

NOTICE OF REQUEST FOR WAIVERS TO THE SITE PLAN REVIEW APPLICATION

or relief from § 16.02(14)(b) of the Site Plan Regulations

for relief from § 16.03(5), § 16.03(8), and § 16.03(11) of the Site Plan Regulations

AMENDED NARRATIVE IN SUPPORT OF SITE PLAN AND CONDITIONAL USE
PERMIT APPLICATIONS OF RAISING CANE’S CHICKEN FINGERS

This application for major site plan amendment and a conditional use permit relates to the property located at 287 Loudon Road in Concord, New Hampshire (the “Property”). The Property is located in the Gateway Performance District (“GWP”). The Property consists of approximately 4.6 acres located between Old Loudon Road and Loudon Road. The property currently consists of one tax map parcel (Map #611Z, Lot 38), which was divided into three land condominium units pursuant to the Declaration of Dundee Land Condominium recorded with the Merrimack County Registry of Deeds at Book 3584, Page 2339. This application is made in connection with the proposed development of land condominium Unit #2 by Raising Cane’s Chicken Fingers (the “Applicant”) and applies to the entirety of Lot 38.

The Planning Board previously approved a site plan for the Property dated October 10, 2022. On August 8, 2024, the Zoning Board of Adjustment approved a parking variance for the Property to provide a total of 153 parking spaces where 170 are required for the entire site. *See* ZBA-0203-2024, 287 Loudon Road, GWP – Gateway Performance District. This application seeks an amendment to the previously approved site plan.

The Property is currently disturbed and partially developed. Dundee Investment Associates LLC (the “Owner”) sought to develop the Property in distinct and separate phases. The Owner initially applied and received approval for an overall non-residential site plan and subsequently constructed an Aldi grocery store within the footprint of land condominium Unit #1. Unit #1 is now owned by Aldi Inc. and currently operating. During this second phase, the Applicant proposes to build a Raising Cane’s Chicken Fingers location. Copies of the site plan are included herewith. The building will have a footprint of 3,404 square feet. The Applicant proposes to have two side-by-side drive-through lanes for the restaurant. Restaurants with drive-through service are permitted in the GWP district.

Founded in 1996 in Louisiana, Raising Cane’s Chicken Fingers now has more than 700 locations across the country. The business prides itself on the quality of its chicken fingers and consequently offers a very focused menu (presently only five items, including choice of beverage). Approximately 70-80 percent of the Applicant’s business consists of drive-through sales.

In light of the Applicant’s business model and heavy focus on drive-through sales, the Applicant proposes to construct two side-by-side drive-through lanes to accommodate its customer volume. The previously approved site plan included a single drive-through lane. Utilizing two lanes will increase the efficiency of the Applicant’s business, thereby improving customer experience, expediting traffic flow through the drive-through to prevent congestion and backups into adjacent travel lanes and parking areas, facilitate overall traffic circulation, and enhance site safety.

The Applicant seeks the following relief in connection with this application:

- Partial waiver pursuant to § 36.08 of the Site Plan Regulations for relief from § 18.08 of the Site Plan Regulations, which requires a bypass lane for each drive-up facility;
- Conditional Use Permit in accordance with § 28-7-4 of the Zoning Ordinance for 10 stacking spaces where 11 are required pursuant to § 28-7-2(e);
- Waiver pursuant to § 36.08 of the Site Plan Regulations for relief from § 16.02(14)(b) of the Site Plan Regulations, which requires profiles of proposed storm sewer, sanitary sewer, and water lines; and
- Waiver pursuant to § 36.08 of the Site Plan Regulations for relief from § 16.03(5) of the Site Plan Regulations, which requires windows, doors, type and pitch of roofs shall be noted on the elevations, along with the size and spacing of all windows and door openings; § 16.03(8), requiring horizontal dimension to be provided on the architectural elevations; and § 16.03(11), requiring colored photographs showing the existing site, and adjacent buildings and properties.

The wavier and conditional use permit criteria are discussed below.

DISCUSSION

The Applicant meets the standard for the requested waivers.

Section 36.08 of the Site Plan Regulations provides that an applicant seeking a waiver must establish the following elements:

1. The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property;
2. The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable generally to other property;
3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular and unnecessary hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out;
4. Specific circumstances relative to the site plan or conditions of the land where a site plan is proposed indicate that the waiver will properly carry out, or not be contrary to, the spirit and intent of these regulations; and
5. The waivers will not in any manner vary the provisions of the Zoning Ordinance, Master Plan Reports, or Official Map.

The Applicant meets each of these requirements with respect to the partial waiver for relief from having a bypass lane under § 18.08. First, the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property. The Applicant requests only a partial waiver from the bypass requirement. On the east side of the restaurant where the cars will stack for the drive-through, a one-way drive-aisle adjacent to the order board stacking acts as a bypass lane, allowing cars to exit the drive-through at any time. Additionally, a bailout location is situated immediately after the order board. This allows customers to exit the drive-through if they change

their minds after reaching the order location. The only portion of the drive-through for which the waiver is necessary is after the bailout location on the west side of the building while cars wait for their orders in the dual drive-through. During nonpeak hours, the outer drive-through lane will close and therefore serve as a bypass lane and meet the Site Plan Regulations requirement. During peak hours when both drive-through lanes are utilized, the order boards are shut down and crew members will be strategically positioned throughout the drive-through to expedite order taking, food delivery, and manage traffic flow. These crew members will be available to direct traffic out of the drive-through lanes in the event of an emergency. Accordingly, the Applicant requests a waiver from the bypass lane requirement only for the portion of the drive-through beyond the order point, and only during peak hours.

Further, the provision of two drive-through lanes likely will improve safety by improving traffic flow and reducing congestion throughout the site. The drive-through lanes have been designed side-by-side and keep the entire lane and queuing area within the interior of the parking lot, so there is no risk of backup or overflow into Loudon Street. This is consistent with the purpose and objectives of the GWP District and the Master Plan for this area of the City.

Second, the conditions are unique to the property and not generally applicable. The Property is unique in several respects. First, the Property consists of three land condominiums, which must share the access points to Loudon Road. Because the access points are at the far ends of the Property, interior traffic must be able to flow the entire length of the Property. The need to maintain unobstructed interior arteries limits the areas viable for stacking and bypass lanes. The southern entrance to the Property is at a signalized intersection on Loudon Road that uniquely provides access to both the Property and to the adjacent shopping center at 273 Loudon Road. There is no realistic opportunity to move or relocate that site entrance. Aldi's already exists so there is no realistic ability to shift or re-orient the northern and southern ends of the Property. Second, there are wetlands and associated buffer to the west of Aldi's, which cannot be developed per the overall site plan previously approved. These wetlands constrain the overall site footprint available for development. Third, a Slope, Utility, and Drainage easement for the benefit of New Hampshire runs along the frontage of Loudon, similarly limiting developable areas onsite. Finally, the irregular shape of the lot creates numerous setback requirements that further limit the developable areas onsite.

Third, because of the conditions outlined above, strict application of the regulations would impose a particular and unnecessary hardship on the Applicant. Approximately 70-80 percent of the Applicant's business consists of drive-through sales. The dual drive-through not only optimizes the Applicant's operations, it also ensures a proper traffic flow onsite and avoids lengthy queue lines. Requiring a full bypass lane would interfere with the ability to have the dual drive-through in light of the other site constraints, rendering the entire operation less efficient. Again, with the exception of the final portion of the drive-through after the order boards, and only during peak hours, the Applicant meets the requirement for a bypass lane.

Fourth, in light of these constraints, granting the partial waiver is consistent with the spirit of the regulations. The intent of the bypass lane is to improve onsite traffic flow and avoid excessive queues. These functions are served by the dual drive-through lanes and overall site configuration. The proposed development features a comprehensive drive-through system designed to optimize

traffic flow and customer convenience. As described above, a dedicated, independent drive-aisle encircles the building, allowing for continuous navigation and maneuverability within the site. Additionally, a one-way drive-aisle adjacent to the order board stacking acts as a bypass lane for customers first entering the drive-through. To further enhance efficiency, a bailout location is situated immediately after the order board, providing another bypass point. This allows customers to exit the drive-through if they change their minds after reaching the order location. During peak operating hours, as described above, the order boards are shut down and crew members will be strategically positioned throughout the drive-through to expedite order taking, food delivery, and manage traffic flow. Lastly, during non-peak hours, the outside drive-through lane, past the order point, will be utilized as a bypass lane. For these reasons, only limited, partial waiver from the bypass lane requirement is needed.

Fifth and finally, the proposed partial waiver is consistent with, and will not vary, the Zoning Ordinance, Master Plan Reports, or City Map.

For all of these reasons, the waiver criteria are satisfied for the requested partial waiver from the bypass lane requirement.

The Applicant also requests waivers from the requirements to provide profiles of proposed storm sewer, sanitary sewer, and water lines under § 16.02(14)(b), and to provide certain architectural renderings under § Section 16.03(5), (8), and (11). With respect to the profiles, this site is already partially developed, and all connections currently exist onsite. In lieu of providing the profiles, the Applicant has provided utility crossing elevations at the recommendation of the Planner. With respect to the architectural renderings, this application has been before the Architectural Design Review Committee (“ADRC”), which has recommended approval. The Applicant will adhere to all recommended stipulations from the ADRC. Additionally, the Applicant has provided three-dimensional color renderings of the proposed building development. Accordingly, the waiver criteria are satisfied for the requested waivers from § 16.02(14b) and § 16.03(5), (8), and (11).

The Applicant meets the standard for a conditional use permit.

Pursuant to RSA 674:21, II, the Planning Board may grant conditional use permits where authorized by the Zoning Ordinance. The Concord Zoning Ordinance allows the Planning Board to grant a conditional use permit with respect to stacking spaces for drive-through facilities “provided the applicant submits a traffic study or other documentation prepared by a licensed Traffic Engineer sufficiently demonstrating the reduced need and which is acceptable to the City Engineer. Zoning Ordinance § 28-7-4.

The Applicant must satisfy the following criteria, as applicable, for the conditional use permit:

- The compliance of the development plan for the proposed use with the specific standards for such use including, but not limited to, those standards contained in Article 28-5 of the Zoning Ordinance;

- The results of any special investigative or scientific studies prepared in conjunction with the proposed development;
- Special reports or analyses of the proposed use or its impacts prepared by the City's departments, its consultants, its board or commissions;
- The findings, goals and objectives of the City's Master Plan;
- The relationship of the development of the proposed use to the timing, location and cost of public improvements scheduled in the City's Capital Improvements Program; and
- Testimony and evidence introduced at the public hearing on the application.

Zoning Ordinance § 28-9-4(b)(3).

The Zoning Ordinance requires 11 stacking spaces leading up to the order point. § 28-7-2(e). In support of its application for a conditional use permit, Raising Cane's has submitted a drive-through queuing report by Atlantic Traffic + Design ("ATD"). The study observed queuing at Raising Cane's restaurants in Illinois, New Jersey, and Pennsylvania on various dates over the past four years. Importantly, the ATD report indicates the *total* number of vehicles in the *entire* drive-through, all the way to the pickup window. As demonstrated in the report, the maximum average weekday queue, which included all cars up to the pickup window, was 10 or 13 total vehicles in the drive-through. The maximum average Saturday queue was 12 or 14 total cars in the drive-through. The Applicant's proposed dual drive-through layout allows for 9 cars just between the order point and pickup window. The ATD report numbers therefore demonstrate that the 10 proposed stacking spaces *before* the order point will more than suffice to manage the anticipated customer flow. The 10 proposed stacking spaces will ensure that no stacking occurs within the right-of-way of any adjacent street. Additionally, during peak operating hours it should be noted that the order boards are shut down and crew members will be strategically positioned throughout the drive-through to expedite order taking, food delivery, and manage traffic flow. This allows crew members to provide additional stacking and adjust as needed during peak hours.

As demonstrated by the plans, the proposed stacking spaces will not interfere with any other required parking and loading spaces or access aisles and will avoid conflict with pedestrian circulation and access. The Applicant will place appropriate signage indicating that vehicles should not stack in the pedestrian crosswalk.

The proposed development, including the conditional use permit, is consistent with the City's master plan documents and the Zoning Ordinance. The purpose of the GWP District is to provide for well-designed, large-scale commercial development, including restaurants. The District is intended to be "predominantly commercial" and include "both individual and mixed use developments of retail, restaurant, service and office uses." See Zoning Ordinance § 28-2-2(b)(11). This proposed development fits squarely within the purpose of the GWP District. Additionally, the proposed side-by-side drive-through lanes will keep the entire queuing area

within the interior of the parking lot, so there is no risk of backup or overflow into Loudon Street. Based on the Applicant's substantial experience with similar restaurants, the number of proposed stacking spaces will support the customer flow through the drive-through lanes.

The remaining conditional use permit criteria are not applicable to this application. As such, the Applicant satisfies the criteria for a Conditional Use Permit for a reduction in the number of stacking spaces from 11 to 10.