



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

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Planning - Zoning - Economic Development - Conservation

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MEMORANDUM

Date: August 10, 2015

To: Robert Best, Chairman, & Members, Planning Board

From: Jillian M. Harris, AICP, Planning and Zoning Administrator
Timothy J. Thompson, AICP, Community Development Director

Subject: **Madi Choueiri (applicant/owner)** – Review for acceptance and consideration of Final Approval for a waiver of full site plan review for a restaurant located at 480 D.W. Highway in the C-1 (Limited Commercial), Elderly and Town Center Overlay and Aquifer Conservation Districts. Tax Map 5D-3, Lot 046. **This agenda item is continued from the June 2, 2015 and July 7, 2015 Planning Board meetings.**

Background: As the Board may remember, the applicant appeared before you on June 2, 2015 and July 7, 2015 to discuss the proposed restaurant at 480 D.W. (Please read the attached staff memo and minutes).

The applicant is seeking a waiver of full site plan review from the Board and has submitted a revised floor plan and site plan in response to comments from the Board at the previous meetings. The applicant has revised the plan significantly since the last hearing, showing more clearly the proposed improvements and layout. The proposal has also been scaled back to the point that the seating and number of employees no longer require off-site parking or a parking waiver (as it relates to the restaurant use).

Completeness: Staff recommends that the Board determine if it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow the Board to make an informed decision. The planning staff also recommends that the Board determine if annotations to a previous plan is sufficient to justify the waiver of full site plan review. The Board will need to determine if the presented plan is satisfactory, if the applicant can make additional changes to make it satisfactory, or if a fully engineered plan is more appropriate for this use.

Waivers: Other than the waiver of full site plan review, the applicant is not requesting any additional waivers at this time. The Board has discussed the need for a sidewalk waiver and possibly a parking waiver at previous meetings (see below discussion of parking). If any others are requested, Staff recommends that the Board vote with respect to any requested waivers utilizing the criteria from RSA 674:44:

- Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; or
- Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Parking: The revised plans submitted on August 10 indicate seating for 30 people and calls for a total of 4 employees. Based on the calculation of 1 space per 3 seats, plus 1 per employee, Staff has determined that 14 spaces are required. The plan revisions eliminated a number of seats from the previous submittal, which now allows for the required 14 spaces to all be located on site. We understand the applicant is proposing to move forward with this scaled back plan at this time, and will seek off-site parking arrangements at some point in the future if he wishes to expand the seating at a later date. The applicant will need to clarify if there will remain a residential unit on the site. If it is proposed to remain, a parking waiver appears to be needed to account for the residential unit (this would appear to be a reasonable waiver request, assuming the residential unit is to stay and a waiver is requested, particularly if the resident is also the applicant or an employee).

Recommendation:

Based upon the information available to date and if the Board grants the waiver of full site plan review, Staff recommends that the Board approve the site plan with the following conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified (should the Board deny the waiver of full site plan review and require a fully engineered plan, staff recommends tabling the application to allow the applicant to obtain a fully engineered site plan):

1. Final plans to be signed by the Applicant and Property Owner;
2. Any waivers granted shall be listed with the section number and date of approval on the Final Plan;
3. Applicant shall revise site plan as directed by the Planning Board to the satisfaction of the Planning Board and CDD Staff;
4. The applicant shall indicate any proposed easements on the plan, as applicable, including utility, parking and sidewalk easements. A draft copy of any proposed easements and any applicable legal documents to be submitted to the Community Development Department for review and approval by the town's legal counsel (legal review shall be performed at the applicant's expense);
5. Applicant shall address the following comments from the Conservation Commission (as applicable):
 - a. The Commission requests no use of salt or de-icing compounds at the proposed site. This is due to the vicinity of Baboosic Brook, the Merrimack River, and being in a Wellhead protection area.
6. Applicant shall address any forthcoming comments from the Public Works Department;
7. Applicant shall address any forthcoming comments from the Building and Health Division (as applicable);
8. Applicant shall address the following comments from the Wastewater Division:
 - a. The plan as submitted does not indicate where the sewer lateral is located.

9. Address planning staff technical comments. (Below)

Planning Staff Technical Comments

1. Applicant to add "C-1 (Limited Commercial), Elderly and Town Center Overlay, and Aquifer Conservation Districts" to zoning notes;
2. Please add "Plan annotated by Madi Choueiri" with the date (and existing signature) under the notes;
3. Please update the site plan as follows:
 - a. Remove the 50' Front setback (from the C-1 District) as it does not apply to this lot located in the Town Center Overlay;
 - b. Please add the appropriate front setback line (30') from Church Street and side setback lines (15') as required by the Town Center Overlay;
 - c. Please update the plan as appropriate (preferably with a detail) to indicate screening of the proposed dumpster, as required by the regulations;
4. Please add north arrow and street locations on the floor plan;
5. Please add a note that the "Final restaurant design and capacity must be approved by the Fire Department, including Building and Health Divisions";
6. Please add a note referencing CDD Plan #1082 which was annotated;
7. Please indicate the locations of any proposed signs, and verify compliance with the requirements of the Zoning Ordinance;
8. Please add a note indicating the source of water and sewer services;
9. Please note that the use will include the existing residential apartment (if it is to remain);
10. Please verify with the Planning & Zoning Administrator (*who was on vacation at the time this memo was finalized*) whether a setback variance from the Zoning Board of Adjustment for the proposal to add a new roof /enclosure for the patio is required (as the existing patio is within the 30' front setback).

Staff also recommends that the following general and subsequent conditions be placed on the approval:

1. All proposed easements and any applicable legal documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
2. Applicant shall address the following comments from the Fire Department:
 - a. As this proposal is for a change of use to a mixed use combining a residence and restaurant the entire building shall be protected by an approved NFPA-13 compliant fire sprinkler system. (Town of Merrimack Building Zoning Ordinance and Building

Code, Section 11) Plans shall be provided to this office for review and approval before a permit can be issued;

- b. The building shall be protected by an approved NFPA-72 fire alarm system. Plans shall be provided to this office for review and approval before a permit can be issued;
3. Applicant shall address the following comments from the Wastewater Division:
 - a. A plumbing plan indicating said grease trap is required (see condition #7a).

Ec: Madi Choueiri, Applicant/Owner
George Keller, Land Surveyor
Carol Miner and Fred Kelley, Building Department
Al Turner, Health Official
Ken Conaty and Jim Taylor, Wastewater Division
Kyle Fox, Deputy Director of Public Works/Town Engineer
John Manuele, Captain, Merrimack Fire Department
Tim Tenhave, Chairman, Conservation Commission

Cc: Planning Board File
Correspondence