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May 9, 2022

Guy Weston
Zoning Officer
City of Newport Zoning Board of Review
City Hall – 43 Broadway
Newport, RI 02840

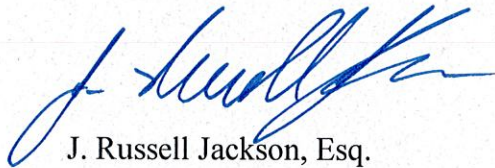
IN RE: Petition of Thames Newport, LLC
 282 Thames Street
 TAP: 27, Lot: 020 (GB Zone)

Dear Guy:

Please find enclosed an Amended Application in regards to the above captioned matter. When preparing the original application, I miscalculated the parking requirement for the uses on site. The Amended Application represents a reduction in the relief being requested. I have attached an exhibit to the Amended Application which details how the parking requirements were determined. Also attached are updated plans from the architect which highlight the applicable service areas and their respective square footages.

Thank you for your attention to this matter. If you have any questions, or require any additional information, please do not hesitate to contact the undersigned.

Sincerely,



J. Russell Jackson, Esq.
jackson@millerscott.com

Enclosure

Cc: S. Barzin
 Thames Newport, LLC

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

CITY OF NEWPORT, RI ZONING BOARD OF REVIEW

****AMENDED APPLICATION****

DATE: May 9, 2022

Board Members:

The undersigned hereby petitions the Zoning Board of Review for a Special Use Permit and a Regulatory (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.

Location of Premises

Street & No.: 282 Thames Street

Tax Assessor's Plat: 27, Lot: 020

Petitioner Information

Applicant:	Thames Newport, LLC	Addresses:	c/o J. Russell Jackson, Esq. Miller Scott Holbrook & Jackson 122 Touro Street Newport, RI 02840
Owner:	Thames Newport, LLC		Same
Leasee:	N/A		Same

Property Characteristics

Dimensions of Lot:	Frontage:	84 ft. +/-	(Thames Street)
	Frontage:	167.92 ft. +/-	(Green Street)
	Depth:	Varies - See plans.	
	Area:	14,643 sf +/-	

Zoning District in which premises is located:	GB
How long have you owned above premises?	6.5 Yrs. (Purchased 11/9/2015)
Are there buildings on the premises at present?	Yes
Total square footage of the footprint of existing buildings:	4,271 sf. (29%)
Total square footage of the footprint of proposed buildings:	4,367 sf. (30%)

Present use of premise: Standard restaurant occupies the first floor, adjacent enclosed patio area and second floor. Third floor is currently a six (6) room transient guest facility and the fourth floor is a dwelling unit.

Proposed use of premises: All uses will remain the same. The only difference is the proposed deck and expanded outdoor restaurant seating area directly above the existing enclosed outdoor patio.

Give extent of proposed alterations: The Applicant proposes to expand the food and beverage service area by building a deck and outdoor seating area directly above the existing enclosed patio. There will be a new staircase providing emergency egress from the upper deck level on the east side of the existing structure.

Zoning Characteristics Matrix

	Existing	Required/Allowed	Proposed
Lot Size (sq. ft)	14,643 sf	5,000 sf	14,643 sf
Lot Coverage	29 %	80 %	30 %
Dwelling Units	1	1	1
Parking (# of spaces)	20	41	19
Front Setback (ft.)	0 ft. +/-	0 ft.	0 ft. +/- (No Change)
Side Setbacks (ft.)	0 ft. +/-	5 ft.	0 ft. +/- (No Change)
Rear Setback (ft.)	>5 ft. +/-	5 ft.	>5 ft. +/- (No Change)
Height (ft.)	≈ 45 ft.	45 ft.	≈ 45 ft. (No Change)

PARKING CALCULATIONS SEE EXHIBIT A ATTACHED HERETO

Project Summary:

The Applicants seek relief under:

Section 17.108.020 (Special Use Permits)

Section 17.108.010 (Variances)

Section 17.72.030 (Alteration to Nonconforming Development)

Section 17.104.20 (Parking Space Requirements – Standard Restaurant)

The Applicant seeks permission to create an additional permanent outdoor dining area by building a deck above the existing enclosed patio structure. During the pandemic, additional outside dining was allowed in the parking lot, which was successful. The Applicant seeks to create permanent additional outdoor dining space. Decking will be added to the roof of the existing patio structure and all construction will remain within the same footprint. Only the new emergency egress stairs on the east side of the patio structure will extend beyond the existing footprint and add to lot coverage. The new upper level outdoor patio will result in approximately 900 sf of new service area. The size and location of the new emergency egress staircase will result in the loss of one (1) existing parking space. The Applicant will not be able to provide sufficient on-site parking to meet the requirements of the code for the expanded service area and will require a parking variance.

The existing subject parcel is an irregularly shaped legal conforming lot of record containing 14,643 square feet of land. The purpose of this project is to provide additional outdoor service area for the standard restaurant use. The property is in the General Business Zone. The improvements being made to expand the service area are all taking place above an existing structure. There are no other changes to the property. The expansion of the licensed service area, however does increase the parking requirements. The plan proposed by the Applicant is harmonious with the surrounding General Business area and will not create dimensional or regulatory non-conformities to such a degree that it is injurious to, or inconsistent with the area or the purpose and intent of the GB Zone.

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

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

Land Use:

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 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.

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?

The existing parcel is an irregularly shaped legal conforming lot of record containing 14,643 square feet of land. The location and coverage of existing buildings on the subject parcel makes it impossible to add enough parking spaces to meet the current parking requirements resulting from the existing "by right" uses. There is insufficient space to accommodate the additional spaces called for by the code for the expanded service area. This property will however, still provide nineteen (19) on-site parking spaces, which is substantially more than most other commercial establishments in the downtown area that provide none.

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 proposes to continue the existing uses on the premises, including the standard restaurant use, all of which are allowed by right in the General Business Zone. The Applicant is seeking relief from the parking requirements. An existing parking space will be lost as part of the creation of additional service area. The remaining nineteen (19) on-site spaces will still be insufficient to meet the current and proposed parking requirements for the restaurant. The subject property is located on Thames Street, at the corner of Green Street. This is a very densely developed commercial area. There are a number of parcels in this commercial area with a myriad of uses such as restaurants, retail shops, night clubs, inns, and other businesses that do not meet the code requirements for parking. The literal interpretation of the zoning code, resulting in the denial of the relief requested, would unreasonably deny this Applicant the ability to utilize the existing structures on site to create additional outdoor service area. The proposed parking variance will be consistent with surrounding properties and the rights enjoyed by other property owners in this area of the General Business Zone.

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

The Applicant is seeking permission to permanently expand the outdoor service area. The Applicant cannot meet the parking requirements for the current uses, nor will it be able to meet the requirements resulting from the expansion of the service area. The Applicant proposes to provide nineteen (19) spaces for the mix of uses on site where forty-one (41) are required. The simple fact that the Applicant is providing any on site spaces in this district already puts it well ahead of most other businesses and restaurants in this area, that provide none. The additional parking requirement results from the permanent expansion of outdoor service area. Utilizing this space above the existing enclosed outdoor patio structure will be in harmony with the streetscape on this area of Thames Street. Other than parking, there are no dimensional variances required. There will be no changes to footprint or height of the main building. The Applicant has taken great care to develop a proposed plan to permanently expand the outdoor service area which is consistent with public demand in the pandemic/post pandemic era. The plan is appropriate in scope, scale and size for this area and will be a natural extension and enhancement to the existing standard restaurant use. The overall proposal

has been designed to meet the reasonable business needs of the Applicant. The hardship is driven by the location of the existing buildings on-site and the inability to provide any additional on-site parking spaces. Granting the request for a parking variance is the minimum variance which will allow the continued "by right" uses on the property and the reasonable expansion of the standard restaurant service area. Accordingly, the proposed use of the property and the relief sought by the Applicant will not be injurious to, or create a burden for abutting property owners, will be harmonious with the commercial area and will be appropriate for this section of Thames Street in the General Business Zoning District.

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:

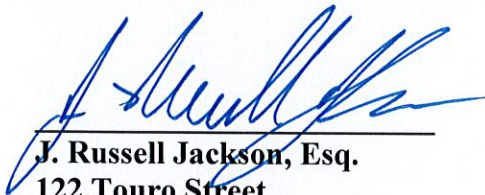
- a) That the reasons set forth in the application justify the granting of the variance and that the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;
- b) That the variance will not be injurious to the neighborhood or otherwise 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 are; 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 & Owner,
By Their Attorneys,
Miller Scott Holbrook & Jackson**



J. Russell Jackson, Esq.

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Newport, RI 02840

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EXHIBIT A **PARKING CALCULATIONS**

Existing Conditions

<u>Standard Restaurant:</u>	<u>Required Parking Spaces</u>
1 st Floor Indoor 1,118 sf	
1 st Floor Patio 818 sf	
2 nd Floor Indoor 1,424 sf	

Total 3,360 sf	
@ 1 space/150sf of service area = 22.4 spaces	23
 <u>Transient Guest Facility:</u>	
Six (6) guest rooms	
(Guest rooms monitored by restaurant employees)	6
 <u>Dwelling Unit:</u>	2
 <u>Employees:</u>	
9 Employees for Standard Restaurant	3
Total	34

Proposed Conditions

<u>Standard Restaurant:</u>	<u>Required Parking Spaces</u>
1 st Floor Indoor 1,118 sf	
1 st Floor Patio 818 sf	
2 nd Floor Indoor 1,424 sf	
2 nd Floor Patio/Deck 900 sf	

Total 4,260 sf	
@ 1 space/150sf of service area = 28.4 spaces	29
 <u>Transient Guest Facility:</u>	
Six (6) guest rooms	
(Guest rooms monitored by restaurant employees)	6
 <u>Dwelling Unit:</u>	2
 <u>Employees:</u>	
10-12 Employees for Standard Restaurant	4
Total	41

