APPLICATION FOR A SPECIAL USE PERMIT/DIMENSIONAL VARIANCE

CITY OF NEWPORT, RI
ZONING BOARD OF REVIEW

DATE: June 26, 2017

Board members:

The undersigned hereby petitions the Zoning Board of Review for a special use permit/dimensional variance in the application of the provisions or regulations of the Zoning Ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth. (See also addendum)

Location of premises

Street & No: 4 Commercial Wharf

Tax Assessor's Plat 27 Lots 77, 78, 248 and 281

Petitioner Information

Applicant: SW 77, LLC; SW 78, LLC; Address: Rumford Center, Bldg 3, Suite 1005
SW 248, LLC, SW 281, LLC 20 Newman Ave., Rumford, RI 02916

Owner: same
Address: same

Lessee: N/A
Address: N/A

Property Characteristics

Dimensions of lot-frontage depth area 87,197 sq. ft.

Zoning District in which premises is located WB

How long have you owned above premises? December 17, 2014

Are there buildings on the premises at present? yes

Total square footage of the footprint of existing buildings 1,720 sq. ft.

Total square footage of the footprint of proposed buildings 28,638 sq. ft.

Present use of premises commercial parking, office, marina

Proposed use of premises Hotel, retail, restaurant, commercial parking, office, marina
Give extent of proposed alterations. This property is currently used as part of the mix of marina and commercial uses currently located on the site, including a marina office building to support marine operations and guest activities.

The Applicant is seeking to create a mixed use project highlighted by a hotel. Retail space and a restaurant will be located in the project as well as offices. Commercial parking will be maintained on the site as well as the existing marina. A state of the art water quality and storm water management system will be installed for the project. A professional office will be located in the building. A skating rink will be used on the site during the winter months. A special use permit is needed for these uses. In addition, regulatory variances will be required for density (17.100.050(C)) and room size for the hotel (17.100.050(A)). The amount of density for the site allows 58 rooms for the hotel while 84 rooms are being requested calling for a variance of 26 rooms. The Zoning Ordinance requires room sizes of 300 sq. ft. (17.100.050(A)) while the proposal seeks room sizes of 230 sq. ft. calling for a 70 sq. ft. variance. The parking spaces required for the project call for 147 spaces, while 166 spaces are being proposed. Therefore, no variance for parking spaces is needed if the variance requested below is granted.

In addition, the Applicant is seeking a variance from Section 17.104.20(F) and 17.100.050(C) of the Zoning Ordinance to permit adjacent, but not contiguous lots (Lots 248 and 281) to be used for square footage in calculating the density and parking spaces.

Zoning Characteristics Matrix

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Required/Allowed</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Size (sq. ft.)</td>
<td>87,197 sq. ft.</td>
<td>5,000</td>
<td>87,197 sq. ft.</td>
</tr>
<tr>
<td>Lot Coverage</td>
<td>2%</td>
<td>40%</td>
<td>37.98%</td>
</tr>
<tr>
<td>Dwelling Units</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Parking (# of spaces)</td>
<td>166</td>
<td>147</td>
<td>166</td>
</tr>
<tr>
<td>Front Setback</td>
<td>0'</td>
<td>0'</td>
<td>1'</td>
</tr>
<tr>
<td>Side Setbacks</td>
<td>5'</td>
<td>5'</td>
<td>5'</td>
</tr>
<tr>
<td>---------------</td>
<td>----</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Rear Setback</td>
<td>14'</td>
<td>5'</td>
<td>14'</td>
</tr>
<tr>
<td>Height</td>
<td>25'</td>
<td>45' plus freeboard</td>
<td>46' (1' of freeboard)</td>
</tr>
</tbody>
</table>

What provisions of the Comprehensive Land Use Plan are the applicable to this project?

**LAND USE: GOAL 1** Protect Newport's historic character and natural and cultural resources

**LAND USE: GOAL 2** Establish a pattern of land use to provide the highest level of health, safety and well-being for all segments of the community; Policy 2A: Relate the use of land to its natural characteristics and varying suitability for development.

**LAND USE: GOAL 3** Policy 3B: All new development or redevelopment to maintain complimentary scale, building materials, and dimensional patterns of Newport's historic character

**LAND USE: GOAL 4** Promote business, employment and economic development consistent with the community's character and limited resources, in order to sustain Newport's vitality

**LAND USE: GOAL 5** Protect the harbor and encourage traditional maritime related uses

**LAND USE: GOAL 8** Protect and enhance attributes of coastal region, including scenic values, which contribute to the quality of life for the citizens of Newport

**ECONOMIC DEVELOPMENT GOAL 1** Promote economic activity that will ensure and enhance the quality of life for all Newport residents

**ECONOMIC DEVELOPMENT GOAL 2** Foster conditions that will produce and maintain a healthy and broad based business climate in the City

**ECONOMIC DEVELOPMENT GOAL 4** Encourage economic development that is compatible with and will preserve the City's natural, historic, and cultural resources
What special conditions and circumstances exist which are peculiar to the land, structure or building involved, which are not applicable to other lands, structures or buildings in the same district?

There is a public way that is located between contiguous parcels of land. Without the public way, all lots would be contiguous. The Applicant is seeking a variance to utilize all four lots for the project thereby providing a large amount of square footage dedicated to the project. This is unique to have parcels of land in this district. The flood plain for the land also limits the area of construction. The room size and density requested allows for the reasonable use of these lots in this district.

Explain how the literal interpretation of the provisions of this zoning code deprive the applicant of rights commonly enjoyed by other property owners in the same district under the provisions of this zoning code?

The Applicant's hardship is due to these unique characteristics of the subject land and structures and not the general character of the surrounding area. Not being able to utilize all four lots would deprive the Applicant of the available lot size to dedicate to this project. The density available to other land in this district would not be available to Applicant without relief. The density and room size requirements would also prohibit the reasonable use by Applicant of these large parcels.

Explain why this is the minimum variance that will make possible the reasonable use of the land, building or structure.

The variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure because it is the least relief needed to allow the Applicants to have the proposed uses be in harmony with the character of the neighborhood, and to be able to put the property to its permitted uses consistent with other properties in the area without the hardships noted above. The variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, nor will it impair the intent or purpose of the zoning code or the comprehensive plan, because the request is in furtherance of a reasonable use of the
properties, as contemplated for the densely developed WB district and as is consistent with the character of the neighborhood. If the Applicants are denied the variance they will suffer a hardship amounting to more than a mere inconvenience because they would be denied the ability to have reasonable uses consistent with the character of the neighborhood, and the property would continue to have the problematic features noted above, which prevent the properties from being reasonably put to their permitted use.

The Zoning Board's Role – Special Use Permits

Special use permits shall be granted only where the zoning board of review finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

1. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;

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

3. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;

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

5. The fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;

6. All standards contained in this zoning code;

7. The comprehensive plan for the city.

The burden of proof in a special-use permit application is on the applicant. This means that if the applicant fails to present adequate competent evidence to prove the applicable standard for issuing a special-use permit has been met, the board must deny the application.

The Zoning Board's Role – Dimensional Variance
In granting a variance, the zoning board of review shall require that evidence of the following standards be entered into the record of the proceedings:

a. That the reasons set forth in the application justify the granting of the variance and that the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;

b. That the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will not impair the intent or purpose of the zoning code or the comprehensive plan upon which this zoning code is based;

c. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant; and

d. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

e. That the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief;

By signing below, I hereby attest that the information provided is accurate and truthful. I also attest that I have read the section entitled “The Zoning Board’s Role.”

Applicants and Owners

By their attorney,

[Signature]

Neil P. Galvin
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ngalvin@cphglaw.com

Be sure all required drawings are attached to this application at the time of the submittal.