

Received Sept. 24, 2020



TOWN OF EAST GREENWICH

ZONING APPLICATION

Planning Department
125 Main Street
P.O. Box 111
East Greenwich, RI 02818

(401) 886-8645
Fax (401) 886-8625
www.eastgreenwichri.com/planning.htm

APPLICANT INFORMATION

Property Owner Shui Man Llc
 Address: 75 Main Street Phone 401-573-2900
East Greenwich, RI 02818 Fax _____
 E-Mail protha@e.w.edu
 Applicant TMG - Main Street Holdings Llc II
 Address: 328 Main Street Phone 401-393-2395
Unit 6 E.G. RI 02818 Fax _____
 E-Mail TSe@theMarketing/cup.com
 ZBR Approvals Required: Special Use Permit _____ Dimensional Variance(s) _____ Use Variance _____
 Application Date: 9/24/20
 Application Fee: _____ Paid: Yes No

PROPERTY INFORMATION

Map 085/001/164/000 Plat Lot(s) _____
 Street Address 234 Main Street, East Greenwich, RI 02818
 Current Zoning District(s): _____
 How long have you owned or rented the above property? 11 months
 Is there a building on the property at present? Yes
 Dimensions of existing building: 26w - 67L
 Existing use of the property: Restaurant / Bar
 Proposed use of the property in Detail: No change
 Describe proposed request: Elimination of Valet Parking / Follow up
 Number of Families Before/After Alteration: _____ Before _____ After
IF A BUILDING PERMIT IS REQUIRED
 Have you submitted plans for the above building to the Building Official?
 If Yes, Give Date: _____
 If No, Explain: _____
 If Refused, Give Reason: _____
 List all provisions or regulations of the East Greenwich Zoning Ordinance (or State Enabling Act) from which you are seeking relief by Section, Subsection and Title: Parking / Dedicated + assigned parking spaces
 State ground(s) for Special Use Permit, Use Variance or Dimensional Variance by each Section and Title referred to above: Max + Maximize Bar + Restaurant Business in a Night time Business - after other businesses close

CERTIFICATION

Attest: The information provided on this application is true and accurate:
 Applicant's Signature [Signature] Date: 9/24/20
 Owner's Signature _____ Date: _____

I, Jason Kindness affirm that on October 14th I sent a copy of the legal notice concerning the requested dimensional variance for the property located at 234 Main st via certified, return receipt requested to each of the parties on the abutters list as well as a copy to the associate director of the division of planning.

Thank You,

A handwritten signature in black ink, appearing to read "Jason Kindness". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jason Kindness

420



Sales and Transaction Counts
For the Period from 1/28/2020 through 10/19/2020

BAR	Sales	% of Total	Number of Checks	% of Total	Average Check
ALL DAY					
05:00-05:59	0.00	0.0 %	0	0.0 %	0.00
06:00-06:59	0.00	0.0 %	0	0.0 %	0.00
07:00-07:59	0.00	0.0 %	0	0.0 %	0.00
08:00-08:59	0.00	0.0 %	0	0.0 %	0.00
09:00-09:59	0.00	0.0 %	0	0.0 %	0.00
10:00-10:59	0.00	0.0 %	0	0.0 %	0.00
11:00-11:59	0.00	0.0 %	1	0.0 %	0.00
12:00-12:59	89.00	0.0 %	5	0.0 %	17.80
13:00-13:59	0.00	0.0 %	2	0.0 %	0.00
14:00-14:59	0.00	0.0 %	2	0.0 %	0.00
15:00-15:59	0.00	0.1 %	15	0.1 %	30.04
16:00-16:59	0.00	1.1 %	84	0.7 %	52.26
17:00-17:59	0.00	4.1 %	376	3.4 %	45.06
18:00-18:59	0.00	6.6 %	601	5.4 %	45.18
19:00-19:59	0.00	10.2 %	931	8.3 %	44.64
20:00-20:59	0.00	14.7 %	1,361	12.1 %	44.14
21:00-21:59	0.00	17.6 %	1,849	16.5 %	39.01
22:00-22:59	0.00	19.2 %	2,275	20.3 %	34.48
23:00-23:59	0.00	15.8 %	2,107	18.8 %	30.59
00:00-00:59	0.00	9.8 %	1,432	12.8 %	27.96
01:00-01:59	0.00	0.8 %	181	1.6 %	17.82
02:00-02:59	0.00	0.0 %	0	0.0 %	0.00
TOTAL ALL DAY DAYPART	89.00	100.0 %	11,222	100.0 %	36.44
BAR TOTAL	89.00	100.0 %	11,222	100.0 %	36.44



Dear Members of Zoning Board

As requested, we have conducted a poll with our patrons to determine the method of parking when spending an evening at Kai Bar and have concluded with the following results.

Patrons 421

Public Parking 61%

Uber/Walk 37%

Valet 2%

Based on the monthly valet fee we were paying and number of cars being parked, this would amount to us paying \$171.42 per car.

We have also included an hourly sales report as requested. At the time of our January 27th meeting, we reported to you that 65% of our total sales took place after 9pm. As reflected on our sales report attached, that number has increased to 70%. If you've experienced Main St East Greenwich after 9pm, public parking is wide open and never an issue.

We thank you for your consideration as we realize that our business model is much different than a majority of the other food and drink establishments in the area and we also appreciate the challenges in town concerning parking during the prime dining hours. If parking became an issue at any time for our late night timeframe, it would be in our best interest to employ valet, and would do so.

TMG Main Street Holdings II



Doc ID: 200520010006001

BK 1470 PG 132-137

DECISION
ZONING BOARD OF REVIEW

APPLICANT: T.J. MARTUCCI (TMG MAIN STREET HOLDINGS II, LLC)

PROPERTY OWNER: SHIV MAIN, LLC

LOCATION: 232 MAIN STREET; MAP 085 A.P. 001 LOT 164

DATE HEARD/DECISION DATE: JANUARY 28, 2020

MEMBERS PRESENT: Richard Land, Chair
Melody Alger
Jody Sceery
Ashley Cullion
Barry Golden (Voting Alternate)

MEMBERS ABSENT: Christopher Mulhearn, Vice-Chair*
David Collier (Alternate)

*In addition to being absent from the January 28, 2020 meeting, Mr. Mulhearn submitted a Statement of Conflict of Interest, dated January 21, 2020.

The Applicant seeks a reconsideration of a November 28, 2017 decision of the Zoning Board of Review wherein a petition was approved for Kai Bar seeking to lift the condition relating to the valet parking service requirement for one year with the Applicant returning to the Board to reassess within one year from the rendered decision. The subject condition was imposed on the original March 22, 2016 ZBR decision. The Applicant is requesting to remove the parking valet requirement in its entirety.

MR. THOMAS J. MARTUCCI of **TMG MAIN STREET HOLDINGS II, LLC** and **MR. JASON KINDNESS**, Manager of Kai Bar, represented the application. Mr. Martucci testified all 60 abutters were notified in which he received one returned as undeliverable.

Mr. Martucci explained they were before the Board as a result of a November 2017 ZBR decision which the prior owner (Marshall Muir) did not follow through on. He conveyed the Kai business model has not changed since the original decision was put in place as a mix and mingle establishment back in March of 2016.

Mr. Martucci affirmed TMJ Holdings II kept the DBA the same name, being Kai; he took over as a managing company on November 4, 2019 with the liquor license being transferred at the beginning of December 2019.

Mr. Martucci asserted the sales data provided indicate 65 percent of the business is performed after 9PM when the traditional restaurants generally close as it is basically a night and weekend business similar to Main Street Coffee.

Mr. Kindness testified he has been with the business since its original opening and confirmed less than ten percent of total sales are food related as Kai has a reputation as being a craft cocktail bar. In terms of the previous valet service, Mr. Kindness said there were times 3 to 4 cars were valeted per week as it seemed most people would park their vehicle pre-dinner and Kai was the after-dinner spot.

Mr. Martucci confirmed the business model will remain the same as there was no need to change it although he wishes the food sales would grow, currently at 6 percent. He stated 94 percent of business is alcohol sales. Mr. Martucci testified in the 60 days since he has been operating the business it has remained status quo with no complaints or issues.

When questioned about the frequency and time of live music, Mr. Kindness asserted originally music was 7 nights per week but music is now down to 5 nights per week as the business on Sunday and Monday are slow; in terms of time music is between 8PM-11PM or 9PM-midnight.

Mr. Kindness asserted there has been no valet associated with the business since November 2017 when the ZBR approved suspending it for one year.

When asked about the number of patrons visiting the establishment Mr. Kindness confirmed there has not been a decline in patrons and sales have gone through the roof the financial burden of the valet was almost \$1,000/month which is tough in this type of business with limited profit margins which cut into the ability to succeed on Main Street.

Chairman Land confirmed the business does not have any on-site parking therefore the Applicant is seeking full parking relief.

Chairman Land voiced his concerns about the difficulty of downtown parking and economic allocation which were the same concerns when Mr. Muir originally came before the Board in 2016. He was concerned about whether the Board is simply shifting the burden to other business owners, meaning shifting the expense of valeting cars to other businesses and other parties for the benefit of the subject business. He understood the Kai Bar business model is different and the Applicants expectation being patrons are visiting the area anyway but just drawing them in a little later at night than what they might otherwise stay. Chairman Land asserted there is still an economic component of this that there is no data for in terms of the effect of what that is on other businesses. He also pointed out there are several downtown businesses that have no parking requirements at all because they are grandfathered so they too are shifting the burden to others on Main Street but fairness is not necessarily part of the equation.

With no further questions from the Board Chairman Land opened the hearing for public comment. No public comments.

Chairman Land affirmed he would like to see more evidence of what the Applicant is doing at the business; his inclination is to allow for interim relief - from a community perspective the Board has an obligation to make sure what Mr. Muir purported and the Applicant adopted is really playing itself out. He recognized there may be some economic shifting but some sense of reason to be shown.

Chairman Land further explained the Applicant provided financial information showing what their sales are and timing of their sales those numbers have meaning. He would like to see the same updated financial information as well as evidence of where their patrons are parking. Chairman Land provided an example of what he was talking about survey customers as to where they are parking from time to time in order to demonstrate patrons are using a valet, parking on their own, using an Uber, etc. information that supports the Applicants position factually so when they return there is something to support a decision. Chairman Land felt the Applicant should return to the Zoning Board before their liquor license is renewed (next year) so they are not going into it blind.

Mr. Martucci point out the business has self-imposed security on Friday and Saturday evenings - that employee is already stopping patrons at the door who could ask and tally where/how patrons arrived via valet, park on their own, Uber/Lyft, etc.

Chairman Land asked for a motion.

MS. SCEERY motioned to grant relief that has been requested through November 30, 2020 meaning no valet service necessary on the condition the Applicant return to the Zoning Board of Review on October 27, 2020 to provide the updated and additional information as discussed. Should the ZBR not be satisfied with the provided evidence then as of December 1, 2020 the valet parking service condition will be reinstated.

Seconded by MS. CULLION.

The Application will be docketed as a review on October 27, 2020.

Chairman Land noted after reviewing the application he believes the Applicant has met the relevant standards for the specific relief which are as follows:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area. The subject property is the site of an existing commercial establishment. The hardship is caused by the lack of parking on the subject property for the establishment. If the Board did not grant relief from the off-street parking requirement, then no use could take place on the property, based upon the existing structure and the absence of available parking on site.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain. The applicant is recently coming into possession of the property. The applicant did not create, build or site the commercial structure on the property and, therefore, is not responsible for the lack of parking on the property. Further, the applicant is not seeking relief primarily to achieve a greater financial gain, but, instead, is merely to make use of the property at all, as the property cannot be used as it is currently configured without parking relief.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan. The Zoning Ordinance allows the commercial use on this property for which it is currently configured, and the parking variance is merely allowing this use to take place. Further, allowing a parking variance will not alter the character of the surrounding area, as many parcels in this area require parking relief to allow a use permitted under the Zoning Ordinance.

The relief to be granted is the least relief necessary. Since there is no parking on site for this establishment, only full parking relief will allow the permitted use on this property. Further, while the prior decision conditioned relief on the provision of valet parking as a way of attempting to mitigate or reduce the relief required, the applicants testimony, including the data on the amount of use of the valet, indicates that the valet parking was not mitigating or reducing the relief required and the valet parking condition was imposing an unnecessary burden on the applicant. Accordingly, the Board finds that the full parking relief granted is the least relief necessary, even with the valet parking condition removed.

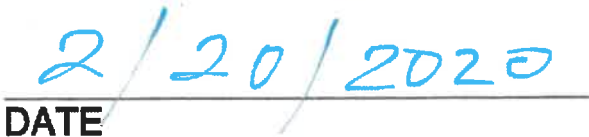
The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience. If the Board does not grant the parking variance, then applicant will not be able to make any use of the property, which would certainly amount to more than a mere inconvenience.

- * This relief is granted on the condition that the applicant return to the Board at its October 27, 2020, meeting, after full advertising and notice as required by the Zoning Ordinance and Zoning Enabling Act, so that the Board may hear evidence on the effect of removal of the valet condition on the property and so the Board may hold a public hearing on the same.

VOTE: 5 - 0 (Land, Alger, Cullion, Sceery, and Golden in favor of the application)

ZONING BOARD OF REVIEW,
By Its Chair,


Richard Land


DATE

Filed in the Office of the East Greenwich Town Clerk on _____.

CC: APPLICANT

**BUILDING OFFICIAL
TOWN PLANNER
TAX ASSESSORS OFFICE**

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Doc ID: 200520010006001
02/21/2020 13:03
BK 1470 PG 132-137
Town of East Greenwich

6. **T.J. Martucci** for property owned by **Shiv Main LLC** and located at 232 Main Street; Map 85 A.P. 1 Lot 164 (Zoned Commercial Downtown, CD-1). The Applicant seeks a reconsideration of a November 28, 2017 decision of the Zoning Board of Review wherein a petition was approved for Kai Bar seeking to lift the condition relating to the valet parking service requirement for one year with the Applicant returning to the Board to reassess within one year from the rendered decision. The subject condition was imposed on the original March 22, 2016 ZBR decision. The Applicant is requesting to remove the parking valet requirement in its entirety.

Mr. T.J. Martucci and Mr. Jason Kindness represented the application. Mr. Martucci explained they were before the Board as a result of a November 2017 ZBR decision which the prior owner did not follow through on. He conveyed the Kai business model has not changed since the original decision was put in place as a “mix and mingle” establishment back in March 2016.

Mr. Martucci asserted the sales data provided indicate 65 percent of the business is performed after 9PM when the traditional restaurants generally close as it is basically a night and weekend business and similar to Main Street Coffee.

Mr. Martucci explained a valet service was originally in place for the first year but data showed the valet was parking on average three vehicles per night with many instances people would park their car, visit a different establishment for dinner knowing they would end up at Kai Bar after. It financially did not make sense given how much the service was being used.

Mr. Martucci added that all 60 abutters were notified in which he received one returned as “undeliverable.”

Mr. Golden questioned the type of food that is served in the establishment. Mr. Kindness explained poke bowls are part of the menu which is rice with protein on top. He has been with the business since the beginning as a manager. In terms of the previous valet service, Mr. Kindness said there were times 3 to 4 cars were valeted per week as it seemed most people would

park their vehicle pre-dinner and Kai was the after dinner spot. He noted food sales are about 8 percent of total sales. Typically when Kai gets busy the streets are clear as far as parking goes.

Mr. Golden probed as to whether patrons were frequenting the business specifically for dinner. Mr. Kindness confirmed no since Kai has a reputation as being a craft cocktail bar.

Ms. Alger questioned when Mr. Martucci took over the business. Mr. Martucci explained TMJ Holdings II kept the DBA the same name, being Kai; he took over as a managing company on November 4, 2019 with the liquor license being transferred at the beginning of December 2019.

Ms. Alger asked about the business model and whether it will remain the same. Mr. Martucci confirmed the business model will remain the same as there was no need to change it although he wishes the food sales would grow, currently at 6 percent, not the 8 percent noted earlier. He said 94 percent of business is alcohol sales and late night food is served from the pizza shop.

Mr. Martucci said in the 60 days since he has been operating the business it has remained status quo with no complaints or issues.

Mr. Land asked about the frequency and time of live music. Mr. Kindness asserted originally music was 7 nights per week but music is down to 5 nights per week as the business on Sunday and Monday are slow; in terms of time music is between 8PM-11PM or 9PM-midnight.

Ms. Sceery asked about the timeline regarding not having a valet service. Mr. Kindness asserted there has been no valet associated with the business since November 2017 when the ZBR approved suspending it for one year.

Ms. Sceery queried about the number of patrons visiting the establishment. Mr. Kindness noted there has not been a decline in patrons and sales have gone through the roof – the financial burden of the valet was almost \$1,000/month which is tough in this type of business with limited profit margins which cut into our ability to succeed on Main Street.

Mr. Land confirmed the business does not have any on-site parking therefore the Applicant is seeking full parking relief. Atty. Ursillo pronounced the Applicant requires 100 percent parking relief.

Mr. Land voiced his concerns about the difficulty of downtown parking and economic allocation which were the same concerns when Mr. Muir originally came before the Board in 2016. He was concerned about whether the Board is simply shifting the burden to other business owners, meaning shifting the expense of valeting cars to other businesses and other parties for the benefit of the subject business. He understood the Kai Bar business model is different and the Applicant's expectation is patrons are visiting the area anyway but just drawing them in a little later at night than what they might otherwise stay. Mr. Land asserted there is still an economic component of this that there is no data for in terms of the effect of what that is on other businesses. He also pointed out there are several downtown businesses that have no parking requirements at all because they are grandfathered so they too are shifting the burden to others on Main Street but fairness is not necessarily part of the equation.

With no further questions from the Board Mr. Land opened the hearing for public comment. No public comments.

Ms. Hitchen pointed out the Applicant has to return to the Town Council in March as the Council granted the Applicant a 90 day liquor license conditioned upon this relief.

Mr. Land asked for a motion.

Motion by Ms. Sceery to approve the application as submitted. Seconded by Ms. Cullion.

Mr. Land affirmed that he would like to see more evidence of what the Applicant is doing at the business; his inclination is to allow for interim relief.

Atty. Ursillo asserted the Board can condition an approval that is for a certain amount of time (just like the last approval). If the Board is simply looking for more evidence that there is not a problem over the summer months then he suggested the Board condition the Applicant return later in the year seeking permanent relief.

Mr. Land confirmed he was inclined to approve a conditional approval and can explore additional evidence at a later date since from a community perspective the Board has an obligation to make sure what Mr. Muir purported and the Applicant adopted is really playing itself out. He recognized there may be some economic shifting but he wants some sense of reason to be shown.

Ms. Sceery asked what that would entail.

Mr. Land explained the Applicant provided financial information showing what their sales are and timing of their sales – those numbers have meaning. He would like to see the same updated financial information as well as evidence of where their patrons are parking. Mr. Land provided an example of what he was talking about – survey customers as to where they are parking from time to time in order to demonstrate patrons are using a valet, parking on their own, using an Uber, etc. – information that supports the Applicant's position factually so when they return there is something to support a decision. Mr. Land felt the Applicant should return to the Zoning Board before their liquor license is renewed (next year) so they are not going into it blind.

Mr. Martucci commented the business has self-imposed security on Friday and Saturday evenings; that employee is already stopping patrons at the door who could ask and tally where/how patrons arrived via valet, park on their own, Uber/Lyft, etc.

Mr. Land thought that was a great idea. Ms. Cullion also added that was a good idea especially since the Applicant has a different business that does not fit the normal restaurant mold and the backup information is very important.

Mr. Kindness ventured to guess that between 20-30 percent of patrons used an Uber or Lyft to the business.

Ms. Sceery questioned how the Board's decision will affect the Applicant going back to the Town Council. Mr. Land noted the Board can provide provisional relief since the idea is to not hold the Applicant up but it is to facilitate the use.

Atty. Ursillo suggested amending the motion to permit relief that has been requested through October 27, 2020 – meaning no valet service necessary. Mr. Land picked up on the fact if the Board approves that there will be a gap and perhaps extending the time through the end of November with the condition the Applicant has to return to the ZBR in October to provide the necessary information in order for there to be no gap in time. Atty. Ursillo agreed that would be a better situation, being extend through November 30, 2020 on condition the Applicant return to the ZBR on October 27th and if the ZBR is not satisfied then as of December 1, 2020 the condition gets reinstated but they still have a liquor license.

Mr. Land queried whether the Applicant is “continued” to the October agenda or if an application is required. Atty. Ursillo was of the opinion the Applicant can be docketed as a review. Ms. Hitchen was not familiar with that type of procedure and asked whether abutters would need to be notified. Atty. Ursillo confirmed the right thing to do would be to notify abutters. Ms. Hitchen argued then it would be an advertisement of a “new” application. Atty. Ursillo asserted anyone who wanted to be here this evening was notified; no person was here therefore it should it should be a “review” on October 27th.

Mr. Land summarized the Applicant will return on October 27th; it automatically be on the calendar and they will provide the data accumulated at the security checkpoint, along with sales, records and anything else that supports the position of removing the valet service.

Motion amended by Ms. Sceery to grant relief thru November 30, 2020 on condition the Applicant returns to the ZBR on October 27, 2020 with additional information. Seconded by Ms. Cullion.

Chairman Land noted after reviewing the application he believes the Applicant has met the relevant standards for the specific relief which are as follows:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

VOTE: 5 – 0 (Land, Alger, Cullion, Sceery, and Golden)

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the November 26, 2019 ZBR and ZBA meetings.

Motion by Ms. Alger to approve the November 26, 2019 ZBR minutes as written. Seconded by Ms. Sceery.

Approved 5-0.

Motion to adjourn by Mr. Golden. Seconded by Ms. Alger. Approved 5 –0.

Zoning Board of Review meeting adjourned at 7:35 pm.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

For more information, please refer to the recording available in the Planning Department.

