

NORTH HAVEN PLANNING & ZONING COMMISSION

: SUPERIOR COURT
 :
 : J.D. OF NEW HAVEN
 :
 : AT NEW HAVEN
 :
 : OCTOBER 28, 2024
 :

CITATION AND RECOGNIZANCE

TO ANY PROPER OFFICER:

By Authority of the State of Connecticut, You are hereby commanded to summon the NORTH HAVEN PLANNING & ZONING COMMISSION, 18 Church Street, North Haven, Connecticut 06473, to appear before the Superior Court within and for the Judicial District of New Haven on December 3, 2024 then and there to answer unto the foregoing Complaint and Appeal of FFDC EJV II LLC and SHIV, L.L.C. by leaving two (2) true and attested copies of the attached Appeal and of this Citation with the Clerk of the Town of North Haven at least twelve (12) days before the return date.

Plaintiffs FFDC EJV II LLC and SHIV, L.L.C. as principals and Donna S. Worroll of the City of Milford, as surety, are recognized in the sum of \$250.00, payable to the North Haven Planning & Zoning Commission to prosecute this appeal to effect and comply with the orders and decrees of this Court. I hereby certify that I have personal knowledge of the financial responsibility of the Plaintiffs and deem them sufficient to pay the costs of this action.

HEREOF FAIL NOT, but of this writ, with your doings thereon, make due service and return according to law.

Dated at Milford, Connecticut, this 28th day of October, 2024.



Amy E. Souchuns
Commissioner of the Superior Court

6. Thus, under RECARA Section 148(c), codified at Conn. Gen. Stat. § 21a-422f(c), recreational cannabis “shall be zoned as if for any other similar use, other than a cannabis establishment, would be zoned.” (“Closest Use”).

7. In June 2024, Fine Fettle applied for site plan approval and, if required, special permit approval, for an adult use recreational cannabis retail store on the Property (“Application”).

8. The Application included a variety of supporting materials addressing zoning and operational considerations, including a traffic study, letter outlining distance to certain receptor uses, and cannabis-specific issues such as security and deliveries.

9. The Application depicted 20 parking spaces for the facility, one more than required by the Zoning Regulations for retail use.

10. The Commission held a public hearing on the Application, which opened at its September 9, 2024 meeting. At Fine Fettle’s request, the Commission initially discussed whether the Closest Use was a retail pharmacy – a permitted use in the CB-20 Zone – or whether the Closest Use was a retail liquor store – a special permit use in the CB-20 Zone, ultimately voting that the Closest Use was a liquor store.

11. At the start of Fine Fettle’s presentation, the Commission Chairman noted an issue raised in the staff report: that the Zoning Regulations with respect to alcohol uses establish a 500 foot separation distance requirement between those uses and a variety of other uses, such as schools, places of worship, or libraries (“Alcohol Separation Regulation”).

12. No public or private kindergarten through grade 12 schools, colleges, or universities are allowed in the CB-20 Zone, nor are any located within 500 feet of the Property – a fact documented in the Application.

13. Across the street from the Property is a Paul Mitchell cosmetology school (“Paul Mitchell”) – a use only allowed in the CB-20 as a “vocational and technical school.”

14. The Chairman noted that he, Town Planner Alan Fredericksen, and the town attorney discussed the Application prior to the start of the public hearing.

15. The Chairman explained that they had concluded that Paul Mitchell constituted a school for the purposes of the Alcohol Separation Regulation, a finding noted in the staff report. The Chairman further indicated that he had shared this position with other members of the Commission.

16. During the September hearing, Fine Fettle addressed a number of questions from the Commission as well as those from the public, discussing operations, deliveries, and screening, as well as rebutting public concerns about cannabis usage. Because of the issues surrounding the Alcohol Separation Regulation, the hearing was continued to the Commission’s October 7 meeting.

17. At the September meeting, following the discussion of the Application, the Commission also held a public hearing on its own application to amend the Zoning Regulations to ban cannabis uses in the town. The Commission closed the hearing the same night and voted to approve the amendment.

18. At the October 7 session of the public hearing, Fine Fettle rebutted the Commission’s interpretation of the applicability of the Alcohol Separation Regulation, noting that the Commission had approved new special permits for restaurants within the prohibited distance of schools and the public library. Members of the public spoke in opposition and in support, with a letter bearing more than 100 signatures in support of the Application entered into the record.

19. The Commission debated the Application and on a unanimous vote, denied the special permit application based upon the Property's proximity to Paul Mitchell, and also denied the site plan application based upon the lack of a special permit and the proximity to Paul Mitchell (collectively, the "Denial").

20. Notice of the Denial was published in the North Haven Courier on October 17, 2024.

21. Pursuant to General Statutes § 8-8, SHIV is statutorily aggrieved by the Denial as the owner of the Property and Fine Fettle is statutorily aggrieved as the applicant before the Commission and lessee of the Property.

22. SHIV and Fine Fettle are classically aggrieved as the owner and the applicant/lessee, respectively, whose interests differ from those of the general public with respect to the Application and the Property and whose interests have been specially and injuriously affected by the Denial as detailed above.

23. In issuing the Denial, the Commission acted illegally, arbitrarily and in abuse of its discretion in that:

(a) the Closest Use was a retail use and/or a retail pharmacy under the Zoning Regulations and the Commission's determination that the Alcohol Separation Regulation was applicable was erroneous;

(b) the Commission's conclusion that Paul Mitchell is a school is inconsistent with the Zoning Regulations;

(c) the Commission members pre-determined Fine Fettle's application, as evidenced by (i) the ban on cannabis uses adopted while the public hearing was still open, and (ii) the Commission's discussion of the Application prior to the opening of the public hearing;

- (d) the Commission lacked substantial evidence to support its decision; and
- (e) the Commission failed to review the information before it in accordance with law and the Zoning Regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

1. The appeal be sustained; and
2. such other relief as is just and proper.

THE PLAINTIFFS
FFDC EJV II LLC and SHIV, L.L.C.

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