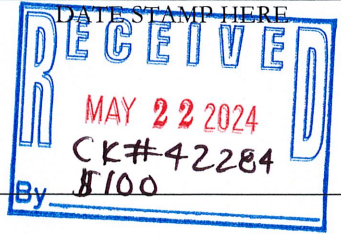




Newport Zoning Application

ZBR 2024 - JUL - 002

(This box for staff use only)



Date: May 22, 2024

Board members:

The undersigned hereby petitions the Zoning Board of Review for a special use permit or a 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: 19 South Baptist Street

Tax Assessor's Plat: 32 Lot: 186 Zoning District: R-10

- Special Use Permit (Non-Conforming Alteration)
- Regulatory (Dimensional) Variance
- Special Use Permit (New Use)
- Use Variance
- Modification

Property Owner: John R. McCarthy

Mailing Address: 19 South Baptist Street

Email Address: mccjohnr@hotmail.com

Phone Number: 401-846-2455

How long have you been the owner of the above premise? 22 Years

Legally Authorized Representative *if applicable: J. Russell Jackson, Esq.

Mailing Address: 122 Touro Street, Newport RI 02840

Email Address: jrjackson@millerscott.com Phone Number: 401-847-7500

Lessee: N/A

Mailing Address: _____

Email Address: _____ Phone Number: _____



Newport Zoning Application

Property Characteristics

Dimensions of lot-frontage: 38 ft. Lot Area: 3,484 sq. ft.

Are there buildings on the premises at present? Yes

Total square footage of the footprint of existing buildings: 1,116.5 sq. ft.

Total square footage of the footprint of proposed buildings: 1,116.5 sq. ft.

Zoning Characteristics Matrix

	Existing	Required/ Allowed	Proposed
Lot Size (sq. ft.)	3,484	10,000	3,484
Coverage Area (sq. ft)	1,116.5	1,150.77	1,116.5
Lot Coverage (%)	32	33.03	32
Dwelling Units	2	2	2
Parking (# of spaces)	4	4	4
Front Setback (ft.)	0'	4.95'	0'
Side Setbacks (ft.)	W=12' E=0'	3.3'	W=12', E=0'
Rear Setback (ft.)	40'	6.6'	40'
Height (ft.)	30' +/-	30'	30' +/-



Newport Zoning Application

All of the following information and questions must be filled in and answered completely.

Present use of Premise: 2-Family (1 Owner Occupied Dwelling + 1 Guest House Unit)

Proposed use of Premise: 2-Family (1 Owner Occupied Dwelling + 1 Guest House Unit)

Summary of Proposed Alterations

The Applicant seeks relief under the following provisions of the Zoning Code:

Section 17.109 (Special Use Permits)

There are no alterations proposed as part of this Application.

The Applicant was before the Board in 2022 and secured approval for a Special Use Permit and Variances to the Commercial Parking Standards to allow the conversion of the first floor dwelling unit of his two family property into a Guest House for short term rentals. The Owner lives in the second floor unit as his primary residence.

The property has been operated with a Guest House on the first floor for almost two years without incident or violations of City Ordinance.

Zoning Approval of the Special Use Permit contained a two year sunset provision. The Applicant is before the Board requesting that the existing Special Use Permit now be renewed on a permanent basis.

A copy of the recorded Zoning Decision is attached hereto.



Newport Zoning Application

Applicant Statement

How does your application meet the required standards for variance(s) or special use permit(s)?
(See page 6 for most common applicable standards)

The Applicant was before the Board in 2022 and secured approval for a Special Use Permit and Variances to the Commercial Parking Standards to allow the conversion of the first floor dwelling unit of his two family property into a Guest House for short term rentals. The Owner lives in the second floor unit as his primary residence.

The property has been operated with a Guest House on the first floor for almost two years without incident or violations of City Ordinance.

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A copy of the recorded Zoning Decision is attached hereto.



Newport Zoning Application

Upon submittal of this application, please make sure you have also reviewed our Zoning Application Submittal Requirements packet, and included with your application, a copy of the Submittal Checklist which can also be found here: [Zoning Application Submittal Requirements](#). If an application is missing any submittal requirements and/or necessary application information, your application may be regarded incomplete. Incomplete applications will not be publicly advertised or appear on an agenda until the project is deemed complete.

By signing below, I hereby attest that the information provided is accurate and truthful. I also attest that I have read through this application thoroughly and understand what is required to submit a completed application.



Applicant Signature

May 22, 2024

Date



Owner Signature

Attorney for Applicant/Owner

Date



Newport Zoning Application

Applicable Standards for Approval of Variances and Special Use Permits for alterations to non-conforming developments

A. Variances – Newport Municipal Code Chapter 17.108

17.108.020.C.1. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in GLRI §45-34-30(a)(16).

17.108.020.C.2. That the hardship is not the result of any prior action of the applicant

17.108.020.C.3. That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.

The zoning board of review, shall, in addition to the above standards, require that evidence is entered into the record of the proceedings showing that:

- a. In granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring lands or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and
- b. In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted. 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. The zoning board of review, or planning board where unified development review is enabled shall have the power to grant dimensional variances where the use is permitted by a special use permit.

B. Special Use Permit – Newport Municipal Code Chapter 17.109

For applicable Standards for Special Use Permit Categories 1-5, please see Newport Municipal Code Chapter 17.109.020 A-E

Category 6

A structure or land which is nonconforming by dimension, but the use of which is a use permitted by right in the district in which the land or structure is located, shall only be altered, changed, enlarged or subject to addition or intensification with respect to its nonconforming element(s) by obtaining a special use permit from the zoning board of review. Special use permits for alterations, changes, enlargements, or subject to addition or intensification with respect to its nonconforming element(s) must comply with the following:

1. The alteration, change, enlargement, addition or intensification will not increase the dimensional nonconformity, or a variance shall be obtained from the zoning board of review, subject to the affirmative determination of the standards for variances under 17.108.020.C.
2. Will not alter the character of the surrounding area within 200' of the property lines.
3. No net increase in stormwater runoff from the site.
4. All proposed lighting is Dark-Sky compliant.



Newport Zoning Application Submittal Requirements

ZBR _____ - _____ - _____

DATE STAMP HERE

- Special Use Permit (new) Variance
- Special Use Permit (modification) Modification

(This box for staff use only)

SUBMITTAL REQUIREMENTS CHECKLIST

Applications that are missing materials in this checklist will not be accepted for review.

Section 1 – Application Forms – Page 3 of the Guide Required for All Projects

- A. Completed Zoning Project Application Packet comprised of the following individual sections:
 1. Zoning Project Application Form
 2. Completed copy of this Zoning Application Submittal Requirements Checklist (Page 2)
- B. Request to Waive any Submittal Requirements *(if applicable)*
- C. Application Fee (Please Refer to Current Fee Schedule)

Section 2 – Plan Package – Pages 4-7 of the Guide Required for All Development Projects (Involving New Structures, Additions, Exterior Alterations, etc.) Individual requirements of the Plan Package (listed below) may differ depending on the project

- A. Class I Site Survey
- B. Proposed Site Plan
- C. Lot Coverage Diagram
- D. Floor Plans
- E. Stormwater Management Plan
- F. Landscape Plan
- G. Building Elevations
- H. Change of Use

Section 3 – Supporting Documents, Studies, Graphics, and Depictions – Page 8 of the Guide May be required for certain Development Projects

- A. Site Photographs
- B. Photo Simulations
- C. Structural Evaluation
- D. Parking Survey
- E. Traffic Impact Analysis

STATE OF RHODE ISLAND
NEWPORT, S.C.

ZONING BOARD OF REVIEW
CITY OF NEWPORT

IN RE: AMENDED PETITION OF JOHN McCARTHY, Applicant and Owner; for a Special Use Permit for permission to use the first-floor dwelling for rentals of less than 30 days, (guesthouse use), with an aisle width of less than 20', (20' required), and a driveway width of less than 24', (24' required for 2-way traffic), applying to the property located at 19 South Baptist Street, TAP: 32, Lot: 186, (R-10 Zone).

ZONING DECISION

This matter came to be heard at a meeting of the City of Newport Zoning Board of Review ("Board") on May 23, 2022, on the Petition of John McCarthy, Applicant and Owner, for a Special Use Permit and Variance to the Parking Requirements. The Applicant was present and participated remotely. J. Russell Jackson, Esq. was present on behalf of the Applicant. There were letters of support and letters of objection in the file. There were no objectors present at the hearing.

Under the Petition, the Applicant was before the Board seeking relief under Section 17.108.020 (Special Use Permits), Section 17.108.010 (Variances), Section 17.72.030 (Alteration to Nonconforming Development), Section 17.104.040(c) (Parking Standards, Aisle Width 20 feet) and Section 17.104.040(d) (Parking Standards, Access Driveway Width 24 feet).

Counsel summarized the project. He stated that the Applicant was seeking relief for permission to operate his existing legal two-family residential property as a "Guest House." Attorney Jackson indicated that Mr. McCarthy would occupy the second floor, two-bedroom dwelling unit as his primary residence. The first floor two-bedroom dwelling unit had historically been rented out to tenants on a long term basis. He stated that the requested zoning relief would let the Applicant periodically rent out the first floor dwelling unit to guests on a daily or weekly basis.

Counsel stated that the conversion of the first floor unit to a Guest House use also triggered the need for relief from certain parking standards in the Zoning Code. He indicated that although the parcel was a 3,484 square foot non-conforming lot of record, it still had enough space for four (4) on-site parking spaces. Attorney Jackson stated that the total on-site spaces met the requirements for both the two-family and the Guest House use.

He stated that the change of use, however, to a "Guest House" imposed additional parking requirements in terms of aisle width and access driveway width. The code requires travel aisles to be a minimum of twenty (20) feet wide and access driveways to be a minimum of twenty-four (24) feet wide. These are the code provisions from which the Applicant seeks relief.

The Applicant John McCarthy testified first. Mr. McCarthy gave a brief history of the property and his family's ownership of 19 South Baptist Street. He described the neighborhood and surrounding area known as the "Yachting Village." The witness testified that he had owned the property since 2000 after buying it from his mother. He indicated that during his time of ownership, his mother had lived at the property, and it had also been used as a rental. He stated that he moved back to Newport in 2019 and since then has occupied the second floor as his primary residence. He plans to retire soon and live at the property during his retirement. The witness described the layout of the property including the parking and the driveway. He described the floor plans for both units. He indicated that he traditionally likes to rent to military and war college students, which is often for shorter terms than a full year. With the gaps in long term tenants, he wanted the flexibility to rent the first floor on a short-term basis. He confirmed that he would be on the premises during short term occupancies.

Mr. Paige Bronk testified next. He was accepted by the Board as an expert in planning and zoning. His report was identified and accepted as Applicant's Exhibit 1. Mr. Bronk confirmed that the Applicant had engaged him to analyze the proposed project. He described the steps he undertook. The witness visited and inspected the site and the neighborhood, reviewed the Application, the Newport Zoning Code, and the Comprehensive Plan. Mr. Bronk described the locus and the existing conditions on site. He testified that the Guest House use was allowed by Special Use Permit and would be harmonious with the neighborhood. Mr. Bronk discussed the proximity of the property to the Limited Business Zone along lower Thames Street. He stated that allowing the Guest House use of the first floor unit would mitigate "dark house" issues arising from the proliferation of second homes in the Yachting Village. He stated that the use was supported by many provisions of the Comprehensive Land Use Plan as covered in his report. The witness confirmed there would be enough parking on site for either the two-family use or the Guest House use. He reminded the Board that there would be essentially

no difference in how the first floor unit and the parking area would be used whether it was a long term tenant or a short term tenant. As such, he did not see the variance request for the driveway and aisle width as being problematic. Mr. Bronk testified that the project was appropriate for the area, would not be injurious or have negative impacts on abutters, and was in harmony with the surrounding neighborhood. He adopted in full the analysis, findings and opinions in his written report. He testified that the Petition met all the requirements for granting a Dimensional Variance in relation to the Parking Standards and met all the requirements for granting a Special Use Permit.

Mr. Todd E. Brayton, P.E. also testified for the Applicant after being accepted by the Board as an expert in in traffic engineering. His Report was identified and accepted as Applicant's Exhibit 2. Mr. Brayton confirmed that the Applicant had engaged him to analyze the proposed project. He described the steps he undertook, including his review of the site and the neighborhood. Mr. Brayton described the locus and the existing parking and traffic patterns for South Baptist Street and the surrounding area. He testified that there would be no change in the trip generation on and off the site between the two-family use and the single family use with a Guest House. He also confirmed that the four (4) on-site parking spaces satisfied the Zoning Ordinance for both uses. Mr. Brayton testified that the part of the travel aisle directly next to the parking spaces did meet the twenty foot (20') aisle requirement, though it narrowed near the radius of the access driveway. He stated that the driveway was 10'3" wide and was sufficient for the two family use, but not for the Guest House use. The expert testified that based on the low traffic count, the narrow driveway did not present a safety concern. Mr. Brayton testified that the project was appropriate for the area, would not be injurious to, or have negative impacts on abutters as it relates to parking and traffic. He adopted in full the analysis, findings and opinions in his written report and testified that the Petition met all the requirements for granting a Dimensional Variance in relation to the Parking Standards.

Board members followed up with questions addressed by Counsel and the witnesses. Counsel also identified the letters of support and objection and the Planning Board Memorandum finding conformity with the Comprehensive Plan that are included in the record of this hearing.

At the end of testimony and the presentation of evidence, the public hearing was closed, and Board members began with discussion and deliberation.

Mr. Grimes stated that he would be voting to approve the Petition. He stated that the Applicant met the standards for approval of the Special Use Permit and Variances to the Parking Standards. He indicated that he had been to the property. Mr. Grimes stated that it had no history of problems with the city, and he took comfort it would be owner occupied. He felt that the one-way traffic on South Baptist Street reduced any traffic risks. He believed that the use was consistent with the neighborhood and this area of the Yachting Village.

Mr. Johnson indicated that the objectors made credible points, however he concluded they had all been adequately addressed by the Applicant. He was persuaded by the parking and traffic really not changing between the existing two-family use or the Guest House use. He stated that the Applicant was credible and would be a good steward of his property and stay on top of the tenants. Mr. Johnson liked the condition recommended by the Planning Board for a two-year sunset. He stated he would be voting to approve.

Mr. Riley stated that he would be voting against the Petition. He stated he was not concerned about traffic and acknowledged that the proposed use met the Comprehensive Plan. He stated, however, that the street is too congested and that the Guest House use would not be consistent with this part of the R-10 Zone. He expressed concern about prior zoning relief granted to this Applicant relating to a second floor deck and questioned if the screening met the requirements of that approval. He stated that the proposed Guest House was not in harmony with the neighborhood.

Mr. Rudd stated that he would support the Petition. He adopted the comments of Board members Johnson and Grimes. He stated that although the property was in the R-10 Zone, with its proximity to lower Thames Street, it was "in the middle of everything." He acknowledged the concerns of certain abutters, but felt with the Applicant being on site, he would be self-regulating and would police his tenants. Mr. Rudd stated he was satisfied with the parking.

Mr. Goldblatt indicated he would vote for the Petition. The Chairman adopted the comments of his fellow Board members and stated that the witnesses were credible. He stated the Applicant met the burden of proof on all the necessary elements for granting a Special Use Permit and Dimensional Variances relating to the Parking Standards. He was persuaded by the testimony of all witnesses relating to traffic patterns and the ability of tenants to safely pull forward out of the access driveway onto South Baptist Street.

A Motion was duly made and seconded to adopt as the Board's findings of fact, the information in the Amended Application along with all survey(s), site plan(s), elevations and plans filed therewith; the Staff Report, testimony of witnesses, representations made by Counsel, exhibits accepted into the record, and the findings of the Board members spread on the record during deliberations. The Motion passed unanimously.

A Motion was duly made and seconded to adopt as the Zoning Board's conclusion of law, that the Petition was consistent with the Comprehensive Land Use Plan and that the Applicant met his burden of proof for granting a Special Use Permit and Dimensional Variances relating to the Parking Standards. The Motion passed on a vote of four (4) to one (1).

THEREFORE, UPON MOTION duly made and seconded the Petition was approved by a vote of Four (4) to One (1), with Board Member David Riley voting in the negative and Board Members Samuel Goldblatt, Russell Johnson, Wick Rudd, and Bart Grimes voting to approve, on these conditions:

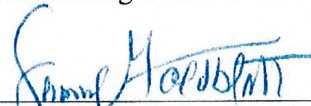
- 1) The project be started and substantially completed within twelve (12) months of the date of the recorded Decision;
- 2) All invoices for notice be paid to the city before recording the Decision;

- 3) That the Special Use Permit approval for the Guest House will sunset and expire two years from the date of the recorded Decision, at which time petition may be made to the Zoning Board of Review for an extension.
- 4) That the Guest House use shall be subject to all necessary Newport City departmental inspections and approvals.

The Petition, having received the concurring votes of at least four members of the Zoning Board of Review is therefore GRANTED.

So Approved:

Newport Zoning Board of Review

By: 

Samuel Goldblatt
Chairperson

Draft Decision Prepared By:
/s/ J. Russell Jackson
J. Russell Jackson, Esq. #5901
Miller Scott Holbrook & Jackson
122 Touro Street
Newport, RI 02840
Tel: 401-847-7500
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LAURA C SWISTAK
CITY OF NEWPORT
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