

Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin
DATE: May 16, 2017
RE: 17-0974CA/CU; 2-14 King Street

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: DW-PT Ward: 3C

Owner/Applicant: Russ Scully

Request: Install exterior removable deck panels, install awning and hood vent, and remove 3 windows.

Applicable Regulations:

Article 2 (Administrative Mechanisms), Article 3 (Applications, Permits, & Project Reviews), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Criteria & Guidelines)

Background Information:

The applicant is seeking approval to renovate the former Breakwater Café & Grill. Very limited building alterations include removal of 3 windows and infill with siding, installation of a hood vent, and installation of a retractable awning. Site alterations are limited to new deck panels throughout the outdoor seating area.

The property sits within the Special Flood Hazard Area. This location triggers conditional use review in addition to the SFHA review criteria under Sec. 4.5.4. Project plans have been provided to the state floodplain coordinator. Preliminary comments have been received. Further comments may be pending. If provided, they will be incorporated into permit conditions.

Previous zoning actions for this building:

- 6/10/11, Non-app issued for post-flood damage repairs
- 2/21/03, Approval to replace existing restaurant building with larger restaurant building (not acted upon)
- 5/9/91, Approval to construct new structure containing freezer and refrigeration units

Recommendation: Initial review and continuation of the hearing to afford additional time to address the Special Flood Hazard Area criteria.

I. Findings

Article 2: Administrative Mechanisms

Part 7: Enforcement

Sec. 2.7.8, Withhold Permit

A number of zoning permits have been approved for the subject property. Some, but not all, have final certificates of occupancy. Per this section, prior to issuance of a final certificate of occupancy for this project, any zoning permits not yet closed out with final certificates of occupancy must be addressed. **(Affirmative finding if conditioned)**

Article 3: Applications and Reviews

Part 5, Conditional Use & Major Impact Review:

Section 3.5.6 (a) Conditional Use Review Standards

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. *Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*
No change or expansion in use is proposed. Demands on public services and utilities are expected to remain unchanged. **(Affirmative finding)**
2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The subject property is located in the Downtown Waterfront – Public Trust (DW-PT) District. This district is intended to enhance and diversify commercial and residential development in the downtown waterfront area, and to increase access, utilization, and enjoyment of the lakeshore by the community. The restaurant use is consistent with this character and will remain unchanged. **(Affirmative finding)**

3. *The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

No change in use is proposed. No changes relative to this criterion are anticipated. **(Affirmative finding)**

4. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

As above, no change in use is proposed. No changes relative to this criterion are anticipated. **(Affirmative finding)**

and,

5. *The utilization of renewable energy resources;*

No renewable energy utilization is included in this proposal. Future incorporation is not precluded by the project design. **(Affirmative finding)**

and,

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances;*

City building and energy efficiency codes will apply via the building permit process.

(b) Major Impact Review Standards

Not applicable.

(c) Conditions of Approval:

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

No change or expansion in use is proposed. Impacts relative to this criterion are expected to remain unchanged. **(Affirmative finding)**

2. *Time limits for construction.*

No construction timeline or phasing are included in the project plans. The standard 2-year timeframe for zoning permits will apply. **(Affirmative finding)**

3. *Hours of operation and/or construction to reduce the impacts on surrounding properties.*

Days and hours of operation will remain consistent with those of Breakwater's: 9:00 AM – 10:00 PM, 7 days/week, seasonally. The exact extent of the season is not indicated and must be.

Construction hours are not noted in the application. Typical construction hours are Monday – Friday from 7:00 AM – 5:00 PM. Saturday construction may be allowed upon request. No work on Sunday. **(Affirmative finding if conditioned)**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,*

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

5. *Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*

See the recommended conditions.

Article 4: Maps & Districts

Sec. 4.4.1, Downtown Mixed Use Districts:

(a) Purpose

(4) Downtown Waterfront – Public Trust District (DW-PT)

The subject property is located in the Downtown Waterfront – Public Trust (DW-PT) District. This district is intended to enhance and diversify commercial and residential development in the downtown waterfront area, and to increase access, utilization, and enjoyment of the lakeshore by the community. The lakefront restaurant is consistent with this intent. As noted previously, the restaurant use will remain unchanged. **(Affirmative finding)**

(b) Dimensional Standards & Density

No changes proposed. **(Not applicable)**

(c) Permitted & Conditional Uses

See (d) 2 below.

(d) District Specific Regulations

1. Use Restrictions

A. Ground Floor Residential Uses Restricted

(Not applicable)

2. Public Trust Restrictions

The subject property is located within that area of the DW-PT: Maple to Main Street. The restaurant is a permitted use and will remain unchanged. **(Affirmative finding)**

3. Facades and Setbacks on Side and Rear Property Lines

(Not applicable)

4. Building Height Setbacks

A. Principal View Corridors

(Not applicable)

B. Church Street Buildings

(Not applicable)

C. Side Street Building Height

(Not applicable)

5. Lake Champlain Waterfront Setbacks

No changes proposed. **(Not applicable)**

6. Residential District Setback

(Not applicable)

7. Development Bonuses/Additional Allowances

None are sought.

Sec. 4.5.4, Natural Resource Protection Overlay District:

The entire restaurant and seating area are located within the Special Flood Hazard Area (at or below the 102' elevation). The finished floor elevation within the restaurant building is unclear. An architectural plot plan notes the elevation at 102,' whereas a topographic base plan (by a licensed land surveyor) notes ~100' elevations around the perimeter of the building slab. Between

the two, the surveyor plan is a more credible source of elevation information. No elevation certificate is evident in the zoning permit files for this property. One needs to be created and placed on file as the official assessment of the finished floor elevation. If indeed the finished floor elevation is at, or above, 102', the interior renovations are acceptable as is. If the finished floor elevation is below 102,' then additional information as to anchoring and elevation heights or flood proofing are required.

(a) District Specific Regulations: Special Flood Hazard Area

(7) Special Review Criteria

A. The danger to life and property...

The proposed renovations will have no effect on flood heights or velocities. **(Affirmative finding)**

B. The danger that material may be swept onto other lands...

The outdoor decking panels are seasonal. While they are to be interconnected, there is no evidence that they will be anchored to the ground to resist floatation as required. Without the required anchoring, they are susceptible to floating away during times of flooding. **(Adverse finding)**

C. The proposed water supply and sanitation systems...

No changes to water and sewer systems are proposed. The 1966 plot plan depicts an onsite septic system. Presumably, this system is no longer operational. Documentation on file from 1996 indicates municipal sewer service. Confirmation is needed. **(Affirmative finding if conditioned)**

D. The susceptibility of the proposed facility and its contents to flood damage...

Given its low elevation adjacent to the lakeshore, the property has been flooded a number of times. No information has been provided as to the decking materials and whether it is resistant to water damage during times of inundation. Similarly, clear information is lacking as to the actual finished floor elevation of the building and the elevation of interior equipment. **(Adverse finding)**

E. The importance of the services provided...

No new use is proposed. The existing restaurant will remain, albeit under different name and ownership. As noted above, the restaurant is consistent with the intent of this DW-PT district. **(Affirmative finding)**

F. The availability of alternative locations...

As above, no new use is proposed. While there are certainly alternative locations for restaurants, the use is in place already and will remain unchanged. **(Affirmative finding)**

G. The compatibility of the proposed use with existing development...

As previously noted, the restaurant is consistent with the intent of the DW-PT zone. **(Affirmative finding)**

H. The relationship of the proposed use to the Municipal Development Plan...

No new use is proposed. The existing restaurant use provides unique access to the working waterfront and contributes to the vitality of the downtown waterfront called for in PlanBTV: Downtown and Waterfront. **(Affirmative finding)**

I. The safety of access to the property...

While almost the entire property is within the Special Flood Hazard Area, access to it remains possible from King Street during flood events. No changes in access are proposed. **(Affirmative finding)**

J. The expected heights, velocity, duration, rate of rise...

The maximum regulatory flood elevation along the lakeshore is 102' above sea level. The velocity of flood waters along the lakeshore is not problematic. Water is more or less stationary as it rises and falls. The duration of flooding and the rate of its rise depend entirely on spring snowmelt and precipitation events. The lake has risen above 102' just once on record (spring 2011). Sediment transport is insubstantial. Sediment transport is associated with moving waterways such as rivers. The restaurant renovations will have no impact on flood height, velocity, duration, rate of rise, or sediment transport. **(Affirmative finding)**

K. Conformance with all other applicable requirements...

See Articles 4, 5, and 6 of these findings.

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Article 4 above.

Sec. 5.2.4, Buildable Area Calculation

Not applicable in the DW-PT zone.

Sec. 5.2.5, Setbacks

See Article 4 above.

Sec. 5.2.6, Building Height Limits

See Article 4 above.

Sec. 5.2.7, Density and Intensity of Development Calculations

See Article 4 above.

Sec. 5.5.1, Nuisance Regulations

Nothing in the proposal appears to constitute a nuisance under this criterion. **(Affirmative finding)**

Sec. 5.5.2, Outdoor Lighting

No new outdoor lighting is proposed. **(Not applicable)**

Sec. 5.5.3, Stormwater and Erosion Control

No earthwork or additional lot coverage is proposed. **(Not applicable)**

Article 6: Development Review Standards:

Part 1, Land Division Design Standards

(Not applicable)

Part 2, Site Plan Design Standards

Sec. 6.2.2, Review Standards

Site changes are limited to installation of deck panels throughout the outdoor seating area. Decking materials are not noted and must be. **(Affirmative finding if conditioned)**

Part 3, Architectural Design Standards

Sec. 6.3.2, Review Standards

Little in the way of exterior building changes are proposed. The three windows to be removed will be infilled with T-111 siding to match the existing building siding. A retractable awing will be installed; however, its location is not evident in the project plans and must be. A new hood vent will also be installed. Its rooftop location is not indicated and must be. Finally, the existing sign will be revamped with new messaging. New outdoor signage is subject to a separate zoning permit. **(Affirmative finding if conditioned)**

II. Conditions of Approval

None yet proposed in light of the outstanding items above.