

Heather Ross

From: Richard Lundborn <RLundborn@fando.com>
Sent: Thursday, June 13, 2019 4:50 PM
To: Heather Ross; Amber Harrison
Cc: Mark; Jeffrey J. Clark Esq. (jclark@clarkandhowell.com); Dylan Smith
Subject: RE: Kittery Indian - Review of revised plans in relation to side and rear parking

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Heather,

Thank you for the resend of your previous review. We modified the preferred layout to only have 10 spaces in front of the building and to have the rest to the sides. This is as allowed by the regulations.

The submission also, has a far superior driveway layout and less impervious surfaces than the previous preferred layout and Layout 2 mentioned in the 2018 staff review.

Thank you for telling me that the meeting is June 27th previously I had erroneously written it down as June 28th. I will be sure to fix my calendar.

Rick Lundborn, PE
Senior PM | Office Manager
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From: Heather Ross [mailto:hross@yorkmaine.org]
Sent: Thursday, June 13, 2019 4:22 PM
To: Richard Lundborn <RLundborn@fando.com>; Amber Harrison <aharrison@yorkmaine.org>
Cc: Mark <mdp624@aol.com>; Jeffrey J. Clark Esq. (jclark@clarkandhowell.com) <jclark@clarkandhowell.com>; Dylan Smith <dsmith@yorkmaine.org>
Subject: RE: Kittery Indian - Review of revised plans in relation to side and rear parking

Rick,

Your application is scheduled for the June 27th Planning Board meeting at 7pm. A written staff review will be posted prior to the meeting.

In my staff review, dated October 26, 2018 (attached), for your Sketch Plan application, I stated that the applicant's preferred layout appeared to be more non-conforming, and I addressed concerns with zoning compliance. We have had several discussions regarding these concerns, and I have related that both the Code and Planning departments have similar concerns. I asked the Code Enforcement Department to review your application, specifically its' compliance with the Town of York Zoning Ordinance. My staff review will again address the items in which I feel the application does not meet the intent of the ordinance.

Although the Board discussed ideas with you regarding your application, per the following sections of the Site Plan and Subdivision Regulations, the Board is not bound to these discussions, as a sketch plan does not constitute a substantive review.

Article 5.2.2: *The purpose of Board review of a Sketch Plan is to allow the Board to ask questions and make suggestions to be incorporated by the applicant into the application.*

Article 5.2.5: *The submission or review of the Sketch Plan by the Code and Planning Department or Planning Board shall not be considered the initiation of substantive review for the purposes of bringing the Plan under the protection of Title 1, M.R.S.A., Section 302. The applicant shall obtain no vested rights by submittal or review of a Sketch Plan.*

Sincerely,
Heather Ross

From: Richard Lundborn <RLundborn@fando.com>
Sent: Thursday, June 13, 2019 3:03 PM
To: Amber Harrison <aharrison@yorkmaine.org>
Cc: Mark <mdp624@aol.com>; Jeffrey J. Clark Esq. (jclark@clarkandhowell.com) <jclark@clarkandhowell.com>; Heather Ross <hross@yorkmaine.org>; Dylan Smith <dsmith@yorkmaine.org>
Subject: RE: Kittery Indian - Review of revised plans in relation to side and rear parking

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Amber,

It would be helpful if you can explain how the parking is non-compliant. We feel that the design is complaint now as discussed below. We would need this information in order to even approach the BOA.

When I visited you initially to discuss this almost a year ago at Dylan's suggestion, you first suggested I talk to Dylan, when I told you that I had and he said to talk to you, you then suggested I go to the Planning Board and discuss this project with them, in part because as you have excerpted below, 6.3.2 provides the Planning Board the ability to do the following:

"The Planning Board may allow exceptions to these standards to foster creativity and harmony in layout of the parking areas."

We attended a Planning Board Sketch Plan Hearing, and had a long conversation about this project and they ultimately said if we could reduce the parking in the front of the building to 10 spaces, which we have, that they could go along with the plan. They also stated that they could support a reduction in overall parking as long as there was at least 1 space per room, one space per employee maximum shift and the owner was satisfied that this was enough parking. Mr. Dellapasqua stated he was, and we have since made the changes per that meeting and submitted them.

We are not trying to say the use is non-conforming. The building meets the setbacks the use is allowed.

The parking is to the side of the building. Only 10 spaces are in front. Per our conversation with the Board we have done what was discussed; Provided 1 space per room, 1 per employee and gotten all but the 10 spaces allowed out from in front of the building.

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From: Amber Harrison [<mailto:aharrison@yorkmaine.org>]

Sent: Thursday, June 13, 2019 1:55 PM

To: Richard Lundborn <RLundborn@fando.com>

Cc: Mark <mdp624@aol.com>; Jeffrey J. Clark Esq. (jclark@clarkandhowell.com) <jclark@clarkandhowell.com>; Heather Ross <hross@yorkmaine.org>; Dylan Smith <dsmith@yorkmaine.org>

Subject: RE: Kittery Indian - Review of revised plans in relation to side and rear parking

Hi Rick,

The Code Enforcement staff has reviewed the Kittery Indian site plans (attached). The concern is that the proposed parking appears to be non-compliant with the standards under article 6.3.2. of the Town's Zoning Ordinance. Article 6.3.2. states:

6.3.2 Parking

A non-residential use shall provide an adequate amount of parking for the proposed use, reference Article 15, Town Zoning Ordinance, to ensure public health, safety and welfare. The design and layout of the parking area shall be harmonious to the use, structures and site and to abutting uses, structures and sites. The Planning Board encourages creativity in the design of all parking areas to enhance site appearance, enhance how the site functions, reduce the total amount of area devoted to parking, reduce the scale and bulk of parking areas, and encourage joint use parking between adjacent sites. The design and layout shall conform to the following standards. The Planning Board may allow exceptions to these standards to foster creativity and harmony in layout of the parking areas.

6.3.2.1 A non-residential use which obtains a Route One Use Permit after November 5, 1996 and which occupies a structure constructed after November 5, 1996 shall strictly comply with parking requirements identified in Town Zoning Ordinances, Section 5.2.4.

6.3.2.2 A non-residential use which obtains a Route One Use Permit after November 5, 1996, and that occupies a structure constructed prior to November 5, 1996 that proposes to expand the existing use or structure or change the use, that cannot fully satisfy the parking layout requirements identified in Town Zoning Ordinances, Section 5.2.4, shall satisfy these layout requirements to the greatest extent practical. The Planning Board shall determine when a use cannot satisfy Section 5.2.4 requirements and any relaxation permitted to the standards identified in 5.2.4. The Planning Board may require additional or larger plantings, fencing, walls, landscape berms, bufferyards, and similar measures to compensate for the use not satisfying 5.2.4 requirements.

Footnotes for article 5.2.4. for the Route 1-3 zone states:

g Provided all parking spaces for a non-residential use are located to the side or rear of the structure, and no parking spaces are located closer to the front lot line than the front setback of the structure occupied by a non-residential use. A nonresidential use existing as of November 5, 1996 that does not meet this setback requirement shall not locate any new parking closer to the front lot line than the existing structure occupied by the non-residential use.

h A maximum of twenty percent, but no more than ten parking spaces, are permitted directly in front (across front of the structure from side wall to side wall) of the structure occupied by a non-residential use if this structure is setback a minimum of eighty feet from the front lot line. All other bulk/common parking spaces, the remaining eighty percent of spaces or more than ten spaces, shall be located to the sides and rear of this structure and shall not be located closer than seventy feet to the front lot line. A non-residential use existing as of November 5, 1996 that does not meet this setback requirement shall not locate any new parking closer to the front lot line than the existing structure occupied by a non-residential use.

We also have concern with the your assumed non-conforming status. Per article 6.3.2.2., if the use isn't occupying the structure then strict compliance with the parking standards under 5.2.4. is required. 6.3.2.2. is stated above and refers to 5.2.4. At this time, the Code office would not issue a permit based upon the proposed plan as it does not meet the zoning ordinance requirements under 6.3.2. and 5.2.4. footnote "g". You are welcome to appeal this email to the BOA or pursue approval with the Planning Board but as proposed it does not appear the parking meets the ordinance requirements. Please let me know if you have any questions.

Thanks,
Amber

[Amber Harrison](#)
[Director of Code Enforcement](#)
[Local Health Officer](#)
[186 York Street](#)

[York, ME 03909](#)
[207.363.1002 x 6044](#)

From: Richard Lundborn <RLundborn@fando.com>
Sent: Monday, June 10, 2019 1:56 PM
To: Amber Harrison <aharrison@yorkmaine.org>
Cc: Mark <mdp624@aol.com>; Jeffrey J. Clark Esq. (jclark@clarkandhowell.com) <jclark@clarkandhowell.com>
Subject: Kittery Indian - Review of revised plans in relation to side and rear parking

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Amber,

I haven't heard back from you on when we might have a meeting to discuss Kittery Indian, the Hotel on Route 1.

Are you available for a meeting or do you need us to show up to counter hours? We need to iron out the parking and interpretation of side. As mentioned in my previous email we did what was asked of us and went to the Planning Board to discuss this issue and explain our approach. We then revised the parking further per that discussion and have since submitted for a Preliminary Site Plan Review. After that submission and numerous inquiries as to when it would be heard we found out that there is some question as to interpretation of "to the side of the building".

Please let me know your preference for a meeting.

Thank you!



Rick Lundborn, PE
Senior PM | Office Manager

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MEMO

TO: Planning Board
FROM: Heather Ross, Land Use Tech
DATE: October 26, 2018
RE: Application Review – Kittery Indian LLC – Mic Mac Hotel
317 US Route 1
Map & Lot: 0059-0004

OVERVIEW

This is a sketch plan submission to redevelop the 2 story, 10 unit Mic Mac motel into a 65 unit Comfort Inn or similar hotel.

JURISDICTION

This is an application for a sketch/conceptual plan, which as stated in (Site/Sub 5.2) is to allow the Board to ask questions and make suggestions to be incorporated by the applicant into the formal application. The applicant shall obtain no vested rights by submittal or review of a sketch plan. Jurisdiction is limited by (Site/Sub §5.2) as well as (§18-A.5-A).

RECOMMENDATIONS

1. Application Acceptance. I have reviewed all application materials and believe there is enough information to review the application as a sketch/conceptual plan.
2. Public Hearing. Following the application acceptance vote or lack thereof, conduct the public hearing to identify any issues or concerns relevant to the decision-making process. The Board, at its discretion, can allow a public hearing for a sketch and or conceptual plan.
3. Substantive Review and Deliberation. I believe the relevant issues for the Planning Board to discuss as part of this application include but are not limited to:
 - A. **Zoning**: This property is wholly located within in the RT 1-3 Zone.
 - B. The owner received a building permit on July 25, 2017 in order to demolish the previously existing Mic Mac Hotel, Permit# 2017-0474. It appears the structure was demolished near the fall of 2017. The applicant should provide a more specific time frame on both when the structure was demolished, as any non-conforming use of Land, i.e. non-conforming parking in the front of the structure.

Per §17.1.2 Resumption of Use Prohibited: *A lot or structure in or on which a non-conforming use is discontinued for a period exceeding 24 months, or which is superseded by a conforming use, may not again be devoted to a non-conforming use, except as allowed by this ordinance. This applies even if the owner has not intended to abandon such use.*

Per §17.4 Non-Conforming Design: *B. A building or use on a property with non-conforming design shall be permitted to expand or change provided the property after the expansion is closer to conformity than it was prior to the expansion. Where there are multiple aspects of non-conformity, each aspect must be improved in some manner. The burden shall be on the applicant to establish the baseline of on-conforming conditions and to show how the required reductions in each aspect of non-conformity will be met.*

§5.2.4 Route One Zoning Districts ZONE 3 requires a minimum of 80% of the required parking to be located on the side and rear. The previous Mic-Mac Hotel had 100% of the parking located in the front, totaling 18 parking spaces.

The applicant has provided plans showing several layouts.

Preferred Layout	83 parking spaces in the front & side
Layout 1: Parking side and rear	79 parking spaces in the side & rear
Layout 2: Parking side and rear	14 parking spaces in the front 68 parking spaces in the side & rear

The proposed preferred layout appears to be more non-conforming than the previous parking. The proposed “layout 1” appears to meet ordinance requirements for the location of parking. The proposed “layout 2” appears to be no more non-conforming than the previous parking.

The Board should ask the applicant to verify the date of demolition for the previous use, and the date the previous use was terminated, in order to determine if the proposed “layout 2” would meet the requirements of §17.4 if the applicant wishes to utilize this layout.

- C. **Buffers:** The Planning Board will want to ensure dense buffering (perhaps fencing and vegetation) is utilized on the perimeter (abutting neighbors) in order to screen

the property from neighbors. Lighting specs and buffer specs should be discussed and should be incorporated as part of the preliminary plan submittals.

- D. **Refuse Disposal:** This should be detailed on the plan set and screened where appropriate (Zoning §6.1.13 and §6.1.14),
- E. The Planning Board will want to ensure buildings are harmonious and aesthetically pleasing as they relate to the terrain and/or buildings in the vicinity that have a visual relationship to the proposed buildings (zoning §6.1.12 and §10-B.2-H). The applicant should include a building design into their preliminary plan submittals so that the Board can provide comment on the overall design.
- F. **Traffic:** The applicant should be aware that they will need to meet with DPW to review traffic impacts. (See zoning Article 15-A). Based on this being a hotel facility, there could be a traffic impact.
- G. **Stormwater:** Stormwater management will be important on site. The applicant will need to submit a detailed stormwater management plan as part of a full application. See (zoning §6.1.6) and Site/Sub §6.3.27, §6.4.16, §9.8, and §9.9. The applicant has shown proposed underground soil filters on the preferred layout and layout 1 and not on layout 2.
- H. **Other items of concern for full application:**
 - a) **State and Federal Permits:** The applicant will need to show that they have received any required state and federal permits for the proposed work. This will likely include MDEP permits for over an acre of disturbance.
 - b) **Timeline/Phasing:** The applicant will need to provide an estimated timeline for construction and any proposed phasing of the development per Site/Sub §7.30.
 - c) **Parking:** The Board will need to review all proposed layouts to determine the layouts that show compliance with the Zoning ordinance. The applicant has cited §6.3.2.2 which states:
A non-residential use which obtains a Route One Use Permit after November 5, 1996, and that occupies a structure constructed prior to November 5, 1996 that proposes to expand the existing use or structure or change the use, that cannot fully satisfy the parking layout requirements identified in Town Zoning Ordinances, Section 5.2.4, shall satisfy these layout requirements to the greatest extent practical. The Planning Board shall determine when a use cannot satisfy Section 5.2.4 requirements and any relaxation permitted to the standards identified in 5.2.4. The Planning Board may require additional or larger plantings, fencing, walls, landscape berms, bufferyards,

and similar measures to compensate for the use not satisfying 5.2.4 requirements.

However, the use is no longer an “existing use or structure” and the Board should discuss whether §6.3.2.1 is more relevant:

A non-residential use which obtains a Route One Use Permit after November 5, 1996 and which occupies a structure constructed after November 5, 1996 shall strictly comply with parking requirements identified in Town Zoning Ordinances, Section 5.2.4.