional traffic movements (to and from this site) upon the existing intersection. There is also concern about cut through traffic (Dayton north to Whalley east).

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

The department notes the presence of a 24 hour gasoline station almost directly across the street from this proposed facility and is concerned that the proximity of two such uses, and the

relatively high level of on-site traffic that each generates and located at this intersection, will ultimately impair both present and future development in this area.

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

As noted in part *a.* above staff believes that the presence of a 12 position fueling station not only creates a level of outside activity that will significantly impact nearby residences but which will also facilitate the increased impact of Whalley Avenue itself upon those same residences.

e. All standards contained in this ordinance; and n.a.

f. The comprehensive plan of the City of New Haven, and other expressions of the purpose and intent of this ordinance.

The portion of the 2003 Comprehensive Plan of Development that deals with Neighborhood Development states in part:

Over time, the success of the neighborhood business districts depends on the mix of uses, properly operated, in order to generate sufficient customer traffic.

It is the position of staff that rather than representing a proper mix of uses it represents, given the existence of the gasoline station across the street, a concentration of high traffic generating uses at a difficult intersection and as such represents a case of rather than "sufficient customer traffic" an excess of customer traffic.

Specific Standards of Section 42.5 (Gasoline Station and Convenience Store)

a. The applicant must demonstrate the need to service the community between the hours of 11:00 p.m. and 6:00 a.m.;

The response does not really address need. Given the existence of a 24 hour gasoline station virtually across the street and 24 hour convenience stores located within ½ mile of this site it would appear that if such need exists it is already being met in this area

b. The applicant must demonstrate that the proposed hours of operation will not contribute to illegal activity at or in close proximity to the proposed use. The Board of Zoning Appeals shall consider the presence of loiterers, drugs sales or prostitution or other criminal activities and/or nuisances in close proximity to the location proposed, given the character of surrounding uses and past history in the immediate area as may be presented by the Department of Police Services, neighborhood organizations and area residents and business people;

Staff's only comment has to do with the presence on the plan of an outdoor patio with what looks like customer seating. This does not appear at all compatible with a 24 hour facility, especially given its proximity to residences.

c. The applicant must demonstrate that the proposed hours of operation will not have an adverse effect on abutting or proximate uses, including places of worship, parks, playgrounds, youth services facilities, or residences; and

As noted in earlier portions of this report it is the position of staff that the gasoline station in particular would clearly impact nearby residences.

d. The applicant must identify all other uses within 200 feet of the proposed location which are operating between the hours of 11:00 a.m. and 6:00 p.m. The Board shall consider the potential clustering of uses in a manner that may be inconsistent or inappropriate for the surrounding area.

The applicant has acknowledged the existing 24 hour gasoline station store across the street. The question that has not been addressed however, is why the applicant feels that the near co-location of two such uses is in the best interest of the area. There are also two 24 hour convenience stores located within ½ mile of this location.

FINDINGS AND RECOMMENDATIONS

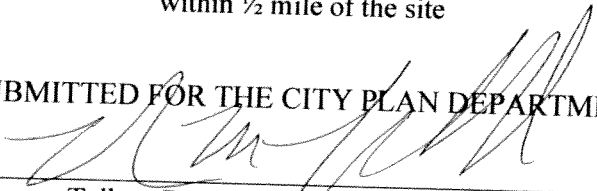
Based on the above consideration staff recommends denial of the Special Exception for the Gasoline Station for the following reasons:

1. The outdoor nature of the use which will result in nearby residences being impacted by sound, light and general activity originating not just from the site itself but also from Whalley Avenue.
2. The physical location of the facility will have impact upon neighboring residences in terms of the increase in traffic movements in and out of the site and the impact upon the existing intersection.
3. The proximity of a similar use with the same relatively high level of traffic generation

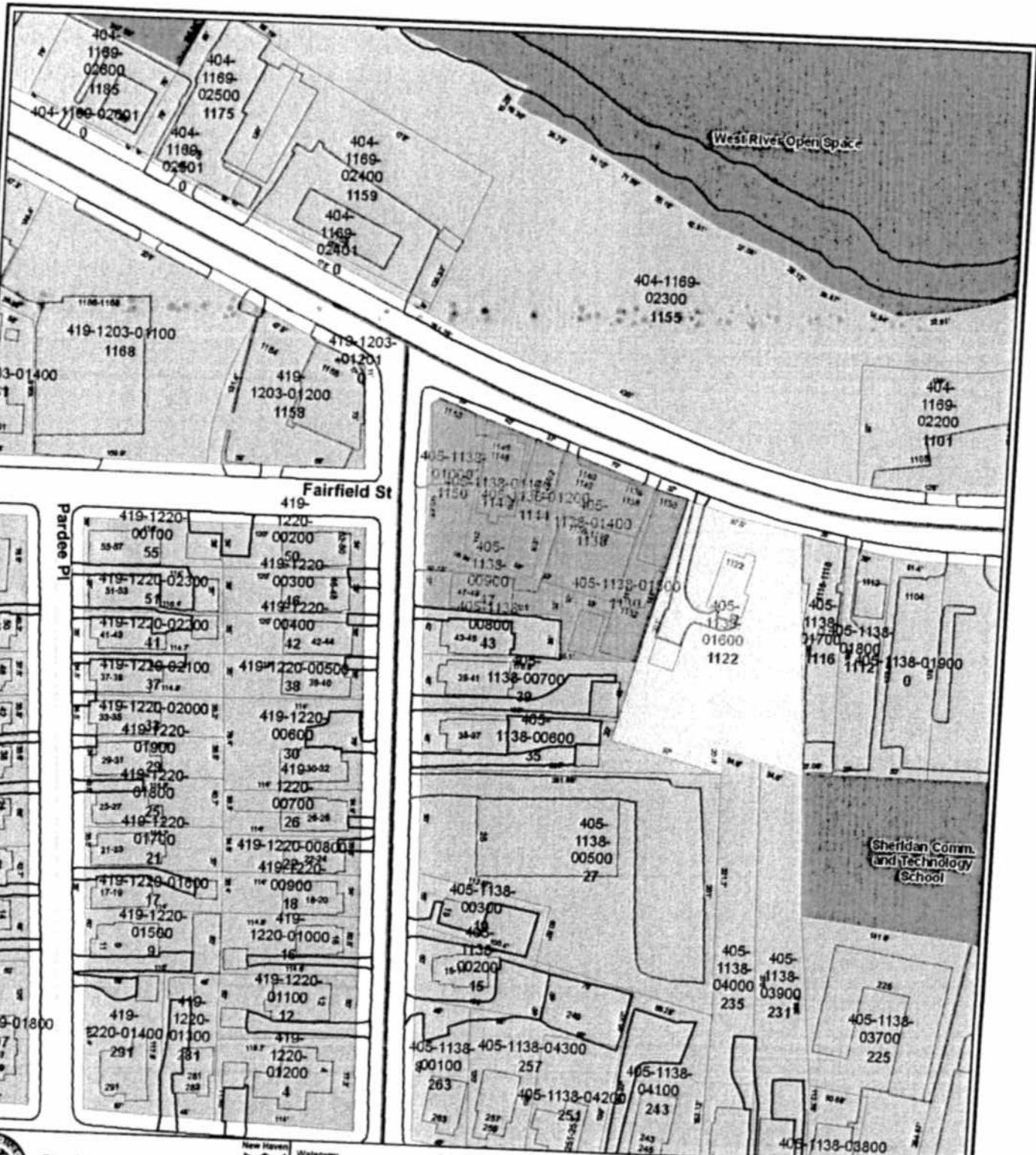
Based on the above consideration staff recommends denial of the Special Exception for the Gasoline Station for the following reasons:

1. Lack of demonstrated need to serve the community.
2. Existence of an existing adjacent 24 hour gasoline station and 24 hour convenience store within ½ mile of the site

SUBMITTED FOR THE CITY PLAN DEPARTMENT



Thomas Talbot, Deputy Director, Zoning



City of New Haven, Connecticut
John DeStefano Jr., Mayor



- New Haven**
2003
- Waterway
 - Lake - Pond
 - River
 - Shoreline
 - Stream
 - Wetland
 - Parcel
 - Parcel
 - City Boundary Line
 - City Boundary Line
 - Schools
 - Administration
 - Food Service
 - Private School
 - Public School
 - Fire Station
 - Fire Station
 - Police Station
 - PD Headquarters
 - Substation
 - Health Centers
 - Health Centers
 - Hospital
 - Library
 - Library

- Railroad
 - Railroad Track
 - Abandoned Railroad Track
- Airport Runway
 - Airport Runway
- Parcel Line, 2005
 - Parcel Line, 2005
- Parks
 - Park
 - Triangle
 - Golf Course
- Land Trust Preserves
 - Land Trust Preserves
- Airport boundary
 - Airport boundary
- Shoreline
 - Shoreline

This map is intended for illustrative and Community-Based Planning processes. Every reasonable effort has been made to assure the accuracy of the map and data provided; nevertheless, some information may not be accurate. The City of New Haven assumes no responsibility arising from the use of this information.

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Scale: 1" = 112 ft
Created: December 7, 2013



47 Dayton

Produced by the
Office of Information Technology
Geographic Data Viewer



