



# Town of Hamden

## Planning and Zoning Department

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September 15, 2011

**MINUTES: THE PLANNING & ZONING COMMISSION**, Town of Hamden, held a Public Hearing and Regular Meeting on Tuesday, September 13, 2011 at 7:00 p.m. in the Thornton Wilder Hall, Miller Memorial Library Complex, 2901 Dixwell Avenue, Hamden and the following items were reviewed:

Commissioners in attendance:

Joe McDonagh, Chairman  
 Lee Campo  
 Jon Cesare  
 Brack Poitier  
 Ann Altman  
 Peter Reynolds  
 Bob Roscow

Staff in attendance:

Dan Kops, Assistant Town Planner  
 Tim Lee, Assistant Town Attorney  
 Stacy Shellard, Clerk  
 Lisa Raccio, Stenographer

Mr. McDonagh called the meeting to order at 7:01 p.m. The clerk read the Public Hearing items into the record. Mr. McDonagh introduced the panel and reviewed the Public Hearing procedures.

### A. Public Hearing

#### 1. Special Permit & Site Plan 11-1182

1025 Dixwell Avenue, T-4 Zone  
 Place of Worship  
 Bishop Lethenial McClam, Applicant  
*Continued from the 7/26/11 meeting*

Mr. Dan Kops, Assistant Town Planner, read the staff comments which recommend approval based on the following plans:

“Property Survey/Site Plan, Property of V & F Paving, LLC, 1025 Dixwell Avenue, Hamden, Connecticut,” revised August 10, 2011

With the following conditions:

1. Obtain a Zoning Permit.
2. Prior to the Issuance of a Zoning Permit the applicant must sign a document prepared by the Planning and Zoning Department acknowledging that occupancy is restricted to 60 persons based on the available parking.
3. All work should be completed by September 27, 2016.

Mr. Darrell McClam, representing the applicant, addressed the Commission and reviewed the application.

Ms. Altman asked how big the congregation would be. Mr. McClam said that there are twenty active members at this time. Ms. Altman asked how many seats there would be. Mr. McClam replied that there are seven seats per row and the total seating is approximately fifty five. Ms. Altman asked if any more seating were to be added would it make the seating area too tight and Mr. McClam replied yes.

Mr. Roscow asked if there would be a ramp placed at the corner of the building where the handicapped parking will be. Mr. McClam replied that there will be a ramp placed to the rear of the building and there will be a new door installed for handicapped accessibility.

Mr. Campo asked how many parking spaces there would be. Mr. Kops replied that there would be a total of 20 parking spaces and they are shown on the revised plans.

Mr. McDonagh asked Mr. McClam if limiting the seating to 60 people would be a problem and Mr. McClam said it would not. Mr. McClam asked if in the future the current owner were to sell the property and it was purchased by the church would the zoning for a house of worship still apply.

Mr. Kops explained that the Special Permit applies to what the approval is for. If modifications were needed to the Special Permit there might be a need for a minor amendment. Mr. Kops explained that depending on the modifications such as increased parking or the amount of people it might be a minor amendment that would be an administrative sign off by the Town Planner. He further explained that if the request was for a new building it would need to be a Major Amendment to the special permit and would require Mr. McClam to come before the Planning & Zoning Commission and a Public Hearing would need to be held.

Mr. Roscow asked if tandem parking would be allowed on the site. Mr. Kops stated that in the past the Commission has allowed tandem parking, but for this site it is not needed.

Mr. McDonagh asked if there were comments for or against the application. There were none.

Mr. McClam stated that the conditions of approval are acceptable and he is willing to make any changes to the plan that the Commission deemed necessary.

Mr. McDonagh closed the public hearing.

## **2. Special Permit & Site Plan 11-1184/APZ**

4133 Whitney Avenue, T-3.5 Zone

Retail/Liquor Store

Chirag Parikh d/b/a CSP409, LLC

Mr. McDonagh explained that he is a tenant at 4133 Whitney Avenue and does not have a financial interest in the building or concerns for or against the application which would influence his vote. Mr. McDonagh said that if there are no objections he would like to continue to sit on this matter. Mr. Pellegrino stated that he has no objections.

Mr. Bernard Pellegrino, Attorney, addressed the Commission and stated that the site is a multi-unit commercial site which houses offices, retail stores and a restaurant. His client would like to open a liquor store in the former Nicolino Gift store. This application is for a change of use only and there will be no exterior work done. The site is located in a T-3.5 zone and the proposed use is allowed by a Special Permit. There will be no outdoor use of the site and ample parking is available. Mr. Pellegrino said that the change in use that is being requested meets the special permit criteria and his client looks forward to an approval. He explained that his client is experienced in the liquor/retail because his family has owned liquor stores in the Town of Hamden and has twenty years of experience.

Mr. McDonagh said that a restaurant, "DeMils", has recently opened on this site. He reviewed the letters that had been received from Mr. Ken Minkema and Douglas & Dorothy Baker expressing their opposition to the application. Mr. McDonagh explained that there are three liquor stores between the Route 10 connector and the proposed location. Mr. McDonagh said that this is not a concern for the Commission and he asked if there was concern that it would be a non-profitable venture.

Mr. Pellegrino said that there is not a concern by the applicant or the owner of the property because the traffic traveling north to Cheshire may stop to make a purchase. The analysis that the applicant has done shows a demand to exist. The distance between existing liquor stores and the proposed store is in keeping with the Town Ordinance. The road is heavily traveled and the belief is that there is a demand to satisfy the opening of this store.

Ms. Altman asked if when discussing the application the commission should consider the health of welfare of the citizen of Hamden. Having read the letters received from residents she asked if there are sidewalks on Whitney Avenue in the area of the proposed site. Mr. Pellegrino did not know and said that most people travel by car. Mr. McDonagh stated that there are no sidewalks. Ms. Altman said that the students and residents in the area must walk on the street and there are liquor stores in the area.

Mr. McDonagh said that there is Mt Carmel Wine Shop at the corner of Whitney Avenue and Ives Street, The Amity Liquor Store on the corner of Sherman Avenue and Whitney Avenue and another liquor store on Whitney Avenue that he was unsure of the name of it, but that it was located near the Sleeping Giant Golf Course. The proposed liquor store is past the golf course and he believes it is the last commercial property before Cheshire. Mr. Roscow said that there is also a veterinary office before the Cheshire Town line. Mr. McDonagh wants to address the concern of the Quinnipiac students in the area and community.

Mr. Pellegrino stated that the proposed application is a destination that people will arrive at by vehicle as are the other existing businesses on the site. He is not aware of incidences that have happened on Whitney Avenue near the site based on the lack of sidewalks and the proposed usage is no different than the other existing retail usages. There will be no consumption of purchased alcohol on the proposed site, and there is alcohol consumption at the restaurant site. The majority of people to the proposed site will access the site by vehicular transportation and would be different than the other package stores that are in a more populated area of town. Mr. Pellegrino stated that anything can happen at any liquor store in the town and does not feel it would be a credible argument for approval.

Ms. Altman said if she wanted to go from the Nicolino site to any other liquor store in either direction the distance would be approximately one mile. Mr. McDonagh said that the next liquor store would be approximately ½ mile south. Ms. Altman feels that to deny this application would not deprive or adversely affect the ability to purchase liquor.

Mr. Pellegrino said that there are certain regulations that restrict uses and specific regulations about the distance between liquor stores. He feels it is a slippery slope if the rationale for not granting the application is based on demand and competition.

Mr. McDonagh said that number of liquor stores, the distance between them, the proximity from schools and churches are based on the Town Ordinances. This Commission can be concerned with the issue of appropriateness. Mr. Pellegrino said that the proposed store is farther from the other stores than the other stores are to each other.

Mr. Dan Kops, Assistant Town Plan read his comments which recommend approval with the recommended conditions. Mr. Kops explained that APZ stands for Aquifer Protection Zone and under the new regulations if there is an application that requires an approval for a APZ regulation it would go before the Commission acting as a special body specifically to handle Aquifer Protection Zone Regulations rather than zoning regulations. However, the proposal is not a regulated use and no action is needed.

Ms. Altman said that Mr. Kops' comments states that there are no valid grounds for not granting the special permit and asked if given the fact that the use is allowed and there is no problematic site work there would be no way to argue there are valid grounds.

Mr. Kops said that in his opinion and based on his interpretation of the zoning regulations and that there is no site work being done, therefore are no environmental issues, it is an allowable use. To determine if it is an appropriate use the Commission and they must decide that there are factors that would have an adverse impact on the health welfare and safety. Ms. Altman asked what factors could be considered. Mr. Kops responded that factors could be noise and traffic. Ms. Altman stated there could be valid grounds and not based on Mr. Kops' comments. Mr. Kops explained that his comments were based on his strict interpretation of the regulations and not based on the testimony given at this meeting. He noted that the Commission's judgment counts.

Mr. McDonagh asked for comments in favor of the application and there were none. He asked for comments against the application:

Ms. Cindy Civitello, 61 Berkley Court, addressed the Commission and stated that she is speaking on behalf of the executive board for the West Wood Neighborhood Association. Ms. Civitello is opposed to the application and she read a statement (see attachment #1).

Mr. Leroy DeBerry, 20 Prospect Lane, addressed the Commission and is concerned about the number of liquor marts that have opened in Hamden over the last few years. One has opened recently on Dixwell Avenue and another one on Skiff Street. In his opinion there are too many liquor marts opening and based on the family tragedies that many have experienced and along with the alcoholism that has occurred the Commission should consider how many liquor stores should be established in Hamden. Mr. DeBerry said that this was his first Planning & Zoning meeting he has attended but feels passionate about another liquor mart opening up.

Ms. Sara Clarke, 4032 Whitney Avenue, addressed the Commission and reviewed and submitted a petition (exhibit #1) against the application. She also read and submitted a letter (exhibit #2) from James & Gail Traester & a letter (exhibit #3) from Jeanette Murdock opposing the application.

Mr. Gus Spohn, 4032 Whitney Avenue, addressed the Commission and asked if there would be an opportunity to speak during the Commission's deliberation and when the public hearing is closed. Mr. McDonagh stated that the only comments and testimony from the applicant and the public can only be done during the public hearing. Once the public hearing is closed no more testimony can be taken. Mr. Spohn read and submitted his statement (exhibit #4) opposing the application.

Mr. Paul Geary, 4040 Whitney Avenue, addressed the Commission and stated that he moved into the neighborhood in July. He was aware of the students in the neighborhood and during the summer there were no problems. Since the students are back in school there are kids the street almost every Friday and Saturday night. He will be sitting outside and the kids are in the street and on the sides of the street and there are no sidewalks. Mr. Geary said he sees and hears the loud students and parties. He does not know how one would prove the correlation proximity leads to more drinking but logic dictates that they would go to the closest place, creating more traffic and more students will be walking back and forth up until 9:00 p.m to get fuel for the party. Mr. Geary stated that when he moved in and being new to the Quinnipiac University students issues he feels that a liquor store would not improve the area but make it worse.

Ms. Altman asked Mr. Geary if students walk on the street because there are no sidewalks and if there are street lights. Mr. McDonagh said there are street lights but that they are infrequent. Ms. Altman said the area is rural and not urban. Mr. Geary said that the students go on lawns including his.

Ms. Sara Clarke showed the Commission beer cans and bottles that she found when going to a neighboring mailbox to pick up the petitions.

Mr. McDonagh asked for additional comments from the public and there was none.

Mr. Pellegrino stated that there been a number comments that were relative to the fact that the Commission should deny the application because of the fact that there is a need or demand. He does feel that the comments or consideration would be appropriate under the special permit criteria. If the Commission chose now to approve or deny special permits based on need or demand it would exceed the Commission's legal authority. He said that so long as the application where there is construction or based on use which is permitted in this zone allows the use. The fact that there is other similar uses symmetry is not appropriate, such as if someone wanted to put a restaurant in the Hamden Plaza and the Commission did not think another was needed. This is a free market society and the Commission is a zoning commission and the demand and need regulates itself from a business standpoint. Making a decisions from the zoning standpoint based on the determination based on excess demand would be exceeding the Commission's authority and therefore is not a valid standpoint when addressing this application. This application does not violate any of the regulations, ordinances and zoning regulations that restrict the use and locations of liquor stores. The safety concerns are always a concern and this locations is not an area of excessive student housing and whether there is a liquor store or not students do walk at night. Many of the concerns that are being raised can also arguably be raised with restaurants. When looking at the zoning regulations because there is no special consideration for retail liquor stores under the regulations hypothetically potential dangers that are driven by student housing criteria should have no impact on the applicants business or the appropriate criteria being used. There is no adverse construction, the site is well lit, parking is off the street and traffic will not increase traffic on Whitney Avenue.

Ms. Altman agrees that there would not be increase in the number of cars in the area. She lives in Whitneyville were there are sidewalks and traffic lights. The dangers of pedestrians walking at night buying liquor and the cars that would be coming in and out without a traffic light represents a hazard.

Mr. Pellegrino feels that the site is well it and would be accessing the site by way of vehicle and the business would be good for the site. The proposed site had retail use and this retail use will not change the site dramatically.

Mr. Roscow asked when the liquor store would close and Mr. Pellegrino said 9:00 p.m.

Mr. Spohn asked if he could rebut Mr. Pellegrino's comments and Mr. McDonagh said that the applicant generally makes the last comments.

Mr. McDonagh closed the Public Hearing

The Public Hearing was closed.

## **B. Regular Meeting:**

### **1. Special Permit & Site Plan 11-1182**

1025 Dixwell Avenue, T-4 Zone  
Place of Worship  
Bishop Lethenial McClam, Applicant

***Ms. Altman made the motion to approve Application 11-1182 as recommended by Mr. Kops with the following conditions:***

1. Obtain a Zoning Permit.
2. Prior to the Issuance of a Zoning Permit the applicant must sign a document prepared by the Planning and Zoning Department acknowledging that occupancy is restricted to 60 persons based on the available parking.
3. All work should be completed by September 27, 2016.

*Mr. Poitier seconded the motion. The motion passed unanimously.*

## **2. Special Permit & Site Plan 11-1184/APZ**

4133 Whitney Avenue, T-3.5 Zone  
Retail/Liquor Store  
Chirag Parikh d/b/a CSP409, LLC

Mr. Roscow said that he believes there are two issues for the people who oppose the application. He feels one is the drinking and the unruly parties and this is not a new problem, and if someone wants to find a place to purchase liquor in the immediate area there are already three stores. The State has stringent laws for those who sell liquor to minors. Mr. Roscow said that another issue is people walking on Whitney Avenue. He said that he was on Whitney Avenue about 4:00 p.m during rush hour and the cars were only going about 40 miles per hour and did not see a lot of people. Mr. Roscow said that regulating sale of liquor should have occurred when the zoning regulations were amended. He feels that issue is spot zoning in reverse and holding the applicant to a higher stander then someone who would be putting it elsewhere in the Town. Mr. Roscow stated that the Planning and Zoning Commission does not have the power to make regulations on one application that is not popular position with the neighbors. It will not stop the Quinnipiac University students from having parties nor will it stop them from walking on Whitney Avenue. Mr. Roscow said drunk is drunk and he understands there have been alcoholic related deaths and he takes this issue very seriously. However, the concerns should be brought up during the public hearings when the zoning regulations were being amended.

Ms. Altman stated that she understands Mr. Roscow's point about spot zoning. However, when you compare the proposed location for this liquor store and the ones located in Whitneyville, the ones in Whitneyville are accessible by sidewalks and are well lit, and the sites are two very different sites. Ms. Altman said she is in agreement that you cannot regulate commerce. She finds every time she reads about a Quinnipiac Student being hit by a car on Whitney Avenue she is very saddened. Ms. Altman what exasperates the issue is what Mr. Roscow said about the parties, that they will not go away, the students are not going to go away and the liquor will not go away. She said two wrongs do not make a right and adding to the problem because it exists is not necessarily right. Ms. Altman stated that she was concerned about the path up to Rocky Top and the hazard it represented, she had asked for it to be put in the minutes that she was concerned about the dangers to the students. Ms. Altman cannot support this application because it increases the danger to pedestrians. One of her nightmares is if she were to be driving and hit one of the kids. Ms. Altman said she cannot be party to something that increases the problem.

Mr. Roscow said that the issue of the student parties should be handled by the Police Department and Quinnipiac should work out and based on the comments from the neighbors they have not gotten responses to their complaints. He said that you cannot regulate commerce and it is not the time to change the regulations after an application has been made and he cannot make a decision based on if it is popular or not.

Mr. McDonagh stated that he is not as concerned about a liquor store as a source of danger as he about a bar/restaurant. He explained that the Commission had no jurisdiction over DeMils restaurant because it was a continuation of use. Mr. McDonagh is more concerned about someone drinking at an establishment and driving to go someplace rather than a liquor store where a purchase is made and brought home. Mr. McDonagh said that he does not know if adding one more liquor store would be harmful to the safety health and welfare of the public within the Commission's jurisdiction.

***Mr. Roscow made the motion to approve Special Permit & Site Plan Application 11-1184 as recommended by Mr. Kops with the following conditions:***

1. A Zoning Permit must be obtained.

2. All work must be completed by September 13, 2016.

***Mr. Reynolds seconded the motion. Mr. Roscow, Mr. McDonagh and Mr. Reynolds voted in favor of the motion. Mr. Cesare, Mr. Campo, Ms. Altman and Mr. Poitier voted against the application. The motion was therefor denied.***

**3. Special Permit & Site Plan 03-997**

3594 Whitney Avenue  
 Trailside Village Retail Building  
 Request to release bond in the amount of \$126,489.00  
 Ravenswood Construction, LLC, Applicant  
***Tabled from the 7/26/11 meeting***

Mr. McDonagh stated that this item had been tabled at the previous meeting at the request of the applicant. He reviewed the request to release the bond in the amount of \$126,489 and advised the Commission that Ms. Holly Masi, Zoning Enforcement Officer, recommends that the request be approved.

***Ms. Altman made the motion to approve the request to release the bond in the amount of \$126,489.00 as recommended by Ms. Holly Masi, Zoning Enforcement Officer. Mr. Campo seconded the motion. The motion passed unanimously.***

**4. Special Permit & Site Plan 08-1142**

21 Hamden Park Extension  
 Request to release bond in the amount of \$117,347.15  
 Campo Enterprises, Applicant

Mr. Campo recused himself from this application.

Mr. McDonagh reviewed the request to release the bond in the amount of \$117,347.15. He advised the Commission that Ms. Holly Masi, Zoning Enforcement Officer, recommends that the request be approved.

***Ms. Altman made the motion to approve the request to release the bond in the amount of \$117,347.15 as recommended by Ms. Holly Masi, Zoning Enforcement Officer. Mr. Cesare seconded the motion. The motion passed unanimously.***

**5. Special Permit & Site Plan 06-1094**

843, 953, 965 Dixwell Avenue  
 Request to release bond in the amount of \$324,694.50  
 Larosa Building Group, Applicant

Mr. McDonagh reviewed the request to release the bond in the amount of \$324,694.50. He advised the Commission that Ms. Holly Masi, Zoning Enforcement Officer, recommends that the request be approved.

***Ms. Altman made the motion to approve the request to release the bond in the amount of \$324,694.50 as recommended by Ms. Holly Masi, Zoning Enforcement Officer. Mr. Campo seconded the motion. The motion passed unanimously.***

**C. Old Business/ New Business**

1. Review minutes of July 26, 2011

***Ms. Altman made the motion to approve the Minutes of July 26, 2011 as written and commended the Clerk of the Commission. Mr. Poitier seconded the motion. Mr. McDonagh, Ms. Altman, Mr. Cesare, Mr. Poitier, Mr. Campo and Mr. Roscow voted in favor of the motion. The motion passed.***

Mr. Kops stated that he and Mr. Lee were approached by an architect representing the Hamden Hall Country Day School. They would like to increase the size of the court yard area and the vestibule. Mr. Lee said that the question is should the application be for a minor amendment or a major amendment to the Special Permit to add 1,500 square feet to the interior court yard and in. Mr. Kops said that this would involve an area outside where students could sit study and talk with benches built in. He said that a major amendment would require a public hearing, or it could be a minor amendment that would be signed off by the Town Planner or a minor amendment that would come before the Commission. Mr. Kops stated that his recommendation is that it be a minor amendment that would come before the Commission.

Ms. Altman said that representing Whitneyville it should be a major amendment to the Special Permit so that the neighborhood would be allowed a public hearing to comment and their concerns about the density and the use of the campus. She said that the community may be upset if they were not to be consulted about any changes.

Mr. McDonagh said he would defer to the member of the commission who lives in the area and expressed the concerns of the neighbors. Mr. McDonagh feels it should be a major amendment.

Mr. McDonagh advised the Commission that the special meeting for signage has been postponed.

Mr. Kops said the special meeting would be specifically about the window signage and the concerns that were received from the business owners. Mr. Kops said that the staff will prepare information regarding the zoning regulation and signs.

Ms. Altman said that she had forwarded dates that she is not available to the commission clerk and would like this considered when determining a date for the special meeting.

Mr. McDonagh said that the Planning & Zoning Commission has had prior meetings to allow community input and feels this is a good idea.

#### **D. Adjournment**

***Ms. Altman made the motion to adjourn. Mr. Cesare seconded the motion. There was no further discussion. The motion passed unanimously.***

The meeting adjourned at 8:18 p.m.

**Submitted by:** \_\_\_\_\_  
**Stacy Shellard, Clerk of the Commission**

It is hard to believe that from the Mt Carmel connector to 4133 Whitney ave which is less than 3 miles, our neighborhood is already amply served by 3 other liquor stores. An additional liquor store is not what we would like to see in the former Nicolino's gift shop.

A liquor store there is not the type of business that will have a positive affect on our neighborhood.

Why do you ask?

Just think of the usual scenario at Amity Liquor Store on Thurs, Fri and Saturday evenings, where it is almost impossible to get into the parking lot at times to get a cup of coffee from dd or a gallon of milk from Krausers. Numerous times I have seen college students with open trunks filling them up with ice, beer etc Not a positive sight.

Thank goodness there is a light on Sherman Ave that helps drivers navigate Whitney when it is used. However, many drivers try to exit the parking lot by using the Whitney Ave driveway to turn left which is an accident waiting to happen.

What do you think will happen if this new liquor store opens in a strip mall with no light and the driver exiting wants to turn left during peak hours. It will be a horror show.

Additionally, we don't need another place for QU students living in that area to cause traffic issues by trying to cross the Avenue especially late in the evening.

I am also concerned about the additional impact to the appearance and intensity of the use of the site. This is a very low key strip mall made up of professional offices and small shops which does not generate a lot of traffic on a daily basis. Will this new liquor store's windows be pasted with signs advertising specials? If approved, I hope that a condition of approval will be to limit the advertising signs in the windows.

Please find some way to deny this application

ATTACHMENT #1