

## M E M O R A N D U M

**TO:** Planning and Zoning Board

**THROUGH:** Allen Parsons, AICP  
Director, Planning, Zoning and Building Department

**FROM:** Tate Taylor, AICP, Planner

**REPORT DATE:** November 9, 2020

**MEETING DATE:** November 17, 2020

**SUBJECT:** **535 & 547 St. Jude's Drive – Special Exception**

### **Application Information**

**PROPERTY OWNER:** Harry Christensen

**AGENT:** Robert Rokop

**SITE LOCATION:** 535 & 547 St. Jude's Drive

**EXISTING ZONING:** C-1 (Limited Commercial)

**REQUEST:** The applicant requests approval of a Special Exception to allow a restaurant use, with outdoor dining.

### **Subject Property and Background**

Harry's restaurant is in the midst of a several step process to expand its current indoor and outdoor dining area by incorporating two adjacent properties, located at 535 and 547 St. Jude's Drive, as new restaurant space with associated parking. Harry's completed the first step in the process. On October 15, 2020, Harry's received Zoning Board of Adjustment approval for a variance to reduce the required distance of the proposed parking area surface to the street, from 20 feet to 6 feet. The last remaining entitlement related steps for the Applicant include a proposed Special Exception, and a Site Development Plan approval, which the Applicant has chosen to submit separately, from the Planning and Zoning Board for the proposed restaurant use.

Upon approval of the Special Exception restaurant and outdoor dining uses, the Applicant has proposed to separately file a Site Development Plan that proposes to combine the two non-conforming commercial zoned C-1 (Limited Commercial) parcels and provide Site Development Plan level details.

### **Staff Summary**

This Special Exception seeks to allow the expanded use of Harry's restaurant and outdoor dining in the existing structure at 535 St. Jude's Drive. The structure next door at 547 St. Jude's Drive will be removed and replaced with additional required parking. The new off-street parking area will be constructed in compliance with the recently updated parking requirements for restaurants that is based upon square footage of restaurant area rather than on the number of seats in the restaurant. The Zoning Code now requires one parking space per 150 square feet of restaurant area. The new off-

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street parking area will provide 14 spaces for the 2,100 square feet restaurant expansion (1500 square feet of indoor, plus 600 square feet of outdoor dining area).

As the application describes, several conditions exist that are contributing to the need for this proposed expansion. One is the current pandemic that may be long lasting, making an increase in indoor and outdoor dining areas critical in providing the required "social distancing" of restaurant patrons. The second is the continued seasonality of the restaurant business, making additional convenient and safe off-street parking necessary.

This area of St. Jude's Drive contains a mix of commercial and residential land uses and zoning. The request is consistent with other existing commercial businesses and zoning in this area of the Town. The area along St. Jude's Drive, from Gulf of Mexico Drive continuing easterly and extending to, and including, the parcel to the east of the subject property is similarly zoned commercial, while residentially zoned properties are located further to the east. Existing land uses in this area consist of the Harry's Restaurant, Deli, Catering, Offices, and Convenience Store, Offices of the Longboat Observer, and further to the east, single family, two-family, and multi-family dwellings. As shown on the proposed site plan, the restaurant uses are located along the westerly portion of the property, which would provide separation from residential use properties further to the east. A vegetated landscape screening and buffer is also proposed along St. Jude's Drive and along the east property line. The east property line screening will also provide a 6 feet high fence to buffer the proposed off-street parking area from the adjacent property to the east.

The proposed off-street parking would provide a vast improvement over the existing parking for these commercial lots. The existing parking provides no setback from the surface of the street, and is configured such that exiting vehicles back out into St. Jude's Drive. The proposed parking area would provide separation and landscape areas between the parking surface and the street, while providing new off-street parking spaces that would avoid potential hazards associated with vehicles backing out into the street.

### **Staff Assessment**

As per Town Code Section 158.19(A), before any Special Exception is granted, the Planning and Zoning Board shall make a written finding of the below findings, where applicable.

To facilitate discussions by the Board, the following findings and conclusions have been prepared by staff for your review and consideration:

- 1) The proposed use is in compliance with all elements of the Comprehensive Plan
- 2) The proposed use is a permitted Special Exception use as set forth in the schedule of use regulations.

- 3) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe is provided.
- 4) Off-street parking and loading areas, where required, with particular attention to the items in (3) above and the economic, noise, glare, or other effects of the Special Exception on adjoining properties and properties generally in the district is provided.
- 5) Refuse and service areas are provided, with particular reference to in Subsections (3) and (4) above.
- 6) Utilities, with reference to locations, availability and compatibility is provided.
- 7) Screening and buffering with reference to type, dimensions and character is provided.
- 8) Any future signage will be required to be in compliance with Chapter 156, Sign Code.
- 9) Required yards and other open space as provided is in compliance with applicable regulations.
- 10) The proposed use conforms with all applicable regulations governing the district where located.
- 11) Considerations relating to general compatibility with adjacent properties and other property in the district, including but not limited to:
  - a. **Whether the proposed use would be contrary to the land use plan and would have an adverse effect on the Comprehensive Plan.** As a permitted Special Exception, the proposed use will not be contrary to the land use plan and will not have an adverse effect on the Comprehensive Plan.
  - b. **Whether the proposed use would be compatible with the established land use pattern.** The proposed use would provide a continuation of the established land use pattern that is compatible with the area composed of a mixture of commercial, multi-family, two-family and single-family properties. The location of the outdoor dining provides a separation for the properties to the east from the busiest area of the property's business operations.
  - c. **Whether the proposed use would materially alter the population density pattern and thereby increase or overtax the load on public facilities such as schools, utilities and streets.** The proposed use will not alter the density/intensity on the property.
  - d. **Whether changed or changing conditions find the proposed use to be advantageous to the community and the neighborhood.** The proposed use will provide an aesthetic, and code compliant improvement to the benefit of the neighborhood and community.

- e. **Whether the proposed use would adversely influence living conditions in the neighborhood.** The proposed building and improvement to the property will not adversely influence the area living conditions.
- f. **Whether the proposed use would create or excessively increase traffic congestion or otherwise affect public safety.** The use of the property will not create or excessively increase traffic congestion, and will improve public safety.
- g. **Whether the proposed use would create a drainage problem.** Through the Site Development Plan and Building Permitting Review processes, it will be ensured that the proposed redevelopment of the site will be developed with an adequate drainage system for the site and land use.
- h. **Whether the proposed use would seriously reduce the flows of light and air to adjacent areas.** The proposed use will improve the flow of light and air to the area through the removal of an existing structure.
- i. **Whether the proposed use would adversely affect property values in the adjacent area.** The expansion of the restaurant use would not adversely affect property values in the adjacent area.
- j. **Whether the proposed use would be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.** The proposed expansion of the restaurant use would not be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.
- k. **Whether the proposed use would be out of scale with the needs of the neighborhood or the Town.** The proposed improvements to the property is commensurate with the scale of the built condition of the Town and neighborhood, while providing a needed business operation to the Town.

Town Code Section 158.110 provides standards for outdoor dining areas at restaurants. An outdoor dining area at a restaurant shall not be permitted unless it complies with each of the following standards:

- 1) **The principal use of the property shall be a restaurant that provides indoor dining, outdoor dining or both types of dining.** The principal use of the subject property is an expansion of the existing Harry's Restaurant, which will provide both indoor and outdoor dining.
- 2) **The outdoor dining area shall be used only for food service, drink service, as a waiting area and for casual seating.** The outdoor area will only be used for food service, drink service, as a waiting area, and for casual seating.

- 3) **All food and drink preparations shall take place within the confines of an enclosed restaurant building located on the same site as the outdoor dining area.** All food and drink preparation will take place within the restaurant building.
- 4) **An outdoor dining area shall be considered an expansion of a restaurant. Accordingly, an outdoor dining area shall be designed in such a manner that will maintain a free, unobstructed connection between the restaurant and outdoor dining areas. All regulations that pertain to restaurant dining areas shall apply to outdoor dining areas.** The proposed outdoor dining area provides a free unobstructed connection to the restaurant through stairways.
- 5) **An outdoor dining area may be located within the required street yard, the required canal, bay, or pass waterfront yard, and within a non-required yard. An outdoor dining area shall not be located in any required side or rear yard when that yard abuts residential property.** The outdoor dining will be located within the street yard.
- 6) **All outdoor dining areas shall meet the regulations for parking under Section 158.100 as may be modified by Subsection 158.046(A)(1).** The proposed restaurant areas will total 2,100 square feet in area and is required to provide 14 parking spaces (1 space per 150 square feet of area). As shown on the proposed plan for the restaurant, 14 parking spaces will be provided on site in compliance with the parking requirements of Section 158.100 of the Zoning Code.
- 7) **The entire ground service area of the outdoor dining area shall have an improved walking surface.** The area of the outdoor dining area will consist of an improved walking surface consisting of pavers, tile, concrete or similar materials.
- 8) **The entire perimeter of the outdoor dining area shall be physically delineated by the improved walking surface, railing, fencing, a wall, landscaping, or similar device deemed by the Planning and Zoning Board to be consistent with the intent of this Subsection.** The perimeter of the outdoor dining area will be delineated consistent with the adjoining outdoor dining area with a continuous improved walking surface.
- 9) **Hours of operation.**
  - a) **The hours of operation for an outdoor dining area shall not be before or extend beyond the hours of operation for an associated indoor dining area, at which time, lights, other than safety and security lighting, shall be prohibited;**
  - b) **When an outdoor dining area is located within 250 feet of residential property, service in the outdoor dining area shall not begin before 8:00 a.m. and the outdoor dining area shall be vacated by 10:00 p.m., at which time, lights, other than safety and**

**security lighting, shall be prohibited;** The hours of operation for the outdoor dining area are to be 8:00 a.m. to 10:00 p.m.

- c) **When a restaurant is not associated with an indoor dining facility and not within 250 feet of a residential property, service in the outdoor dining area shall not begin until 6:30 a.m. and the dining area shall be vacated by 11:00 p.m., at which time, lights, other than safety and security lighting, shall be prohibited.**
- 10) **No music or amplified voices shall be allowed in the outdoor dining area. Noise shall not be audible more than 50 feet from the commercial property and shall otherwise be in accordance with Section 130.02, Loud and Unnecessary Noise, of the Town Code, as may be amended.** No music or amplified voices will be allowed in the outdoor dining area.
- 11) **All lighting used in conjunction with an outdoor dining area shall be designed and installed in a manner to avoid glare being directed toward a public or private right-of-way, adjacent property, and the Gulf of Mexico pursuant to Chapter 100 of the Town Code, Sea Turtles, as may be amended.** Minimal lighting is proposed and the Applicant acknowledges that lighting must meet all code requirements.
- 12) **An outdoor dining area shall be screened from all adjacent properties and rights-of-way. The required landscaped screening shall comply with the standards contained in Subsections 158.103(A)(1) and (2), except that the required screening in a street or waterfront yard shall have a height of three feet and the required screening in the side, rear or non-required yards shall have a maximum height of six feet. In addition, the required screen shall be at least 80 percent opaque.** As shown on proposed site plan, the outdoor dining area will be screened from adjacent properties and rights-of-way consistent with Subsection 158.103(A)(1) and (2).
- 13) **All furniture within an outdoor dining area shall be portable, meaning that such furniture shall be easily removable from the outdoor dining area. Portable furniture may include tables, chairs, and umbrellas. The maximum diameter of an umbrella shall be eight feet and shall be fabric covered. In the event of a tropical storm, the furniture shall be physically secured or stored within the restaurant building or other on-site enclosed storage area.** All furniture in the outdoor dining area will be portable.
- 14) **Outdoor dining located in a bay or canal waterfront yard may be covered by a permanent roof structure or retractable or collapsible awning or canopy, so long as it meets all of the following criteria:** The outdoor dining area is not located in a waterfront yard.

- a) **One hundred percent of the approved outdoor dining area may be covered by the roof, awning or canopy;**
  - b) **A minimum bay or canal waterfront yard of 20 feet, as measured from the edge of the roof, awning or canopy shall be maintained;**
  - c) **A permanent roof structure shall be included in the site's overall building coverage and non-open space calculations, verified by a licensed design professional, and shall not exceed that permitted for the underlying zoning district or Outline Development Plan approval, whichever is applicable;**
  - d) **A retractable or collapsible awning or canopy shall not be counted as building coverage;**
  - e) **A permanent roof structure shall meet all other applicable Zoning Code requirements;**
  - f) **The highest point of the roof, awning or canopy shall not be more than 19 feet from the finished floor elevation of the approved outdoor dining area;**
  - g) **The approved outdoor dining area shall not be enclosed by permanent walls;**
  - h) **The approved outdoor dining area shall not have permanent climate control equipment;**
  - i) **A permanent outdoor dining roof structure shall be reviewed and may be approved by the Planning and Zoning Board through the Site Development Plan amendment, Outline Development Plan amendment, or Special Exception process, whichever is applicable;**
  - j) **A retractable or collapsible awning or canopy outdoor dining shelter may be approved administratively by the Planning and Zoning Official.**
- 15) **No signs, unless specifically exempted in the Town Sign Code, shall be permitted within the outdoor dining area. No signage is proposed.**
  - 16) **Any increase in the total number of seats at the restaurant in conjunction with the establishment of an outdoor dining area, may subject the property owner to an assessment of a sewer/water connection fee in accordance with Town Code Chapter 51, Charges, Rates and Billing. The Applicant is aware of this requirement.**

### **Staff Recommendation**

Based on Staff's analysis of Harry's Special Exception criteria, the project meets the standards of approval. Staff recommends **APPROVAL** of the Special Exception for

Harry's Special Exception Order 2020-04, with the standard conditions and including the following condition:

- 1) The special exception is granted for a restaurant and outdoor dining use.
- 2) The provisions of the Special Exception application for the above referenced subject property, dated October 2, 2020 as amended, shall be complied with unless waived or modified by the following conditions or by written agreement between the Town and the Owner or amended pursuant to Code.
- 3) The special exception shall expire the later of 24 months from the date of grant, or the date of the Site Development Plan expiration, as applicable, unless appealed and extended. An appeal for extension shall show that commencement of the use is being actively pursued by evidence of an application for a Building Permit, preliminary plat, or Site Development Plan, or other satisfactory evidence.

### **Attachments**

Attached, please find a copy of the Special Exception Application, and support documentation upon which the staff assessment has been based. If you should have any questions, or desire any additional information, please do not hesitate to contact the Planning, Zoning & Building Department.

cc: Robert Rokop, Agent  
Maggie Mooney, Town Attorney  
Allen Parsons, AICP, Planning, Zoning and Building Director



## **SPECIAL EXCEPTION ORDER 2020-04**

### **A SPECIAL EXCEPTION ORDER OF THE TOWN OF LONGBOAT KEY, FLORIDA, APPROVING A SPECIAL EXCEPTION APPLICATION FOR PROPERTY LOCATED AT 535 AND 547 ST. JUDES'S DRIVE, ALLOWING RESTAURANT AND OUTDOOR DINING USE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Harry Christensen (hereinafter the "Owner") owns certain real property located at 535 and 547 St. Jude's Drive (hereinafter "Property"); and

**WHEREAS**, the Owner has given Robert Rokop (hereinafter the "Applicant"), authorization to act on its behalf for the submittal of a certain Special Exception application; and

**WHEREAS**, the Property is zoned C-1 (Limited Commercial), restaurant and outdoor dining is an allowed use within the C-1 zone district provided a Special Exception is obtained for such use in accordance with the Town of Longboat Key Zoning Code; and

**WHEREAS**, the Applicant has submitted a Special Exception application requesting Town approval of a restaurant and outdoor dining use on the property; and

**WHEREAS**, the Planning and Zoning Official has, in a timely fashion, accepted a Special Exception application for the Property and referred same to the Planning and Zoning Board along with the support documentation and staff recommendations; and

**WHEREAS**, the Planning and Zoning Board is authorized by the Land Development Code to approve the application as submitted, approve the application with changes or special conditions, or disapprove the application, if the application meets the applicable provisions of the Land Development Code; and

**WHEREAS**, after considering all of the evidence presented at a quasi-judicial hearing on the application, the Planning and Zoning Board makes the following conclusions and findings of fact:

- 1) The proposed use is in compliance with all elements of the Comprehensive Plan
- 2) The proposed use is a permitted Special Exception use as set forth in the schedule of use regulations.
- 3) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe is provided.
- 4) Off-street parking and loading areas, where required, with particular attention to the items in (3) above and the economic, noise, glare, or other effects of the Special Exception on adjoining properties and properties generally in the district is provided.
- 5) Refuse and service areas are provided, with particular reference to in Subsections (3) and (4) above.

- 6) Utilities, with reference to locations, availability and compatibility is provided.
- 7) Screening and buffering with reference to type, dimensions and character is provided.
- 8) Any future signage will be required to be in compliance with Chapter 156, Sign Code.
- 9) Required yards and other open space as provided is in compliance with applicable regulations.
- 10) The proposed use conforms with all applicable regulations governing the district where located.
- 11) Considerations relating to general compatibility with adjacent properties and other property in the district, including but not limited to:
  - a. Whether the proposed use would be contrary to the land use plan and would have an adverse effect on the Comprehensive Plan. As a permitted Special Exception, the proposed use will not be contrary to the land use plan and will not have an adverse effect on the Comprehensive Plan.
  - b. Whether the proposed use would be compatible with the established land use pattern. The proposed use would provide a continuation of the established land use pattern that is compatible with the area composed of a mixture of commercial, multi-family, two-family and single-family properties. The location of the outdoor dining provides a separation for the properties to the east from the busiest area of the property's business operations.
  - c. Whether the proposed use would materially alter the population density pattern and thereby increase or overtax the load on public facilities such as schools, utilities and streets. The proposed use will not alter the density/intensity on the property.
  - d. Whether changed or changing conditions find the proposed use to be advantageous to the community and the neighborhood. The proposed use will provide an aesthetic, and code compliant improvement to the benefit of the neighborhood and community.
  - e. Whether the proposed use would adversely influence living conditions in the neighborhood. The proposed building and improvement to the property will not adversely influence the area living conditions.
  - f. Whether the proposed use would create or excessively increase traffic congestion or otherwise affect public safety. The use of the property will not create or excessively increase traffic congestion, and will improve public safety.
  - g. Whether the proposed use would create a drainage problem. Through the Site Development Plan and Building Permitting Review processes, it will be

ensured that the proposed redevelopment of the site will be developed with an adequate drainage system for the site and land use.

- h. Whether the proposed use would seriously reduce the flows of light and air to adjacent areas. The proposed use will improve the flow of light and air to the area through the removal of an existing structure.
- i. Whether the proposed use would adversely affect property values in the adjacent area. The expansion of the restaurant use would not adversely affect property values in the adjacent area.
- j. Whether the proposed use would be a deterrent to the improvement or development of adjacent property in accordance with existing regulations. The proposed expansion of the restaurant use would not be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.
- k. Whether the proposed use would be out of scale with the needs of the neighborhood or the Town. The proposed improvements to the property is commensurate with the scale of the built condition of the Town and neighborhood, while providing a needed business operation to the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:**

Section 1. The above recitals are true and correct and are fully incorporated herein by reference.

Section 2. The Special Exception application for Harry's Restaurant located at 535 and 547 St. Jude's Drive, Longboat Key, Florida 34228 is hereby approved subject to the conditions attached hereto marked Exhibit "A", "Conditions Requisite for Approval" and dated concurrently with this Order.

Section 3. If any section, subsection, sentence, clause, or provision of this Order is held invalid, the remainder of the Order shall not be affected.

Section 4. This Special Exception Order shall become effective immediately upon adoption.

ADOPTED at a meeting of the Planning and Zoning Board of the Town of Longboat Key on the 17<sup>th</sup> day of November 2020.

ATTEST:

\_\_\_\_\_  
Penny Gold, Secretary

\_\_\_\_\_  
David Green, Chair

Attachment: Exhibit "A": Conditions Requisite for Approval

EXHIBIT "A"  
SPECIAL EXCEPTION PLAN ORDER 2020-04  
CONDITIONS REQUISITE FOR APPROVAL  
SPECIAL EXCEPTION PLAN  
535 and 547 St. Jude's Drive

1. The special exception is granted for restaurant and outdoor dining use.
2. The provisions of the Special Exception application for the above referenced subject property, dated October 2, 2020 as amended, shall be complied with unless waived or modified by the following conditions or by written agreement between the Town and the Owner or amended pursuant to Code.
3. The special exception shall expire the later of 24 months from the date of grant, or the date of the Site Development Plan expiration, as applicable, unless appealed and extended. An appeal for extension shall show that commencement of the use is being actively pursued by evidence of an application for a Building Permit, preliminary plat, or Site Development Plan, or other satisfactory evidence.