



CITY OF CONCORD
New Hampshire's Main Street™
Community Development Department
Planning Division

Staff Report for Planning Board

Meeting on November 20, 2024

Project Summary – Site Plan, Architectural Design Review, and Conditional Use Permit Applications

Project: Raising Cane's (2024-069)
Property Owner: Dundee Investment Associates, LLC
Applicant: Raising Cane's and Hinckley Allen
Project Address: 287 Loudon Rd
Tax Map Lot: 611Z 38/2

Determination of Completeness:

Per Section 7.06 of the Site Plan Regulations, a completed application will contain the required information listed in Section 15 *Minor Site Plan Submittal Requirements* of the Site Plan Regulations, and will be legible and competently prepared. In making a determination of completeness, the Board shall consider the written recommendation of the Planning Division, as well as any written communications from the applicant, abutters, and parties of interest; **however, no hearing shall be opened nor shall testimony be received on a determination of completeness.** If it is determined that the application is complete, the Board shall then open the public hearing on said application. An application which is determined to be incomplete may be revised and resubmitted to a subsequent meeting of the Board for another determination of completeness.

Section 36.14(1) *Determination of Completeness* of the Site Plan Regulations provides additional language regarding the determination of completeness, and states that a completed application shall contain all required information for each stage of the application process; shall be legible and properly prepared; shall accurately portray existing conditions; shall be accompanied by copies of special investigative studies; and shall contain sufficient information and detail for a full review and action by the Board.

The Planning Division reviewed the application for completeness based upon the criteria of the Site Plan Regulations and concludes that the criteria for completeness have been met, and that the application contains sufficient information and detail for a full review and action by the Board.

Based upon the Planning Division's review of the application, the Planning Division recommends that the Board move to:

- **Determine the application complete;**
- **State that the project does not meet the criteria for a development of regional impact per New Hampshire RSA 36:55; and,**
- **Open the public hearing.**

If the Board chooses to deem the application incomplete, the Board would move to:

- Determine that the application is incomplete because all items from Sections 12, 13, 15, and 16 of the Site Plan Regulations, which are necessary for a complete determination, have not been provided; and,
- State that the application may be revised and resubmitted to a subsequent meeting of the Board for another determination of completeness.

The Board has 65 days within which to consider and act on the application once the application is determined complete, per New Hampshire RSA 676:4(I)(c). The 65-day period shall commence upon the date of the regular meeting of the Board at which the application was accepted as complete and end on January 24, 2025, if accepted as complete on November 20, 2024. If the applicant has not demonstrated compliance with the Site Plan Regulations by the end of the statutory timeline (January 24, 2025), the applicant may request a postponement or the Board may approve, approve conditionally, or deny the application based on the information provided.

Project Description:

The applicant proposes construction of a 3,404-square-foot restaurant with drive-thru service. The proposed construction for the new building will take place on Tax Lot 611Z 38/2, addressed as 287 Loudon Rd, in the Gateway Performance (GWP) District. The site has double frontage with Old Loudon Rd to the north and Loudon Rd to the south. The site is bordered to the south, east, and west by the GWP District, and to the north by the Medium Density Residential District. The site contains asphalt paving, curbing, landscaping, bollards, and a dumpster enclosure, most of which will be removed as noted in the submitted materials.

Major site plan conditional approval (2017-31) was granted on September 20, 2017, for commercial development of several parcels that have since changed configuration due to a merger and a condominium subdivision. Final approval was subsequently obtained on January 30, 2018, resulting in the construction of a grocery store at 289 Loudon Rd as the first phase of the three-phase project. The two remaining phases were not completed, however, and pursuant to Section 11.10 *Phasing of Major Site Plans* of the Site Plan Regulations, no phase shall exceed two years in duration and in no case shall any phasing plan in total exceed six years (January 30, 2024). Accordingly, the phasing approval has expired.

Minor subdivision approval for the site was granted on September 20, 2017, to create three condominium land units associated with commercial development. The condominium land unit plat was subsequently recorded in 2018 creating the three land units – 289 Loudon Rd (Unit 1, grocery store), the subject property addressed as 287 Loudon Rd (Unit 2, proposed Raising Cane’s), and the adjacent 285 Loudon Rd (Unit 3, undeveloped). Staff notes that conditional approval (2022-40) was received on July 20, 2022, and final approval on December 5, 2022 for future construction on Unit 3. No building permit applications have been submitted or building permits issued for construction on Unit 3, so Unit 3 remains undeveloped.

Compliance:

The following analysis of compliance with the Zoning Ordinance and Site Plan Regulations is based on a plan set, dated September 18, 2024, revised October 25, 2024, prepared by Bohler Engineering; a drainage memorandum, dated September 18, 2024, prepared by Bohler Engineering; and, a 6-page narrative.

1. Project Details and Zoning Ordinance Compliance:

Zoning District: Gateway Performance (GWP) District
 Existing Use: undeveloped
 Proposed Use: drive-thru restaurant
 Overlay Districts:
 Flood Hazard (FH) District: None
 Shoreland Protection (SP) District: None
 Historic (HI) District: None
 Penacook Lake Watershed (WS) District: None
 Aquifer Protection (AP) District: None

Zoning Code Item	Required	Proposed
Minimum Total Area	---	---
Minimum Buildable Land	---	---
Minimum Lot Frontage	300 feet	547.33 feet (no change from existing – lot frontage is based on the recorded overall condominium plat, not the individual land units that comprise the overall condominium plat)
Minimum Front Yard	25 feet	121.8 feet
Minimum Rear Yard	25 feet	113,8 feet
Minimum Side Yard	25 feet	West – 91.8 feet East – 357.2 feet (yards measured from the overall condominium plat boundary, not land unit lease lines)
Maximum Lot Coverage	85%	60.4% (after full development of all three land units of the condominium plat, and including the approved future development of the adjacent 285 Loudon Rd)
Maximum Building Height	45 feet	23.6 feet
Off-street Parking	Unit 2 – proposed Raising Cane’s (287 Loudon Rd) 1/75 square feet of gross floor area, plus 11 stacking spaces 3,404 plus 499/75 = 52.04 parking spaces, plus 11 stacking spaces Unit 1 – existing grocery store (289 Loudon Rd) 1/250 square feet of gross floor area 19,054/250 = 76.2 parking spaces Unit 3 – future approved unconstructed retail/restaurant (285 Loudon Rd) 1/250 square feet of gross floor area	153 spaces, provided by and shared between 285, 287, and 289 Loudon Rd via recorded condominium declaration (201800001653, Bk 3584, Pg 2338, 01/31/2018) Variance for 153 spaces approved August 7, 2024 (ZBA-0203-2024) 10 stacking spaces – requested conditional use permit approval (2024-069) 7 accessible spaces

	<p>4,550/250 = 18.2 parking spaces 1/75 square feet of gross floor area 1,600/75 = 21.3 parking spaces</p> <p>Total Required = 168 parking spaces, 11 stacking spaces, 6 accessible spaces</p>	
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1.1 Per Article 29.2-1-2(a)(1) of the Zoning Ordinance, any person or entity which seeks to undertake new development within the City of Concord, shall pay impact fees to the City in the manner and in the amounts set forth in the ordinance. Per Article 29.2-1-2(e)(1) of the Zoning Ordinance, an applicant may apply for a waiver of all or part of the impact fees that are payable with respect to new development or redevelopment. Per Article 29.2-1-2(e)(4)(a) of the Zoning Ordinance, an applicant for the development of permitted nonresidential uses shall qualify for a waiver of the transportation facilities impact fees. The Clerk determines the impact fee at the time of building permit application, and the **applicant must request the waiver prior to the date of the determination.**

1.2 Per Section 28-7-4 *Stacking Requirements for Drive-Through Facilities* of the Zoning Ordinance, the Planning Board may grant a conditional use permit to allow for fewer stacking spaces than what are required. The applicant requests conditional use permit approval to provide 10 stacking spaces, rather than the 11 that are required.

2. Site Plan Regulations Compliance and Comments:

2.1 Per Section 2.04, the public and private improvements shall conform to and be properly related to the proposals shown in the Master Plan and Official Map of the municipality.

2.2 Per Section 4.01, the Site Plan Regulations shall apply to all land development within the corporate limits of the City.

2.3 Per Section 6.01(4) *Conformity with Zoning*, for an application to be determined complete, the proposed application must be in conformity with the Zoning Ordinance at the time the notices are mailed to the abutters notifying of the Board’s consideration of completeness. To be determined complete where a variance is being requested from the Zoning Board of Adjustment, the site plan application must either comply with the Zoning Ordinance, or the applicant must have obtained favorable approval of the required variances prior to the time the notices are mailed to the abutters notifying of the Board’s consideration of completeness. With the parking variance that was granted by the Zoning Board of Adjustment on August 7, 2024, the application was considered by staff to conform with the Zoning Ordinance at the time of the mailing.

2.4 Per Section 6.01(5) *Conditional Use Permits*, where conditional use permits are required in conjunction with a proposed site plan application, a completed conditional use permit application shall be made at the same time as the site plan application. Where a conditional use permit is required, no site plan application may be considered complete without a complete conditional use permit application. Conditional use permit applications will be considered concurrently with the site plan application. The project requires a conditional use permit application as described in Item 5 of this staff report, and said application was submitted at the same time as the site plan application.

- 2.5 Staff notes that the information required by Section 15.03 *Existing Condition Plan* is distributed throughout the plan set on various sheets, including the sheet titled “existing conditions/demolition plan” and the two-sheet ALTA land survey. While not all contained entirely on one existing condition plan sheet as required, staff is accepting the submittal in its current state for purposes of compliance with Section 15.03 *Existing Condition Plan*.

All information required for a complete determination is contained within the revised materials received on October 25, 2024, with consideration for waivers for items 2.6 through 2.8.

The following items from Sections 12, 13.01, 15, 16.02, and 16.03 of the Site Plan Regulations appear to be missing from the application, all of which are minimum components necessary to determine the application complete.

- 2.6 Section 16.03(5) *Windows, Doors, and Roofs* requires that the type and pitch of roofs shall be noted on the elevations, along with the size and spacing of all windows and door openings. **The applicant requests a waiver from this requirement.**
- 2.7 Section 16.03(8) *Dimensions* requires that the horizontal dimension be provided on the architectural elevations. **The applicant requests a waiver from this requirement.**
- 2.8 Section 16.03(10) *Photographs* requires the submittal of colored photographs showing the existing site and adjacent buildings and properties. **The applicant requests a waiver from this requirement.**

The items below appear to be missing from the application, but they are not required as part of the determination of completeness and can be addressed as conditions of approval.

- 2.9 While the revised submittal on October 25, 2024, included information that was missing from the original submittal that was needed for a complete determination, the information in the revised submittal is not presented as required by the Site Plan Regulations. For instance, Section 15.04 has requirements for items on the site plan. Rather than showing all the items on the site plan as required by Section 15.04, the applicant has shown varying items on different sheets throughout the entire plan set. While the required information is present, said required information is not presented as required; therefore, as a condition of approval, the site plan shall be revised to contain all information required by Section 15.04 rather than being spread out over numerous different sheets in the plan set.
- 2.10 The **site plan sheet** shall be revised to show, list, and note, in a legible and clear manner, the following: plan or deed references for recorded easements on the property proposed and existing easements on abutting properties as required by Section 12.06(2) *Easements*; Section 12.06(3) *Existing Restrictions*, deed reference and statement of any existing recorded covenants or restrictions as required by Section 12.06(3) *Existing Restrictions*; Section 12.06(4) *Prior Subdivisions or Surveys*, plan references for prior recorded subdivisions or surveys as required by Section 12.06(4) *Prior Subdivisions or Surveys*; a note stating that no state or federal agency permit applications are required OR a note listing the state and federal agency permits that are required as required by Section 13.01(6) *State and Federal Permits*; and, notations of all easements, covenants, and self-imposed restrictions as required by Section 15.02(5) *Easements and Restrictions*.
- 2.11 The **site plan sheet** shall be revised to clearly and legibly show, label, depict, and/or note on the

- site plan sheet all the information required by Section 15.04 *Proposed Site Plan* to be shown on the site plan sheet.
- 2.12 Recorded easements shall be noted on the **site plan sheet** for compliance with Section 17.02 *Self-Imposed Restrictions*, including notation of the condominium declaration and the easements contained therein.
- 2.13 The **site plan sheet** shall contain all the information from Section 18 *Parking Lot Design Standards* and Section 19 *Access and Driveway Standards*, including dimensions clearly labeled of driveway widths, drive aisle widths, accessible spaces, parking spaces, stacking spaces, bypass lane, compact parking space signage, striping and markings, perimeter buffers, perimeter landscaping, interior parking lot landscaping, tree plantings, lighting, curbing and guard rails. Information shall be clearly identifiable and easily and readily located on the site plan.
- 2.14 Required information from Section 20 *Loading and Solid Waste Facility Standards*, Section 21 *Sidewalks, Multi-use Paths, and Trails*, Section 22 *Storm Water Management*, Section 23 *Water Supply*, Section 24 *Sanitary Sewage Disposal*, Section 25 *Non-municipal Utilities*, Section 26 *Buffers and Screening*, Section 27 *Landscaping and Environmental Considerations*, and Section 29 *Lighting* shall be contained in the plan set, and shall be clearly identifiable and easily and readily located on identified sheets of the plan set.
- 2.15 As required by the Site Plan Regulations, construction details shall be provided for all utilities, driveways, parking areas, pavement markings, sidewalks, patios, drainage facilities and structures, information, regulatory, and directional signage; common mailboxes; solid waste receptacles; buffer walls and fences; retain walls; landscaping; and, site lighting. Unless specifically waived by the Planning Board, construction details shall be provided which conform to the Concord Construction Standards and Details. There are details in the plan set that are not from the Concord Construction Standards and Details. Where the Concord Construction Standards and Details does provide such a detail, that detail must be used.
- 2.16 Section 21.05 *Design Standards* requires sidewalks constructed in conformity with Concord Construction Standards and Details. The submitted plan set does not appear to include the sidewalk detail from the Concord Construction Standards and Details as required. This includes accessible sidewalks on the site, curb ramps provided in compliance with the Architectural Barrier Free Design Code for the State of New Hampshire and the ADA Standards for Accessible Design, minimum sidewalk width of five feet exclusive of curbing, and minimum transverse slope of 2% and maximum slope of 8%.
- 2.17 Section 22.02 *Construction Standards* requires all public and private storm water drainage facilities to be constructed to the standards of the Site Plan Regulations and the Concord Construction Standards and Details. It does not appear that the Concord Construction Standards and Details were used for the details shown in the submitted plan set.
- 2.18 Section 23.04 *Design Standards for Service Connections* requires the installation of facilities for water in accordance with the Concord Construction Standards and Details. It does not appear that the details shown in the submitted plan set are the details from the Concord Construction Standards and Details.
- 2.19 Section 24.04 *Design Standards for Service Connections* requires service connections to the municipal sanitary sewer system to be constructed in accordance with the Concord Construction

- Standards and Details. It does not appear that the details shown in the submitted plan set are the details from the Concord Construction Standards and Details.
- 2.20 Section 25.02(1) *Underground Utilities* and (2) *Service Connections* requires service connections to non-municipal utilities to be constructed in accordance with the Concord Construction Standards and Details, and the standards established by the private utility company responsible for the service. It does not appear that the details shown in the submitted plan set are the details from the Concord Construction Standards and Details, nor was any documentation provided from private utility companies showing approval for the proposed non-municipal utility design.
- 2.21 It's unclear from the submitted materials if the project proposes any roof-top or ground-mounted mechanical equipment. If there is no roof-top or ground-mounted mechanical equipment proposed, add a note to the site plan stating as much. If any such equipment is proposed, add the required screening details to the detail sheets, and reference the sheet number on the site plan sheet, to show compliance with Section 26.02 *Mechanical Equipment*.
- 2.22 For compliance with Section 27.06(5) *Underground Utilities*, a note shall be added to the site plan sheet, utility plan sheet, and landscaping plan sheet stating that no trees shall be planted within 10 feet of an existing or proposed underground utility line.
- 2.23 Section 27.07(4) *Biodiversity* allows for no more than 25% of the trees to be planted to be of the same species. The landscape plan shows that three trees are being planted and all three are of the same species, which doesn't meet the requirement. With three trees being planted to meet this requirement, each tree will need to be a different species. Alternatively, an analysis shall be provided of all three land units listing the number of existing trees by species, as well as the number of trees to be planted by species, such that no more than 25% of all the trees (existing and to be planted) are of the same species.
- 2.24 Section 27.07(6) *Planting Specifications* requires the use of Concord Construction Standards and Details. It does not appear that the details presented in the landscaping plan are from the Concord Construction Standards and Details as required.
- 2.25 Section 29.07 *Nuisance and Glare* allows for no more than 0.2 foot-candles beyond property boundaries. The submitted lighting plan appears to show greater than 0.2 foot-candles beyond the lot lines.
- 2.26 The Assessing Department, Fire Department, and General Services Department have no comments.
- 2.27 The Engineering Division provided compliance requirements in a separate memorandum, dated November 1, 2024, and attached hereto.
- 2.28 The capacity of the municipal sanitary sewer system is of concern along Loudon Road and throughout the GWP District in the Heights neighborhood of the City. Capacity is limited due to physical constraints of certain sanitary sewer mains located within the Loudon Road sewershed, the physical capacity of the existing municipal sewer pump station located at the former Steeplegate Mall, as well as the provisions of a 1988 sewer agreement concerning allocation of capacity within the existing sewer pump station to certain properties located on the Heights. The properties located at 285, 287, and 289 Loudon Road are not party to the 1988 sewer agreement.

On October 10, 2023, the City Council approved Resolution #9586 and Resolution #9587 which appropriated the sum of \$1,900,000 to design sewer improvements associated with Capital Improvement Projects 91 (sewer mains) and 275 (sewer pump stations) to increase capacity of the municipal sanitary sewer system in this area of the City. As part of the City's FY2025 budget, the City Council appropriated the additional sum of \$23,150,000 for Capital Improvement Projects 91 (sewer mains) and 275 (sewer pump stations), combined, to replace the existing municipal sewer pump station located at the former Steeplegate Mall, as well as to replace sewer mains located within Loudon Road, Branch Turnpike, and Pembroke Road to address capacity issues. These proposed sewer improvements are currently under design and tentatively scheduled for completion in late calendar year 2026/early 2027.

On November 13, 2017, the City executed a New Hampshire Department of Environmental Services sewer connection permit for development located at 285-289 Loudon Road. The permit was for total flowage of 6,469 gallons per day (GPD) from all buildings proposed to be developed at 285-289 Loudon Road, combined. Specifically, said sewer capacity was allocated as follows: 2,096 GPD for the recently developed Aldi's, 713 GPD for the 6,250-square-foot retail building, and 3,600 GPD for an 80-seat, 20-employee restaurant (now proposed to be the Raising Cain's), as well as 60 GPD for infiltration allowance. Staff notes that the size of the restaurant, which will be the Raising Cain's, has increased since the original 2017 application.

On December 5, 2022, the Planning Board granted conditional site plan approval for modification of the 6,250-square-foot retail building contemplated in the issued sewer connection permit in 2017. Specifically, as part of the December 5, 2022, approval, approved uses for said building were revised to 4,250 square feet of retail, and 1,600 square feet of restaurant. While the building permit has not been issued for said retail/restaurant building, final approval has been received. The 2017 sewer connection permit was never updated for the additional 1,600 square feet of restaurant use.

The December 5, 2022, approval, and associated changes to building uses therewith, increased sewage flow from the retail/restaurant building from the 713 GPD included in the 2017 sewer connection permit to at least 1,713 GPD. Specifically, the 1,600-square-foot restaurant added to the retail building will require at least 1,500 GPD, and 213 GPD for the remaining 4,250-square-foot retail portion.

Accounting for the 1,713 GPD for the retail/restaurant building, 60 GPD for infiltration allowance, and 2,096 GPD for the existing Aldi's grocery store, only 2,600 GPD of capacity remains available under the 2017 sewer connection permit for development at 285-289 Loudon Road. **As such, there is insufficient remaining capacity under the 2017 sewer connection permit for both the retail/restaurant approved in 2022 and the proposed Raising Cane's restaurant.**

The City acknowledges the applicant's rights to a certain amount of sewer capacity per the November 13, 2017, New Hampshire Department of Environmental Services sewer connection permit. However, the applicant shall be limited to maximum sewer utilization of 6,469 gallons per day for all buildings located at 285-289 Loudon Rd, combined, until such time as aforementioned sewer improvements associated with Capital Improvement Projects 91 and 275 are operational, or sufficient capacity is determined to exist within the municipal sanitary sewer system as determined by the City Engineer (whichever occurs first).

Therefore, in order to proceed with its project, the applicant has the following options:

- 1) Verify actual sewer usage of the existing Aldi's grocery store. If Aldi's usage is less than 2,096 GPD, then evaluate whether residual capacity related thereto is sufficient to support the 6,250-square-foot mixed use building (retail/restaurant), and proposed Raising Cain's within the maximum 6,469 GPD, combined, per the 2017 sewer connection permit to the satisfaction of the City Engineer; or,
- 2) Reduce the size of the proposed Raising Cain's restaurant so that sewage capacity needs – in conjunction with sewage generation for the existing Aldi and approved retail/restaurant building – will not exceed 6,469 GPD for 285, 287, and 289 Loudon Road, combined; or,
- 3) Negotiate with the owner of 285 Loudon Road to delay their project until after completion of the City's sewer improvements, or otherwise modify their project to use less sewer capacity, and assign available sewer capacity therefrom to the Raising Cain's restaurant to achieve sufficient capacity for the applicant's Raising Cain's restaurant with the 6,469 GPD limit for 285, 287, 289 Loudon Road, combined; or,
- 4) Should the Planning Board conditionally approve this Raising Cain's project and the applicant is able to achieve final site plan approval, the applicant – subject to satisfying required building codes – shall be eligible for a building permit from the City of Concord. However, if a building permit is issued, and the applicant is unable to achieve sufficient sewer capacity for the Raising Cain's project as outlined in options 1-3 above, the applicant's building permit shall be subject to the following requirements concerning sewer service:
 - a. The Raising Cain's building shall not be connected to the municipal sanitary sewer system until such time as aforementioned sewer improvements associated with Capital Improvement Projects 91 and 275 are operational, or sufficient capacity is determined to exist within the municipal sanitary sewer system as determined by the City Engineer (whichever occurs first).
 - b. No certificate of occupancy shall be issued for the Raising Cain's project until such time as aforementioned sewer improvements associated with Capital Improvement Projects 91 and 275 are operational, or sufficient capacity is determined to exist within the municipal sanitary sewer system as determined by the City Engineer (whichever occurs first);
- 5) These options have been incorporated as conditions of approval outlined in Section 8.6 of this report.

Alternatively, due to lack of available sewer capacity, the Board could deny this application on the grounds that it is premature and scattered in accordance with Section 36.22 of the Site Plan Review Regulations due to lack of sewer capacity. However, staff believes the options laid out above provide the applicant with reasonable options for proceeding.

3. Variances:

3.1 At the meeting held on August 7, 2024, the Zoning Board of Adjustment granted the applicant's requested variance as follows:

- Article 28-7-2 *Off-Street Parking Requirements*, to provide a total of 153 parking spaces where 170 spaces are required.

4. Waivers:

- 4.1 The applicant requests waivers from the following sections of the Site Plan Regulations:
- a. Section 16.03(5) *Windows, Doors, and Roofs*, to not provide the type and pitch of roofs and size and spacing of windows and door openings on the architectural elevations;
 - b. Section 16.03(8) *Dimensions*, to not provide the required horizontal and vertical dimensions on the architectural elevations;
 - c. Section 16.03(10) *Photographs*, to not submit the required colored photographs of the existing site and adjacent buildings and properties; and,
 - d. Section 18.08 *Design of Stacking Spaces*, to not provide the full length of the 8-foot-wide bypass lane as required.

The applicant provided an analysis of the five waiver criteria listed in Section 36.08 of the Site Plan Regulations, and the criteria in New Hampshire RSA 674:44(III)(e).

Staff reviewed the evidence submitted and supports the waiver requests in Item 4.1(a) through (d).

- 4.2 The applicant requests a waiver from the following section of the Site Plan Regulations:
- a. Section 16.02(14)(b) *Utility Plan*, to not provide profiles of all municipal utilities on the utility plan sheet as required.

The applicant provided an analysis of the five waiver criteria listed in Section 36.08 of the Site Plan Regulations, and the criteria in New Hampshire RSA 674:44(III)(e).

Staff reviewed the evidence submitted and feels it is not sufficient enough to warrant approval of the waiver request; therefore, staff does not support the waiver request in Item 4.2(a).

5. Conditional Use Permits:

- 5.1 The applicant requests approval for a conditional use permit in accordance with Section 28-7-4 *Requirements for Stacking Spaces for Drive-Through Facilities* of the Zoning Ordinance, to allow for 10 stacking spaces rather than the 11 that are required. The applicant provided a narrative addressing the criteria of approval.

Staff reviewed the narrative, found that the criteria are satisfactorily addressed, and supports granting the requested conditional use permit.

6. Architectural Design Review:

- 6.1 The application was presented to the Architectural Design Review Committee on October 1, 2024. The application was reviewed for conformity with the Architectural Design Guidelines; harmony and compatibility with existing architectural character of the site, district, or location; integration into site design of significant natural features on site and abutting properties; and, the integration of landscaping, parking, and site features into the overall design of the project.

The Architectural Design Review Committee recommended that the Planning Board grant architectural design review approval for the application as submitted, subject to the following conditions:

- a. The approval does not include architectural design review approval for any signage, whether shown or not. Architectural design review approval of signage shall be considered at the time of sign permit application submissions and in conjunction with a prepared sign master plan.
- b. The One Love Heart (XL) artwork shared by the applicant during the October 1, 2024, Architectural Design Review Committee meeting shall be used in place of the proposed Canes sign on the front elevation.
- c. The dog artwork on the side elevation shall be approved as submitted, unless it is determined to be a sign, in which case approval will be for the same dog image but with removal of the words “Cane 1.”
- d. Artwork shall be added to the rear elevation.
- e. The approval does not include the “One Love” sign/art on the front elevation and will instead be included and considered as part of the master sign plan approval.
- f. The approval includes the flame depicted on the drive-thru elevation as submitted, but the words “Drive Thru” shall be removed.

7. Conservation Commission:

- 7.1 No appearances before the Conservation Commission are necessary for this application.

8. Recommendations:

- 8.1 Staff recommends that the Planning Board **discuss and adopt the findings of fact**, which include: information provided in staff reports; the applicant’s submission materials; testimony provided during the public hearing; and, other documents or materials provided in the public hearing.

Based on the adopted findings of fact, staff recommends that the Planning Board make the motions outlined below:

- 8.2 **Grant architectural design review approval** for the proposed 3,404-square-foot drive-thru restaurant, subject to the following conditions:
- a. The approval does not include architectural design review approval for any signage, whether shown or not. Architectural design review approval of signage shall be considered at the time of sign permit application submissions and in conjunction with a prepared sign master plan.
 - b. The One Love Heart (XL) artwork shared by the applicant during the October 1, 2024, Architectural Design Review Committee meeting shall be used in place of the originally-proposed Canes sign on the front elevation.
 - c. The dog artwork on the side elevation shall be approved as presented to the Architectural Design Review Committee, unless it is determined to be a sign, in which case approval will be for the same dog image but with removal of the words “Cane 1.”
 - d. Artwork shall be added to the rear elevation.
 - e. The approval does not include the “One Love” sign/art on the front elevation and will instead be included and considered as part of the master sign plan approval.
 - f. The approval includes the flame depicted on the drive-thru elevation as presented to the Architectural Design Review Committee, but the words “Drive Thru” shall be removed.
- 8.3 **Deny the waiver request below** from the listed section of the Site Plan Regulations because the request does not meet the criteria of New Hampshire RSA 674:44(III)(e)(1) or (2) or Section 36.08 of the Site Plan Regulations.

- a. Section 16.02(14)(b) *Utility Plan*, to not provide profiles of all municipal utilities.
- 8.4 **Grant the waiver requests below** from the listed sections of the Site Plan Regulations, using the criteria of New Hampshire RSA 674:44(III)(e) and Section 36.08 of the Site Plan Regulations:
- a. Section 16.03(5) *Windows, Doors, and Roofs*, to not provide the type and pitch of roofs and size and spacing of windows and door openings on the architectural elevations;
 - b. Section 16.03(8) *Dimensions*, to not provide the required horizontal and vertical dimensions on the architectural elevations;
 - c. Section 16.03(10) *Photographs*, to not submit the required colored photographs of the existing site and adjacent buildings and properties; and,
 - d. Section 18.08 *Design of Stacking Spaces*, to not provide the full length of the 8-foot-wide bypass lane as required.
- 8.5 **Grant the conditional use permit** from Section 28-7-4 *Requirements for Stacking Spaces for Drive-Through Facilities* of the Zoning Ordinance to allow only 10 stacking spaces rather than the 11 that are required, based on the criteria being met, and subject to the following condition:
- a. Applicant shall ensure that no vehicle shall stop on or over the crosswalk in the drive-thru lanes.
- 8.6 **Grant site plan approval** for the construction of a new 3,404-square-foot drive-thru restaurant at 287 Loudon Rd, subject to the following precedent and subsequent conditions:
- a. Precedent Conditions – Per Section 7.08(9) *Expiration of Approval*, approved site plans shall meet all precedent conditions and obtain the signature of the Chair and Clerk of the Planning Board within one year of the date of the Planning Board meeting where conditional final approval was granted; otherwise said plans shall be null and void.

Precedent conditions are as follows:

1. Unless a specific variance, waiver, or conditional use permit is granted stating otherwise, revise the plan set to fully comply with the Site Plan Regulations, Zoning Ordinance, and Concord Construction Standards and Details, including but not limited to the following:
 - a. The site plan sheet shall be revised to contain all information required by Section 15.04 *Proposed Site Plan*, rather than being spread out over numerous different sheets in the plan set.
 - b. The site plan sheet shall be revised to show, list, and note, in a legible and clear manner, the following: plan or deed references for recorded easements on the property proposed and existing easements on abutting properties as required by Section 12.06(2) *Easements*; Section 12.06(3) *Existing Restrictions*, deed reference and statement of any existing recorded covenants or restrictions as required by Section 12.06(3) *Existing Restrictions*; Section 12.06(4) *Prior Subdivisions or Surveys*, plan references for prior recorded subdivisions or surveys as required by Section 12.06(4) *Prior Subdivisions or Surveys*; a note stating that no state or federal agency permit applications are required OR a note listing the state and federal agency permits that are required as required by Section 13.01(6) *State and Federal Permits*; and, notations of all easements, covenants, and self-imposed restrictions as required by Section 15.02(5) *Easements and Restrictions*.

- c. The site plan sheet shall be revised to clearly and legibly show, label, depict, and/or note on the site plan sheet all the information required by Section 15.04 *Proposed Site Plan* to be shown on the site plan sheet.
- d. Recorded easements shall be noted on the site plan sheet for compliance with Section 17.02 *Self-Imposed Restrictions*, including notation of the condominium declaration and the easements contained therein.
- e. The site plan sheet shall contain all the information from Section 18 *Parking Lot Design Standards* and Section 19 *Access and Driveway Standards*, including dimensions clearly labeled of driveway widths, drive aisle widths, accessible spaces, parking spaces, stacking spaces, bypass lane, compact parking space signage, striping and markings, perimeter buffers, perimeter landscaping, interior parking lot landscaping, tree plantings, lighting, curbing and guard rails. Information shall be clearly identifiable and easily and readily located on the site plan.
- f. Required information from Section 20 *Loading and Solid Waste Facility Standards*, Section 21 *Sidewalks, Multi-use Paths, and Trails*, Section 22 *Storm Water Management*, Section 23 *Water Supply*, Section 24 *Sanitary Sewage Disposal*, Section 25 *Non-municipal Utilities*, Section 26 *Buffers and Screening*, Section 27 *Landscaping and Environmental Considerations*, and Section 29 *Lighting* shall be contained in the plan set, and shall be clearly identifiable and easily and readily located on identified sheets of the plan set.
- g. As required by the Site Plan Regulations, construction details shall be provided for all utilities, driveways, parking areas, pavement markings, sidewalks, patios, drainage facilities and structures, information, regulatory, and directional signage; common mailboxes; solid waste receptacles; buffer walls and fences; retain walls; landscaping; and, site lighting. Unless specifically waived by the Planning Board, construction details shall be provided which conform to the Concord Construction Standards and Details. There are details in the plan set that are not from the Concord Construction Standards and Details. Where the Concord Construction Standards and Details does provide such a detail, that detail must be used.
- h. Section 21.05 *Design Standards* requires sidewalks constructed in conformity with Concord Construction Standards and Details. The submitted plan set does not appear to include the sidewalk detail from the Concord Construction Standards and Details as required. This includes accessible sidewalks on the site, curb ramps provided in compliance with the Architectural Barrier Free Design Code for the State of New Hampshire and the ADA Standards for Accessible Design, minimum sidewalk width of five feet exclusive of curbing, and minimum transverse slope of 2% and maximum slope of 8%.
- i. Section 22.02 *Construction Standards* requires all public and private storm water drainage facilities to be constructed to the standards of the Site Plan Regulations and the Concord Construction Standards and Details. It doesn't appear that the Concord Construction Standards and Details were used for the details shown in the submitted plan set.
- j. Section 23.04 *Design Standards for Service Connections* requires the installation of facilities for water in accordance with the Concord Construction Standards and Details. It doesn't appear that the details shown in the submitted plan set are the details from the Concord Construction Standards and Details.
- k. Section 24.04 *Design Standards for Service Connections* requires service connections to the municipal sanitary sewer system to be constructed in

accordance with the Concord Construction Standards and Details. It does not appear that the details shown in the submitted plan set are the details from the Concord Construction Standards and Details.

- l. Section 25.02(1) *Underground Utilities* and (2) *Service Connections* requires service connections to non-municipal utilities to be constructed in accordance with the Concord Construction Standards and Details, and the standards established by the private utility company responsible for the service. It doesn't appear that the details shown in the submitted plan set are the details from the Concord Construction Standards and Details, nor was any documentation provided from private utility companies showing approval for the proposed non-municipal utility design.
 - m. It's unclear from the submitted materials if the project proposes any roof-top or ground-mounted mechanical equipment. If there is no roof-top or ground-mounted mechanical equipment proposed, add a note to the site plan stating as much. If any such equipment is proposed, add the required screening details to the detail sheets, and reference the sheet number on the site plan sheet, to show compliance with Section 26.02 *Mechanical Equipment*.
 - n. For compliance with Section 27.06(5) *Underground Utilities*, a note shall be added to the site plan sheet, utility plan sheet, and landscaping plan sheet stating that no trees shall be planted within 10 feet of an existing or proposed underground utility line.
 - o. Section 27.07(4) *Biodiversity* allows for no more than 25% of the trees to be planted to be of the same species. The landscape plan shows that three trees are being planted and all three are of the same species, which doesn't meet the requirement. With three trees being planted to meet this requirement, each tree will need to be a different species. Alternatively, an analysis can be provided of all three land units listing the number of existing trees by species, as well as the number of trees to be planted by species, such that no more than 25% of all the trees (existing and to be planted) are of the same species.
 - p. Section 27.07(6) *Planting Specifications* requires the use of Concord Construction Standards and Details. It doesn't appear that the details presented in the landscaping plan are from the Concord Construction Standards and Details as required.
 - q. Section 29.07 *Nuisance and Glare* allows for no more than 0.2 foot-candles beyond property boundaries. The submitted lighting plan appears to show greater than 0.2 foot-candles beyond the lot lines.
 - r. Revise sheets as applicable to address all compliance comments in the memorandum from the Engineering Division, dated November 1, 2024, attached hereto.
2. A note shall be added to the site plan sheet and the utility plan sheet stating that maximum sewer utilization from all development located at 285-289 Loudon Rd shall not exceed 6,469 gallons per day (GPD), combined, until such time as aforementioned sewer improvements associated with Capital Improvement Projects 91 and 275 are operational, or sufficient capacity is determined to exist within the sanitary sewer system as determined by the City Engineer (whichever occurs first). If the applicant is unable to demonstrate to the City Engineer that sufficient sewer capacity exists within the aforementioned 6,469 GPD limit, the applicant shall be eligible to receive a building permit for the Raising Cain's project; however, said building permit shall be subject to the following conditions:
 - a. The applicant's Raising Cain's building shall not be connected to the

municipal sanitary sewer system until such time as aforementioned sewer improvements associated with Capital Improvement Projects 91 and 275 are operational, or sufficient capacity is determined to exist within the municipal sanitary sewer system as determined by the City Engineer (whichever occurs first).

- b. No certificate of occupancy shall be issued for the applicant's Raising Cain's building until such time as aforementioned sewer improvements associated with Capital Improvement Projects 91 and 275 are operational, or sufficient capacity is determined to exist within the municipal sanitary sewer system as determined by the City Engineer (whichever occurs first);
 3. The site plan sheet shall list all approved variances, waivers, and conditional use permits with the section numbers and description, and date of approval.
 4. If the waiver from the bypass lane required in the Site Plan Regulations and the conditional use permit for the reduced stacking spaces are not granted, then all applicable sheets in the plan set shall be revised to show full compliance with the requirements for the bypass lane and stacking spaces.
 5. Upon notification from the Planning Division that the plan set complies with Planning Board conditions, the Zoning Ordinance, Site Plan Regulations, and Concord Construction Standards and Details, the applicant shall deliver to the Planning Division two full-size plan sets and one 11x17 plan set for endorsement by the Planning Board Chair and Clerk. The plan sets shall contain the signature and seal of the appropriate licensed professionals as outlined in the Site Plan Regulations.
- b. **Subsequent Conditions** – to be fulfilled as specified:
1. This approval notwithstanding, the applicant is responsible for full knowledge of, and compliance with, the municipal code, Site Plan Regulations, and Concord Construction Standards and Details for the project, unless a variance, waiver, or conditional use permit is granted.
 2. Per Section 4.02 no building permit shall be issued for the purposes of constructing a new building or structure unless a certificate of approval has first been issued by the Planning Board as required by the Site Plan Regulations.
 3. Per Section 7.08(7) *Building Permits and Certificates of Occupancy*, no certificate of occupancy shall be issued until all public and private improvements have been completed, and all conditions of a site plan approval established by the Planning Board have been satisfactorily addressed as determined by the Clerk of the Planning Board. Additionally, issuance of building permit and certificate of occupancy shall be expressly subject to Precedent Condition 2 herein.
 4. Per Section 27.07(8) *Maintenance*, the applicant or their successors shall be responsible for the regular maintenance of all plantings and other landscape features. Plant materials shall be maintained alive, healthy, and free from pests and disease. Tree stakes and guys shall be removed after the first growing season.
 5. Per Section 27.11 *Site Stabilization Guarantee*, a site stabilization guarantee shall be provided to ensure the site is properly stabilized. The guarantee shall be in a form of a cash deposit or a letter of credit from a New Hampshire bank. The City Engineer may call said financial guarantee, and stabilize a disturbed site if, upon notice, the applicant has not stabilized or restored the site.
 6. Per Section 36.02 *Conditions*, the applicant has the duty to comply with the approved site plan and any reasonable conditions set forth by the Planning Board for design, dedication, improvement, and restrictive use of the land.

7. Per 36.15 *Compliance with Regulations*, no site construction, or change of use of land, shall occur in violation of the Site Plan Regulations and the Zoning Ordinance. No building permits may be issued for any building, structure, site improvement, or change of use prior to site plan approval and the satisfactory completion of any pre-construction conditions of Planning Board approval. The Clerk shall not approve any certificate of occupancy, nor shall any use of a building or site commence, unless the proposed improvements, and the proposed use of land or buildings, is found to comply with the approved site plan and the conditions of Planning Board approval.
8. Per 36.24 *Inspections*, the Community Development Department shall be responsible for inspecting the site plan improvements for conformity with the approved plans and conditions of Planning Board approval. The City may assess the application for all or a portion of the cost, including overhead, of the necessary inspections. No certificate of occupancy shall be issued until the development has been completed according to the approved plans.
9. Per Section 36.25 *As-Built Plans*, the applicant's engineer or surveyor shall submit to the City Engineer a detailed as-built survey for all site plans showing the location of buildings, structures, utilities, parking and loading areas, driveways and access, as well as for any public improvement required by the City Engineer. The as-built survey shall also be submitted in digital format and media conforming to the Engineering Division's as-built checklist.
10. Per Section 36.27 *Release of Financial Guarantees*, a release of any financial guarantee assurance shall not be undertaken until the Clerk of the Planning Board and the City Engineer have ascertained that all site related improvements, or required public improvements, have been constructed in conformance with the approved plans and specifications.

Prepared by: AMS



CITY OF CONCORD
New Hampshire's Main Street™
Community Development Department

Michael S. Bezanson, PE
City Engineer

MEMORANDUM

TO: AnneMarie Skinner, AICP, City Planner
FROM: Paul Gildersleeve, PE, Project Manager
DATE: November 1, 2024
SUBJECT: Raising Cane's Restaurant with Drive Thru – Major Site Plan Amendment, Waivers, and Conditional Use Permit - Engineering Review
287 Loudon Road; Map #611Z, Lot #38, Unit #2; City Project 2024-069

The Engineering Services Division (Engineering) has received the following items for review:

- *Preliminary Site Development Plans by Bohler Engineering, dated October 25, 2024*
- *Narrative in Support of Site Plan and Conditional Use Permit Applications of Raising Cane's Chicken Fingers (also includes waiver requests)*

As a supplement to any comments offered by the Planning Division, Engineering offers the following design related comments. With subsequent submissions, the applicant shall provide a response letter that acknowledges or addresses each of these comments and discusses any additional changes to the plans.

Waiver: CSPR 16.02(14b)- providing utility profiles

1. A waiver In the Narrative, p.4, the applicant notes utility crossing elevations have been included. However, no elevations can be found. On C-501, crossings are located and labeled with a W. The legend under W states, "Approx. location of Prop. Utility Crossing. GC shall confirm all crossings and notify engineer should any conflicts occur." Part of the intent of City of Concord, NH Site Plan Regulations (ie CSPR) 16.02(14b) is to prevent conflicts in the first place in order to provide the best design before construction begins. Also, the waiver requirements of CSPR 36.08 have not been met. Therefore, Engineering Services does not support this waiver request.

General Plan Set Comments

1. *The seating capacity of the restaurant must be provided to verify sewer capacity. Provide calculation(s) verifying sewer capacity, and usage.*

Sheet C-301: Site Plan

1. A leader next to the Sign Summary Table appears to leader to nothing. Turn off this leader information.

Sheet C-302: Dimension Control Plan

1. Under “Dimension Notes: 1,” it states all curbs shall be 6” standard; however, only 5” sloped granite curbing is shown on the details. Add appropriate detail from the City’s Construction Standards and Details. Under “Dimension Notes: 3,” it states all curbs shall be 6” standard unless otherwise noted; however, only a 5” sloped granite curbing detail is shown in the details, on C-904. Revise this discrepancy using City of Concord’s Construction Standards and Details.

Sheet C-501: Drainage and Utility Plan

1. *The exiting sanitary line on site does not appear to leave the site. Show how the sewer connects to utilities in the ROW pursuant to CSPR 15.04(13) and CSPR 16.02(14a).*
The exiting sanitary line on site does not appear to leave the site. While two lines are shown approaching each other, neither connect. Show how the sewer connects to utilities in the ROW pursuant to CSPR 15.04(13) and CSPR 16.02(14a).
2. *Provide profiles of proposed storm sewer, sanitary sewer, and water lines, pursuant to CSPR 16.02(14b). The sanitary line must have 4’ of cover or insulation is required, pursuant to City of Concord Construction Standards and Details (ie Standards), Section 4: Sanitary Sewer Systems, 3(B)(23). The 4” sewer line from the northwest side of the building appears to have less than 4’ of cover and will therefore need this insulation.*

The water line must have 5.5’ of cover, with insulation being required for pipe installed with less than 5.5’ cover, pursuant to Standards Section 5: Water Systems, 3(A)(2 and 3).

Storm sewer line must have 4’ of cover. If less than 4’ of cover is achieved, 2” rigid polystyrene thermal insulation with a minimum “R” value of 10 shall be required, pursuant to Standards Section 6: Storm Drainage Systems, 3(F)(2).

A waiver has been applied for concerning this comment. This information is important for proper vetting of the design. The Engineering Division does not support this waiver request.

3. *All utility crossings should be shown in the profiles for clarity and ease of construction. This information is important for proper vetting of the design. Therefore, the Engineering Division does not support this waiver request.*

4. *Confirm the grease trap previously installed is legally accessible to this building (e.g. via agreement).* While the response to this comment refers to the ALTA/NSPS Land Title Survey, the information could not be found.
5. Provide easement information for the existing infiltration system for the purposes of maintenance. Easement information was searched for on the ALTA/NSPS Land Title Survey for this infiltration system but could not be found.
6. A sanitary callout for 10 LF of 6" SDR-35 and a callout K2 in the Utility Keynote Legend for a 6" PVC cleanout conflict with callout K in the Utility Keynote Legend which states this line is 6" cast iron, not PVC. Revise to match.
7. North of the building located between the two dumpsters, a proposed 12" HDPE pipe is shown tying into to an existing 15" CPP. Also, in the drive lane north of the building, a proposed 6" HDPE pipe is shown connecting to an existing 12" CPP. Describe how these two proposed HDPE pipes connect to the two existing CPP pipes.

State/Federal Permits

The project will require the following state and/or federal permit(s) associated with the site design:

- EPA Notice of Intent, General Construction Permit and accompanying SWPPP (if area of disturbance is over 1 acre)
- NHDES Alteration of Terrain (if disturbance is over 100,000 SF)

Pursuant to Site Plan Regulations Section 13.02(8), a copy of state and federal permit shall be submitted to the City prior to final plan approval.

Post-Approval/Pre-Construction Requirements

The following items are required prior to the start of construction:

1. Pursuant to Site Plan Regulations Section 27.11, establish a financial guarantee (letter of credit, or cash deposit) for site stabilization.
2. The following permit(s) will need to be obtained from the Engineering Division:
 - Excavation Permit
 - Utility Connection Permit(s)
 - Other permits deemed necessary by the City Engineer

Please note that all Engineering permits must be applied for online using the City's Citizen Self Service (CSS) Permit Portal, which can be found here:

<http://concordnh.gov/1915/Engineering-Permits-Fees>

3. Pursuant to Site Plan Regulation Section 36.24, the Applicant is responsible for paying inspection fees to ensure work is consistent with City standards, the approved plans, and conditions of approval.

Prior to scheduling the pre-construction meeting, the applicant shall apply for the required Engineering permits listed above and provide an estimate of the anticipated number of inspections for review by Engineering. The applicant shall provide a project schedule when applying for the required permits.

The permit fees shall be paid prior to scheduling the pre-construction meeting.

4. Establish a performance surety (bond, letter of credit, or cash deposit) for work within the Right-of-Way and proposed public improvements or common private improvements per Subdivision Regulation 10.09, prior to subdivision plat signature (13.02 (7), and 30.01. An engineer's cost estimate, prepared by the Applicant and based on the current NHDOT weighted average unit prices, shall be submitted a minimum of two weeks prior to scheduling the pre-construction meeting.
5. When above requirements have been met, request to schedule a pre-construction meeting with the Engineering Division to discuss construction requirements, site inspections, associated fees, schedules, etc. Engineering permits will not be authorized (unless explicitly stated otherwise) until final revised plans have been submitted and approved to the satisfaction of the Planning and Engineering Divisions.
6. Shop drawings/submittals shall be submitted to the Engineering Division for the proposed water, sewer, drainage improvements as applicable.

Construction Requirements

1. Retaining wall design drawings (stamped Structural Engineer licensed in the State of NH) shall be submitted to the Engineering Division for proposed retaining walls that are greater than 4 feet high. In addition, walls greater than 4 feet high require a Building Permit from Code Administration.