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TOWN OF COHASSET
BUILDING DEPARTMENT



**TOWN OF COHASSET
ZONING BOARD OF APPEALS**

**THE UNDERSIGNED HEREBY APPLIES TO THE BOARD OF APPEALS IN
THE NATURE OF:**

_____ A petition for a VARIANCE of the requirements of Section _____
of the zoning Bylaw.

_____ A petition for a USE SPECIAL PERMIT of the requirements of
Section _____ of the zoning Bylaw.

_____ A petition for SPECIAL PERMIT pursuant to Section 300-4.2, 300-8.7 and 300-9.7H
of the zoning Bylaw.

_____ an APPEAL from the attached decision dated _____

and such OTHER AND FURTHER RELIEF as the Board deems appropriate

AND IN SUPPORT THEREOF REPRESENTS AS FOLLOWS:

1. Legal owner of land: Cohlobster, LLC

a. Address: 844 Alton Road, Suite 3

Miami Beach, Florida 33139

b. Phone: (Please call Adam Brodsky, Esq., at 781-749-7200)

2. If Applicant is other than the legal owner of the land

a. Address: _____

b. Phone _____

c. Property Interest (i.e. builder, prospective owner) _____

3. Description of this property:

- a. Address: 46 Border Street
- b. Assessors' Map: Page # F5-32 Plot # 018
- c. Deed as recorded in NORFOLK COUNTY REGISTRY OF DEEDS:
 certificate # _____ in book # 38964 at page # 331

4. Zoning District: WB Overlay District (if any) Floodplain and Watershed

5. Has an application for relief from Zoning Bylaws ever been filed for this parcel?

YES/NO No DATE (if yes) _____

Explain (if yes):

6. Nature of proposed construction or use: See attached Letter from Adam J. Brodsky, Esq.

7. Date of principal structure / dwelling was built (if applicable): approx. 1948

Date and nature of other structures/additions: _____

8. Area Regulations (Section 5.3.1) REQUIRED EXISTING PROPOSED*

	REQUIRED	EXISTING	PROPOSED*
a. Area (lot size)	<u>No req</u>	<u>1.49 acres</u>	<u>no change</u>
b. Frontage	<u>20 ft</u>	<u>332.38 ft</u>	<u>no change</u>
c. Lot width	<u>20 ft</u>	<u>297.5 ft</u>	<u>no change</u>
d. Front setback	<u>15 ft</u>	<u>13.3 ft</u>	<u>24'</u>
e. Rear setback	<u>15 ft</u>	<u>1.2 ft</u>	<u>no change</u>
f. Side setback #1	<u>10 ft</u>	<u>0 ft</u>	<u>no change</u>
g. Side setback #2	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
h. Building height	<u>35 ft</u>	<u>31.2 ft</u>	<u>no change</u>
i. coverage (structural)	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
j. coverage(building)	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>

*No blank spaces – put a calculation in each row – leaving anything blank in above section or entering “no change” will be considered incomplete.

9. Do present structure(s) and use conform to all other provisions of the Zoning Bylaw? Yes: _____ No: X If not, explain: _____
See attached Letter from Adam J. Brodsky, Esq.

10. Is this parcel connected to Town Sewer? Yes: X No: _____
If Yes, state location, and area dimensions: _____

11. Does the owner/applicant own adjacent land? Yes: _____ No: X
If Yes, state location, and area dimensions: _____

12. Plans submitted herewith are drawn to scale, accurately show all details relevant to the relief being requested, and are complete per Section 2.2 of the Rules of Procedures of the Zoning Board of Appeals:

ALL PLANS

- a. drawn to scale with dimensions on every plan yes (yes/no)
- b. if addition/alteration, proposed construction outlined or in red yes (yes/no)
- c. each plan stamped by registered engineer, land surveyor, or architect (as appropriate) yes (yes/no)

SITE PLAN

- a. eleven (11) copies of a site plan @1" = 20' 8 sets provided (yes/no)
- b. north arrow yes (yes/no)
- c. Lot lines/ dimensions & lot area yes (yes/no)
- d. Structural & building coverage calculations
- e. Flood Plain & Zoning Districts (as applicable) yes (yes/no)
- f. Locations/dimensions of all buildings, driveways, parking areas & other structures yes (yes/no)
- g. boundary lines, names of owners, and locations/ dimensions of all buildings, driveways & parking areas on all immediately adjacent properties yes (yes/no)
- h. Dimensions of all adjacent streets, sidewalks and rights-of-way; street names yes (yes/no)

CONSTRUCTION PLANS

- a. at a scale not smaller than ¼ inch = 1 foot yes (yes/no)
- b. showing the existing structure(s) as well as all proposed alterations/new construction yes (yes/no)
- c. showing at least 4 exterior elevations (front, rear, left & right sides) yes (yes/no)
- d. show all heights on all exterior renderings yes (yes/no)
- e. other renderings/photographs (optional) No (yes/no)

VOLUME CALCULATIONS

If the proposed construction is increasing massing within a setback, please submit a diagram showing the existing volume within the setback and then the proposed. For example, if you are adding a second story to an existing, non-conforming structure that is within a setback, calculate the existing volume that is sitting within the setback and then how much that second story adds within that non-conforming setback. Also, please calculate the total square footage of each existing non-conforming façade of the structure, and then the total square footage of each proposed additional non-conforming façade, subtract, and then calculate the percentage increase of each non-conforming façade.

13: The following pages provide an accurate list of the abutters and the owners of the land next adjoining abutters: **STAMPED AS CERTIFIED BY BOARD OF ASSESSORS** (Stamped Abutter’s List must be presented with application filing)

14: Litigation Policy – Use of Town Counsel by the Zoning Board of Appeals (ZBA). The applicant must read and acknowledge the following policy of the ZBA.

When zoning relief has been approved by the ZBA, either in whole or with conditions, Town Counsel will not primarily defend any appeal against such relief brought by parties claiming to be aggrieved, without the express written consent of both the Chairman of the ZBA and the Town Manager.

The successful applicant is the appropriate party to bear expenses associated with maintaining such relief, be it a Special Permit, a Variance, or an enforcement Appeal.

Generally, the Town will enter an appearance but will mount no active defense or Discovery: it will neither initiate motions nor will it undertake depositions or interrogatories unless prior approval is given per the above.

(Signatures required on the next Page)

Sign for acknowledgement of the litigation policy:

Date: 3/2/22

Signature(s) of Applicant(s) Representatives, if any

Adam J. Brodsky, Esq.
Drohan Tocchio & Morgan, PC

Date: 2/24/22

Signature(s) of Applicant(s)

**
Manager - Cohasset Lobster, LLC
Thomas Sullivan

15. I have read and understand the Rules of Procedure of the Board of Appeals:

Date: 3/2/22

Signature(s) of Applicant(s) Representatives, if any

Adam J. Brodsky, Esq.
Drohan Tocchio & Morgan, PC

Date: 2/24/22

Signature(s) of Applicant(s)

**
Manager - Cohasset Lobster, LLC
Thomas Sullivan

**Application must be signed by legal owner of the land ("Applicant").
Signature(s) of Owner(s)

DROHAN TOCCHIO & MORGAN, P.C.

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www.dtm-law.com

ADAM J. BRODSKY
abrodsky@dtm-law.com

March 2, 2022

Via Hand Delivery and Email

S. Woodworth Chittick, Chairman
Zoning Board of Appeals
Town Hall
41 Highland Avenue
Cohasset, MA 02025

**Re: Cohlobster, LLC
46 Border Street, Cohasset (Assessor's Parcel ID F5-32-018)
Special Permit for Uses, Alteration of Building and Nonconforming Parking,
and Floodplain and Watershed Protection District**

Dear Mr. Chittick:

This office represents Cohlobster, LLC ("Cohlobster") regarding the proposed improvements to the existing "Atlantica" restaurant/function building (the "Project") located at 46 Border Street, Cohasset (the "Property"). Cohlobster proposes to reconfigure the existing building to accommodate one smaller fine dining restaurant and kitchen, a second smaller restaurant/coffee shop, an ice cream (retail) store, a bakery (retail), a lobster pound (restaurant), and provide additional public areas. Cohlobster also proposes to improve the existing parking lot with additional landscaping, lighting, and stormwater management best management practices.

Cohlobster is seeking a special permit under the Town of Cohasset Zoning Bylaw (the "Zoning Bylaw") for the Project as follows:

- Special permit for restaurant and retail uses in the Waterfront Business Zoning District in accordance with § 300-4.2 of the Zoning Bylaw;
- Special permit for the alteration of an existing nonconforming building in accordance with § 300-8.7 of the Zoning Bylaw (to the extent necessary);
- Special permit for the alteration of the existing nonconforming parking use in accordance with § 300-8.7 of the Zoning Bylaw; and

- Special permit for the alteration of an existing building in the Floodplain and Watershed Protection District (“Floodplain District”) in accordance § 300-9.7H. of the Zoning Bylaw.

The Project team includes:

Eamon O’Marah, Project Manager, Harbinger Development
Susan Hoadley, AIA, and Corina Martinez, AIA, Hoadley Martinez Architects
Paul J. Mirabito, PLS, Ross Engineering Company, Inc.
Darren Grady, PE, Grady Consulting, LLC
Carlos G. Pena, PE, Foth Infrastructure and Engineering, LLC

I. Existing Conditions

Cohlobster acquired title to the Property under a deed from CHP Border Street Realty, LLC dated February 4, 2021, recorded with the Norfolk County Registry of Deeds (the “Registry”) at Book 38964, Page 331. A copy of the Deed is submitted herewith. The Property is shown on the Town of Cohasset Assessor’s Maps as Parcel ID F5-32-018, and has a total land area of approximately 1.497 acres. The Property is situated in the Waterfront Business (“WB”) Zoning District. The Property is also located in FEMA F.I.R.M. Zone AE (El. 11) and Zone VE (El. 15) as shown on Community Map Panel No. 25021CO265F, dated July 6, 2021. Lastly, the Property is located in the Floodplain and Watershed Protection District.

The Property has frontage on Border Street. The Property is improved with an approximately 14,809 sf restaurant/function building, reportedly constructed in 1948 according to Assessor’s records, and an existing parking lot. There is also a licensed float for recreational vessels on the Property.

The Property is conforming with respect to minimum dimensional requirements within the WB District. The building at the Property is non-conforming with regard to certain dimensional requirements under the Zoning Bylaw, including side and rear yard setbacks. The number of existing parking spaces is also nonconforming. The nonconforming dimensions are set forth in the Table below.

II. Proposed Project

Cohlobster seeks to improve the existing building at the Property to accommodate a smaller fine dining restaurant and kitchen, a smaller second restaurant/coffee shop, an ice cream (retail) store, a bakery (retail), a lobster pound (restaurant), and provide additional public areas. The Project will result in a net reduction in the total area dedicated to the existing restaurant use on the Property and the elimination of the large-scale function use. The proposed fine dining restaurant will contain approximately 2,691 sf and the kitchen for the fine dining restaurant will contain approximately 1,707 sf. The proposed second restaurant/coffee shop will contain approximately 1,336 sf and the small prep kitchen will contain approximately 512 sf. The proposed ice cream

store will contain approximately 212 sf. The proposed bakery will contain approximately 935 sf. Cohlobster presently intends to relocate the Cohasset Lobster Pound from 82 Border Street, also owned by Cohlobster, to the proposed retail unit at 46 Border Street to continue the existing water-dependent use of the properties. The proposed lobster pound will contain approximately 893 sf. The kitchen area for the Old Salt House, which contains approximately 494 sf, will remain where it is currently located.

Despite our best efforts, we have been unable to locate any special permits specifically relating to the approval of the existing restaurant use at the Property. We have been unable to locate Town records prior to the 1990s relating to the restaurant but presume the restaurant use was authorized. We have similarly been unable to locate any special permits recorded at the Norfolk Registry of Deeds. The restaurant use is discussed in other special permits relating to either the Old Salt House or the former Kimball's By the Sea when the properties were in common ownership. The reconfigured restaurant uses (if re-authorization is required) and new retail uses require a special permit pursuant § 300-4.2 of the Zoning Bylaw.

Similarly, the alteration of the existing nonconforming building may require a special permit pursuant to § 300-8.7 of the Zoning Bylaws. The building is being reconfigured and removed from the existing nonconforming front yard setback which will eliminate this nonconformity. There are no structural alterations proposed to the portions of the existing building within the existing nonconforming side and rear yard setbacks, but there will be alterations to remaining portions of the building. There will, however, be cosmetic improvements in the nonconforming portions of the building such as new windows, doors, etc.

The existing parking lot contains 52 irregularly sized parking spaces and is nonconforming.¹ The proposed uses, which are less intensive than the existing use, will require a total of 46 parking spaces under current zoning.² Cohlobster proposes to alter and improve the parking lot to provide a total of 28 conforming 9.5' x 20' parking spaces, including 2 handicap parking spaces, which will be more than sufficient to satisfy the parking demand of the proposed uses. The drive aisle will also be 24' and meet current standards.

The alteration of the existing nonconforming parking use requires a special permit pursuant to § 300-8.7 of the Zoning Bylaws.

The landscaping will also be improved to make the Property more attractive to the neighborhood. The exterior lighting fixtures will be improved with Dark-Sky compliant fixtures. The existing stormwater management best management practices will be improved to meet Massachusetts Stormwater Standards as incorporated into the Massachusetts Wetlands Regulations at 310 CMR 10.10.05(k) and the Cohasset Stormwater Management Bylaw.

¹ The existing restaurant use requires a total of 74 parking spaces calculated as follows: $14,809 \text{ sf} / 200 \text{ sf} = 74$. See § 300-7.1 of the Zoning Bylaw.

² The proposed uses require a total of 46 parking spaces calculated as follows: 20 parking spaces for two restaurants ($4,054 \text{ sf} / 200 \text{ sf} = 20$); 11 parking spaces for two kitchens ($2,219 \text{ sf} / 200 \text{ sf} = 11$); 11 parking spaces for retail/ ice cream shop ($1,147 \text{ sf} / 100 \text{ sf} = 11$); and 4 parking spaces for lobster pound ($893 \text{ sf} / 200 \text{ sf} = 4$). See § 300-7.1 of the Zoning Bylaw.

The table below shows the various dimensional requirements of the Zoning Bylaw as well as existing and proposed conditions:

Criteria	Required Per Bylaw	Existing	Proposed
Area	None	1.49 acres	No change
Frontage	20'	332.58'	No change
Width	20'	297.5'	No change
Front Setback	15'	13.3'	24'
Side Setback	10'	0'	No change
Rear Setback	15'	1.2'	No change
Height	35'	31.2'	No change
Coverage	80%	51.6% (33,648 sf)	45% (29,360 sf)

The Project is depicted in the following plans also submitted herewith:

1. Site Plan for 46 Border Street in Cohasset, prepared by Grady Consulting, L.L.C., dated February 28, 2022 (5 Sheets) (“Site Plans”); and
2. Architectural Plans entitled “Cohasset Wharf Renovations” prepared by Hoadley Martinez Architects and Planners, Inc., dated March 2, 2022 (9 Sheets, numbered EX101, EX102, EX103, AS101, A102, A103, A201, A202, A203, (“Architectural Plans”).

The existing building, which is located in Zone AE and Zone V, is nonconforming and does not comply with the current flood hazard requirements of the *Massachusetts State Building Code*. However, the Project will not result in a substantial improvement, and therefore, does not need to be improved to comply with these requirements.³ The Project will, however, require a special permit under § 300-9.7H. of the Zoning Bylaw because the existing building located in the Town’s Floodplain District is being altered in certain respects.

³ Per the *International Building Code*, as adopted with amendments by the 9th edition of *Massachusetts Building Code* Base Volume that covers commercial properties, § 1612.1 requires construction that rises to the level of a substantial improvement to conform with flood hazard and flood load resiliency provisions recommended by the American Society of Civil Engineers Chapter 24, as integrated into the National Flood Insurance Program administrated by the Federal Emergency Management Agency. The *Massachusetts Building Code* defines a substantial improvement as “any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure, before the improvement or repair is started.” See also § 300-2.1 Definitions of the Zoning Bylaw. The building official making the determination is the commissioner/inspector of buildings charged with enforcement of 780 CMR per M.G.L. c. 143, §§ 3 and 3A. The Cohasset Building Commissioner will be charged with making this determination in this instance.

A. The Proposed Restaurant and Retail Uses Satisfy the Requirements for a Special Permit under § 300-4.2.

Restaurant and retail uses are allowed in the WB District by special permit granted by the Zoning Board of Appeals pursuant to § 300-4.2 and the Table of Use Regulations. The Zoning Board of Appeals may grant a special permit upon Cohlobster demonstrating compliance with the following requirements and action taken to assure that the Project will not have an adverse effect on adjoining properties or properties generally in the district:

- a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, off-street parking and loading areas where required, traffic flow and control, access in case of fire or catastrophe, and the capability of public roads to support the added traffic safely.**

The Project will provide safe and convenient ingress and egress to the Property with sufficient off-street parking and loading for the proposed uses. Fire safety will be improved and Border Street is capable of providing traffic safety.

- b. The proposed use will not create any danger of pollution of public or private water facilities, and the methods of drainage at the proposed site, either on site or via public sewage systems wherever necessary, are adequate. No excessive demand shall be imposed on the water supply system.**

The Project will be served by municipal water and sewer which are adequate and will not create any danger of pollution. The parking lot will be improved with additional stormwater best management practices which will comply with the Massachusetts Stormwater Standards and the Cohasset Stormwater Management Bylaw and Cohlobster will obtain an Order of Conditions and a Stormwater Permit.

- c. Signs, if any, proposed exterior lighting with reference to glare, and that no excessive noise, vibration, light, dust, smoke, heat, glare, or odor shall be observable at the lot lines.**

The Project will not result in any glare as all exterior lighting fixtures are specified to be Dark-Sky compliant. There will be no excessive noise, vibration, light, dust, smoke, heat, glare or odor observable at the lot lines.

- d. Refuse collection or disposal and service areas, with particular reference to items in Subsection A(2)(a) and (b) above.**

The Project will provide an enclosed dumpster for refuse.

- e. Screening and buffering with reference to type, dimensions, and character.**

The Project will provide additional landscaping for screening and buffering over existing conditions.

f. Required yards and other open space.

The Project will eliminate the existing front yard nonconformity but does not propose any alterations to the existing yards. Additional public areas are proposed creating more open space.

g. Economic effect and general compatibility and harmony with adjacent properties and other property in the district.

The Project has been designed to be compatible and harmonious with adjacent properties. The Project can only generate positive economic effect given the historic difficulty operating a successful restaurant/function business at the Property.

The reconfigured restaurant uses (if re-authorization is required) and the new retail uses satisfy each of these requirements.

B. The Proposed Alteration of the Existing Nonconforming Building Satisfies the Requirements for a Special Permit under § 300-8.7.

Pursuant to § 300-8.7.B. of the Zoning Bylaw, a special permit for structural alteration or enlargement of a nonconforming building can be authorized provided that the alteration is “[not] substantially more detrimental than the existing nonconforming use to the neighborhood,” and “[not] injurious or dangerous to the public health or hazardous because of traffic congestion or other reason.” § 300-8.7.B. of Zoning Bylaw.

The building is being reconfigured and removed from the existing nonconforming front yard setback. The alterations to the front of the building make the building more conforming. There are no alterations proposed to the portions of the existing building within the existing nonconforming side and rear yard setbacks. There are no proposed changes in height, volume or mass of the building within the nonconforming setbacks. The other alterations to the building conform to the zoning dimensional requirements. To the extent that authorization is required for these other alterations, the alterations will be substantially less detrimental than the existing building and will pose no injury or danger to the public health.

C. The Proposed Alteration of the Existing Nonconforming Parking Satisfies the Requirements for a Special Permit under § 300-8.7.

Pursuant to § 300-8.7.B. of the Zoning Bylaw, a special permit for extension, alteration, reconstruction or enlargement of nonconforming use of land can be similarly authorized provided that the activity is “[not] substantially more detrimental than the existing nonconforming use to the neighborhood,” and “[not] injurious or dangerous to the public health or hazardous because of traffic congestion or other reason.” § 300-8.7.B. of Zoning Bylaw.

The alteration of the existing nonconforming parking use will be substantially less detrimental than the existing use and will pose no injury or danger to the public health. The proposed reduction in the scale of the existing restaurant/function use and the addition of new retail uses will materially reduce parking demand. Instead of potentially hundreds of people arriving all

at one time to attend a wedding or function, the parking demand will be spread over the course of the day and the total demand reduced.

The proposed conforming 9.5' x 20' parking spaces and 24' drive aisle will improve internal circulation and facilitate safe emergency access. Additionally, the landscaped buffer along Border Street will improve aesthetics and the changes should be welcomed by the neighborhood. The Project will not be substantially more detrimental than the existing use to the neighborhood and will not be injurious to public health or hazardous.

D. The Project Satisfies the Requirements for a Special Permit under § 300-9.7H.

In the Floodplain District, no building or structure shall be altered, except as permitted by § 300-9.5 or pursuant to a special permit issued by the Zoning Board of Appeals under § 300-9.7. See § 300-9.6A. of the Zoning Bylaw.

The Project satisfies the requirements for a special permit under § 300-9.7H. as follows:

- 1. The proposed structure or use is not subject to damage by flooding or waves, nor is land unsuitable for the proposed structure or use because of drainage conditions.**

There is an existing building on the Property and the land is not unsuitable for the existing and proposed uses. The proposed improvements will incorporate floodproofing elements which will improve the building's resiliency to damage by flooding. The Project also incorporates improved stormwater management best practices which will comply with the Massachusetts Stormwater Standards and the Cohasset Stormwater Management Bylaw and Cohlobster will obtain an Order of Conditions and Stormwater Permit.

- 2. If the land is subject to tidal action or adjacent to tidal waters, the proposed structure or use is not less than 10 feet above mean sea level.**

There is an existing building located on the Property which will be reconfigured but not razed and reconstructed.

- 3. The proposed construction use and/or change in grade will not obstruct or divert flood flow or reduce natural flood storage capacity to the extent of substantially raising the high water level in the same or adjoining districts.**

The proposed uses will not obstruct or divert flood flow or reduce natural flood storage capacity raising the high water level.

- 4. The proposed system of drainage and/or private sewage disposal will not cause pollution or otherwise endanger property or the public health.**

Please see above.

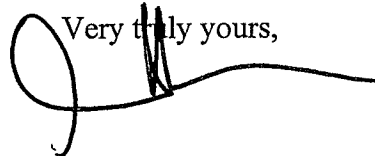
5. The proposed use of the land does not derogate substantially from the purposes of the Floodplain and Watershed Protection District as set forth above or the purposes of this bylaw.

The proposed uses will not derogate substantially from the purposes of the Floodplain District, *i.e.*, to protect persons and property from the hazards of flood and pollution; to protect, preserve and maintain the water table and water recharge areas and protect the Town's water supplies; and to continue the natural flow patterns of the watercourses within the Town to provide adequate and safe water storage and runoff capacity.

III. Conclusion

The Project satisfies each of the requirements of §§ 300-4.2, 300-8.7, and 300-9.7H. of the Zoning Bylaw and Cohlobster is entitled to a special permit.

Should you require any additional information, please do not hesitate to contact us. Thank you for your consideration.

Very truly yours,


Adam J. Brodsky
Drohan, Tocchio & Morgan, P.C.

cc: Jennifer Oram, Zoning Board of Appeals (*via email*)
Lauren Lind, Planning and Zoning Director (*via email*)
John Hallin, Director of Planning, Permits and Inspections (*via email*)
Charlotte Pechtl, Conservation Agent (*via email*)
Eamon O'Marah (*via email*)
Susan Hoadley, AIA (*via email*)
Paul J. Mirabito, PLS (*via email*)
Darren Grady, PE (*via email*)
Carlos G. Pena, PE (*via email*)