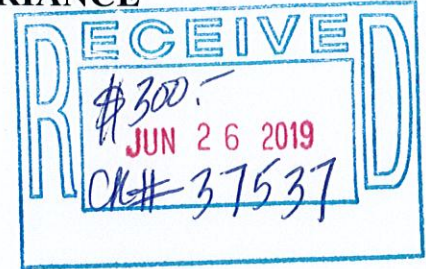




COMBINED APPLICATION FOR A SPECIAL USE PERMIT & A REGULATORY (DIMENSIONAL) VARIANCE

**CITY OF NEWPORT, RI
ZONING BOARD OF REVIEW**



DATE: June 26, 2019

Board Members:

ZBR AUG-1

The undersigned hereby petitions the Zoning Board of Review for a special use permit and a regulatory 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.

Location of Premises

Street & No: 25 Waites Wharf	Tax Assessor's Plat: 32, Lot: 155
Street & No: 20 West Extension Street	Tax Assessor's Plat: 32, Lot: 267
Street & No: 1 Waites Wharf	Tax Assessor's Plat: 32, Lot: 268
Street & No: 0 Waites Wharf	Tax Assessor's Plat: 32, Lot: 272
Street & No: 16 Waites Wharf	Tax Assessor's Plat: 32, Lot: 248
Street & No: 23 Coddington Wharf	Tax Assessor's Plat: 32, Lot: 293

Petitioner's Information

Applicant: Harbour Realty, LLC	Address: c/o J. Russell Jackson Miller Scott Holbrook & Jackson 122 Touro Street Newport, RI 02840
Owners: Harbour Realty, LLC Tomorl, LLC 20 West Extension, LLC Waites Wharf Realty Association, LLC Thomas B. Abruzese	c/o J. Russell Jackson Miller Scott Holbrook & Jackson 122 Touro Street Newport, RI 02840
Leasee: N/A	N/A

Property Characteristics

As part of this proposed development, the Applicant/Owners propose to merge the two (2) contiguous lots which are north of the Waites Wharf right of way into a single lot, and to merge the four (4) contiguous lots which are south of the Waites Wharf right of way into single lot. For the purposes of this Application the proposed merged lots will be referred to as “Waites Wharf North Lot” and “Waites Wharf South Lot.”

Proposed Waites Wharf North Lot

Dimensions of Lot: **Frontage:** 427 ft. +/- Waites Wharf (Lot 155)
 135 ft. +/- West Extension St. (Lot 267)
 Depth: 170 ft. +/-
 Area: 84,471 sq. ft. +/-

Zoning District in which premises is located: Waterfront Business

How long have you owned above premises? 24 Years – 25 Waites Wharf (Lot 155)
 3 Years – 20 West Extension St. (Lot 267)

Are there buildings on the premises at present? Yes

Total square footage of the footprint of existing buildings: 15,035 sq. ft. +/-

Total square footage of the footprint of proposed buildings: 17,726 sq. ft. +/-

Present use of premise: Marina, nightclub, parking, warehouse.

Proposed use of premises: Marina, hotel, restaurant, banquet facility, parking.

Proposed Waites Wharf South Lot

Dimensions of Lot: **Frontage:** 522.12 ft. +/- Waites Wharf (Lots 268, 272, 248)
 95.32 ft. +/- Coddington Wharf (Lot 293)
 Depth: 131.73 ft. +/-
 Area: 53,322 sq. ft. +/-

Zoning District in which premises is located: Waterfront Business

How long have you owned above premises? 24 Years – 1 Waites Wharf (Lot 268)
 16 Years – 0 Waites Wharf (Lot 272)
 13 Years – 16 Waites Wharf (Lot 248)
 18 Years – 23 Coddington Wharf (Lot 293)

Are there buildings on the premises at present? Yes

Total square footage of the footprint of existing buildings: 12,835 sq. ft. +/-

Total square footage of the footprint of proposed buildings: 10,339 sq. ft. +/-

Present use of premise: Marina, restaurant & deck, parking, warehouse, residential dwelling.

Proposed use of premises: Marina, hotel, restaurant, banquet facility, parking.

Give extent of proposed alterations: The Applicant proposes to demolish the existing structures on both the merged Waites Wharf North Lot (Existing Lots 155 & 267) and the merged Waites Wharf South Lot (Existing Lots 268, 272, 248 & 293) and construct an upscale 150 room hotel. The hotel rooms, uses, amenities and parking will be distributed between the North and South Lots. The newly constructed hotel building on the Waites Wharf North Lot will have 88 guest rooms and will also house the restaurant, banquet and wedding facilities. The new hotel building on the South Lot will have 62 guest rooms.

Zoning Characteristics Matrix

Attached Hereto as Exhibit A

Project Summary:

The Applicant seeks relief pursuant to the hereinafter named provisions of the Zoning Code, for permission to demolish all existing structures on the subject parcels and merge the two lots north of the Waites Wharf right of way (Lots 155 & 267) into a single "North Lot" and merge the four lots south of the Waites Wharf right of way (Lots 268, 272, 248 & 293) into a single "South Lot." The North and South Lots will each be a conforming lot in the Waterfront Business Zone. Upon the merger of the lots, the Applicant proposes to continue the existing marina use and develop an upscale 150 room hotel complex with restaurant, wedding and banquet facilities. A hotel building with a footprint of 17,726 square feet will be constructed on the North Lot, which will house 88 guest rooms as well as the restaurant, wedding and banquet spaces. A hotel building with a footprint of 10,339 square feet will be constructed on the South Lot, which will house 62 guest rooms. The buildings will be constructed to meet all modern building code and flood zone requirements. Parking is provided on both the North and South Lots. Combined, there will be 266 parking spaces which will be sufficient to satisfy the requirements of the Zoning Code based on the various proposed uses of the two lot complex. The development will meet all setback, lot coverage and building height dimensional requirements for the Waterfront Business Zone. There will be a substantial increase in green space and a state of the art water quality and storm water management system installed as part of the project.

The development will enhance public access to the water by providing an improved pedestrian walkway around the entire perimeter of the hotel and marina complex. At the end of West Extension Street, the Applicant proposes to increase green space to make the public dinghy dock and public right of way more user friendly. From that point there will be a ten foot wide walking path running along the northern portion of the North Lot, until it reaches the western terminus of the parcel. Along the western end of both the North and South Lots, public access will be increased by providing a land based fifteen foot wide public walking and harbor observation area. A public access walking path will also be provided along the southern boundary of the premises and will provide a pedestrian connection to Coddington Wharf. The existing marina office will be removed from the western end of the Waites Wharf right of way. The proposed development will preserve and enhance existing direct public access to the water and will provide an improved and vital link for the ongoing development of the Newport Harbor walk.

As part of this development plan, the Applicant will be seeking relief pursuant to the following provisions of the Zoning Code:

Section 17.108.020 (Special Use Permits)

Section 17.56.020 (B)(8) (WB Zone Use Regulations – Transient Guest Facilities)

The proposed use as a hotel or “Transient Guest Facility” is allowed in the Waterfront Business Zone with a Special Use Permit. These sections of the Zoning Code are the applicable provisions relating to the Applicant’s request for a Special Use Permit for the development.

Section 17.108.010 (Variances)

This section of the code allows the Applicant to seek a variance from the literal application and enforcement of various provisions of the Zoning Code.

Section 17.100.050 (C) (Development Standards – Transient Guest Facilities – Room Density)

The Applicant seeks a regulatory variance from the requirements of the Development Standards as they relate to room density. In zones where Transient Guest Facilities are allowed by Special Use Permit, the standard density is one guest room per 1,500 square feet of lot area. This formula would yield a count of 91 guest rooms on the combined subject North and South Lots. The Applicant seeks a variance from the Development Standards to allow for 150 guest rooms.

Section 17.104.020 (F) (Parking & Loading Standards – Parking on Noncontiguous lots)

This section of the Zoning Code calls for the parking requirements for a Transient Guest Facility to be satisfied on site. To the extent necessary, the Applicant seeks relief from this provision of the Zoning Code to allow for the adjacent but noncontiguous North and South Lots, which are under common ownership and part of a comprehensive development plan, to be considered together for the purposes of satisfying the parking requirements for each of the uses of the hotel and marina complex.

Section 17.104.040 (B) (Parking & Loading Standards – Parking Space Design Standards – Exiting and Entering onto a Right of Way)

This section of the Zoning Code relating to Parking Space Design Standards requires that off street parking spaces open directly upon an aisle or driveway and not a pedestrian or vehicular right of way. The Applicant seeks relief to allow a portion of the proposed parking spaces on both the North and South Lots to open upon the Waites Wharf right of way.

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

The Applicant avers that the project is consistent with many provisions of the Comprehensive Land Use Plan, including, but not limited to the following:

Land Use Goals and Policies:

- 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-1.3:** The City shall work with state regional agencies and private property owners to maintain viable maritime uses and public access within the city’s harbor area, while also supporting uses necessary to accommodate tourism.
- Policy LU-1.4:** The City shall maintain design standards to protect historic structures, maintain the heritage of the community, and maintain views and access to the harbor and waterfront areas.
- Policy LU-1.6:** The City shall encourage upgrading, beautification, revitalization, and environmentally appropriate reuse of existing commercial areas.

Economic Development:

- 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 a more substantial year-round tourism economy.

Goal ED-2: To protect and enhance the City's maritime related business.

Policy ED-2.1: The City shall consider the impacts of plans, programs, investments, regulations and other factors influencing or potentially influencing the viability of its maritime businesses and will take appropriate actions to avoid or mitigate negative impacts.

Goal ED-3: To provide efficient and effective government services to encourage economic development.

Policy ED-3.1: The City shall work with the State and advocate for City revenue options which provide a better return between the tax contributions provided by tourism in Newport with the tax revenues returned by the State to the City to pay for the services required to support the large tourism base.

Policy ED-3.5: The City shall make strategic capital investments that facilitate core economic development objectives.

Transportation and Circulation:

Goal T-5: To provide sufficient and suitably located parking, designed to eliminate, mitigate or reduce impacts.

Policy T-5.1: The City shall strive to develop, implement and actively manage a plan and program intended to provide sufficient parking to support local businesses and tourist activity sites.

Open Space & Recreation:

Goal OSR-3: To protect and enhance public access to shoreline and waterfront areas.

Policy OSR-3.1: The City shall enhance and protect public access to the shoreline and waterfront areas through recreational sites, public rights-of-way, and access easements.

What special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district?

The Applicant/Owners own title to six contiguous or adjacent parcels of land, encompassing over half of the western portion of Waites Wharf. This is a unique circumstance in the Waterfront Business Zone, both in terms of the number of adjacent or contiguous lots under common ownership and in terms of the overall size of the area. These parcels are divided down the middle by the Waites Wharf public right of way. Without the right of way, all lots would be contiguous and available to merge into a single parcel in support of the proposed development. The Applicant is seeking a

regulatory variance to utilize all six lots by merging both lots north of the right of way into a single lot and merging all lots south of the right of way into a single lot and thereafter having both lots considered as a single development for zoning purposes. The flood zone status of this property also presents unique challenges to site development, storm water management and construction. The regulatory variances from the Development Standards requested by the Applicant as they relate to parking space design standards and room density would allow for the reasonable use of the land in light of these unique circumstances and challenges.

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 subject property encompasses the western half of Waites Wharf. The property is in the heart of the Waterfront Business Zone and is surrounded by a rich mix of uses including traditional maritime, educational/institutional, retail, standard restaurant, fast food restaurants, parking lots, bar/taverns, offices, transient guest facilities, timeshares, residences and multi-unit condominium developments. The proposed hotel structures in this development will comply with setback, lot coverage and building height requirements. The ongoing marina operation is a use by right and the proposed hotel is a permitted use. The requested regulatory variances will allow both for a parking plan which provides 266 spaces, exceeding the number required by the proposed uses and for a room count which makes the project economically viable. The Applicant's hardship is due to the unique characteristics of the subject land as described herein and the literal interpretation of the zoning code, resulting in the denial of the relief requested would deny the Applicant the opportunity to develop the property as a transient guest facility, (which is allowed by Special Use Permit), in a manner consistent with a number of properties throughout the Waterfront Business Zone. The planned use of this property by the Applicant is appropriate and consistent with the purpose and intent of the Waterfront Business Zone and is consistent with the rights enjoyed by other property owners throughout this business district.

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

The relief requested are the minimum variances and the least relief necessary that will make possible the reasonable use of the land, building or structure as a viable marina and hotel complex. These uses are consistent with the purpose and intent of the Waterfront Business Zone. The proposed development will be in harmony with the surrounding area and will allow for the use of the property consistent with other properties in the densely developed Waterfront Business Zone. The variances will not be injurious to the surrounding area or otherwise detrimental to the public welfare, nor will they impair the intent or purpose of the Zoning Code or the Comprehensive Land Use Plan because the requested regulatory variances are in furtherance of a reasonable use of the property. If the variances are denied the Applicant will suffer a hardship amounting to more than a mere inconvenience because it would be denied the ability to have a reasonable use as a viable transient guest facility in a manner consistent with the character of the Waterfront Business Zone.

The Zoning Boards Role

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.

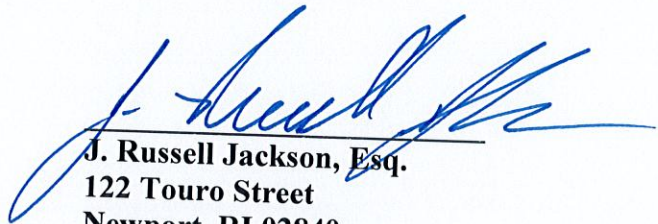
The burden of proof in a special-use permit application is on the applicant. This means that if the applicant fails to present adequate competent evidence to prove the applicable standard for issuing a special-use permit has been met, the board must deny the application.

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".

Applicant & Owners
By Their Attorneys
Miller Scott Holbrook & Jackson



J. Russell Jackson, Esq.
122 Touro Street
Newport, RI 02840
Tel: 401-847-7500
jrjackson@millerscott.com

Waites Wharf Hotel

EXHIBIT A – Zoning Characteristics Matrix

	Existing	Required/Allowed	Proposed
Lot Size (sq. ft)	Lot 155 = 74,346 Lot 267 = 10,125 Lot 268 = 31,834 Lot 272 = 9,296 Lot 248 = 6,242 Lot 293 = 5,590	5,000	Merged North Lot = 84,471 Merged South Lot = 53,322
Lot Coverage	Lot 155 = 10.76% Lot 267 = 69.48% Lot 268 = 17.76% Lot 272 = 0.00% Lot 248 = 99.01% Lot 293 = 16.81%	40 %	Merged North Lot = 23.83% Merged South Lot = 20.37%
Dwelling Units	Lot 293 = 1 All other Lots = 0	27 (1 Dwelling/5,000 sq. ft.)	Merged North Lot = 0 Merged South Lot = 0
Parking (# of spaces)	100 +/-	264	266
Front Setback (ft.)	Lot 155 = 8.03' Lot 267 = 0' Lot 268 = 0' Lot 272 = N/A Lot 248 = 0' Lot 293 = .72'	0'	Merged North Lot = 13.97' Merged South Lot = 8.2'
Side Setbacks (ft.) West Side	Lot 155 = 0' Lot 267 = 0' Lot 268 = 78.43' Lot 272 = 0' Lot 248 = .68' Lot 293 = 69.12'	5'	Merged North Lot = 65' Merged South Lot = 25.77'
Side Setbacks (ft.) East Side	Lot 155 = 350' Lot 267 = 5.5' Lot 268 = 179.11' Lot 272 = 0' Lot 248 = .75' Lot 293 = 3.09'	5'	Merged North Lot = 61.54' Merged South Lot = 268.79'
Rear Setback (ft.)	Lot 155 = 33.05' Lot 267 = 0' Lot 268 = 1.94' Lot 272 = 0' Lot 248 = .35' Lot 293 = 18.42'	5'	Merged North Lot = 88.47' Merged South Lot = 13.70'
Height (ft.)	Lot 155 = 18' +/- Lot 267 = 22' +/- Lot 268 = 16' +/- Lot 272 = N/A Lot 248 = 19' +/- Lot 293 = 30' +/-	45' + 5' freeboard Measured from base flood elevation pursuant to Sec. 17.56.060 & RIGL 45-24-31 in effect at time of filing.	Merged North Lot = 49' Merged South Lot = 49'