

July 2, 2024

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The Honorable Tyisha Walker-Myers, President
New Haven Board of Alders
City of New Haven
165 Church St
New Haven, CT 06510

Re: Petition of Chapel Haven to Establish a Planned Development District
Application of Connecticut General Statutes § 8-2m

Dear President Walker-Meyers and Members of the Board of Alders:

On June 26, 2024, the City Plan Commission conducted a public hearing on the pending application for a planned development district (“PDD”), submitted by Chapel Haven Schleifer Center Inc. (“Chapel Haven”), in connection with the existing Chapel Haven campus located at the corner of Whalley Avenue and Emerson Street. During that public hearing, a member of the public asked Chapel Haven to address certain language in Connecticut General Statutes § 8-2m as it relates to the proposed PDD.¹ This memorandum has been prepared in order to more fully address that question and confirms that the Chapel Haven PDD does not conflict § 8-2m.

Executive Summary

Section 8-2m was enacted in response to a then-pending dispute concerning approval of a PDD that sought to expand an existing nonconforming catering use (Anthony’s) in a residential district. Though the language of the statute is somewhat confusing, the legislative history and available case law make clear that the intent of the legislature was to prevent the approval of a PDD that (a) permits the expansion of a nonconforming use and/or (b) allows a type of use that would not otherwise be permitted by the underlying residential district.

The proposed PDD does not violate or otherwise conflict with § 8-2m for the following reasons:

- (1) The PDD does not allow the expansion of any pre-existing nonconforming use. Chapel Haven is an existing residential school that is permitted-as-of right in the RM-2 zone.
- (2) The PDD does not allow any use beyond those that are already permitted in the RM-2 zone. The term “Independent Living Community” is proposed as a holistic and inclusive term to describe Chapel Haven’s existing use providing education and residential support programs for adults with intellectual and developmental disabilities. The accessory uses proposed as part of the “Independent Living Community” are entirely consistent with what is permitted in connection with any other secondary school, college, or university use permitted in the RM-2 zone pursuant to §§ 12(b)(1)(f)-(g) of the Zoning Ordinance.

¹ Of note, the Advisory Report prepared by staff in advance of the public hearing found that the proposed PDD complied with § 8-2m.

Background

By way of background, § 8-2m was enacted in 2006 in response to a then-pending dispute regarding the approval of a PDD in connection with a catering facility known as Anthony's Oceanview, Inc. ("Anthony's"), which was a preexisting nonconforming use in the RS-2 zoning district. The Board of Alders had approved that PDD, subject to certain limitations, and the residential neighbors appealed, claiming that the approval of the Anthony's PDD violated the provisions of the special act by which the City of New Haven exercises its zoning powers.

The Connecticut Appellate Court determined that the PDD was "not properly authorized by the legislature or the charter of New Haven and therefor [was] invalid." *Campion v. Board of Alderman of City of New Haven*, 85 Conn.App. 820, 853 (2004). Thereafter, on June 6, 2006, the Connecticut Supreme Court reversed the judgment of the Appellate Court and confirmed that the Anthony's PDD was authorized by the City's zoning powers. *Campion v. Board of Alderman of City of New Haven*, 278 Conn. 500 (2006). Before the publication of the Supreme Court's decision, however, the State Legislature passed § 8-2m in an effort to clarify the City's statutory authority with respect to the approval of planned development districts and similar flexible zoning districts, which states as follows:

The zoning authority of any municipality that (1) was incorporated in 1784, (2) has a mayor and board of alderman form of government, and (3) exercises zoning power pursuant to a special act, may provide for floating and overlay zones and flexible zoning districts, including, but not limited to, planned development districts, planned development units, special design districts and planned area developments. The regulations shall establish standards for such zones and districts. Flexible zoning districts established under such regulations shall be designed for the betterment of the municipality and the floating and overlay zones and neighborhood in which they are located and shall not establish in a residential zone a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district. Such regulations shall not authorize the expansion of a pre-existing, nonconforming use. Notwithstanding the provisions of this section, no planned development district shall be approved which would permit a use or authorize the expansion of a pre-existing nonconforming use where the underlying zone is a residential zone.

By passing § 8-2m, the State Legislature sought to provide the City of New Haven with clear zoning authority to approve future planned development districts subject to specific standards and certain limitations. At the same time, the State Legislature also sought to prevent the creation of a PDD that would authorize a use that would not otherwise be permitted in the underlying residential zone, or allow the expansion of a pre-existing nonconforming use in a residential zone. In other words, language was added to § 8-2m to disallow future PDDs like the one approved for the Anthony's expansion—i.e., a PDD that permits the expansion of a nonconforming use and/or allows a type of use that would not otherwise be permitted by the underlying residential district regulations.

Application of 8-2m to Chapel Haven PDD

The Chapel Haven PDD is consistent with and complies with § 8-2m for two reasons. First, the proposed PDD does not propose the expansion of any pre-existing nonconforming use. Chapel Haven is an education/institutional use that is permitted as-of-right within the existing RM-2 zone. Chapel Haven has been providing education and residential services to adults with intellectual and developmental disabilities at its Whalley Avenue/Emerson Street campus since 1976. Most recently, Chapel Haven received site plan approval for the expansion of the existing school and residential programs as part of the campus redevelopment in 2017.

Second, the Chapel Haven PDD does not propose any use that is not already permitted by the underlying RM-2 regulations. While the PDD proposes a new term—“Independent Living Community”—to describe Chapel Haven’s existing permitted uses, it does not allow for the approval of any use beyond those already permitted in the RM-2 zone.

The following uses are currently permitted in the RM-2 zone pursuant to the Zoning Ordinance:

- Multi-family dwellings²
- Public and private elementary and secondary schools meeting all requirements of the compulsory education laws of the State of Connecticut, and adult education facilities connected with such schools, including dormitories connected with such schools but excluding fraternities and sororities³
- Public and private colleges and universities, including dormitories connected with such institutions but excluding fraternities and sororities, trade/or business schools and colleges, and schools and colleges operated as a commercial enterprise⁴

Chapel Haven is best categorized as an educational institution—it is a non-profit organization that provides unique education programs and residential housing for adults with intellectual and developmental disabilities. In addition to the principal education/school use, Chapel Haven’s on-campus residences, offered as part of an independent living program (SAIL) for adults with intellectual and developmental disabilities, might also be fairly characterized as a type of “multi-family dwelling” use. Both the education and multi-family use are permitted as-of-right in the RM-2 zone.

Because Chapel Haven provides a unique mix of residential and education services, the “List of Permitted Uses” in the proposed PDD utilized the term “Independent Living Community” in an effort to identify Chapel Haven’s existing permitted uses under a single, holistic term that can be easily applied to future applications. The term “Independent Living Community” does not propose any new or additional use beyond what would be allowed for any other secondary school, college, or university use permitted in the RM-2 zone pursuant to §§ 12(b)(1)(f)-(g) of the Zoning Ordinance. Although the terms “secondary school,” “college,” and “university” are not defined in

² Zoning Ordinance, § 14(a)(1).

³ Zoning Ordinance, §§ 12(b)(1)(f), 13(b)(1), 14(b)(1)

⁴ Zoning Ordinance, §§ 12(b)(1)(g), 13(b)(1), 14(b)(1)

the Zoning Ordinance, the definition of “school” includes such institutions and is defined as follows:

Any public, private, parochial, charitable, charter or nonprofit elementary or secondary school, junior college or university, other than a trade or business school, **including instructional and recreational uses, with or without living quarters, restaurants, dining rooms, kitchens, heating plants and other support facilities for students, teachers and employees, including support to multiple facilities, student bodies, and/or teacher groups, as well as any other facilities or uses which may be approved or required in the future by the Connecticut State Department of Education.**

Zoning Ordinance, § 1.

Like the definition of “school,” the definition of “Independent Living Community” is inclusive of the accessory and supportive uses customarily associated with residential education facilities. It is common knowledge that recreation facilities, assembly halls, staff offices, libraries, gardens, cafes, and medical clinics are accessory uses commonly associated with residential schools (e.g., boarding school or university). A prime example of a unique accessory use affiliated with an educational use, is the Culinary Program offered at Wilbur Cross High School, located in the RS-2 district, which offers members of the public the opportunity to purchase food prepared by students of the program at the “Governor’s Café.”

In sum, the proposed PDD is consistent with § 8-2m because it does not allow for the expansion of any existing non-conforming use, nor does it allow any use that would not otherwise be permitted as a school or multi-family residential use in the underlying RM-2 district. In order to clarify and confirm that the proposed “Independence Living Community” term does not permit a use other than what is already allowed in the underlying RM-2 zone, Chapel Haven has revised Exhibit C to expressly state that the additional enumerated uses (listed in bullet point format) are only permitted as accessory and subordinate uses. See attached **Exhibits 1 and 2**, providing redline and clean copies of this revision to Exhibit C.

Relevant Case Law

Only one court has considered the relevancy or bearing of § 8-2m in connection with a PDD approved in New Haven after 2006. In that case, Judge Corradino considered whether § 8-2m prohibited the approval of a new PDD in a residential zone (RM-2 and RO zoning districts) for the purposes of establishing a new consolidated campus for the Yale University management school. *Tagliarini v. New Haven BOA, CPC et. al.*, No. CV106010699S, 2011 WL 1366639, at *1 (Conn. Super. Ct. Mar. 14, 2011). After acknowledging the somewhat confusing language of the statute, Judge Corradino determined that the proposed PDD did not establish “a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district” in violation of § 8-2m⁵ because “[u]niversity uses were already permitted in the underlying zone and [had] been for 45 years.” (emphasis added) *Id.* Similarly, Chapel Haven is an education/school use that is

⁵ A “planned development district” is listed as a type of “flexible zoning district” under § 8-2m.

permitted-as-right in the RM-2 zone and has existed at the Whalley Avenue/Emerson Street campus for nearly 50 years.

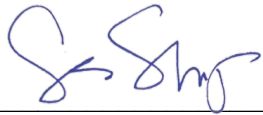
Conclusion

Because Chapel Haven is an existing use permitted as-of-right in the RM-2 zone, as well as the fact that the current proposal does not allow any use beyond those already permitted in the underlying residential district, the proposed PDD does not violate § 8-2m.

Thank you for your time and consideration. As always, we welcome any questions and look forward to working with the Board of Alders and City staff in this important matter.

Sincerely,

Chapel Haven Schleifer Center, Inc.

By: _____

Sara A. Sharp, Esq.

Agent/Attorney for Chapel Haven Schleifer Center, Inc.

EXHIBIT 1 – PROPOSED REVISIONS TO EXHIBIT C (redline)

EXHIBIT C

List of Permitted Uses

1. All uses permitted in the RM-2 District pursuant to the Zoning Ordinance.
2. Independent Living Community: a private facility operated by an institution or nonprofit organization for the purpose of providing a community-based education and supportive housing program for adults with disabilities. Such facilities may include the following accessory and subordinate uses:
 - Dormitories, student housing, and other living quarters;
 - Kitchens;
 - Greenhouse, roof garden, or community garden;
 - Special education uses, such as a Transitional/Vocational Services Provider and/or an Approved Private Special Education Program;
 - Café, bakery, convenience store, and/or dog grooming uses associated with educational and/or vocational training programs for individuals with disabilities;
 - Health Practitioner's Office;
 - General, charitable, philanthropic, and other staff or professional offices;
 - Indoor and outdoor recreation facilities and community centers;
 - Assembly hall;
 - Cultural activities not carried on as gainful business, including art galleries and libraries; and
 - On or off-site parking lot or parking structure. ~~and~~
 - ~~○ Accessory uses customarily incidental to any of the above-referenced uses.~~

EXHIBIT 2 – PROPOSED REVISIONS TO EXHIBIT C (clean)

EXHIBIT C

List of Permitted Uses

1. All uses permitted in the RM-2 District pursuant to the Zoning Ordinance.
2. Independent Living Community: a private facility operated by an institution or nonprofit organization for the purpose of providing a community-based education and supportive housing program for adults with disabilities. Such facilities may include the following accessory and subordinate uses:
 - Dormitories, student housing, and other living quarters;
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 - Special education uses, such as a Transitional/Vocational Services Provider and/or an Approved Private Special Education Program;
 - Café, bakery, convenience store, and/or dog grooming uses associated with educational and/or vocational training programs for individuals with disabilities;
 - Health Practitioner's Office;
 - General, charitable, philanthropic, and other staff or professional offices;
 - Indoor and outdoor recreation facilities and community centers;
 - Assembly hall;
 - Cultural activities not carried on as gainful business, including art galleries and libraries; and
 - On or off-site parking lot or parking structure.