

OUTLINE OF TESTIMONY

It must be emphasized at the outset that:

The description of the dimensional relief we are seeking is somewhat inaccurately described on the Agenda. There are not currently two separate uses in the building. The whole reason that we need a dimensional variance is that the building was constructed as a single family residence and lends itself to 1 singular use, not two mixed or separate uses.

The dimensional variance is requested because it is economically impossible to reconfigure and remodel the building to accommodate residential use on the second floor and commercial use on the first floor.

Due to the unique characteristics of the building, the entire building can only be feasibly used for one use: either residential or commercial-- but not both.

We are requesting the dimensional variance because residential use is a permitted use in the zone where the building is located but there is a dimensional regulation restricting the that residential use to the second floor.

It is impossible, from a practical standpoint, for us to enjoy the permitted use of the second floor for residential purposes without also being able to use the first floor for residential purposes.

EXHIBITS:

1A: Dimensional Variance Application and Supporting Documents

1B: Letter to Neighbors Clarifying only a Single Use

1C: This Outline of Testimony

2: Photo of the Exterior of the Building

3: Photo of the only public Entrance to the Building

4: Panoramic Photo of the Foyer and interior leading to the first floor space and the second floor space

5: Short Video clip entering the interior foyer through the front door

6: Short Video clip coming down the stairs from the second floor to the first floor foyer and exit to the front door

Standards of § 45-24-41. General provisions--Variances

(d) In granting a variance, the zoning board of review ... shall require that evidence to the satisfaction of the following standards is entered into the record of the proceedings:

- (1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in [§ 45-24-30\(a\)\(16\)](#);

The hardship here is due to the unique characteristics of the structure. The building was constructed in 1930 as a single-family residence. The building is still configured as a single-family residence and only the kitchen was removed from the building.

Although the building was used as office space, the building has not been modified in any way to meet all current commercial building code and fire code standards. The building is grandfathered from most of the building code and fire code regulations enacted after 1979. The post-1979 building code and fire code regulations make it impossible for us to reconfigure the building to enjoy the second floor for residential purposes and meet the dimensional requirements prohibiting residential use of the first floor.

There is only one main entrance into the building and that entrance is to a foyer allowing ingress and egress to both the first floor and the second floor.

Review EXHIBITS 2-6

We consulted with an architect to determine if it was feasible to provide access to a commercial use on the first floor and a residential use on the second floor through the existing entrance to the

building. It was determined that there was no feasible way to utilize the existing entrance to the building for residential use on the second floor and commercial use on the first floor. The building, as constructed, only allows ingress and egress for 1 singular use of the 1st and 2nd floors, not separate uses.

There is a means of ingress and egress to the back of the building through the walk-out basement but that means of access could not serve as a means of ingress and egress for the operation of the commercial enterprise on the first floor. There is also a means of ingress and egress to a small deck-landing on the back of the first floor of the building but that means of ingress and egress could also not serve as a means of ingress and egress for the operation of the commercial enterprise on the first floor. These two means of ingress and egress would serve as emergency exits but not as viable commercial entrances or exits.

Through consultation with an architect and the South Kingstown Building Official, it was also determined that it would be cost-prohibitive to accommodate residential use on the 2nd floor and commercial use on the 1st because of current building code and fire code requirements, including fire-rating all 1st floor ceilings and second story floors and the common walls between the first floor and the second floor.

These hardships are all due to the unique characteristics of the building and clearly meet the hardship requirements necessary to grant the requested dimensional variance.

- (2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;

The hardship is not the result of any prior action of the applicant. The building was constructed in 1930 as a single-family residence which was a permitted use under zoning regulations when the building was constructed and remains a permitted use, albeit limited to the second floor.

The applicant did not take any actions that resulted in the current hardship we face. The building has always been configured for a singular use and the hardship was created by the somewhat-recent dimensional regulation prohibiting residential use on the first floor of the building. The only modification aside from minor decorative changes that were made to the building since it was constructed in 1930 was the removal of the kitchen on the first floor the building. This was done somewhere around 1979 and the hardship we face results solely from the unique characteristics of the building and the subsequent dimensional regulation incorporated into the zoning ordinance.

The hardship also does not result primarily from the desire to realize greater financial gain. Residential use of the second floor is a permitted use in the zone and we would like to enjoy that reasonably permitted use of the second floor but cannot do so without also being able to use the first floor for residential purposes due to the uniqueness of the building and subsequently-enacted dimensional regulations.

We would like to enjoy a permitted use of the building. The impact that the Covid-19 pandemic has had on small businesses has prevented us from enjoying use of the property for commercial purposes and the building has been vacant for over 6 months. The majority of the building was occupied by Attorney Martha Day who needed most of the space in the building to handle large in-person conferences and real estate settlements. However, Covid-19 forced her to change her business model and she no longer needed 2000+ square feet of office space. She gave me 6 month's notice back around March 2020 that she would be vacating the building and I spent the last 12 months since she gave her notice unsuccessfully trying to find a commercial tenant for the space.

The building does not really lend itself to any commercial use other than as office space by a singular business that can live with an interior that is much more suitable to residential use than it is

commercial use. The building has over 2500 square feet of Living Area. It would be hard enough to find a business that needs the unique space of this building but after the Covid-19 pandemic and most businesses going virtual and limiting large in-person gatherings, it has become impossible.

Based upon our unsuccessful efforts to try and lease the building for commercial purposes for about 12 months, we have concluded that the only reasonable use we can make of the building is to convert the entire building to residential use. We need to convert the entire building to residential use because current building and fire code regulations prevent us, from a practical standpoint, from using the second floor for the permitted residential purpose and also using the first floor for commercial purposes.

- (3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based;

Granting the requested variance will not alter the general character of the surrounding area or impair the intent or purposes of the zoning ordinance or the comprehensive plan upon which the ordinance is based.

There are no changes required to the exterior of the building so there will be no change to the general character of the surrounding area. It should also be noted that two of the three lots that abut our property are single-family residences. There is also residential use on the second floor of the building directly across the street and there is residential use on the e floor of most of the properties up and down Main Street where our property is located.

Granting the variance will not impair the intent or purpose of the zoning ordinance or the comprehensive plan. When this restriction was incorporated into the zoning ordinance it was incorporated as a dimensional variance. Incorporating it as a dimensional variance makes clear that the ordinance will permit commercial use on the first floor of properties in this zone where it amounts to more than a mere inconvenience to the property owner and is due to the unique characteristics of the building and is not a self-created hardship.

This is not a situation where someone is seeking to construct a new building with residential use on the first floor or seeking to modify a structure that is already configured for residential use on the second floor and commercial use on the first floor, meeting zoning and fire code standards. This is a unique situation where we have a structure suited for a singular use on both the first floor and

second floor of the building and cannot be reconfigured to allow separate and different uses of the first floor and the second floor.

(4) That the relief to be granted is the least relief necessary.

The relief being sought is the least relief necessary. This is not a situation where there is any partial or more limited dimensional relief available to us. Given the unique nature of the building and the nature of the dimensional regulation, the relief sought is not only the least relief available—it is the only relief available.

(e) (2) In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief.

As previously, the hardship we face trying to enjoy the reasonable use of our property clearly amounts to more than a mere inconvenience. The issue here is not whether one use may be more profitable or whether the structure may be more valuable after the relief is granted. The hardship here is that due to the unique characteristics of the building and that the permitted use of the second floor for residential purposes cannot be enjoyed without also using the first floor for residential purposes.

The hardship here is without the dimensional variance we are seeking, we are unable to enjoy any reasonable use of the property at this time and into the foreseeable future.

If the Board believes more evidence required, we would like the opportunity to present it

Expertise of Building Official & Expertise of Board members as to the costly necessary requirements of Fire Code and Building Code requirements for separation of walls and ceilings between mixed uses of commercial and residential.

Proposed language to include in the Motion:

The Applicant have met their burden of proof entitling them to a dimensional variance to allow residential use of the first floor of the building.

1. The hardship here is due to the unique characteristics of the structure. The building was constructed in 1930 as a single-family residence and is still configured as the originally-built single-family residence and only the kitchen was removed to utilize both the first floor and the second floor of the building as office space.

Although the building was used as office space, the building has not been modified to meet all current commercial building code and fire code standards. The building code and fire code regulations enacted after 1979 make it economically cost-prohibitive to reconfigure the building to enjoy the second floor for residential purposes and meet the dimensional requirements restricting the first floor to commercial.

Based upon the testimony of the Applicant and taking into account the expert knowledge of certain board members and municipal staff, we find that the applicant has established that it would be more than a mere inconvenience to enjoy the legally permitted use of the second floor as residential use without also being able to use the first floor as residential use. The applicant has established that the means of ingress and egress in and from the building will not accommodate mixed use of the building and that fire code and building code regulation also make it economically unfeasible to enjoy use of the second floor for its permitted residential use without also using the first floor for residential use.

2. The hardship is not the result of any prior action of the applicant. The building was constructed in 1930 as a single-family residence which was a permitted use under zoning regulations when the building was constructed and remains a permitted use, albeit limited to the second floor under current dimensional regulations. The applicant did not take any actions that resulted in the current hardship they face. The building has always been configured for a singular use and the hardship was created by the somewhat-recent dimensional regulation prohibiting residential use on the first floor of the building.

The hardship also does not result primarily from the desire to realize greater financial gain. Residential use of the second floor is a permitted use in the zone and the Applicants would

like to enjoy that reasonably permitted use of the second floor but cannot do so without also being able to use the first floor for residential purposes due to the uniqueness of the building and subsequently-enacted dimensional regulations.

The impact that the Covid-19 pandemic resulted in the building being rendered vacant and, despite efforts to rent the building for commercial use for about 12 months, the Applicants have not been able to enjoy any use of the building since it was rendered vacant.

The Applicants request for a dimensional variance results from the desire to use the building for a use permitted on the second floor of the building that requires dimensional relief as to the first floor and does not result primarily from the desire to realize greater financial gain.

3. Granting the requested variance will not alter the general character of the surrounding area or impair the intent or purposes of the zoning ordinance or the comprehensive plan upon which the ordinance is based.

Two of the three lots that abut the property are single-family residences. There is also residential use on the second floor of the building directly across the street and there is residential use of most of the properties up and down Main Street where the property is located. The Applicants are not proposing any changes to the exterior of the building so there will be no change to the general character of the surrounding area.

Granting the variance will not impair the intent or purpose of the zoning ordinance or the comprehensive plan. When the restriction relating to first floor use was incorporated into the zoning ordinance it was incorporated as a dimensional variance. Incorporating it as a dimensional variance makes clear that the ordinance will permit commercial use on the first floor of properties in this zone where it amounts to a mere inconvenience to the property owner and is due to the unique characteristics of the building and is not a self-created hardship.

This is not a situation where someone is seeking to construct a new building with residential use on the first floor or seeking to modify a structure that is already configured for residential use on the second floor and commercial use on the first floor, meeting zoning and fire code standards. This is a unique situation where we have a structure suited for a singular use on both the first floor and second floor of the building and cannot be reconfigured to allow separate and different uses of the first floor and the second floor.

4. The relief being sought is the least relief necessary. This is not a situation where there is any partial or more limited dimensional relief available to the Applicants. Given the unique nature of the building and the nature of the dimensional regulation, the relief sought is the least relief available.
5. The hardship suffered by the Applicants if the dimensional variance is not granted amounts to more than a mere inconvenience.

NO consideration has been given to whether or not use of the building may be more profitable
NOR has any consideration been given to whether or not the building may be more valuable
after the relief is granted.