

CITY OF NEWPORT  
PLANNING BOARD  
Zoning Amendment

STAFF REPORT

Meeting: September 9, 2019  
Initially Received: August 6, 2019  
Applicant: ARC HTNEWRI001, LLC  
Petition: Rezone 2 Kay Street from R-10 to GB

Issue:

The applicant has applied to rezone their property at 2 Kay Street Assessors Plat 21 Lot 123 from R-10 Residential to General Business. It is my understanding that they currently operate a Guest House under a Special Use Permit. They are interested in opening an accessory Restaurant, which would require a Use Variance, a difficult legal standard to meet. Expanding the abutting General Business zone would allow the Guest House and Restaurant to operate by right. The Historic District Commission reviews any exterior alterations to the property under the Certificate of Appropriateness process.

As part of the review of zoning amendments outlined in Rhode Island General Law (RIGL) § 45-24-50 through 53, and Section 17.120 of the Newport Code of Ordinances, the Planning Board “shall report to the city council within forty-five (45) days of the receipt of the petition giving its findings and recommendations.” As part of this review, the Planning Board shall “include a statement on the general consistency of the proposal with the comprehensive plan including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and Include a demonstration of recognition and consideration of each of the applicable purposes of zoning, as outlined in RIGL § 45-24-30 and Section 17.04.020 of the Newport Code of Ordinances.

Analysis: **Required findings**

General consistency of the proposal with the Comprehensive Plan including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan

Relevant goals, policies, and actions include:

Goal LU-1 – *To provide a balanced city consisting of residential, commercial and employment uses consistent with the character, environmental resources and vision of the community*

Policy LU-1.6 – *The City shall encourage the upgrading, beautification, revitalization, and environmentally appropriate reuse of commercial areas.*

Policy LU-1.7 – *The City shall protect the existing character of residential neighborhoods while encouraging local neighborhood business.*

Goal ED-1 – *To develop a robust and diverse economy, providing suitable employment opportunities for residents, and a stable tax base*

Policy ED-1.1 – *The City shall support key economic drivers while also seeking to attract and grow its technology sector and businesses that represent new and innovative concepts and technologies.*

Policy ED-1.5 – *The City shall build upon thriving sectors to develop of [sic] a more substantial year-round tourism economy.*

Action ED-1C – *Continue to work with Discover Newport, NCCVB, Commerce RI, Newport Preservation Society, Newport County Chamber, Newport Harbor Corporation and other stakeholders to expand tourism in the city.*

Goal H-1 – *To preserve and protect existing housing resources in the community.*

Policy H-1.3 – *The City shall continue to promote the repair, revitalization, or rehabilitation of residential structures and neighborhoods.*

In developing its statement regarding general consistency with the Comprehensive Plan, the Planning Board should perform investigations as to:

- Whether or not 2 Kay Street is in a commercial and/or residential area
- The proposed amendment:
  - How the conversion of 2 Kay Street from R-10 to GB would provide a balanced city consisting of residential, commercial, and employment uses consistent with the character, environmental resources and vision for the community, or not
  - How the rezoning would encourage upgrading, beautification, revitalization, and environmentally appropriate reuse of commercial areas, or not
  - How the rezoning would protect the existing character of residential neighborhoods while encouraging local neighborhood business, or not
  - How the rezoning would help to develop a robust and diverse economy, providing suitable employment opportunities for residents, and a stable tax base, or not
  - How the rezoning would support key economic drivers, or not
  - How the rezoning would build upon thriving sectors to develop a more substantial year-round tourism economy, or not
  - How rezoning would preserve and protect existing housing resources in the community, or not
  - How the rezoning would continue to promote the repair, revitalization, or rehabilitation of residential structures and neighborhoods, or not

In making this finding of general consistency with the Comprehensive Plan, the Planning Board must recognize and consider the purposes of zoning, as presented in the Newport Zoning Ordinance, section 17.04.20 of the Newport Code of Ordinances, and Rhode Island General Law § 45-24-30:

*(A) Promoting the public health, safety, and general welfare.*

- How this rezoning would promote the public health, safety, and general, welfare, or not

*(B) Providing for a range of uses and intensities of use appropriate to the character of the city and reflect current and expected future needs.*

- How this rezoning would provide for a range of uses and intensities of use appropriate to the character of the city and reflects current and expected future needs, or not

*(C) Providing for orderly growth and development which recognizes:*

- (1) The goals and patterns of land use contained in the comprehensive plan;*

- How this rezoning would provide for orderly growth and development which recognizes the goals and patterns of land use contained in the Comprehensive Plan (see Maps 3-1 and 3-6), or not. The Comprehensive Plan Existing Land Use Map appears to show the subject property as “Commercial.” The Future Land Use Map (3-6) appears to show this area as “Medium Density Residential,” however an “Institutional Overlay” is shown across the Kay Street (Touro Jewish Cemetery) and “General Commercial” is shown across Touro Street and on both sides of Bellevue Avenue heading South. It cannot be expected that the Comprehensive Plan was predicting a future accessory use this insignificant.

*(2) The natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution;*

- The land is already developed and unlikely to change significantly.

*(3) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands;*

- See above.

*(4) The values of unique or valuable natural resources and features;*

- See (C)(2).

*(5) The availability and capacity of existing and planned public and/or private services and facilities;*

- How the rezoning would provide for orderly growth and development which recognizes that availability and capacity of existing and planned private services and facilities, or not.

*(6) The need to shape and balance urban and rural development; and*

- As mentioned, any exterior alterations would need to be approved by the Historic District Commission.

*(7) The use of innovative development regulations and techniques.*

- How the rezoning would provide for innovative development regulations and techniques, or not.

*(D) Providing for the control, protection, and/or abatement of air, water, groundwater, and noise pollution, and soil erosion and sedimentation.*

- How the rezoning would provide for the control, protection, and/or abatement of air, water, groundwater, and noise pollution and soil erosion and sedimentation, or not

*(E) Providing for the protection of the natural, historic, cultural, and scenic character of the city or areas therein.*

- How the rezoning would provide for the protection of the natural, historic, cultural, and scenic character of the city or areas therein, or not. The Touro Jewish Cemetery abuts the property across Kay Street.

*(F) Providing for the preservation and promotion of agricultural production, forest, silviculture, aquaculture, timber resources, and open space.*

- See (C)(2).

*(G) Providing for the protection of public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and other public requirements.*

- How the rezoning would provide for the protection of public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and other public requirements, or not.

*(H) Promoting a balance of housing choices, for all income levels and groups, to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing.*

- How the rezoning would promote a balance of housing choices, for all income levels and groups, to assure the health, safety, and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing, or not

*(I) Providing opportunities for the establishment of low- and moderate-income housing.*

- How the rezoning would provide opportunities for the establishment of low- and moderate-income housing, or not

*(J) Promoting safety from fire, flood, and other natural or unnatural disasters.*

- How the rezoning would promote safety from fire, flood, and other natural or unnatural disasters, or not

*(K) Promoting a high level of quality in design in the development of private and public facilities.*

- See (C)(6).

*(L) Promoting implementation of the comprehensive plan of the city adopted pursuant to Title 45, Chapter 22.2 of the General Laws.*

- How the rezoning would promote implementation of the Comprehensive Plan, or not. See (C)(1) and the general consistency with the Comprehensive Plan analysis.

*(M) Providing for coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on that municipality.*

- Not applicable.

*(N) Provide for efficient review of development proposals, to clarify and expedite the zoning approval process.*

- How the rezoning would provide for efficient review of the proposed restaurant, or not

*(O) Provide for procedures for the administration of the zoning ordinance, including, but not limited to, variances, special-use permits, and, where adopted, procedures for modifications.*

- How the rezoning would provide would supplant the use variance process, or not

*RIGL § 45-24-30 (16) Provide opportunities for reasonable accommodations in order to comply with the Rhode Island Fair Housing Practices Act, chapter 37 of title 34; the United States Fair Housing Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of Persons with Disabilities Act, chapter 87 of title 42; and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.*

- How the rezoning would provide opportunities for reasonable accommodations for individuals with defined disabilities, or not

The Board should also directly address whether or not they are satisfied by Paige Bronk's report, submitted by the applicant.

Per *RIGL § 45-24-43*, the City Council may assign conditions to its approval. These include:

- (1) Minimizing the adverse impact of the development upon other land, including the type, intensity, design, and performance of activities;
- (2) Controlling the sequence of development, including when it must be commenced and completed;
- (3) Controlling the duration of use or development and the time within which any temporary structure must be removed;

- (4) Assuring satisfactory installation and maintenance of required public improvements;
- (5) Designating the exact location and nature of development; and
- (6) Establishing detailed records by submission of drawings, maps, plats, or specifications.

If the Planning Board is leaning towards an affirmative recommendation of the rezoning, it could request the City Council limit the permitted uses and their duration. The General Business by-right uses include:

1. Single-family dwellings;
2. Two-family dwellings;
3. Guest houses;
4. Home occupations;
5. Churches and places of worship;
6. Schools of limited instruction;
7. Nursery schools and day care centers;
8. Parks, playgrounds and playing fields;
9. Transient guest facilities;
10. Standard restaurants;
11. Bus terminals on a lot having a minimum area of twenty-five thousand (25,000) square feet;
12. Professional and business offices;
13. Banks and other financial institutions;
14. Stores where goods are sold or service is rendered primarily at retail;
15. Radio and television broadcasting studios, excluding transmitting and receiving towers;
16. Commercial indoor recreation facilities;
17. Printing and publishing establishments;
18. Research laboratories;
19. Painting and woodworking shops;
20. Theaters;
21. Emergency low-income housing facilities;
22. Vacation guest facilities;
23. Nonprofit multifamily housing for the elderly and/or handicapped;
24. Community residences;
25. Family day care homes;
26. Municipal and public service corporation buildings and facilities; community water supply reservoirs; community well houses; water towers, water and sewage treatment facilities, water and sewage pumping stations;
27. Accessory uses with respect to the foregoing.

Staff: Peter Friedrichs, City Planner

Date: September 3, 2019