

**City of Hallowell**  
**Special Planning Board Meeting**  
**May 4, 2016**  
**7:00 pm**

**1. Call to Order**

Ms. Obery called the meeting to order.

**2. Roll Call / Quorum**

Ms. Obery took the roll call and established a quorum.

Present: Danielle Obery (Chair), Richard Bostwick, Darryl Brown, Judith Feinstein, Jane Orbeton,  
Rosemary Presnar

Maureen AuCoin, Code Enforcement Officer

Excused: Amy Mills (1<sup>st</sup> alt.)

Absent: Sandra Johnson

**3. Public Comments** (The Board has agreed to limit the time allotted to Public Comment to fifteen minutes.)

None.

**4. Historic District Certificate of Appropriateness Application for Mad Brew LLC,  
111 & 115 Water Street, Map 5 Lots 144 & 145-1**

Geoff Houghton presented additional information for Mad Brew LLC's application tabled from the April 20, 2016 meeting. Mr. Houghton explained that the plan was to move the existing door at 115 Water Street to a new location and fill the space with a fixed window according to the diagram presented. The door will be placed at 111 Water Street to the right side of the space to accommodate traffic flow. The entire door unit to be moved, including sidelights, is 5' wide. The entire space is 6' wide, so the space to the left will be filled with a panel of the same maroon color. Mr. Houghton said the front of 111 Water Street will be redone to match the facade of 115 Water Street.

Mr. Bostwick asked if the fixed window would be recessed in the same way the existing door is recessed. Mr. Houghton said it would. The new location of the door will also be recessed for safety's sake since there is a 2" rise from the sidewalk.

Ms. Orbeton asked if the height of the new door with the transom is the same height as the existing door at 111 Water Street. Mr. Houghton said it was not; the unit will be taller. The clapboard facade above the existing door will be redone with T1-11 material and painted to match the building at 115 Water Street.

Mr. Brown asked if the granite step would be retained when the door was replaced; Mr. Houghton said it would. The window unit will be the same height and width as the door unit with a solid panel below the window.

Motion to find the application complete with the previously submitted materials, the new information submitted tonight, and the verbal description of the windows and doors, namely: the old door space will be inset the same as the current door, the new door space will be on the right with a panel on the left which will be the same color, and the facade above will be T1-11 material painted seafoam green.

Moved: Bostwick

Seconded: Orbeton

Unanimously approved

Motion to find the application in harmony with Historic District standards and approve the application as amended.

Moved: Orbeton

Seconded: Feinstein

Unanimously approved

## 5. Site Plan Review for Waterside Properties LLC, 116 Water Street, Map 5 Lot 175

Steve LaChance, Larry Hunter and Ben Murray presented an application for a site plan review for an addition to an existing building. Ms. Obery noted the additional documents provided by the applicant.

Ms. AuCoin explained that the abutter notices that were originally sent out referred only to the Historic District and not the Site Plan Review. Therefore there was an error of procedure. She has also completed a draft Findings of Fact. Ms. Feinstein asked Ms. AuCoin to go over the newly submitted material. Ms. AuCoin noted that Mr. Kinney is out-of-town and cannot attend the meeting but will provide a letter. She added that the new material satisfies the Board's request for follow-up information from the last meeting.

Ms. Obery explained that there are 30 standards the Board will be examining.

Mr. Murray explained how the project complied with the standards for Site Plan Review.

1. Adequacy of the Road System Providing Vehicular Access to the Site  
The site has frontage on both Front Street and Water Street.
2. Vehicular Access into the Site  
The addition will not hinder any vehicular access to the site and deliveries will be possible to either the rear or the front entrances of the building.
3. Accessway Location and Spacing  
No new accessways are proposed.
4. Natural Features  
Grading will be minimal. The site will be flattened slightly to accommodate the retaining wall. Ms. Obery asked if the patio would follow the contours of the lot. Mr. Murray said they will flatten out the area for the upper patio because there is a slope there, but that will involve minimal fill behind the retaining wall, which will be about 12' from the sidewalk. The lower patio area will maintain the existing grade.
5. Shoreland Relationship  
The proposed project is set back 75' from the river. Ms. Obery noted that set-back for the Hallowell Downtown district is relaxed to 50' because of its development.
6. Floodplain Management  
The applicant has been working with Sue Baker of Floodplain Management to determine the requirements and they will comply with them.
7. Historic and Archeological Resources  
The Application for Historic District Appropriateness was approved by the Planning Board on April 20.
8. Utilization of the Site  
There is no wetland impact or wildlife habitat.
9. Building Placement  
The addition to the building complements the existing building. It is set back from the water 75'.
10. Setback and Alignment of Buildings  
The proposal complies with the Shoreland requirements and side setbacks in the Downtown District.
11. Building Orientation  
The addition complements the existing building. It is not at any odd angles to the existing building that would make it look out of place.
12. Building Scale  
The addition is relatively small compared to the existing building.

13. Internal Vehicular Circulation  
There is no vehicular circulation associated with the site.
14. Parking Layout and Design  
The addition is 740 square feet, which is under the 2,000 square feet threshold for requiring additional parking in the downtown district. Ms. Obery asked if the area of the patio was included. Ms. AuCoin explained that in the Ordinance the definition of "structure" specifically excludes patios; she said she would consider the actual building to be the addition, perhaps include the covered patio area as well. Mr. Bostwick pointed out that the exemption specifically says "building," not "structure."
15. Pedestrian Access and Sidewalks  
There are two proposed gates for access from the sidewalk and the gates will improve ADA access to the building because of the gradient of the sidewalk.
16. Design of Drive-Through Facilities  
There will be no drive-through facilities.
17. Landscaping  
They will add some shrubs and landscaping on the site and will comply with the Ordinance requirements.
18. Buffering of Adjacent Uses  
There are no buffering requirements in the Downtown District.
19. Stormwater Management  
As discussed on April 20, they propose an extensive drainage system to control drainage from the upper and lower patio areas. The system will utilize a series of trenching, piping, and a catch basin draining to a plunge pool at the river. The only permit required will be a permit-by-rule from DEP.
20. Erosion Control  
They will have erosion control measures in place during construction. Ms. Obery said she assumed that construction would be started immediately and there would be no winter construction; Mr. Murray said that was correct.
21. Groundwater Protection  
There will be no impact because there will be no large excavations.
22. Water Quality Protection  
There will be no storage of fuel or chemicals in the addition or on the patio.
23. Hazardous, Special, and Radioactive Materials  
None.
24. Water Supply  
A letter from Mr. Kinney at the Hallowell Water District will be coming. Ms. AuCoin said she did not foresee any problem obtaining agreement from Mr. Kinney. Mr. Bostwick proposed changing the Finding of Fact to say that a request has been submitted to the Water District.
25. Sewage Disposal  
They will be using the existing connection to the sewer. They will install a grease trap in the proposed kitchen area.
26. Utilities  
The existing utility connections will not be changed.
27. Solid Waste Management  
They will be using the same management as currently being used.

### 28. Storage of Materials

Ms. AuCoin noted that her draft Findings of Fact say that this standard is not met because the Ordinance requires dumpsters to be screened, but along Front Street it is difficult to meet the standard and reality is that the majority of businesses do not meet it. Therefore, even though the Finding says it is not met, it is certainly consistent with other businesses. She added that the existing dumpsters are covered so they meet the requirement for enclosure, but they aren't screened. Ms. Orbeton asked if the dumpsters would meet the requirement for a paved or gravel surface. Mr. LaChance said they are on gravel surfaces. They propose keeping the existing dumpsters as they are. Mr. Brown pointed out that dumpster design has changed over time and they are lighter and better balanced so they do not present the hazard they used to.

### 29. Other Performance Standards

They intend to meet all other performance standards.

### 30. Capacity of the Applicant

The Quarry Taproom is doing well and has the financial and technical capacity to carry out the project.

Ms. Feinstein observed that the letter to the Water District states that the building does not have sprinklers and asked why it doesn't. Mr. Murray said it is not required to due to the occupant load. In designing the project they have been careful to keep the occupant load under the threshold for sprinklers.

Ms. Orbeton questioned the reference to §9-862 regarding financial capacity in standard #30. Ms. AuCoin agreed that it seems to be an erroneous reference and should be brought to the Ordinance Review Committee's attention.

Ms. Obery invited comment from the public.

John Merrill, abutter, observed that at the last meeting Ms. Orbeton asked for a statement of seating occupancy for the out-door seating area. Ms. AuCoin said the requirement to provide seating capacity for a permit is in the Performance Standards but doesn't identify for which permit; she has done research and finds that it most likely applies to the business license. In this scenario the City approves a Victualer's License and a Liquor License. It is the Liquor License that requires a seating plan. Mr. Merrill said that the fact that the information was not forthcoming will be revealing. Ms. Presnar pointed out that the revised floor plan does have the seating numbers requested. Ms. Obery noted that the upper patio occupancy is 88. Mr. Murray explained that they used the same formula used by the Fire Marshal for interior occupancy, i.e. square footage divided by a factor of 15. It is a rough number, but there is nothing more to go by in the City Ordinance. No seating arrangement has been determined for the lower patio, so it is not on the plan and the occupancy of 117 is an estimate based on what the Fire Marshal uses, which is the only standard available. He explained that the occupancy for the covered portion of the patio is separated out because it is included in the occupant load for the interior.

Mr. Merrill said he has studied the City Ordinances and the whole thing falls apart if you look at it carefully. He pointed out that the application for site plan review filed by the applicant bases its project on the viability of the word "patio," which is totally unsupported. He maintained that the use of the word patio is a plausible falsehood; he cited the definition of patio in §9-151(81) and claimed this structure is not a patio and should be considered as a deck because it has railings and is therefore part of the structure and subject to the Board's jurisdiction as far as limiting seating and use. This is the purpose of the Site Plan Review to minimize adverse impact on adjacent properties. It also makes the project subject to the parking requirements because it exceeds 2,000 square feet. He also claimed that the stone paving amounted to a violation of the landscaping requirements to prevent extensive paving. He stated that the impact on the already insufficient parking will be detrimental to all of the downtown businesses.

Larry Hunter, partner in Waterside Properties LLC, rebutted Mr. Merrill, pointed out that this is a two-level patio and that there is a patio down the street at Joyce's.

Ms. Feinstein expressed concern that the Board could get lost in the merits of dictionary definitions. Ms. AuCoin pointed out that some of it does get into the merits of dictionary definitions. She said that she can't come up with a term other than patio. Mr. Murray asked, regarding the lower patio, if there was something other than obtaining a permit to prevent an applicant from putting up a fence and using the space as they do

during Old Hallowell Day. Ms. AuCoin said nothing prohibits fencing if it is on your property and less than 6' tall. Ms. Orbeton asked if there were restrictions under restaurant licensure or liquor licensure regarding the use of the lower patio; Ms. AuCoin said she was not sure since those were issues for the City Council and the State, but there is nothing under the land use ordinance. Mr. LaChance said they have not looked into that thoroughly because looking into expanding their liquor license would come after getting the project approved. He added that the lower level was seen as being more spread-out and relaxed; most of the food business would be on the upper section. Ms. Orbeton asked if they do intend to apply to have their license expanded to serve liquor on the lower level; Mr. LaChance said they did.

Mr. Merrill asked to speak and was recognized. Mr. Merrill asked if the Board was going to ignore the definition of a patio in view of the fact that the applicant has used the expression "patio addition" this evening. Ms. Feinstein suggested that the ordinance did not anticipate patios as anything other than residential. Mr. Merrill said the parking requirement was clearly intended to restrict exactly this type of project that will come in and immediately place an enormous demand on parking that is already inadequate.

Ms. Orbeton quoted the definitions of "deck," "patio" and "structure" in §9-151. Mr. Bostwick asked what the difference between calling it a deck or a patio would be in reference to the parking ordinance; Ms. AuCoin said she thought a deck would still qualify the project for the exemption under the parking ordinance. Mr. Bostwick agreed that the parking ordinance seems to be specific the "buildings." Mr. Merrill said he felt that was incorrect because the parking standard also refers to changes of use necessitating increased parking. Ms. Orbeton asked if the upper patio will be attached to the kitchen addition and the Taproom; Mr. Murray said it will not be attached to the building. Ms. Presnar cited §9-311 and pointed out that this is a mixed use district and in the downtown areas the Board should "avoid large expanses of asphalt for parking"; she said any project on the site would impact parking and there must be a balance with the ordinances that we have to live with in the downtown district.

Ms. Orbeton observed that approval at the April 20<sup>th</sup> meeting was conditioned on submission of a lighting plan and a seating plan; she asked if they have been received. Ms. AuCoin said the seating and the lighting are indicated on the revised plan. Mr. Murray said the fixtures will be Ballard down-lighting. Lighting on the stairs will be LED down-lighting on the treads, and lighting in the covered area will be pendant down-lighting. Pictures of the proposed fixtures were provided at the last meeting.

Mr. Merrill observed that the Board seemed to be determined to approve the site plan review. Ms. Feinstein said that nothing was predetermined, and they were seeking information; she said she resented the implication. Mr. Merrill called attention to the purpose of the site plan review process to minimize the adverse impacts on adjacent properties, which the applicant has shown no inclination to do, and to fit the project harmoniously into the fabric of the city, which failing to address the parking situation makes anything but harmonious. He added that the fact requiring a site plan review was that the hours of operation will be after 8PM. He said it was obvious that getting two hundred people drinking until 2AM next door to a property with a rental unit in it is going to create a problem. Ms. Obery pointed out that there are currently bars on either side of Mr. Merrill's property. Mr. Merrill pointed out that there is currently a vacant lot between him property and the Taproom, which is enclosed. He added that if the proposal was to build an enclosed addition he wouldn't oppose it. He said that if an enclosed addition with 200 seats was built, there would be a requirement for extra parking, but because the proposed seating is outside the building rather than inside there is no requirement for extra parking; there is no less impact because the seating is outside a building rather than inside. He said the whole point of developing the lot is to increase seating for the restaurant.

Ms. Orbeton noted that the floor plan presented tonight has been changed from the version presented at the April meeting and asked Mr. Murray to explain the changes. Mr. Murray explained that the stairs have been reconfigured and now make an ell-shaped run instead of being straight and the lighting and seating have been added. Ms. Orbeton asked about railings and balusters versus cable rails and the safety issues. Ms. AuCoin said the cable railings do meet code.

Ms. Obery asked Ms. AuCoin if she considered this to be a patio; Ms. AuCoin said it was definitely something other than a building addition; she considers it to be hardscaping. Ms. Obery said it seems to meet the definition of what they are using as patio. Ms. Presnar said she agreed with the Code Enforcement Officer that it is not a building, but she didn't think it met the ordinance's definition of a patio. Ms. Feinstein agreed that it is not a building because it is temporary and can be changed at any time. Mr. LaChance pointed out that you can have a gathering of people there as it is with just grass.

Ms. Orbeton noted that the applicant must conform with the Performance Standards to obtain a permit, the Performance Standard for noise in §9-627 is 60 dB during the day and 50 dB at all other times. She observed that music is contemplated on the lot at some times and requested that any motion include compliance with the noise ordinance.

Mr. Merrill requested the Board to specifically include two conditions if it approves the site plan: 1) no music after 9PM and 2) the connecting doors to the bar must not be propped open after 9PM.

Ms. Presnar observed that the first condition is covered by the ordinance and that the Board should discuss whether the second condition is even viable. Mr. LaChance observed that other restaurants and bars leave their doors open in the summer. There was discussion around the issues regarding whether having open doors complied with liquor licensing requirements. Ms. Presnar said she felt that between liquor licensing and heating/cooling issues Mr. Merrill's second condition was also covered. Mr. Merrill said his basis for his request was the adverse impact on an adjacent property. He observed that compliance under the ordinance would require a complaint to the Code Enforcement Officer or the police and the simplest way to enforce it would be to include it in the approval.

Mr. Brown asked Mr. Merrill what his opinion on special events was. Mr. Merrill said that Old Hallowell Day is universally accepted. There was discussion concerning other times. Mr. Brown expressed his support for a property owner's rights; he pointed out that the applicant has stated that they don't plan on having music regularly and only acoustic music when they do. There was discussion of special events. Mr. Brown pointed out that many of the people patronizing downtown businesses park as far away as the boat landing. He expressed support for the applicants as adding to what has already become downtown Hallowell. Mr. Merrill suggested Mr. Brown should talk to other downtown merchants about parking. There was further discussion. Mr. Merrill said the scale of the project is too large; a smaller project would be acceptable.

Mr. Brown asked Mr. Merrill if those two restrictions were included as conditions of approval would he still intend to appeal; Mr. Merrill said it would lessen the likelihood that he would appeal.

Ms. Orbeton cited §9-632 (1) which requires a statement of maximum seating capacity. Ms. AuCoin questioned whether the requirement related to land use permits since the only references to seating capacity in the ordinances are for a Victualer's License or a Liquor License, which are not under the Planning Board's jurisdiction. She pointed out that it may be applicable for a conditional use permit application, but restaurants are a permitted use in the DT district. The Board accepted the sum of the figures from the site plan, i.e. 226. Ms. Feinstein pointed out that these figures are calculated by the Fire Marshal's formula and are rough estimates rather than planned occupancy; Mr. LaChance agreed. Mr. Bostwick observed that the plan shows 66 seats on the upper level while the calculated maximum is 88.

Ms. Orbeton said that under site review noise is probably a problem and suggested including requirements that there is no music outside or with open doors after 9PM so that §9-627 is met and that music is limited to acoustic music except for four community-wide celebrations per year. There was discussion among the Board members. Mr. Vallee observed that no other business has those restrictions; there is already an ordinance in place and they will comply with that. He said he felt they were being punished even before they had done anything. Ms. Feinstein said that if there are existing ordinances the Board must go by those and holding an applicant to a different standard is unfair; as valid as Mr. Merrill's issues are, the Board cannot create new ordinances. She added that if the Board creates a precedent by treating this business differently, one way or the other, then the Ordinances are worth nothing, and it would look arbitrary and capricious.

Mr. Bostwick said that he agreed that whether it is a patio or a deck, it still is not a building over 2,000 square feet and is exempted from the parking requirement. Regarding noise, the applicant runs the risk of having to change their plans if noise does exceed the ordinance limits. Mr. Brown agreed with Mr. Bostwick. Ms. Obery said the Board needs to trust the applicant to meet the ordinance.

Ms. Orbeton inquired if the applicant needs a dance permit. Mr. LaChance explained that the dance permit is issued by the Fire Marshal's office; a dance area is considered to have a higher occupancy load.

