

TOWN OF CONCORD

BOARD OF APPEALS

TOWN HOUSE

Please take notice that in the matter of the APPLICATION OF MILLTARRY MARKET, LLC, under Section 11.6 of the Zoning Bylaw, to amend the Concord Market Special Permit Condition #43 at 77 Lowell Road (Parcels #1683-CD, 1685-cd, 1682-2), Concord, Massachusetts, the Board of Appeals has this day rendered a decision GRANTING said application, and the record therein has this day been filed with the Town Clerk, Town House, Concord, Massachusetts. Appeals, if any, shall be made pursuant to Section 17 of the Zoning Act, Chapter 40A of the Massachusetts General Laws, and shall be filed within 20 days after the date of this notice.



Heather Carey, Administrative Assistant
On behalf of the Zoning Board of Appeals

7/15/19

DATE

TOWN OF CONCORD

BOARD OF APPEALS

DECISION of the Zoning Board of Appeals (the Board) on the APPLICATION OF MILLTARRY MARKET, LLC, under Section 11.6 of the Zoning Bylaw, to amend the Concord Market Special Permit Condition #43 at 77 Lowell Road (Parcels #1683-CD, 1685-cd, 1682-2).

This decision is in response to an application filed on February 27, 2019. After causing notice of the time and place of the public hearing and of the subject matter thereof to be published in *The Concord Journal* on April 4, 2019 and April 11, 2019, posted and mailed to the Applicant, abutters and other parties of interest as required by law, the public hearing was opened on April 18, 2019, and continued to May 9, 2019, June 13, 2019, June 26, 2019, and July 11, 2019.

After due consideration of the application, the record, presentations by the Applicant, comments from Town Staff and based upon review of the issues set forth herein, the Board voted 3 to 0 (Smith, Brady, Kindermans) to **GRANT** approval of the Special Permit with conditions based on the following findings:

James White, the applicant with Milltarry Market, LLC appeared for the hearing and explained that he is looking to have Condition #43 removed from their Special Permit granted on August 3, 2016. The condition stated that “No public use of the second floor shall be permitted” and removing that condition would allow the Market to use the space for events related to the market.

The Deputy Fire Chief did not have any issues or concerns with the proposed use of the second floor by the public so long as the Applicant installs additional smoke and carbon monoxide detectors that are approved and inspected prior to the issuance of a certificate of occupancy for the change of use.

The application was also reviewed by the Building Commissioner, Water/Sewer Engineer, Public Health Director and Town Planner, who on March 22nd sent the Applicant an email outlining issues and concerns with the original application request and required additional information. The Applicant provided additional information and clarification on the proposed uses on April 17th, April 18th, April 24th, May 22nd and June 25th. The Applicant specified the following:

1. the original Special Permit allowed for a 15,062 s.f. market and the actual constructed square footage is 13,664;
2. the required parking under the original Special Permit is 48 spaces and with the reduction in the square footage, the required number of parking spaces for the change of use of the second floor to retail/market remains at 48 spaces;
3. the second floor is to be used for classes and functions associated with the Market;

4. the use of the second floor for Market classes and functions will not require any additional employees;
5. classes and function will be conducted between the hours of 7 am and 11 pm;
6. the number of attendees is limited to 35 people between 8 am and 5pm and 60 people between 5pm and 11 pm, except on Federal holidays;
7. the number of attendees is limited to 60 people on Federal holidays;
8. there will be up to three classes or functions a week with less than 35 people and only two classes or functions a month with 35 to 60 people.

Town staff reviewed the additional information and believes with appropriate conditions of approval all issues and concerns will likely be addressed, although recommends that the Special Permit amendment be granted for one year. This will allow Town staff and the Board to evaluate the public use of the space to determine if it has created significant issues, whether further conditions are required to mitigate any impacts or whether the use is not appropriate.

Section 11.6: Special Permit

Pursuant to Section 11.6, the Board finds the following:

Under Section 11.6.1, the use of the second floor for classes and functions associated with the Market allows for flexibility in the range of goods and services provided by the Market that represents a positive impact on economic and community needs;

Under Section 11.6.2, the limitation on the number of people between 8 am and 5pm helps to reduce the traffic flow when other businesses on the site are still open so that the public use of the second floor does not create any significant safety concerns, including parking and loading;

Under Section 11.6.3, the incorporation of Town staff recommended conditions will address any potential impact to utilities and other public services.

Under Section 11.6.4, the use of the second floor by the public for Market classes and functions does not require any modifications to the site or exterior of the building and the incorporation of Town staff recommended conditions will address any potential impacts on the neighborhood character. Additionally, the granting of the Special Permit amendment for one year allows the Board to evaluate the public use of the space to determine if it has created significant issues, whether further conditions are required to mitigate any impacts or whether the use is not appropriate.

Under Section 11.6.5, the use of the second floor by the public for Market classes and functions does not require any modifications to the site or exterior of the building so there no additional impact on the natural environment, and;

Under Section 11.6.6, the use of the second floor by the public for Market classes and functions will not have a significant impact on the tax base and employment.

Approval of the Special Permit amendment to Condition #43 is based on the following conditions:

1. Use of amplified music is prohibited after 11:00 pm.
2. In addition to uses now allowed thereon, the second floor is to be used for classes and functions associated with the Market.
3. The use of the second floor for Market classes and functions shall not require any additional employees.
4. Classes and functions **will** be conducted only between the hours of 7:00 am and 11:00 pm.
5. The number of attendees is limited to 35 people between 8:00 am and 5:00 pm and up to 60 people between 5:00 pm and 11:00 pm, except on Federal holidays.
6. The number of attendees on Federal holidays is limited to 60 people.
7. There shall only be up to three classes or functions a week with less than 35 people and only two classes or functions a month with 35 to 60 people.
8. The Applicant shall maintain a list of all classes and functions, the date, duration of each class or function, number of attendees and the number of available parking spaces on the entire site at the start of each class or function.
9. **Prior to the issuance of a Certificate of Occupancy for the Change of Use for the second floor**, the Applicant shall install additional smoke and carbon monoxide detectors that are inspected and approved by the Fire Department.
10. **Prior to the issuance of a Certificate of Occupancy for the Change of Use for the second floor**, the Applicant shall either be required to submit a Form J Food Service Establishment Plan Review to the Health Division for approval and obtain a Food Service Establishment Permit or provide a written statement that the Market will not provide food for any classes or functions and all food will be catered. The Applicant shall receive a Temporary Food Event Permit for each event that is to be catered by Trail's End Café (which holds a Catering Permit) or other licensed caterer.
11. **Prior to the issuance of a Certificate of Occupancy for Change of Use of the second floor**, the applicant shall submit to the Concord Board of Health a Request for Title 5 Building Review (Form S) to identify any potential increase in wastewater flow and associated Sewer Improvement Fee as a result of the proposed use of the second floor. Based on existing wastewater capacity constraints, flow increases over 1,000 gallons per day will be administratively denied by the Water/Sewer Superintendent. An appeal may be made to the Public Works Commission seeking relief for an increase in flow over 1,000 gallons per day.
12. **Prior to the issuance of a Certificate of Occupancy for Change of Use of the second floor**, the Applicant shall complete an evaluation of the actual water and wastewater demands of the existing facility, compare these demands to previously approved allowances authorized by the Public Works Commission based upon a Water Impact Report (dated July 18, 2017),

and demonstrate how the proposed use of the second floor would impact these previously authorized allowances. This evaluation shall be submitted to the Water/Sewer Division for review. Any increase in demand on water or sewer services will be subject to all Division Rules, Regulations, and Policies, including the reconciliation of any Sewer Improvement Fees

13. **This Special Permit is granted for a period of one (1) year and expires one year from the date that this Special Permit is filed with the Town Clerk, but, upon application to the Board, may be renewed or extended.**
14. **This Special Permit shall lapse within two (2) years, which shall not include such time required to pursue or await the determination of an appeal, from the date of grant thereof, if a substantial use has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.**
15. **Violation of any of the conditions of the Special Permit shall be grounds for revocation of the Decision, or any building or occupancy permit granted hereunder. If at any time the structure is not in compliance with the Decision and any permit issued by the Town, the Building Commissioner may order that the project be stopped until the non-compliance is corrected.**
16. **By acceptance of this Special Permit, the Applicant acknowledges the binding effect of the conditions of the Decision. The Applicant shall record with the Middlesex South Registry of Deeds the Special Permit and provide a copy of the recorded decision to the Building Inspections Division.**