

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
November 6, 2019

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Brad Fredette,
Keith Perkins-Alternate, Donald Routhier, Coty Donohue
MEMBERS ABESENT: Glenn Garvin-Alternate
STAFF PRESENT: Shanna B. Saunders, Director of Development Services,
Dana Crossley Planning Secretary

The meeting was called to order at 7:00PM.

Keiser stated he would like to welcome Perkins to the board as the new alternate. He noted the Dubois has resigned from the board.

1) Approval of the minutes of the meeting of September 4, 2019.

Brooks stated on page 7 there was a typo with the word hallway. He stated the last paragraph did not express his full comment on the advertising of the commercial units and requested that it be reworded.

Brooks **MOVED** to accept the minutes with changes.

Fredette seconded the motion.

The **MOTION CARRIED** by a 5-0 vote.

2) OLD BUSINESS

A) Any old business that may come before the Board.

No Discussion

3) NEW BUSINESS

A) Joaquin R. German is seeking a variance from Table 4.A.1, footnote 2 to allow 100% residential on the first floor with on-site parking on a property located at 247 Main Street, in the Business (B) District, Assessor's Map 09 Lot 228, ZBA#17-2019 PUBLIC HEARING

Keiser opened the public hearing at 7:02pm.

Saunders stated this property received a variance in 2018 to construct a new structure with 25% commercial and allow 75% residential space on the first floor. She stated the request today is to have 100% residential on the first floor.

Applicant statement: Attorney Brian Barrington of Coolidge Law Firm attended the meeting to represent the applicant. Also in attendance was the applicant **Joaquin German** and Real Estate Agent **Eric Levin of Keller Williams**.

Barrington stated he had corrections to his statement of facts that was submitted in the application. He stated the previous variance granted allowed the applicant to have 25% commercial space on the first floor not 75%. He stated the adjacent property had collapsed from rot and did not burn down. He stated this lot is actually in the upper Main Street area and not the lower Main Street area.

Barrington stated the request is because they were unable to find a viable use for the commercial space on the first floor. He stated when there is an accessory use to the primary use of a structure it is categorized as the same as the primary use. He stated legally having a parking garage for people to park on site would be accessory to the residential use above and would be a residential use.

Barrington stated the proposal is to have a building that has parking garages on the first floor and residential units above. He stated the intent is to have a multifamily building that will require further Planning Board review and approval.

Barrington stated the surrounding property values would not be diminished, given the fact that it is predominately residential all around. He stated to not have 25% commercial on this site it would not diminish the surrounding values. He stated by having parking onsite it goes over and above the ordinance. Barrington stated the request would not be contrary to public interest. He stated there are occasional commercial uses in the area but the majority of commercial is closer to the traditional downtown area. He stated there are few active businesses on Main St. He stated the Business district snakes down the road to an area that is not commercial and historically has not been commercial. He stated they feel it is in the public interest to discourage on street parking. Barrington stated in this case there is no fair and substantial relationship existing between the general public and the purposes of the ordinance. He stated the ordinance requires this to be a mixed use area but the specific application is to force a use that there is no demand for. He stated there is no foot traffic. Barrington stated this lot has been empty for many years and even with the requirement for only 25% commercial space found this unviable. Barrington stated the special conditions of the property are that it is .14 acres and does not have the size for a commercial use with associated parking onsite. He stated it would not be beneficial to the surrounding properties to have business in the building. Barrington stated justice would be to allow a vacant lot to be used again and be able to generate tax revenue. He stated it would be an injustice to require commercial space when there is no demand. He stated the first floor would be used for parking and the upper levels for residential. Barrington stated the spirit of the ordinance is to try to encourage commercial development but it cannot be used that way. He stated the City Council has made claims that they want workforce housing for people to work downtown. He stated having a residential use in this location would be beneficial to all.

Joaquin German, 10 Kilda St, stated he feels the property will be better used if it was residential like the surrounding buildings. He stated the entire lot is surrounded by residential properties. He stated because of the size of the lot it would not be efficient to put business space there. He stated it would be a better idea to make it residential than to have an empty commercial space.

Eric Levin Real Estate Agent of Keller Williams, 750 Lafayette Rd Suite 201 Portsmouth, stated his background in real estate and the mortgage industry. He stated the lot is a smaller lot for commercial use. He stated the surrounding properties are primarily residential and there is limited commercial influence in the area. He stated many businesses want to be in areas that they can network with other businesses. He stated because of the location of the lot he does not think any commercial use would go into this space. He stated it would be a destination spot that someone would have to find rather than being part of a central hub.

Keiser asked for public comment:

Michael Fischer, 93 W. High St. stated he recently purchased the abutting property 253 Main St. He stated he agrees with the applicant's testimony and is in support of the proposal.

Donohue stated the argument is made that 25% commercial space would not be viable. He asked for clarification on that argument. Barrington stated they brought in a licensed real estate broker who has stated he cannot find a tenant that would demand this space.

Donohue asked for clarification on the statement that the drafters of the ordinance were focused on new construction. Barrington stated all of the residential uses that continue there are grandfathered. He stated it was a change of the ordinance and this lot cannot claim grandfathering because it was not rebuilt within a year. Barrington stated it is a reasonable inference when Council was discussing the zoning it was to bring new business into town.

Donohue questioned if there had been any efforts made to get a commercial tenant. German stated he has not tried to rent the space. He stated he has considered small office space but from reaching out to some has found they want to work surrounded by more commercial space around them. He stated they have not posted since it is not built.

Donohue asked if that applicant has been in discussion with the Economic Development Agent of the City. German stated he has had discussion with Ms. Comstock. He stated the space would be very small and would not accommodate a large office use.

Keiser clarified that it is the business district and not a commercial district.

Fredette asked what Levin's connection to this property is. Levin stated he was the real estate agent for German when he purchased the property. He stated he has lived in the seacoast area his entire life and works in real estate ranging from Farmington to Seabrook. Levin explained his background.

Routhier stated the area is known as Smokey Hollow. He asked how far the business district extends. Barrington stated it reaches to the corner of Indigo Hill Rd.

Routhier asked if the Zoning Board decides the number of units that would be allowed for a multifamily unit. Saunders stated the Planning Board would make that decision.

Routhier asked the applicant how many units he plans to build. German stated up to 5 if they can fit the parking spaces. He stated parking is their limitation since they need 2 per unit. Routhier asked how large the units will be. German stated ranging from 1,500 sq. ft. to 1,700 sq. ft. Routhier asked how many floors the building will be. German stated two floors not including the parking space, a three floor building. Routhier asked if the lot would be large enough for that kind of building. Barrington stated the applicant is limited by the space that they can use for the garages. Routhier asked if there is an architecture plan yet. Barrington stated not yet since they do not have the use variance yet. Routhier asked if they would have access from Main Street onto the parcel. German stated Main Street is higher than the lot level, so access will be from Summer Street.

Keiser asked how this property is different from the surrounding properties and should be granted the variance. Barrington stated having garages it would not be residential on the first floor. Barrington stated this location on Main Street has no businesses surrounding it. Keiser asked if all of the properties in this area share the same burden. Barrington stated the immediate properties to this share the burden. He stated there are a lot of empty windows to catch up to active business. Keiser asked if the applicant could make the entire first floor business. Barrington stated he could but there is no business that would not require on street parking and thrive-ability. Barrington stated this lot is long and skinny and most of the frontage is on Summer Street. He stated the frontage on Main St. is narrow and lacks exposure. German stated Summer Street is a one way narrow street that does not have a lot of access.

Fredette stated he is having a hard time in seeing how this lot is different that would require him as a member to be a safety valve. He stated he needs more information to why it should not be done by the long route through rezoning by the City Council. Barrington stated the Zoning Board is a quasi-judicial board and its job is to find the properties which are the round peg in the square hole. He stated Main Street has low traffic and saying that it is unique does not mean there is no other property that has the same characteristics but the features are unique to the property. Barrington stated there is no commercial use available and there are limited businesses as allowed permitted uses appropriate to the property.

Routhier clarified that there is low income housing in the area. Barrington stated the lot is surrounded by it. Routhier stated there is no commercial use in those and the only commercial use is at the corner of Main and Depot St. He stated historically there is no other commercial space in the area.

Brooks asked if the lack of traffic prohibits the commercial uses, as well. Levin stated yes, as far as that area it would be a destination spot for a business.

Keiser closed the public hearing at 7:39 PM.

Board discussion:

Routhier stated he thinks the applicant has a good argument. He stated the area historically has been a business area because in the 20's and 30's it was more active for business. He stated today there is no traffic that goes there like in the past and the area has become blighted. He stated the area is in need of updates and improvement. He stated he does not see a rational between the zoning ordinance requirement and the subject area to make it a business area. He stated a new building would enhance the neighborhood.

Brooks stated he agrees with the statements made by Routhier. He stated there are a lot of vacant businesses on Main Street. He stated that shows there is no demand for commercial businesses in that area.

Donohue stated he agrees with the argument made by the applicant. He asked how the board members feel this property is unique and meets the criteria.

Routhier stated the applicant's argument for the 3rd criteria is a good, that there is no fair and substantial relationship between the zoning and what can be put there. He stated he thinks it is a classic example for the zoning law and the meaning of the hardship requirement. He stated he agrees with the applicant's legal analysis that it is the board's duty to make the decision when a hardship exists. He stated he is additionally comforted by that the Planning Board will review this for how many units can be on the lot. Routhier stated it will enhance the area and does not diminish property values. He stated it will do substantial justice because it does not make sense to keep this as a business unit.

Donohue stated he would support an approval motion following the logic stated by Routhier.

Brooks stated there have been similar variance requests on Main Street for similar reasons. He stated there is no demand for the commercial use.

Keiser stated he cannot support this request because he does not feel it meets the spirit of the ordinance since that is to promote business development on the first floor. He stated this property is not unique nor does it have special conditions beyond other properties in the district. He stated he agrees that the zoning needs to be changed in this area because it does not fit. He stated he does not find it meets the criteria.

Fredette stated that he agrees with Keiser. He stated when he thinks of the public interest he thinks of what is done through the elected body (City Council). He stated he thinks the zoning needs to be addressed through a different channel and addressing the entire area. He stated he does not see anything unique for this property and many of the surrounding properties have small frontages.

Routhier stated the entire area of Main Street is considered the business district. He stated this subject area should not be part of the business district. He stated this lot does not match the rest of the business district. He stated the board has the authority to make a difference.

Fredette stated unless the board puts special conditions nothing forces the applicant to put parking on the first level. He stated he would not vote in favor for this.

Donohue asked if there is any Planning or Economic Development effort in this part of the City related to housing or business space. Saunders stated no in that DDS is not working on anything. She stated the Mayor has been focusing on Main Street as part of his effort for revitalization but not necessarily this far down.

Brooks stated he sees Keiser's argument and wonders if there is a hardship to the area. He stated he feels the zoning for this area is not working and thinks that is the hardship.

Fredette asked if implementation of the Form Based Codes would have an effect on this area. Saunders stated it would not change anything in relation to this proposal.

Brooks stated there are still many vacant businesses on Main Street and the infrastructure is in poor condition. He stated he thinks the zone is a hardship for most anyone on that road.

Fredette stated he wants to ensure the board is not outside of their legal purview and not creating a back door to zoning.

Routhier stated if this property was on the upper part of Main Street, across from GE, where the stores are located he would view that request differently. He stated this subject area is not business like and the surrounding neighborhood is housing. He stated there is no commercial activity and to require the applicant to have a business on the first floor would be contrary to the neighborhood.

Approval motion: Routhier stated, after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of discussion and I move that the request of Joaquin R. German for a variance from Table 4.A.1, footnote 2 to allow 100% residential on the first floor with on-site parking on a property located at 247 Main Street **be GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The first level shall be for parking accessory to the residential use, only.

The MOTION is SECONDED by Brooks.

The MOTION CARRIES by a 3-2 vote.

B) Home Made by Rivka, Rivka Rowe is seeking a variance from Section 8.C.6 and 8.F.5 of the Zoning Ordinance to allow retail space and additional signage for a home occupation on a property located at 95 W. High Street, in the Residential/Single Family (R1) District, Assessor's map 25 Lot 72, ZBA#18-2019 PUBLIC HEARING

Keiser opened the public hearing.

Saunders stated this applicant is approved to operate a home occupation to sell jams and jellies. She stated the applicant is here for an expansion of the home occupation to include merchandise from local artisans which is not permitted under the home occupation ordinance.

Keiser asked for clarification on how the home occupation works. Saunders read Section 19.8.F.11 from the zoning ordinance.

Keiser asked if the applicant would then need a variance from 8.F.11 to expand the sales of goods that were not made in the home. Saunders stated yes.

Routhier stated the ordinance states goods that were not made on the property but are accessory to the goods being made can be sold. Saunders stated she views that in a limited sense when reading the entire ordinance section. Saunders stated the intent of home occupation is the keep a residential use and having retail sales walks a thin line.

Applicant statement: Rivka Rowe of Homemade by Rivka, 95 W. High, attended the meeting to present the application. She stated 95 W. High is a corner lot and historically housed a doctor's office. She stated there is an in-law apartment with its own parking lot and access off of Sunset Drive. Rowe stated she would like to sell jams and jellies out of the home in a 150 sq. ft. area. She stated she would also like to sell other local items like teas and crafts. Rowe stated she is requesting to also add additional signage to ensure customers go to the correct location.

Rowe stated historically there was a doctor's office in the in-law space and it did not diminish surrounding property values. She stated they would not make it look like a business from the outside. She stated the only change to the outside would be the additional signage. Rowe stated there is an existing parking lot that does not affect the neighborhood. Rowe stated she wants a small business where her customers can locate her when she is not at farmers markets or craft fairs. She stated she does not expect high traffic. She stated she would like to use this as a stepping stone to grow the business and then move to High Street.

Rowe stated literal enforcement would affect the home because there is an existing parking lot and there is a separation in the house for the previous use as doctor's office. She stated she would have a low key business. She stated the house has a separate entrance. She stated the parking lot can fit 15-20 cars. She stated there is not a lot of traffic that goes down Sunset since she is on the corner of Sunset and High Street. She stated granting this variance would allow her to grow her business so that she could one day move to High Street commercial space. She stated it would allow her to use the house as it was intended when constructed. Rowe stated she has run her business in Somersworth since 2015.

Rowe stated the home was built in the 1950's and had a doctor's office till the 90's. She stated her home is just under 4,000 sq. ft. and looking for 150 sq. ft. retail space. She stated the house will still be predominately residential and wants it to remain looking residential.

Rowe brought example photos of the signage. She stated she is requesting to have signage at the corner of Sunset and W. High St. She stated that sign would be 60" x 29" that would be a standard wooden sign. Rowe stated she would like to put a sign at the entrance of the parking lot that is 55" x 29". Rowe provided photos for the board of the signage request.

Keiser opened for public comment:

Michael Fischer, 93 W. High St. stated he lives next door and has no problem with the request. He stated it is a crafty thing and would enhance his local area.

Fredette clarified the maximum signage that would be allowed and if the applicant would need a variance for maximum signage as well. Keiser stated 19.8.F.5 only allows 1 sq. ft. of signage and they are asking for a variance from that.

Brooks asked where the applicant had operated her business previously. Rowe stated they were previously at 320 High Street and found they needed more space therefore purchased this home. Brooks asked if she had considered or looked at commercial locations. Rowe stated she has but at this point is not ready for a separate commercial space based on production. Rowe stated it is the goal to end up downtown and works with current businesses now. Brooks asked if the area of production is where she would be selling. Rowe explained her kitchen is licensed by the State and that is where she makes the jams and jellies but not where the retail space would be. Brooks asked if it requires special commercial equipment. Rowe stated it is a regular stove. Brooks asked what the business hours of operation plan would be. Rowe stated she intends to operate Thursday through Saturday from 10 to 4 and does not expect high traffic. She stated her predominate focus is cooking. Brooks asked how she ships her products and receives shipments. Rowe stated it is regular mail service.

Keiser clarified what the applicant is currently licensed for. Saunders stated a home occupation that must meet the guidelines of the ordinance.

Keiser asked the applicant what she is authorized for. Rowe stated she is authorized to make jams and jellies and customers could pick up orders but not have a storefront. She stated the home occupation cannot take up more than 25% of the home.

Fredette clarified what the applicant is requesting to sell. Saunders stated the applicant still wants to be considered a home occupancy but to have an expanded retail use. Fredette asked if the applicant would be selling just things she produces or goods produced by others. Rowe stated she would like to sell items that would accompany her jams such as teas and also craft items.

Keiser clarified that the business entrance would be off of Sunset Drive. Rowe stated yes. Keiser stated Sunset Drive is a more residential drive than West High. He questioned how much traffic she expects. Rowe stated she would expect less than a doctor's office. Keiser stated the doctor's office has not been in business for a long time, so people in that neighborhood are not familiar with that traffic. Rowe stated on open days she would be impressed if she had 5 cars, she stated her home is the corner of Sunset and W. High. Rowe stated she does not expect high traffic but allow for a place for her customers to be able to pick up the jams and jellies. Keiser stated as described that part is already allowed to make the jams and jellies and sell them by allowing pickups. Rowe stated yes.

Keiser stated now the request is to expand the sales. He asked where the 150 sq. ft. space comes from. Rowe stated it is an estimate of the room size. She explained the room that would be used for the retail space.

Keiser stated currently she is allowed 1 sq. ft. for signage and the variance request is for significantly more. Rowe stated it is to ensure the customers are going to the right location to limit the traffic on Sunset and eliminate confusion. She stated she wants to limit confusion by having signage.

Brooks asked if this was granted and there was a business with an entrance off of Sunset would the E-911 require an address change. Saunders stated it is something she can bring up with that committee. Saunders clarified that she is asking for the variance under home occupation and not table of uses. Brooks stated it would make sense to give it its own address to allow for better traffic flow. Saunders explained some of the criteria that the E-911 committee adheres to for address purposes.

Fredette clarified the space the applicant would like to convert to the gift shop is currently residential space. Rowe stated yes. Fredette asked how large the gift shop area would be. Rowe stated the entire area of the in-law space is 800 sq. ft. Fredette stated that exceeds the allowed 300 sq. ft. Rowe stated nothing that would be used for business use would exceed 300 sq. ft. She explained the way the addition is laid out it is 800 sq. ft. she stated the business would be no more than 250 sq. ft. Fredette stated it would be hard to police sq. ft. once it is done.

Keiser closed the public hearing at 8:27.

Board discussion:

Keiser stated they can discuss the expansion of use first and then discuss the signage request.

Keiser stated as a home occupancy he does not have an issue. He stated in any R1 neighborhood they want to limit businesses. He stated some of the items could be considered accessory to the home occupation. He stated by adding signs and pulling people off the street it will still feel like a store front.

Fredette stated the historic doctor's office use is irrelevant at this time, but a residential office is different than what is being proposed here. He stated to him this would become a retail established regardless of the size. He stated his concern of if the business grows how much expansion becomes too much.

Donohue stated this use falls under the prohibited use of a gift shop but to him a gift shop is different than what is being proposed. He views gift shops differently than a shop that sells homemade products and feels the proposal is not contrary to the ordinance. He stated he does not think the character of the neighborhood would see a change. He stated he sees no health or safety concerns. He stated substantial justice would be done to allow a business/homeowner to slightly expand based on how the business has been described. He stated he does not think the surrounding properties would be diminished. He stated he thinks the property is unique based on the parking lot and the historic business use. He stated in regards to the sign he does have different feelings about and would be a different conversation.

Keiser stated from what he is hearing Donohue agrees with the request but that there needs to be restrictions on the use. Donohue stated that is where he is going.

Brooks stated there are a lot of what if questions. He stated looking at the ordinance there is criteria for a home occupation and would see value in looking through those as the board reviews the variance criteria. Keiser stated to be granted the home occupation they would have already met all of those criteria. Brooks stated traffic would be a concern but the applicant is not proposing to put in a storefront but to add extra products. He stated he has some reservations.

Fredette stated he looks at the size and magnitude of the signage leads him to see the goal is for this to be a retail operation. He stated adding products creates a retail store not a home occupation. He stated in an R1 district he thinks this is a difficult concept.

Routhier stated he understands a home occupation to be a small business with products produced on the premise. He stated being beyond items created on the premise it is a commercial activity which is prohibited. He stated if granted enforcement then becomes the issue.

Fredette stated another concern is the growth of the business and how it is enforced to remain in the parameters.

Keiser questioned which of the criteria the board felt the application did not meet.

Fredette stated he does not think creating this type of business is in line with the spirit of the ordinance. He stated the spirit of the ordinance exists to prevent retail establishments reselling in residential areas. He stated the house was also purchased recently and has not had a business for a very long time. He stated by the testimony all of that space has been converted to residential space. He stated he does not see a hardship and does not see that the property is unique in a way that would benefit the public to have retail located there. Fredette stated he does not think the property is unique enough to allow retail. He stated the property is in a very residential area.

Donohue stated the applicant has testified to only expect a couple of cars a day. He stated he would like to find a way to allow this use with conditions. He stated granting the variance would allow for a small business to grow in the City.

Fredette questioned how it would be enforced.

Keiser stated in review of the criteria, a retail front could diminish surrounding property values versus a home occupancy. He stated a home occupancy would not affect surrounding property values but something that is perceived as a retail front could. He stated he does not think it is contrary to the public interest. He stated he cannot

find a special condition of the property that makes it such that creates a hardship case. He stated it is in a R1 residential district and is not meant to have businesses in that zone, specifically retail business. He stated he also does not think it meets the spirit of the ordinance which is to keep retail out of residential districts. He stated it would do substantial justice to grant it but does not meet 3 of those 5 criteria.

MOTION: Fredette stated after review of the application, the file and all the information presented to the Board, I feel that the variance will have a negative effect on surrounding property values and there is no hardship per the discussion of the five criteria have **NOT** been satisfied and I move that the request of Home Made by Rivka, Rivka Rowe for a variance from Section 8.C.6 to allow retail space for a home occupation on a property located at 95 W. High Street **be DENIED.**

The MOTION is SECONDED by Routhier

The MOTION CARRIES by a 4-1 vote.

The board discussed the variance request for additional signage. Keiser suggested they see if the applicant is in favor of tabling the discussing so that she may return to discuss different sizing for the signage. The board was in favor of having that discussion with the applicant. Keiser clarified with the board that it was the consensus that with the proposal in front of them, they would not be in favor of the request. The board was in agreement that they would not support the variance, as submitted tonight.

Keiser explained to the applicant that per discussion of the board they would not support the proposal for larger signs for a home occupancy. He stated the applicant could request that the board table making a decision and come back another time with a different proposal. Rowe stated she would be open with further discussion at a later time.

MOTION: Routhier stated, after review of the application, the file and all the information presented to the Board, I move to **TABLE** the request of Home Made by Rivka, Rivka Rowe for a variance from Section 8.F.5 to allow additional signage for a home occupation on a property located at 95 W. High Street to allow the applicant to reconsider and revise the request per the discussion tonight.

The MOTION is SECONDED by Brooks.

The MOTION CARRIES by a 5-0 vote.

Keiser called for a 5 minute recess at 8:52 PM.

Keiser brought the meeting back to order at 8:57pm.

C) Mike Fischer, is seeking a variance from Table 4.A.1, footnote 2 to allow residential on the first floor on a property located at 253 Main Street, in the Business (B) District, Assessor's Map 09 Lot 227, ZBA#19-2019 PUBLIC HEARING

Keiser opened the public hearing at 8:57pm

Saunders stated she did not have additional information other than what was stated in the memo. She stated she has historical files if the board requires any of that information. She stated she researched the uses in the Business District. She stated that she did not have the corresponding zoning maps to assist in the research. So she is not sure this property falls under the historical zoning.

Fredette stated while reviewing the packet he saw a letter from a department in 1993 that the business use had been relinquished at that point and the structure was to be used as residential. Saunders stated it was a letter received by the assessor's office that was signed by the owner at the time that they would relinquish commercial/business use, only. She stated it is on City letter head and received by the assessor and expects it was for taxation purposes. She stated it does not have grounds in a zoning standpoint. Fredette asked if this letter allowed the applicant to use the building as a residential use on the first floor and if it would be a non-conforming use expansion. Saunders stated the letter does not change the zone of the building or allow for a use change that is not allowed by zoning today.

Applicant Statement: Michael Fischer attended the meeting as the applicant. Fischer stated he is the owner of 253 Main Street. He stated his request is for a variance to allow residential on the first floor in the Business Zone. He

stated it is currently a 2 unit duplex and would like it to continue as that. He stated he recently purchased the property and then became aware that the first floor living unit was not allowed. Fischer provided a brief history of the property. He stated the last commercial use was in 1987 and was converted to a studio apartment some time ago. He stated he intends to bring the unit up to meet current codes and add a bedroom. Fischer stated he understands the City wants to make the Main Street to Indigo Hill a thriving business district but he finds it is an extreme hardship to change his residential property to a business unit. He stated the conversion of an existing building to commercial use is a hardship. He stated the surrounding area is residential.

Fischer stated the home is similar to those in the surrounding neighborhood and would not diminish the property values. He stated nothing is being changed from appearance perspective and the historic character would not be changed. He stated he purchased the home in understanding it was a single family home and not a commercial space. He stated the surrounding area is primarily residential and the primary business block is a quarter of a mile away. He stated he is looking to make the studio a one bedroom apartment. He provided an engineered floor plan and informed the board there is a current tenant in the space. He stated he has a parking plan to support six spaces. He stated substantial justice would be done because he would be able to operate the building in the way that he believed it to be zoned when he purchased it.

Keiser opened for public comment.

No Public comment.

Fredette stated he had questions about the parking plan. He stated it appears there are two separate parcels that the parking plan covers. He stated to his understanding the required parking spaces for a residential unit must be on the same lot or require a variance to be approved. Fredette questioned if the applicant needs a variance for the parking requirement.

Fischer stated he has an alternate parking plan. He stated the back lot (257 Main St) has a shared driveway with this subject lot.

Saunders stated the applicant requires 4 parking spaces. Two can be in the parking lot and 2 could be in the driveway. She stated the rear lot would also require 2 spaces. She stated if it is a concern of the board it can be a condition in place by the board. She stated that staff could ensure the spaces exist before it was finalized for approval.

Routhier asked how many units on this property. Fischer stated there are two units, one up and one down. He stated a studio on the first floor and a three bedroom unit on the second floor.

Routhier questioned what exists on the first floor now. Fischer stated it is a studio apartment. Routhier asked what the size of that space is. Fischer stated that it is about 1,000 sq. ft. he stated the front is finished today and he is proposing to put a bedroom in the back. Fischer presented a floor plan to the board.

Keiser clarified the bedrooms that are being added to the first floor unit. Fischer stated he has a proposal for to convert existing storage area into two bedrooms.

Routhier asked how long the unit has been a residence. Fischer stated from his knowledge the late 1990s. Routhier questioned what the knowledge of that comes from. Fischer stated he had previously purchased the building in the early 2000s and then sold it. He stated the prior owner to himself at that time had been the one to convert it.

Routhier questioned if the applicant had researched how long the property had been taxed as a two unit. Fischer stated no. Routhier asked what other improvements will be done to the building. Fischer stated structural and cosmetic and would be adding the additional bedroom to the first floor unit.

The board held brief discussion of the zoning district for the lot that was adjacent to the applicant's lot.

Saunders stated another issue that had come up from the Code inspection was that the first floor unit did not meet life safety codes.

Fredette stated that the proposed second bedroom is underground. Fischer stated it is partially underground and there is room to put in a window. He stated he is looking to expand it to make it legal.

Keiser closed the public hearing at 9:20 PM.

Board Discussion:

Keiser stated it appears from the tax record that the City had knowledge of the 2 units. Saunders stated there is a clear separation between the assessing and code department. She stated the assessor’s policy, even if they find something that is non-conforming, do not necessarily ‘tattle tale’. She stated just because it is on the tax card does not mean it is legal.

Keiser asked if the City had researched how long this has been on the record. Saunders stated they have reviewed the files and in 2013 records refer to it as a 1 family home.

Routhier stated he felt this was different than the first application of the night. He stated there was a business there at one time. He stated according to the testimony it has been a residency for over 25 years and it would be hard to argue the City had no knowledge of the residential unit. Routhier stated this is also not new construction and is just asking to be renovated. He stated the parking appears that it is on two different lots and if approved there should be a condition that ensures the parking on the other lot stays accessible to these units. He stated the concept of turning this area of Main Street into residential he still advocates for but there should be conditions to this property regarding parking and life safety.

Saunders stated the property card in 2013 the property card lists it as a 1 family home.

Fredette asked if the parking area needed to receive approval as well to become legal. He suggested the application be tabled for more clarification on the parking.

Routhier stated they would not be approving the parking lot. He stated Planning Board would be the approving agent.

Keiser stated it could be sent to the Planning Board for further review and approval. He stated that if necessary they would need to come back for a variance for the parking area.

Saunders stated that the Planning Board did not have jurisdiction over duplex and single family homes. She stated it would more likely be review by the Planning Department.

The board held a brief discussion of the parking requirements and the parking plan.

Brooks stated it appears there is a lot to be sorted out that is not under the jurisdiction of the ZBA. He stated they are looking at a use variance and the other departments will address the other issues.

Brooks stated he is in the same opinion as he was for the first application of the night.

Fredette stated he supports approving this request. He stated there is not much else to be done with the property and it is already being used this way.

Keiser stated he is in support of this. He stated the hardship and uniqueness of this lot is that this property has had residential on the first floor. He stated it could be conceived that the letter in the file gave the permission to allow residential.

Routhier asked if this should be sent to the Planning Department for review of the parking and life safety. Saunders stated yes.

MOTION: Routhier stated after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because the discussion had, and I move that the request of Mike Fischer for a variance from Table 4.A.1, footnote 2 to allow residential on the first floor on a property located at 253 Main Street be **GRANTED WITH THE FOLLOWING CONDITIONS:**

- 1. Matter be referred to Department of Development Services to review parking complies; and
- 2. Life safety and code issues are addressed.

The MOTION is SECONDED by Brooks.

The MOTION CARRIES by a 5-0 vote.

D) Any other new business that may come before the Board.

- a. Keiser stated that he would like to propose that the Business District note 2 be reviewed and considered for amendments. Saunders stated she would review the ordinance and bring a proposal back to this board for review prior to discussion with the Planning Board.
- b. Saunders stated the court has made a decision on the Calef appeal of administrative decision. She explained that the ZBA's decision has been overturned. She explained that the decision is being further reviewed by the City's attorney for the next steps.
- c. Brooks noted that his name is not appearing on the website for the Zoning Board membership. Saunders stated she would address that.
- d. No other business before the board.

Brooks **MOVED** to **ADJOURN** the meeting. Donohue seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 9:35 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary