

Findings of Fact | Outdoor Dining Conditional Use Permit

City of Portsmouth Planning Board

Date: June 15, 2023

Property Address: 95 Brewery Lane

Application #: LU-23-75

Decision: Deny Approve Approve with Conditions

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

Outdoor Dining Conditional Use Permit

10.242.10 The Planning Board may grant a conditional use permit if the application is found to be in compliance with the general criteria in Section 10.243 or, if applicable, the specific standards or criteria set forth in this Ordinance for the particular use or activity.

	Outdoor Dining Conditional Use Permit 10.243 Requirements	Finding (Meets Criteria/Requirement)	Supporting Information (provided by applicant)
1	10.243.21 The design of proposed structures, their height and scale in relation to the site's surroundings, the nature and intensity of the proposed use or activity, and the layout and design of the site will be compatible with adjacent and nearby properties, buildings and uses, will complement or enhance the character of surrounding development, and will encourage the appropriate and orderly development and use of land and buildings in the surrounding area.	Meets/Does not Meet	The design, height, scale and layout of the proposed use is 50.6' x 9.35' which is the same dimensions as what is currently in place. The proposed project is replacing the existing materials with no changes to the 'footprint' or current height, scale and layout. The outdoor dining area will be 473.11 square feet in area. Examples in the surrounding area of approved outdoor dining that are similar to scale and design are Liar's Bench, located at 459 Islington Street permitted to have up to 50 patrons, and Gallagher's Place located at 801 Islington Street.
2	10.243.22 All necessary public and private utility infrastructure and services will be available and adequate to serve the	Meets/Does not Meet	All necessary public and private utility infrastructure and services are available and adequate to serve the proposed outdoor dining area.

	Outdoor Dining Conditional Use Permit 10.243 Requirements	Finding (Meets Criteria/Requirement)	Supporting Information (provided by applicant)
	proposed use.		
3	10.243.23 The site and surrounding streets will have adequate vehicular and pedestrian infrastructure to serve the proposed use consistent with the City's Master Plan.	Meets/Does not Meet	The site and surrounding streets have adequate vehicular and pedestrian infrastructure to serve the proposed outdoor dining area consistent with the City's Master Plan. The existing area does not inhibit any vehicular and pedestrian traffic or access as the proposed project is replacing the materials and not changing the current area dimensions or access. The proposed outdoor dining area has safeguards in place for the public that includes granite curbing and a 4' black aluminum fence with gate access to adequately buffer the area from vehicular traffic and provide safe pedestrian access to avoid customer-vehicular conflicts.
4	10.243.24 The proposed structures, uses, or activities will not have significant adverse impacts on abutting and surrounding properties on account of traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.	Meets/Does not Meet	The proposed permeable paver patio for outdoor dining use will not have significant adverse impacts on abutting and surrounding properties on account of traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. The proposed area abuts the business the Applicant owns and a parking lot which allows current and proposed parking for the public. The parking lot will not be disturbed nor altered in any way for the proposed outdoor dining area.
5	10.243.25 The proposed structures and uses will not have significant adverse impacts on natural or scenic resources surrounding the site, including wetlands, floodplains, and significant wildlife habitat.	Meets/Does not Meet	The proposed permeable paver patio for outdoor dining use will not have significant adverse impacts on natural or scenic resources surrounding the site, including wetlands, floodplains, and significant wildlife habitat.

	Outdoor Dining Conditional Use Permit 10.243 Requirements	Finding (Meets Criteria/Requirement)	Supporting Information (provided by applicant)
6	10.243.26 The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.	Meets/Does not Meet	The proposed outdoor dining will not cause or contribute to a significant decline in property values of adjacent properties. The proposed paver patio for outdoor dining will add to the value and enhance the aesthetics of the property and surrounding businesses. The property owner has approved the proposed paver patio for outdoor dining.
6	<u>Other Board Findings:</u>		
7	<u>Additional Conditions of Approval:</u>		

DRAFT

O'NEILL LANDSCAPING
—▶ INCORPORATED ◀—

1 247 WASHINGTON ROAD, SUITE B, RYE, NH 03801 * 603.430.8518

May 22, 2023

Planning Board
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

**CONDITIONAL USE PERMIT
FOR
OUTDOOR DINING STATEMENT**

Mojo's West End Tavern (the "Applicant") located at 95 Brewery Lane (the "Property") is proposing to replace the existing mulch planting bed with a permeable paver patio, to create an outdoor dining area that can accommodate tables with seating or events up to 50 patrons. In order to do this, a Conditional Use Permit ("CUP") is required pursuant to Section 10.440 (19.50) of the Zoning Ordinance.

The criteria for granting the CUP under Section 10.243.20 of the Ordinance are met as follows:

CUP Criteria (Section 10.243.20)

10.243.21. The design, height, scale and layout of the proposed use is 50.6' x 9.35' which is the same dimensions as what is currently in place. The proposed project is replacing the existing materials with no changes to the 'footprint' or current height, scale and layout. The outdoor dining area will be 473.11 square feet in area. Examples in the surrounding area of approved outdoor dining that are similar to scale and design are Liar's Bench, located at 459 Islington Street permitted to have up to 50 patrons, and Gallagher's Place located at 801 Islington Street.

10.243.22. All necessary public and private utility infrastructure and services are available and adequate to serve the proposed outdoor dining area.

10.243.23. The site and surrounding streets have adequate vehicular and pedestrian infrastructure to serve the proposed outdoor dining area consistent with the City's Master Plan. The existing area does not inhibit any vehicular and pedestrian traffic or access as the proposed project is replacing the materials and not changing the current area dimensions or access. The proposed outdoor dining area has safeguards in place for the public that includes granite curbing and a 4' black aluminum fence with gate access to adequately buffer the area from vehicular traffic and provide safe pedestrian access to avoid customer-vehicular conflicts.

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10.243.24. The proposed permeable paver patio for outdoor dining use will not have significant adverse impacts on abutting and surrounding properties on account of traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. The proposed area abuts the business the Applicant owns and a parking lot which allows current and proposed parking for the public. The parking lot will not be disturbed nor altered in any way for the proposed outdoor dining area.

10.243.25. The proposed permeable paver patio for outdoor dining use will not have significant adverse impacts on natural or scenic resources surrounding the site, including wetlands, floodplains, and significant wildlife habitat.

10.243.26. The proposed outdoor dining will not cause or contribute to a significant decline in property values of adjacent properties. The proposed paver patio for outdoor dining will add to the value and enhance the aesthetics of the property and surrounding businesses. The property owner has approved the proposed paver patio for outdoor dining.

Attached are pictures to show the current area use, location, and dimensions to aid in the description of the proposed paver patio for outdoor dining.

Respectfully Submitted,

Mojo's West End Tavern



By: Joe O'Neill
Contractor - O'Neill Landscaping, Inc.

Mojo's West End Tavern Unit 1 & 2



Property Information

Property ID 0146-0027-0000
 Location 95 BREWERY LN
 Owner MALT HOUSE EXCHANGE REALTY TRUST



**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 09/21/2022
 Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

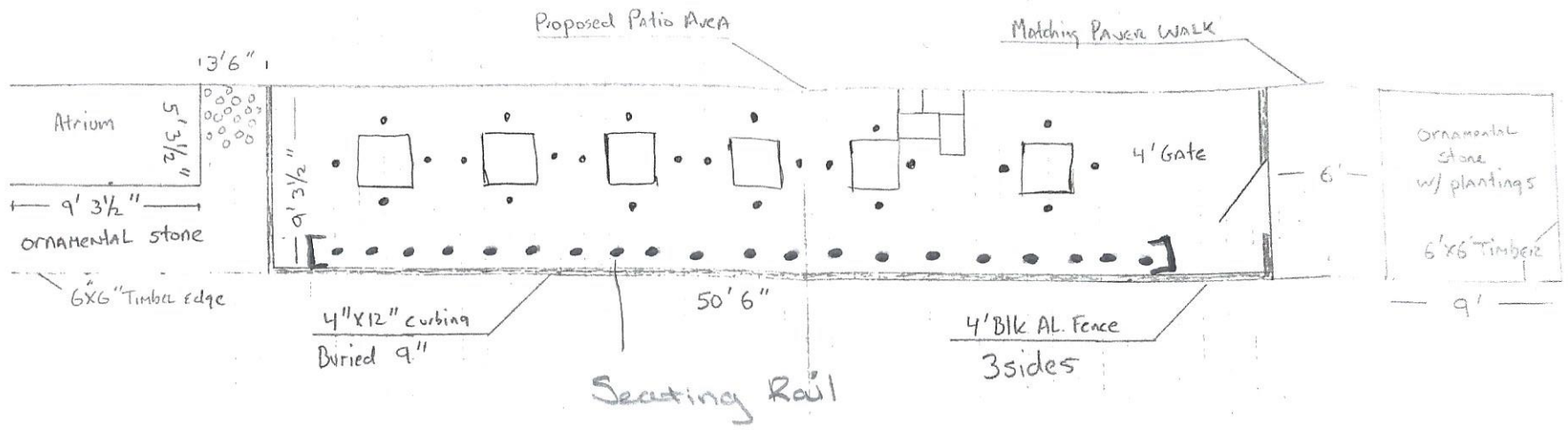


Parking lot will not be disturbed. Patio area will be the same footprint (length and width) as the mulched/bushes area shown.



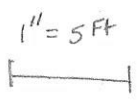
Install 4' Black Aluminum Fence (3 sides)

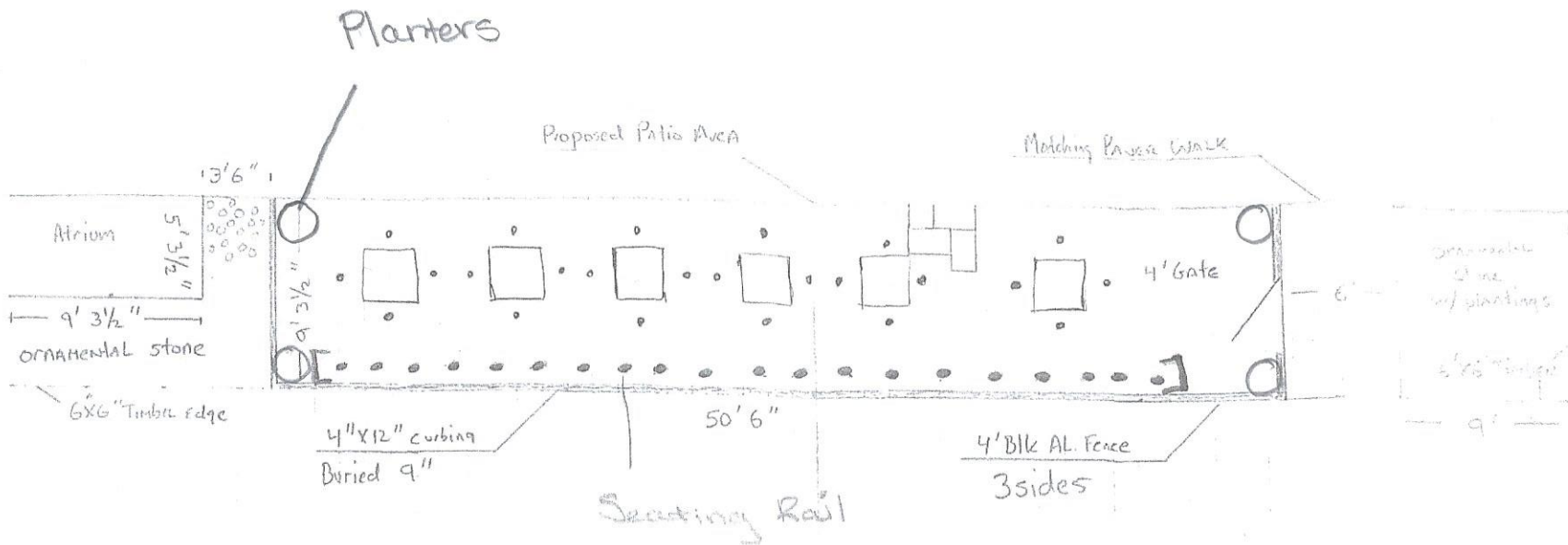
Install 4"x12" curbing (9" buried)



Moja's West End
 95 Brewery Lane
 Portsmouth, NH

ONEILL LANDSCAPING INC
 1247 WASHINGTON Rd
 RYE NH 03870
 May 2023





Mojo's West End
 95 Brewery Lane
 Portsmouth, NH

ONEILL Landscaping Inc
 1747 Washington Rd
 Rye NH 03870

May 2023

1" = 5 FT

O'NEILL LANDSCAPING INC.

1247 Washington Rd, Ste 3B

Rye, NH 03870

+1 6034308518

www.oneilllandscaping.com

Estimate

ESTIMATE # 1241

DATE 05/16/2023

ADDRESS

Mojo's Restaurant
95 Brewery Lane
Unit 1 & 2
Portsmouth, NH 03801

SHIP TO

Mojo's Restaurant

PLEASE DETACH TOP PORTION AND RETURN WITH YOUR PAYMENT.

ACTIVITY	QTY	DATE	AMOUNT
Create outdoor patio area to extend outdoor use. Area 66' x 9' 6"			
Plant Removal Remove shrubs / mulch and approx 9-12" of base material and dispose Off site.			
Construction Install Open Grade Base (Permeable) Install Geo fabric bottom and side walls entire area. Install 1.5" crushed stone base 4-6" depth. Install grid layer to lock in stone. Install 3/4" crushed stone layer 2-3" depth Install 3/8" crushed stone layer 1" depth	1		
Construction Install 560 sq feet of XL LedgeStone Pavers (Bluestone Blend) by Cambridge. Install a Soldier border Coarse using LedgeStone Coal 4.5 x 9" paver.			
Construction Apply Perma-edge paver restraint to non contained edges.			
Construction Install Permeable Poly sand in paver Joints. (Nitro Sand)			
Construction Install a 2-3ft wide Long island round stone strip between glass atrium and patio (LF side)	1		
Construction Remove white / grey crushed stone in front of atrium and right side of existing brick walkway far right entrance bed. Replace with Long Island rounded beach stones and a few ornamental grasses	1		
Construction 4" x 12" Granite Curbing / 64 linear feet. Purchased, delivered and installed.	1		
Construction Aluminum Fence 4ft height./ 75 ft length. Regis Black ornamental fencing. with (1) Four foot walkway gate. Installed with flanged posts on granite curbing. Fencing cost \$5940.00	1		

1. Estimate is Valid for 30 days. A 50% deposit is required to secure a spot on our schedule. 25% is due at the start of the project. The remaining balance is due upon completion of the project.

TOTAL

2. Any changes to the scope of work will result in a change of price. Estimate is based on a surface viewing of the project. If ledge or other obstacles are discovered which impedes our progress, charges will be applied at an hourly rate of labor plus equipment.

3. Homeowner is responsible for marking and notifying contractor of any private utilities (for ex., dog fence, irrigation, accent lighting, etc.)

4. Not included: Permits, utility relocation, ledge removal and associated expenses, fuel surcharges, erosion control due to extreme acts of nature, extreme acts of nature that result in washing, watering of seeded areas.

Accepted By

Accepted Date

Kevin Crowell <kevin.crowell68@gmail.com>

5/22/2023 1:15 PM

Fwd: Outdoor Seating

To sandra2 <sandra@oneilllandscaping.com> • Peter M. Stith <pmstith@cityofportsmouth.com> •
Mojos Westend <mojoswestend@yahoo.com>

Begin forwarded message:

From: Gary Dziama <dziama@roadrunner.com>
Date: December 13, 2021 at 1:04:59 PM EST
To: KEVIN MOJO <KevinCrowell68@gmail.com>
Cc: mlths <mlths@aol.com>
Subject: Outdoor Seating

Kevin
You have our permission to remove the bushes necessary to construct the patio for your outdoor seating...
Gary Dziama
Malthouse Exchange Realty Trust

Sent from my iPhone

Owner Authorization