

## ZONING BOARD OF REVIEW STAFF REPORT

Tuesday, July 27, 2021 Meeting **6:00 PM**

Swift Gym, 121 Peirce Street

East Greenwich, RI 02818

1. **MMISAJK, Inc.** for property owned by **Kevin Pezzuco** and located at 431 Main Street; Map 075 A.P. 003 Lot 097 (Zoned Commercial Downtown – CD-1). The Applicant is seeking a Dimensional Variance under Chapter 260 of the Town Code, Zoning Ordinance; Article VI, Off-Street Parking Regulations, Section 260-20, Required Off-Street Parking Spaces. The Dimensional Variance is required because the Applicant seeks to convert and expand the existing 21 interior only seating capacity to a total of 42 seats exclusively for outdoor dining. There is insufficient on-site parking to accommodate the increased capacity and the Applicant is requesting 100 percent parking relief. **(Continued from the June 22, 2021 ZBR meeting.)**

**There have been no changes or modifications to the application. The following documents are in the ZBR packet:**

Exhibit A: Application Submission

Exhibit B: Affidavit of Mailing

Exhibit C: Clarification Letter, dated June 21, 2021

Exhibit D: Valet Agreement

Exhibit E: Parking Lease for 10 spaces at 333 Main Street

Exhibit F: Parking Lease for 15 Spaces at 205 Marlborough Street

Exhibit G: Conceptual Design of a Pergola (in lieu of tent)

Exhibit H: Letters of Support

Exhibit I: Letters of Objection

Exhibit J: Town Manager Supplemental Materials

Staff reached out to Jeff Cammans, property owner of the parking lot associated with 333 Main Street. Although many of the parking spots are “Pay In Advance Parking” Mr. Cammans was providing ten parking spaces in the back far left of the lot to Mr. Winpenny/The Patio. Mr. Cammans should testify there are a sufficient number of parking spaces to cover the needs of 333 Main Street before leasing 10 spaces.



**Figure 1** Highlighted ten parking spaces to be leased to 431 Main Street

Staff notes Exhibit F, 205 Marlborough Street (being 075-003-176) is a vacant lot, zoned Residential, R-6. The R-6 zoning district does not permit commercial parking lots. This document was originally submitted prior to the June 22<sup>nd</sup> ZBR meeting.

**APPLICANT:** MMISAJK, Inc.

**OWNER:** Kevin Pezzuco

**REQUEST:** Dimensional Variance from the Parking Ordinance.

**LOCATION:** 431 Main Street; Map 75 A.P. 3 Lot 97. The parcel is located at the corner of Main Street and Union Street and is within the downtown Historic District.

**PARCEL SIZE AND FRONTAGE:** The subject property is 5,325 square feet in size with 106.61' of frontage on Union Street and 50' of frontage on Main Street.

**EXISTING LAND USE:** The subject property is Commercial Restaurant being “The Patio.” Former tenants include Feast, Crosby’s Café, Angelina’s Deli, Pick Pockets Deli, Main Street Fish Market and Kent Auto & Glass.

**SURROUNDING LAND USE:** The subject parcel is part of the central business district. Properties on both sides of Main Street in this vicinity are predominantly commercial with some mixed-use residential included. Immediately south of the subject parcel is a major land redevelopment at 461 Main Street that calls for 15 new residential units along with redeveloped commercial space; this project has been properly vetted by the Planning Board and has begun construction. There is also the former Red Stripe Restaurant that is in transition to become the new “Union & Main” restaurant later this summer.

**EXISTING/SURROUNDING ZONING:** The subject property is zoned CD-1, Commercial Downtown. Properties along both sides of Main Street are zoned CD-1, Commercial Downtown. To the west parcels are zoned Residential, R-10.

**COMPREHENSIVE PLAN CONSISTENCY:** This property is shown as part of the Town’s Central Business District encouraging mixed use and pedestrian friendly scale.

**HISTORY:** The owners of The Patio restaurant were before the Town Council in November 2019 to obtain their alcoholic beverage and victualing licensing for the new establishment. Approval was granted based upon a hand drawn parking plan indicating seven (7) spaces and an interior seating plan for 21 seats. At the time Legal Counsel presumed the land use at the subject property had consistently been a restaurant type of establishment since at least 1986 thereby granting the Applicant the former 3:1 parking ratio. Given the Applicant had seven (7) parking spaces on-site and was requesting 21 indoor seats no zoning relief was necessary but the Town Council was clear that any future seating expansion would require Zoning Board and Town Council approval.

The Applicant submitted a zoning application for additional parking relief in June 2020 requesting to increase the seating capacity to 33 seats. Due to the ongoing COVID-19 pandemic which had adversely affected commerce, particularly the local restaurant and retail sectors, the E.G. Town Council approved several ordinances on July 13, 2020 which allowed parking requirement suspension in whole or in part for restaurants and retailers in connection with a duly-authorized temporary expansion of a restaurant service area. Additionally, restaurants located in Town were authorized to temporarily expand their service area into sidewalks and/or adjacent public or private areas (with conditions). With the adoption of the ordinances the Applicant no longer needed to obtain zoning relief and withdrew the ZBR application. The above-mentioned local ordinances to the Town Code expired on May 31, 2021, unless renewed by the Town Council in the same manner as the enactment of a new

ordinance. To date the Town Council has not enacted on extending or reinstating the ordinances. On June 15, 2021 Governor Dan McKee extended the State's Emergency Declaration of the state of emergency due to the dangers to health and life posed by COVID-19 to at least July 9, 2021 which will supersede the Town's local ordinances.

The following Ordinances were enacted last summer to support local businesses which The Patio has been operating under:

Chapter 15 of the Town Code, Alcoholic Beverages, Section 9 Temporary Expansion of Restaurant Service Area, reads as follows:

§ 15-9**Temporary expansion of restaurant service area.**

[Added 7-13-2020 by Ord. No. 895; amended 11-23-2020 by Ord. No. 900<sup>III</sup>]

**A.** Notwithstanding anything to the contrary in the Code, restaurants located in Town are authorized to temporarily expand their service areas into sidewalks and/or adjacent public or private areas, subject to the following conditions:

**(1)** Expansion must be pursuant to and in accordance with any executive orders issued by Governor Gina Raimondo, directives of the Rhode Island Department of Health, Department of Business Regulation, or any other state agency, including without limitation all of the rules set forth in the documents entitled "Phase I Guidelines for Restaurants" and "Phase I Non-Critical Retail Guidelines," available at [www.reopeningri.com](http://www.reopeningri.com).

**(2)** Expansion shall be strictly temporary and shall be permitted only so long as any executive orders, directives, and/or guidelines related to COVID-19 and social distancing are in effect. The Town reserves the right to take enforcement action with respect to licensing and/or zoning against any establishment that fails to restore the conditions of the premises to what was permitted before social distancing measures were required.

**(3)** Expansion must be administratively approved by the Town Manager and Building Official following submittal of the Town's "Outdoor Restaurant Temporary Seating Request" form and all required supporting documents or the Town's "Temporary Outdoor Retail Expansion Request" form and all required supporting documents as applicable.

**(4)** Where expansion into an adjacent area not owned by the Town is proposed, the applicant shall provide written authorization from the landowner.

**(5)** Before temporary expansion into a public area is authorized, the applicant shall provide proof of liability insurance from a company licensed to do business in the state and in a form satisfactory to the Town Solicitor, of no less than \$1,000,000 protecting the Town for all claims and causes of action for personal injury or property damage resulting from use of this license.

**(6)** All applicable life safety codes must be satisfied.

**(7)** Expansion shall not result in an increase in capacity beyond what is currently permitted.

(8) Hours of operation will be limited to 11:00 a.m. to 11:00 p.m., provided that the Town Manager may require an earlier closing time when restaurants are in close proximity to residential zoning districts.

(9) The applicant shall agree in writing that temporary authorization to expand shall not confer any vested rights to continue such expanded use after social distancing measures are no longer in effect.

(10) Appeals of approved or denied temporary expansion permits may be submitted to the East Greenwich Town Council.

[1] *Editor's Note: This ordinance provided that it would expire on 5-31-2021 unless renewed by the Town Council.*

#### Chapter 260 of the Zoning Ordinance, Article VI "Off-Street Parking Regulations," Section 19 Applicability:

(E) Parking requirements may be suspended in whole or in part for restaurants and retailers in connection with a duly-authorized temporary expansion of a restaurant service area as provided for in § 15-9.

[Added 7-13-2020 by Ord. No. 896; amended 11-23-2020 by Ord. No. 899<sup>[1]</sup>]

[1] *Editor's Note: This ordinance provided that it would expire on 5-31-2021 unless renewed by the Town Council.*

#### Chapter 260 of the Zoning Ordinance, Article XI "Historic Districts," Section 59 Applicability; Certificates Required:

(E) A certificate of appropriateness need not be obtained in connection with a duly-authorized temporary expansion of a restaurant service area as provided for in § 15-9, provided that no permanent structure or addition to the structure is erected, and further provided that no removal of existing structural elements or appurtenances shall be allowed.

[Added 7-13-2020 by Ord. No. 896; amended 11-23-2020 by Ord. No. 899<sup>[2]</sup>]

[2] *Editor's Note: This ordinance provided that it would expire on 5-31-2021 unless renewed by the Town Council.*

**COUNCIL ACTION:** Should the Zoning Board grant the necessary relief the Applicant must go back to the Town Council to have their license amended in order to increase the seating capacity.

**PROPOSAL:** The Applicant currently has local approval for a 21-seat indoor restaurant capacity based upon their seven on-site parking spaces. The Applicant seeks to increase the seating capacity, by doubling the number of seats from 21 to 42, exclusively for outdoor dining. Currently, the restaurant is temporarily allowed to have a 42-seat outdoor capacity due to applicable COVID-19 state executive orders which are set to expire with an anticipated date of on or around July 9, 2021. The Applicant has been operating with a 42 outdoor seat capacity under a tent where the majority of the on-site parking spaces are located for the past year. The petition requests to maintain the current outdoor operations as are in place now on a permanent basis. With having zero on-site parking (with the exception of the "Take-

Out” parking space) 100 percent relief from the Off-Street Parking Regulation, Section 260-20 is required. Having a seating capacity of 42 requires 14 parking spaces (based on the former grandfathered 3:1 parking ratio). The Applicant has not provided any information in regards to incorporating a parking lease agreement off-site and/or valet service.



Figure 2 Subject property, being 431 Main Street



Figure 3 Approved 30'x20' Temporary Outdoor Dining Tent located in the Front Parking Area

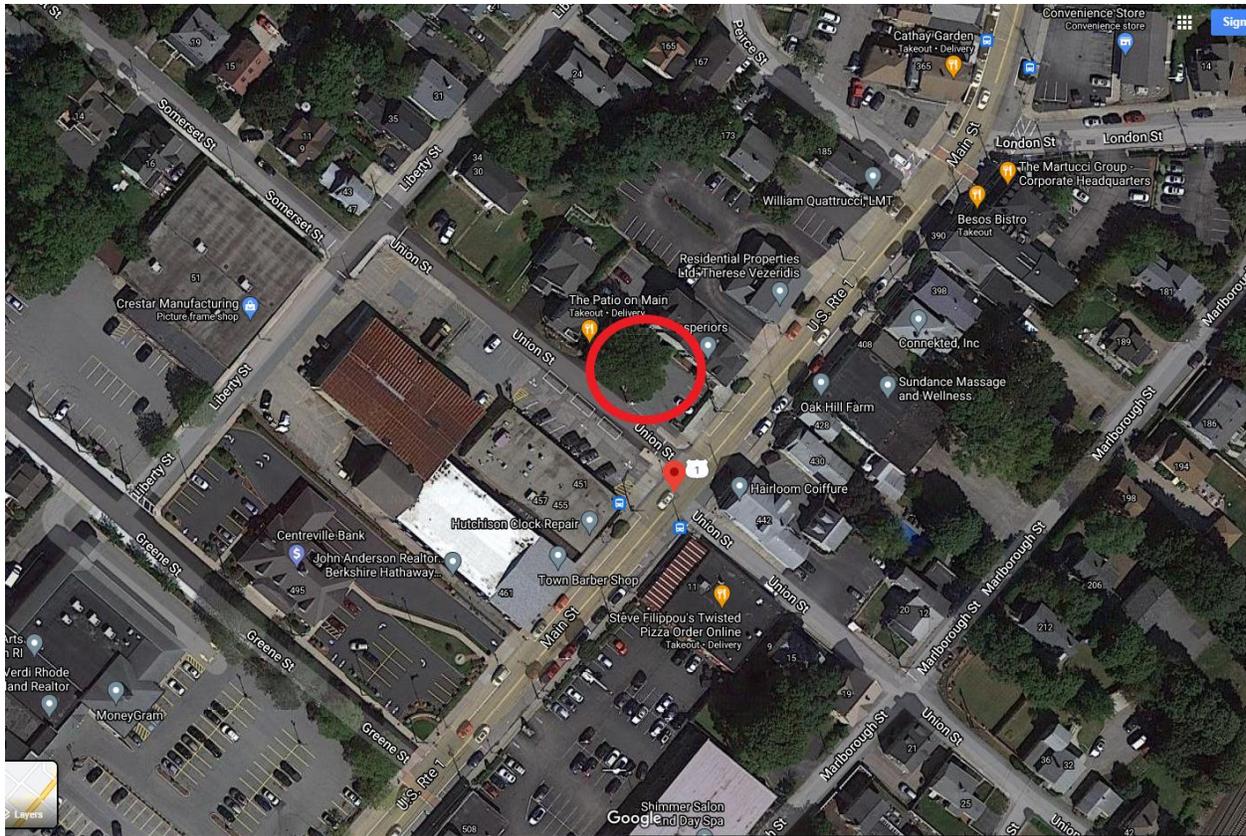


Figure 4 Aerial of The Patio restaurant

**ISSUES:** The idea of making a temporary structure permanent is not as easy as it sounds. There are existing building codes and ordinances that come into play which the Applicant must comply with. To begin, in order to make the 20'x30' tent permanent, the Applicant will need to seek approval from the State Building Code Commission of Appeals as the Town's Building Official can only issue permits for structures of less than 400 square feet and such permits shall be limited to remain in place for no longer than one year.

By making the current outdoor operations permanent the tent will need to comply with dimensional setback requirements. The front yard setback requirement in the Commercial Downtown Zone has a zero (0) setback and a ten (10) foot side setback. By all accounts it appears the tent will require side setback relief; Planning Staff will require a formal survey to determine the tent's compliance.

Additionally, by requesting permanency of the tent, the Applicant will require a Certificate of Appropriateness from the Historic District Commission.

**APPLICABLE REGULATIONS:** The following sections of the Zoning Ordinance are applicable to the application:

**ARTICLE VI, Off-Street Parking Regulations, Section 260-20 Required Off Street Parking Spaces (Table of Required Parking):**

**\*\*History of Section 260-20, Required Off-Street Parking Spaces as it Pertains to Restaurant Establishments\*\***

The Table of Required Parking has been amended twice since 1986, specific to a restaurant use. Prior to 1986 the parking ratio was 1 parking space for every (three) 3 persons of rated capacity. In 1986 the ordinance was amended to 1 space for every two (2) persons of total capacity plus one per employee per shift. In 1998 the ordinance was modified again to its current status of 1 parking space for every two (2) persons of rated capacity.

When the Applicant originally obtained their alcoholic beverage and victualing licensing for their new establishment in November 2019 the presumption was made the land use at the subject parcel has consistently been a restaurant type of establishment since at least 1986 thereby granting the Applicant the former 3:1 parking ratio. Given the Applicant had seven (7) parking spaces on-site and was requesting 21 indoor seats no zoning relief was necessary. **Requesting 42 outdoor seats will require 14 spaces (100 %) of relief.**

**RELEVANT STANDARDS:** In order to be granted a dimensional variance, the following must be met:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

**RECOMMENDATION:** The State of Rhode Island and the Town of East Greenwich relaxed certain restrictions over the last year to make temporary expansion accommodations in order to promote and encourage economic activity. Numerous restaurants in Town took advantage of the ability to have outdoor dining in their parking lots and sidewalks. Now that COVID-19 is on the decline, coupled with no restrictions for indoor dining and there being a sense of “normalcy” again, most of the temporary tents have already been removed. Although a customer might have found it to be a unique experience to have dinner wrapped in a blanket under a tent during the winter months Staff does not find the same customer to have the desire to re-experience that when there is an opportunity to visit a warm indoor restaurant. Therefore, Staff does not consider a tent to be the means a restaurant should operate moving forward but an inexpensive attempt to make a temporary situation permanent.

Staff points out the Applicant has done nothing on their own to carry their burden of the downtown parking situation. There has been no attempt to attain an off-site parking lease agreement or include a valet service during peak evening hours. Furthermore, The Patio also attracts a large lunch crowd, unlike the other local restaurants, whose customers compete for parking with the small daytime businesses along Main Street. The Planning Staff have received multiple complaints from local business owners, specifically regarding The Patio’s customers parking in private lots dedicated to other businesses. To date, Staff has received two submitted letters of objection from Mr. John Hutchinson, owner of Hutchinson Clock Repair, located at 457 Main Street, E.G., just south of the subject property and from Ms. Alison Nakowicz, owner of Hairloom Coiffure, located at 442 Main Street, E.G., directly across the street. (Copies of these letters are in the packet.)

Staff finds there to be no hardship to the Applicant if the relief is not granted. The Applicant leased the subject property knowing fully the existing site conditions, the small configuration of the structure, and the limited number of parking spaces on site and still opened The Patio with 21 indoor seats in November 2019 prior to the health pandemic. There have been numerous prior delis/restaurants that have ran an establishment from this building without seeking any dimensional relief.

Staff finds the requested relief is purely for financial gain as the Applicant is essentially attempting to expand the restaurant’s footprint in the most economic means possible. The Applicant has one of three options – 1. Seek a major reduction in the amount of relief – the proposed June 2020 plan had outdoor seats specifically on the concrete patio area while maintaining the six parking spaces; 2. Add a proper addition to accommodate additional seats or 2. Relocate by finding a larger location that can accommodate The Patio’s strong following.

Staff finds the requested variance will alter the general character of the surrounding area and will impair the intent and purpose of the Zoning Ordinance and Comprehensive Community Plan. Although the Applicant has operated outside for the last year it has not become status quo as the Applicant infers. The tent was temporary to help support the reopening of businesses; it is not normal to dine in a parking lot. Additionally a temporary tent cheapens and denigrates the historic district's atmosphere, is not compatible with the surrounding buildings and is not a positive investment in both facility and site aesthetics. Furthermore, Union Street is unique in that it is a 2-way street on the eastern half of the road but becomes a one-way and narrower section of road towards the residential side. This is coupled with two projects immediately located to the south, being 461 Main Street (15 new residential units along with redeveloped commercial space) along with the new "Union and Main" restaurant opening later this summer in the former Red Stripe location. The 461 Main Street project has fully complied with all aspects of the Planning Board vetting process while the new restaurant has established proper off-site lease agreements to accommodate their seating capacity. With there being zero on-site parking for The Patio, Staff has concerns regarding life safety and the public welfare, particularly about general circulation in the area. Once "Union and Main" opens for business this area will be very congested with additional vehicles and pedestrians. The Applicant has been very fortunate to have been located next to a vacant restaurant for the last year and used the next-door parking lot to their advantage.

Finally, the Applicant will not suffer a hardship beyond a mere inconvenience if not given the opportunity to use the existing outdoor space. The Applicant has approval to use the existing indoor dining area with a 21-seat capacity while allowing for 7 on-site parking spaces. The Applicant has every right to continue using the 21-seat indoor seat capacity while providing the 7 on-site parking spaces.

It is a fair assessment that a sense of "normalcy" has returned as restaurants and retailers are back to pre-covid levels. The Town Council has noted the importance of prioritizing a downtown parking study which will likely be considered for next year's (FY22/FY23) fiscal budget. Nevertheless the Board should not delay or postpone determining whether to grant the relief; Staff finds it quite clear any relief granted will negatively impact and exacerbate the current parking problem. Planning Staff cannot support the application as submitted.

2. **Robert Plain** for property located at 50 Vine Street; being Map 075 A.P. 003 Lot 221 (Zoned Residential, R-6). The Applicant seeks Dimensional Variances from Chapter 260 of the Town Code; Zoning Ordinance, Table 2 – Dimensional Regulations by Zone, specifically from the minimum lot size, front yard setback, and rear yard setback. Additionally, relief is required from Article III, Zoning Districts, Section 260-8 (A) General Regulations, Where residential structures are permitted, only one residential structure shall be located on a lot. Finally, relief is needed from Article V, Nonconforming Development, Section 26-14 (B) Nonconforming By Dimension. The Applicant seeks to demolish the existing garage/barn structure located on the eastern side of the property and construct a second residential dwelling on the parcel while also proposing side additions to the existing residence.

**APPLICANT/OWNER:** Robert Plain

**REQUEST:** Dimensional variances to construct a second residential dwelling on the parcel while also proposing side additions to the existing legally nonconforming residence.

**LOCATION:** 50 Vine Street; Map 75 A.P. 3 Lot 221 and located at the end of the dead-end street in the downtown historic district.

**PARCEL SIZE AND FRONTAGE:** The lot is 6,686 square feet in area with 131 feet of frontage on Vine Street.

**EXISTING LAND USE:** Single family residential.

**SURROUNDING LAND USE:** Generally a mix of single- and multi-family residential. Immediately adjacent to the east is the Amtrak rail line right of way. Immediately adjacent to the west is a three-unit condo complex set on a 15,000 square foot lot. Across Vine Street is another three-unit condo structure set on 12,300 square feet. Directly behind the parcel is the Bridge Street Condo development which consists of 8 units with garages on a 27,200 square foot lot.

**EXISTING/SURROUNDING ZONING:** R-6, Residential, a high-density zone with a 6,000 square foot lot size minimum for a one-family home and 10,000 square foot lot size minimum for two-family use. The frontage requirement is 60 feet for a single-family and 80 feet for a two-family dwelling. Single family residences as well as two-unit and multi-family housing are all allowed by right in this zone so long as the dimensional requirements are met.

**COMPREHENSIVE PLAN CONSISTENCY:** The subject parcel is shown in the Comprehensive Plan's Future Land Use Map as designated for high density residential use (up to 6 units per acre). The Comprehensive Plan and Zoning Ordinance provide for multi-family development in this zone. They also create provisions for accessory dwelling units in certain areas.

**COUNCIL ACTION:** None required.

**HISTORY:** The Applicant originally intended to proceed with the project by taking the Comprehensive Permit land development route (procedure for approval of construction of low/moderate income housing) in lieu of separate applications to the applicable local boards. If the applicant did proceed with the Comprehensive Permit, the subject proposal would not be required to obtain approvals for the new construction from the Historic District Commission even though the property is in the heart of the Harbor historic district. The Planning Board could require an advisory review, however, so that the Historic District Commission members might use their expertise to positively influence the design to ensure compatibility. Additionally, the project would equally not be subject to formal approval of variances by the Zoning Board of Review even though there are several dimensional variances that need to be incorporated into the project.

Mr. Plain presented the pre-application of a Comprehensive Permit proposal to the Planning Board on May 5, 2021 (May 5, 2021 PB minutes in packet). After the Planning Board meeting Mr. Plain reassessed his project and opted to not pursue the Comprehensive Permit means but to move the project forward as a conventional land development thus triggering HDC and ZBR approvals.

The Historic District Commission reviewed the conceptual plans on June 9, 2021. Mr. Matthew McGeorge, the project architect (and recused HDC member) explained the existing barn/garage is completely beyond repair, the roof is ready to collapse, and does not have any original historically significant timbers. He also pointed out the intent was to obtain the smallest footprint possible for a 2-car garage along with a 1-bedroom unit above. The Commission members appreciated the effort in minimizing the new construction's proportions and scale in an area of the historic district that is surrounded by large multi-unit dwellings. The Commission was very supportive of the project and conceptually approved the application as the siting, massing and scale was consistent with the average established structures in the historic district.

**PROPOSAL:** The Applicant has an existing 700 s.f. single family dwelling unit that sits on a 6,686 s.f. lot tucked at the dead-end of Vine Street being adjacent to the Amtrak rail line surrounded by a mix of single- and multi-family residential uses. Also on the parcel is an old garage which sits close to the east property line. The petition calls for several improvements and alterations to the property beginning with the demolition of the existing “garage/barn” which has been identified by the Applicant as containing a bathroom and kitchen, but none-the-less in complete disrepair. The demolition will make way for a new 24’x28’ detached structure to contain an accessory dwelling unit with a two-vehicle garage underneath. Additionally, the proposal includes a 6’x20.5’ addition on the west side and a 10’x12’ addition on the east side of the existing residence.

Specifically, the new construction is being sited in a rear northeast corner of the lot. A 20’ rear setback in this zone is required but the proposal calls for only a 5-foot setback. Additional relief is needed as the lot size required for two dwelling units here is 10,000 square feet (or 5,000 square feet per unit). The proposed addition on the west side of the existing house encroaches into the front 10’ setback by 2.6’ and where residential structures are permitted, only one residential structure shall be located on a lot. Finally, the existing residence is a legal nonconforming structure in terms of not meeting the front setback requirement; the addition to a nonconforming structure must comply with the dimensional regulations of the Zoning Ordinance.

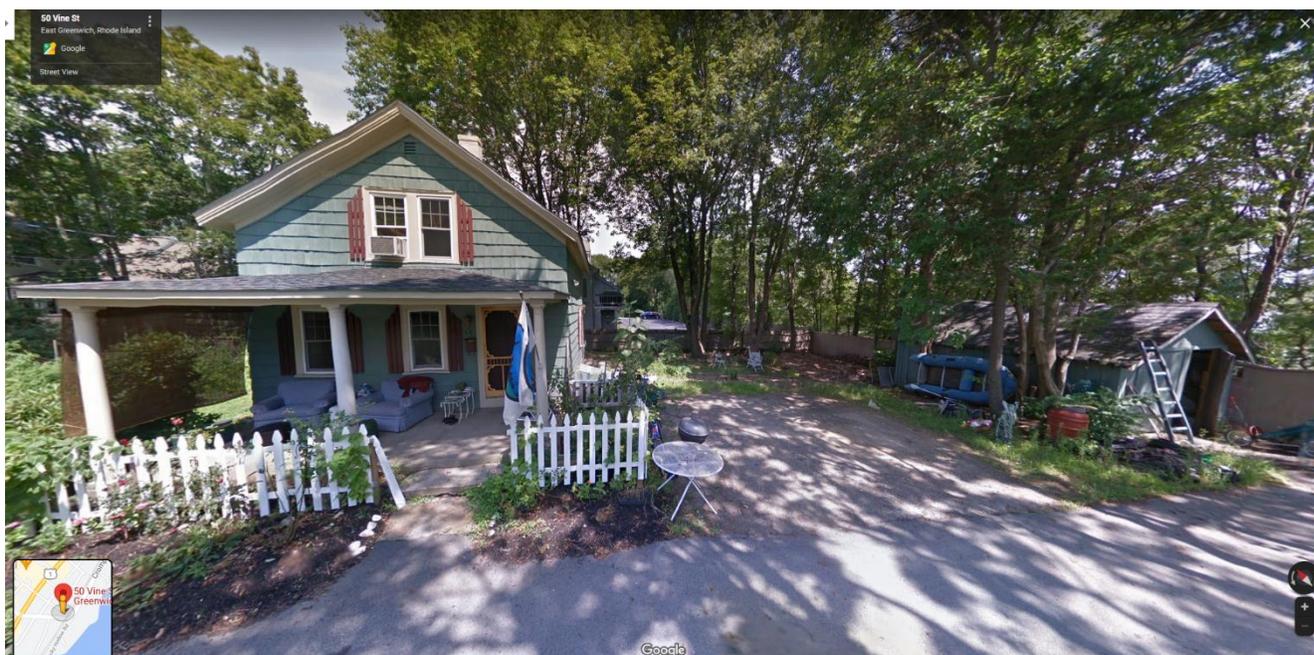


Figure 5 Subject property, being 50 Vine Street with Existing Garage located to the Right



Figure 6 East Elevatio



Figure 7 South Elevation



Figure 8 West Elevation



Figure 9 North Elevation



Figure 10 Aerial of Subject property

**APPLICABLE REGULATIONS:** Relief is needed from Chapter 260 of the Town Code; Zoning Ordinance, Table 2 – Dimensional Regulations by Zone which sets the minimum lot size, front and rear yard setbacks. A minimum lot size for a two-family dwelling in an R-6 zone is 10,000 square feet – **the subject parcel is only 6,686 s.f. in size therefore requires 3,314 s.f. of relief.**

The required front yard setback is ten (10) feet; the existing structure already extends into (and over) the front property line by +2.8' into the Town's right-of-way.

Considering the Applicant is not modifying any portion of the existing structure that extends into the ROW the Town Council will not have to become involved in any of the approval process. Should the plans change with a modification/intensification to the front porch, the Town Council will have to grant an easement to that section of the porch in the ROW.

Additionally, the west side addition on the existing residence will be 7.4' from the front property line where there is a 10' setback, therefore **the addition will require 2.6' of relief**. Furthermore, the new 24'x28' structure will be sited only 5' from the rear property line where a 20' rear yard setback is required; thus, the Applicant **requires 15' of relief**.

Relief is required from Article III, Zoning Districts, Section 260-8(A) which mandates where residential structures are permitted, only one residential structure shall be located on a lot. **The Applicant has requested the accessory dwelling unit with garage underneath be a stand-alone unit to maintain the mass and scale of the project as opposed to have the units physically connected.**

Finally, relief is requested from Section 260-14(B) which states any extension, addition or enlargement of a nonconforming structure shall comply with the dimensional regulations of the Zoning Ordinance. The Applicant intends to add onto the existing nonconforming residence which does not meet the front yard setback.

**RELEVANT STANDARDS:** In order to be granted a **Dimensional Variance**, the following must be met:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

**RECOMMENDATION:** Staff is not opposed to this layout, as we would note the dense urban fabric surrounding the site seems to be marked by accessory structures pushed behind homes and sitting in a back corner. The design seems to respect this vernacular and appears to aim for consistency with the character of the area. As noted above there are other multi-family dwellings on adjacent properties. The eight (8) units at the Bridge Street condominiums (immediately north of the subject parcel) represent a lot size per unit of 3,402 square feet while the Spring Run Condominiums, 3-unit complex, located at 51-55 Vine Street, immediately south of the subject parcel denotes 4,081 s.f./unit. The Harbour Court Condominiums, located north on Duke Street is a 16-unit development which represents 1,545 s.f./unit and 104 Duke Street has been a 5-family dwelling representing 1,403 s.f./unit. The proposal at hand, being two units on 6,686 square feet or 3,343 square feet per unit, is comparable to other nearby developments.

The Planning Department supports adding a dwelling unit at this site but must ensure that all technical concerns are addressed. This generally includes provision of adequate parking, grading and draining on-site, adequate emergency access and ensuring that there is no disruption of efficient and effective public services in the area. There was some concern from the DPW about adequate snow storage at the end of this dead-end street and also, from a public safety perspective, about protecting the grade at the railroad right of way as there is a significant drop-off to the train tracks. The applicant will work with the DPW to address these issues and have brainstormed the installation of guard rail or other protective device that might allow for more effective plowing. Staff would also note that property across the street from the subject location has a driveway as close as 6 feet from the eastern lot line and this has not seemed to cause snow loading conflicts in the past.

Staff finds the project fits the character of the district, will be a positive contribution to the neighborhood and overall improvement to the property. Although the application is a unique request as an accessory apartment there are many established duplexes and multifamily units in the vicinity. The front setback encroachment is fairly common in the historic district with most homes having been constructed before current zoning regulations took effect. Furthermore, the request for more than two residential structures on one lot is often granted in conjunction with multi-unit re-developments as was the case in the Cottages at 15 Castle Street in 2018. The proposal will be a vast improvement from a parking perspective as it will provide garage space for tenant's vehicles but also serve as a storage area for lawn and garden equipment, ladders, etc. which may allow for improved maintenance/upkeep of the yard as opposed to currently storing the equipment on the sides of the house. Once

the old garage/barn is demolished, Staff finds there will be adequate space for proper snow storage which will be further investigated as the project progresses. Overall the project parallels many goals that the Town has in regards to historic preservation and character, infill development, as well as constructing a diversity of housing opportunities which are affordable for various populations groups. Staff is in support of the application and finds the relief is due to the unique characteristics of the parcel and not the characteristics of the surrounding area and the project will not alter the general character of the area or impair the intent of the Zoning Ordinance or Comprehensive Community Plan.

3. **Tom and Kelly Clayton** for property owned by **Touchdown Realty Group, LLC** located at 104 Duke Street; being Map 085 A.P. 001 Lot 415 (Zoned Residential, R-6). The Applicant seeks Dimensional Variances from Chapter 260 of the Town Code; Zoning Ordinance, Table 2 – Dimensional Regulations by Zone, specifically from the minimum lot size, frontage, structure coverage, pavement coverage, front yard setback, and side yard setback. Additionally, the Applicant seeks relief from Article VI Off-Street Parking Regulations, Section 260-21(D) Parking Spaces not counted toward meeting the requirement, Section 260-23(A) Dimensional Regulations for Assess Driveway Width, Section 260-25(D) Parking Lot Landscaping - Required Setbacks/Buffers for Parking Areas. The Applicant is proposing to demolish the existing multi-family (5-unit) building and replace it with a new five (5) unit residential townhouse style structure to be located on the same footprint as the existing building.

**APPLICANT:** Tom and Kelly Clayton

**OWNER:** Touchdown Realty Group, LLC

**REQUEST:** Dimensional Variances to replace an existing 5-unit residential nonconforming structure with a new 5-unit residential townhouse structure to be located on the same footprint as the existing building.

**LOCATION:** 104 Duke Street; Map 85 AP 1 Lot 415. The subject property is in the downtown Historic District.

**PARCEL SIZE and FRONTAGE:** The subject parcel is 7,018 square feet in area with 97.87 feet of frontage on Queen Street and 87.83' of frontage along Duke Street, making it a corner lot.

**EXISTING LAND USE:** The property is currently vacant and has been for well over a year. Prior to being vacant it had been a multi-dwelling unit building with five (5) allowed units.

**SURROUNDING LAND USE:** Properties are predominantly residential with structures being single-family, two-family and multi-family units. The neighborhood east of Main Street approaching Greenwich Cove is the Town's most densely developed residential area. The neighborhood abuts the Amtrak rail line.

**EXISTING/SURROUNDING ZONING:** The west side of Marlborough Street to the railroad track for its entire length from Division Street to Rocky Hollow Road is generally zoned R-6 – “high density residential.”

**COMPREHENSIVE PLAN CONSISTENCY:** The Future Land Use Map of the Comprehensive Plan denotes this section of Queen Street as appropriate for “High Density Residential” development. This designation is defined as “roughly 6 dwelling units per acre.”

**HISTORY:** In 2002 the former owner, Bruce Ahmadjian, requested Zoning Board approval to allow commercial space to be converted to residential use and to allow construction of an additional of an additional second floor apartment at the rear of this multi-family residential property. A total of six dwelling units would exist upon project completion, requiring a lot size of 24,000 s.f. by ordinance, where just over 7,000 s.f. exist. The ZBR granted the request to convert the grocery store to a one-bedroom residential unit but denied the request to add another residential unit over the flat roofed rear ell. Therefore a total of five (5) legal residential dwelling units were allowed at this property.

At some point after this decision was made an illegal dwelling unit was added.

The former owner, Mr. Joseph Colaluca, secured ownership of the property in March 2019 and soon thereafter obtained building permits to install a new asphalt roof and interior demolition. Mr. Colaluca appeared before the Historic District Commission on February 12, 2020 and conceptually requested to rehabilitate the subject property. The petition called for extensive foundation repairs in order to prevent water infiltration into the building. A comprehensive all-encompassing first and second floor exterior wall re-framing project was required due to rot, fire damage, vehicle damage by the previous owner, not being plumb and square and lack of maintenance over the decades had brought it to this dire situation. The project called for dormer additions on the north and south sides of the building – a larger shed dormer on the south side and two smaller dormers on the north side. The dormers would allow for

sufficient head space in the third floor bathrooms while also allowing natural light in the top floor. The majority of the existing windows called for replacement due to excessive rot and poor energy efficiency. The only windows to remain were the four located in the enclosed north side porch. The intent is to use the Anderson 400 Series 6/6 to match the existing windows in configuration. The north and south third floor elevations have existing small vinyl sliding windows (2 on south elevation, 3 on north elevation) which would be removed and infilled per plans. The double hung windows on the east/west elevations of the third floor are in the evaluation stages of possibly being repaired.

The single story flat-roofed wing attached at the rear was also scoped to have the exterior walls and roof be demolished and replaced with new 2x6 framing and converted to a gable roof to match the 8:12 roof pitch and trim details as the 2 1/2 story section. Asphalt roof shingles will match that as on the main structure. New siding will include pre-primed cedar shakes with 6" to the weather and windows are to be Brosco wood windows 6/6 configuration. Generally speaking as much clapboard on the south and west elevations will be reused as possible after the exterior framing is repaired. All corner boards, bands, trim freeze boars, etc. will match the existing trim details. Due to a redesign in the interior apartment layout, the fire escapes can be eliminated from the exterior of the building. There are two chimneys within the building; the more central located chimney is being requested to be removed in order to allow for a new egress stair. All existing gutters and downspouts will be replaced with a new system. All gable vents will be repaired per code. All existing doors will be replaced with a classic solid 6 panel or 4-lite/4-panel door. Overall the Commission provided positive feedback and supported a complete renovation of the conceptual application. In fact when Mr. Colaluca questioned whether a complete demolition was a possibility a couple of Commission members asserted no.

Mr. Colaluca modified his request two (2) months later by returning to the Commission on May 13<sup>th</sup> requesting to demolish the subject structure. Mr. Colaluca explained how he had gone back and forth as how to renovate the building with restoration being the original route but he has found there are many issues with the property as he moves along. Mr. Colaluca stated there is no structural value remaining and he asserted he made an honest attempt to keep and restore the structure. He has been advised from his structural engineer the building is unsafe and should be knocked down. Mr. Bill Porter, of C.A. Pretzer, explained the north and south walls are currently not attached to foundations and are significantly bowed. The west wall is non-perpendicular to the north and south walls and not tied correctly to the floor diaphragms and the floor diaphragms are not framed in a way that they could adequately brace the wall. Additionally, the second floor has significant fire damage and will need to be replaced and the roof has raised collar ties on top of a

knee wall which has long term damage from loads rusting out, permanent creep damage in the rafters and studs. Mr. Porter noted the north and south walls will need to be completely replaced along with the roof rafters, the entire second floor, and a good portion of the third floor in order to adequately brace the western wall. He added the foundation may not be suitable for the structure so the scope of work will require removing walls and building a new foundation, building new walls while also building a new roof. The project will essentially be a rebuild if we are to “maintain” it according to Mr. Porter, noting there will be a very low percent of useful structure to be maintained. The Commission found the structure contributing to the significance of the district, and valuable for the period of the architecture it represents and to the district. The Commission also found the application submitted was complete.

The majority of the Commission members felt a site visit was in order for due diligence purposes. (Three of the six Commissioners, being Carron, Calise and Maxwell attended a site visit on Wednesday, May 20<sup>th</sup> at 12 pm.)

Mr. Colaluca returned to the Commission on June 10, 2020 for the second hearing of the demolition request. Commission members ultimately voted 3-1 for a complete demolition. After going through the demolition process the Applicant has reconsidered plans for the property again and would now like to make extensive repairs and an overall rehabilitation, similar to what was proposed back in February 2020. Once again the Applicant presented conceptual plans to the HDC on October 14, 2020. The architect for the rehabilitation project, RGB submitted a comprehensive summary of exterior façade work to be completed in phases. Phase One consists of work to be performed on the primary two and a half story section of the building while Phase Two is work to be done on the single-story section, being the later addition ell.

Again, much of the restoration was addressed in the original application back in February – there will be an extensive structural repair/replacement of the first-floor walls, replace in kind of the first floor exterior cladding and trim, all of the existing windows will be replaced in kind, existing shake siding and trim boards will be repaired as required, new exterior doors will be installed and the entire building will be painted. A new pitched roof on the one-story section of the building will replace the flat roof and all eaves and cornice details will be repaired on the high roof. The downspouts and gutters will be replaced in kind. Additionally, the fire escape will be removed just as the original proposal called for. In lieu of the shed dormers from the original application the proposal now calls for skylights and on-site parking to accommodate the four proposed residential units.

Upon Mr. Colaluca undertaking the restoration route he then obtained the necessary dimensional variances from the ZBR on October 27, 2020. In this application the intent was to reduce the number of units to a total of four and provide six off-street parking spaces. The Board voted 5 – 0 to approve the application (Decision in packet).



Figure 11 Subject property, being 104 Duke Street



Figure 12 North & West elevations of the subject property



Figure 13 Queen Street side of structure

**PROPOSAL:** Within months after Mr. Colaluca received all of the necessary approvals to rehabilitate the subject property he listed it for sale. Although Tom and Kelly Clayton also had the desire to restore this “diamond in the rough” property, upon their due diligence they found the subject property to be beyond repair based upon structural engineering reports and fire damage. They are requesting to demolish the existing five-unit structure and replace it with a new 5-unit townhouse style development which will require eight (8) on-site parking spaces. Each of the tri-level residential units will have two-bedrooms with 1.5 bathrooms along with a garage which counts as a parking space. Each of the unit’s main entry door will face Queen Street and have a welcoming portico while the garage will face north with vehicle access from Duke Street.

The northern portion of the site will contain three additional parking spaces as well as a landscaped area and an appropriate 6’x8’ trash enclosure within the building envelope.

The Historic District Commission has already granted the approval of the demolition request to the former owner and has granted conceptual approval of the Applicant’s 5-unit townhouse design on June 9, 2021. Staff points out that a legally nonconforming structure loses its nonconforming status if any structure is intentionally destroyed, altered or demolished. In this situation although the new construction will mostly be rebuilt on the existing building’s footprint with several encroachment issues to be improved, the project will still require new dimensional relief.

**APPLICABLE REGULATIONS:** Dimensional Variances from Chapter 260 of the Town Code; Zoning Ordinance, Table 2 – Dimensional Regulations by Zone, specifically from the following for a Multi-Family:

**Minimum Lot Size:** The Applicant has a 7,018 s.f. lot. An R-6 zone requires 4,000 s.f. of land area per dwelling unit (5 units require 20,000 s.f.). The proposal will result in 1,403 s.f. of land area with five units on the 7,018 s.f. lot.

**Minimum Frontage:** 100’ of frontage is required. The parcel has 97.87’ of frontage on Queen Street and 78.13’ of frontage on Duke Street for a contiguous frontage of 176 feet in length.

**Maximum Lot Coverage Structure** (Maximum of 30% or 2,105 s.f.): The renovated structure will be 2,847 s.f. or 40.6%. The Applicant **requires 10.6 percent relief.**

**Maximum Lot Coverage Pavement** (Maximum of 60% or 4,210 s.f.): The proposed project will contain 5,391 s.f. or 76.8%. The Applicant **requires 16.8 percent relief.**

**Front and Side Yard Setback is 10 feet.** The building will need 7' of relief from the Queen Street side front setback; 9 1/2' of relief from the Duke Street front setback and 7' of relief from the east side setback.

**Per Article VI Off-Street Parking Regulations, Section 260-21(D) Parking Spaces not counted toward meeting the requirement.** No part of a minimum front yard setback shall be used to satisfy off-street parking requirements. **Parking Space labeled #6 is entirely in the front yard setback.**

**Per Article VI Off-Street Parking Regulations, Section 260-23(A) Dimensional Regulations for Assess Driveway Width.** The proposed parking angle is at an 80-degree angle which mandates an access aisle driveway width of 25' – the plan shows a driveway of 24' maneuverability thus necessitating relief.

**Per Article VI Off-Street Parking Regulations, Sections 260-25(D)(2)** Parking lot side and rear setbacks shall meet the minimum setback requirements of Table 2 (Dimensional Regulations by Zone) – **therefore all three parking spaces along the north property line will require 10' of relief.**

**RELEVANT STANDARDS:** In order to be granted a dimensional variance, the following must be met:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

**RECOMMENDATION:** The Applicant is taking the risk of being able to rebuild five new units on the parcel technically sized and allowed by right for one single-family residential unit that has historically had five units. The 7,017 s.f. parcel which has always had a multi-family use associated with it will lose the nonconforming use

once the building is demolished; any new construction must comply with the current dimensional regulations as well as parking requirements. This was the exact reason why the previous owner chose to take the restoration route but found out it was not financially feasible in the long run. The proposal will maintain the existing density of five residential units, being extremely high for the lot, representing 1,403 s.f. per unit, but already located in a dense urban fabric with many multi-family uses surrounding the subject property. Staff points out the following comparable properties within one block, all being zoned R-6.

1. Subject property 104 Duke Street, 5 units on 7,017 s.f. (1,403 s.f./unit);
2. King's Court Condominiums built in 1989, 5 units on 7,970 s.f. (1,594 s.f./unit);
3. Harbour Court Condos built in 1985, located at 79 Duke Street, 16-units on 24,726 s.f. (1,545 s.f./unit);
4. 4 Exchange Street, c.1840, 4 units on 7,970 s.f. (1,992 s.f./unit).



Figure 14 Aerial of Multi-family units



Figure 15 38 Exchange Street, parcel directly to the north of 104 Duke Street



Figure 16 79 Duke Street Condominiums



Figure 17 King's Court Condominiums located on King, Duke and Exchange Streets

Staff was supportive of the previous zoning application for the subject property and is once again in favor of this application. Not only is the proposal a major improvement to the property and to the character of the neighborhood, the overall structural and aesthetic design is much improved, there will be garages to reduce the amount of impervious pavement, internal circulation is improved, and adheres more to the dimensional requirements than the previous proposal.

The HDC found the proposed project consistent with the character of the area in terms of scale, massing, and materials and considered the development no different than the King's Street Court Condos or the Duke Street Condos but with a better aesthetic.

Similar to the previous application, this request will also have to comply with all technical aspects, particularly to grading, draining on-site, adequate emergency access and ensuring that there is no disruption of efficient and effective public services in the area. Staff is certain Parking Space labeled #6 will not adequately function as noted on the plan and will have to be moved to a parallel position along the north property line (still within the north side setback). The Applicant will continue to work with Planning and DPW Staff to work out the technical details.

Should the Board approve the variances some conditions to be considered are the following:

1. The Applicant will submit an updated Land Survey by a Professional Registered Land Surveyor;
2. A Landscaping Plan will be submitted by a Professional Registered Landscape Architect for approval by the Planning Department and shall reflect an attempt to maximize screening of the new parking area along the north property line and provide further details of "Landscaped Areas" as shown on submitted plan;
3. The East Greenwich Department of Public Works shall review and approve final site plan engineering, especially as it pertains to grading and drainage, stormwater management, and erosion and sediment control.

4. **Thomas and Kelly Clayton** for property owned by **Touchdown Realty Group, LLC** and located at 11 Lion Street; Map 085 A.P. 001 Lot 395 (Zoned Residential, R-6). The Applicant seeks Dimensional Variances from Chapter 260 of the Town Code; Zoning Ordinance, Table 2 – Dimensional Regulations by Zone, specifically from minimum lot size, minimum frontage, maximum lot coverage structure, as well as front, side and rear yard setbacks. Additionally, relief is required from Article VI, Off-Street Parking Regulations, Section 260-20, Required Off-Street Parking Spaces, Section 260-21(D), Parking Spaces not Counted Toward Meeting the Requirement and Section 260-23(B) Design Standards, Vehicle Exiting of a Parking Area and Section 260-25 Parking Lot Landscaping. The Applicant seeks to convert the abandoned structure into a multi-family (4-unit) dwelling while providing three (3) parking spaces on-site and three (3) parking spaces off-site. The off-site parking spaces are to be located at 29 Lion Street (being Map 085 AP 001 Lot 133).

**APPLICANT:** Tom and Kelly Clayton

**OWNER:** Touchdown Realty Group, LLC

**REQUEST:** Ten Dimensional Variances to renovate an abandoned structure into a 4-unit dwelling while providing three (3) parking spaces on-site and three spaces off site.

**LOCATION:** 11 Lion Street; Map 85 A.P. 1 Lot 395 and located in the “Rope Walk Hill” section of the Historic Harbor District.

**PARCEL SIZE AND FRONTAGE:** The subject 4,142 square feet in area with 80.13 feet of frontage on Lion Street.

**EXISTING LAND USE:** The Town’s Building Official has deemed the use of the structure ABANDONED. This use was upheld in a ZBA Decision dated November 26, 2019. (Decision to be emailed).

**SURROUNDING LAND USE:** Surrounding properties are a mix of single-, two-, and multi-family dwellings.

**EXISTING/SURROUNDING ZONING:** Properties on both sides of Lion Street and in the general vicinity are zoned R-6, Residential at high density.



preexisting, nonconforming use while the Building Official deemed the use abandoned. E.G. Cove Builders appealed the decision to the Zoning Board of Appeals which was heard on November 26, 2019. The ZBA upheld the Building Official's decision in that the nonconforming use was abandoned. E.G. Cove Builders never attempted to obtain the necessary zoning variances for any residential use and instead used the structure for construction storage while building the 15 Castle Street development. In late 2020 and into February 2021 E.G. Cove Builders attempted to demolish 11 Lion Street but that request was withdrawn upon Touchdown Realty, LLC intervening with a Purchase & Sale for the property.



**Figure 19** Subject property, being 11 Lion Street

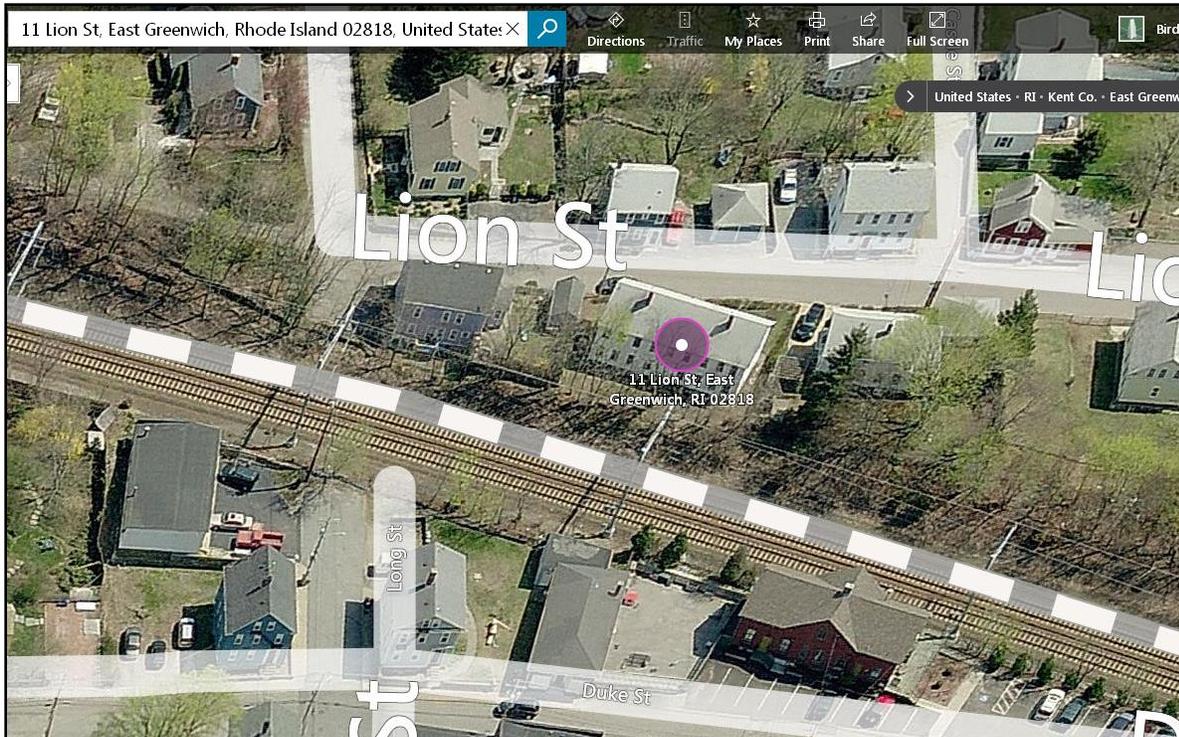


Figure 20 Aerial of 11 Lion Street

**PROPOSAL:** The Applicant first approached the Planning Staff with the idea of redeveloping the structure into a three (3) unit dwelling. Due to the undersized legal nonconforming parcel and inability to obtain a single-family dwelling by-right coupled with the incapability to provide adequate parking Staff was apprehensive about suggesting anything more than 2-residential dwelling units on the parcel. The flip side of the request was the Applicant having the desire to restore the historic structure while the former owner was aggressively attempting to demolish it. The Applicant originally submitted a ZBR application on May 14, 2021 to restore the building with three residential apartment units; within the last few months building materials have skyrocketed in cost with the Applicant implying the only means to recoup the financial restoration efforts is by way of requesting the structure become a four-unit residential dwelling.

The Applicant intends to perform a complete renovation and rehabilitation of 11 Lion Street while keeping the large structure mainly intact, with the exception of adding a large shed dormer to both the front and rear of the building for additional head space on the third floor. The intent is to repair/replace the wood clapboards, replace all of the deteriorated windows with 2/2 configured tru-divided lights as well as provide symmetrical fenestration to both sides of the building. The interior has already been removed to the studs with the purpose of creating a total of four units – two (2) two-bedroom units to occupy the first and second floors and two (2) one-bedroom units to reside on the third dormered floor.

The Applicant recently took ownership of 29 Lion Street, two parcels south of 11 Lion Street, which can also be described as a “diamond in the rough” restoration project. This property contains a 1,300 s.f. home that abuts the south side property line on a 6,342 s.f. parcel which leaves a fair amount of area for potential parking. The Applicant originally intended to provide five (5) parking spaces for three units at 11 Lion Street but upon acquiring 29 Lion Street has modified the plans to now offer three (3) onsite parking spaces at 11 Lion Street while providing an additional three parking spaces off-site at 29 Lion Street. A total of six (6) parking spaces are required for a four-unit dwelling.



**Figure 21 Proposed rendering of the 4-unit dwelling**

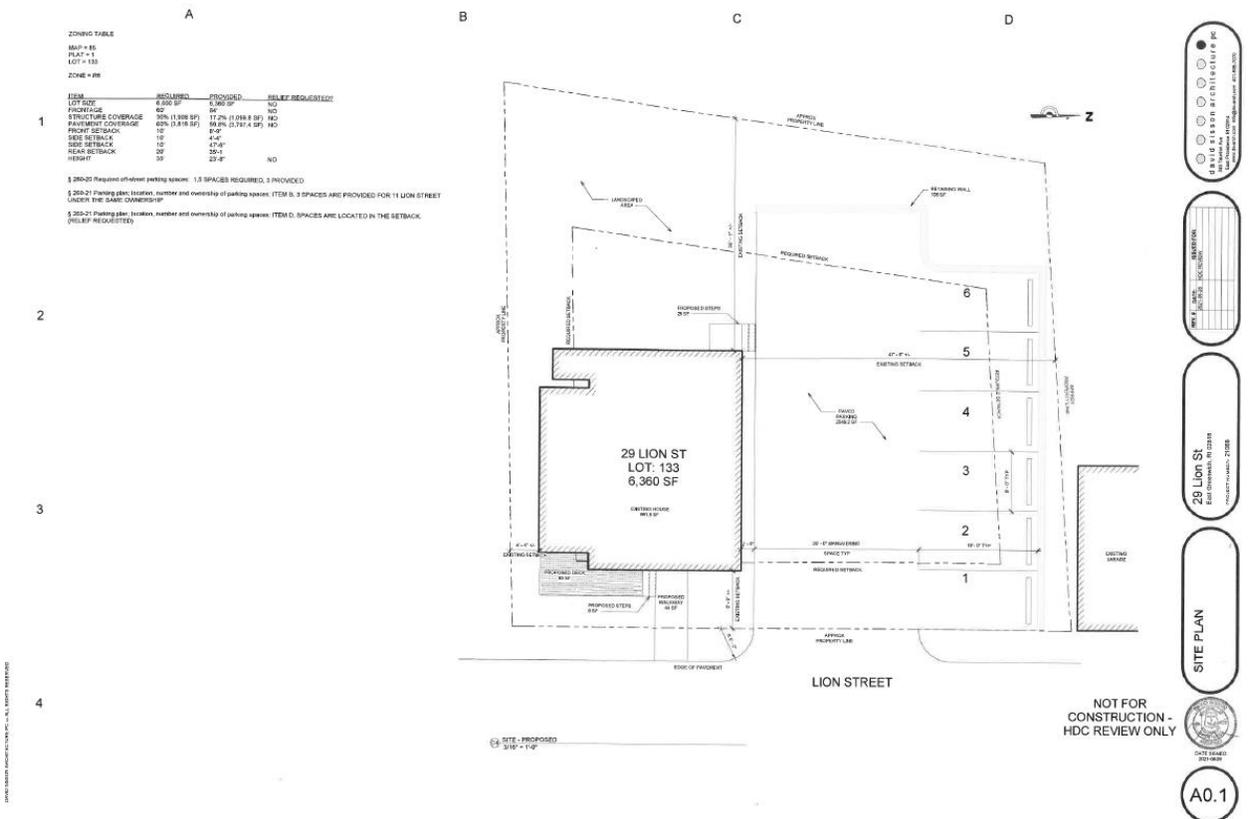


Figure 22 Preliminary survey of 29 Lion Street showing 6 parking spaces



Figure 23 Aerial of 11 Lion and 29 Lion Street

**APPLICABLE REGULATIONS:** Dimensional Variances from Chapter 260 of the Town Code; Zoning Ordinance, Table 2 – Dimensional Regulations by Zone, specifically from the following for a Multi-Family:

**Minimum Lot Size:** The Applicant has a 4,142 s.f. lot. An R-6 zone requires 4,000 s.f. of land per dwelling unit (4 units require 16,000 s.f.). The proposal will result in 1,035 square feet of land area per unit with four units on the 4,142 s.f. lot.

**Minimum Frontage:** 100' of frontage is required. The parcel has 80.15' of frontage on Lion Street and therefore **requires 19.85' of relief.**

**Maximum Lot Coverage Structure** (Maximum of 30% or 1,243 s.f.): The renovated structure will be 1,417 s.f. or 34.2%. The Applicant **requires 4.2 percent relief.**

**Front and Side Yard Setback is 10 feet.** The building will need 0.3' of relief from the Lion Street front setback; 2.3' of relief from the north side setback and 5.2' of relief from the south side setback.

**Rear Yard Setback is 20 feet.** At most the building will require 9.7' of relief from the rear yard setback at the southwest corner of the structure.

**Article 260-20, Required Off-Street Parking Spaces – Residential Dwelling Units** Require 1.5 parking spaces per dwelling unit. A total of 6 parking spaces are required for the redevelopment. While the Applicant has provided three parking spaces on site there is a preliminary request to provide 3 spaces at 29 Lion Street. Relief is being sought for 3 parking spaces in the meantime.

**Article VI Off-Street Parking Regulations, Section 260-21(D) Parking Spaces not counted toward meeting the requirement.** No part of a minimum front yard setback shall be used to satisfy off-street parking requirements. All three parking spaces provided are located in the front yard setback thus require relief.

**Per Article VI Off-Street Parking Regulations, Section 260-23(B) Exits.** The parking lot shall be designed so that no vehicle exiting the lot shall be required to back out in reverse from the parking area into any sidewalk or street. All three on-site parking spaces are designed for vehicles to exit in reverse.

**Per Article VI Off-Street Parking Regulations, Sections 260-25(D)(2)** Parking lot side and rear setbacks shall meet the minimum setback requirements of Table 2 (Dimensional Regulations by Zone) – the most southern located parking space is located in the south side 10’ setback.

**RELEVANT STANDARDS:** In order to be granted a dimensional variance, the following must be met:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

**RECOMMENDATION:** The property is extremely unique in that the 58'x24' structure sits on 4,142 s.f. legal nonconforming lot in an R-6 zoning district with multiple dimensional constraints fronting along a very narrow Lion Street. For well over a decade Planning Staff has been in support of a renovation of the historic structure with as minimal of residential units due to the amount of zoning relief required. Staff has consistently been supportive of two residential units and was willing to entertain the idea of three units at the property as the incentive of the restoration versus demolition weighed heavily on the outcome. Staff does not find the temporary high cost of building materials to be a strong reason why a fourth unit needs to be added to the project as economies can change quickly. On the flip side the fourth unit will not alter the exterior of the building and will only decrease the required number of parking spaces by one space. All of the other requested relief will remain the same.

Considering the residential use has been abandoned for decades and was used most recently as storage, from a zoning perspective Staff considers any reuse as “new construction” and must comply with the zoning ordinance. Although ten separate variances are necessary for this project to go forward, many are due to the existing legal nonconforming structure. There is no height relief as the structure will stand 28'-9” tall, well under the 35' maximum. Staff is in full support of the building being renovated and occupied as a residential dwelling although there are several concerns that should be pointed out.

Section 260-8(J) requires that waste receptacles be 30' from the nearest residence. The Applicant will have to work with Town Staff to propose a “dumpster” location that does not impede circulation, parking, or snow-loading and which is still easily accessible to all residents.

Staff is not comfortable with granting relief for six parking spaces of which three of those spaces are on 29 Lion Street that does not have an accurate land survey and are located in the side setback which necessitates relief as well. Additionally, should that relief be granted any parking spaces at 29 Lion Street dedicated to 11 Lion Street should have a devoted recorded long-term lease agreement. An abutting neighbor at 24 Lion Street also has concerns that their bedroom window directly faces the access/egress of the proposed shared parking area for 29 & 11 Lion Street. While this can possibly be mitigated by landscaping or a stone wall feature it is hard to access without a proper land survey.



Figure 24 View of proposed parking area from 24 Lion Street

The HDC reviewed the conceptual plan at their April 14, 2021 meeting and found the proposed project compatible with the surrounding buildings in size, scale and materials and siting as well as with the general character of the historic district.

Similar to the previous applications, this request will also have to comply with all technical aspects, particularly to grading, draining on-site, adequate emergency access and ensuring that there is no disruption of efficient and effective public services in the area. The Applicant will continue to work with Planning and DPW Staff to work out the technical details.

Should the Board approve the variances some conditions to be considered are the following:

1. The Applicant will submit an updated Land Survey by a Professional Registered Land Surveyor;

2. A Landscaping Plan will be submitted by a Professional Registered Landscape Architect for approval by the Planning Department and shall reflect an attempt to maximize screening and buffering along the north and south property lines;
3. The East Greenwich Department of Public Works shall review and approve final site plan engineering, especially as it pertains to grading and drainage, stormwater management, and erosion and sediment control.

### **Zoning Board of Review Business**

1. Minutes: Review/action on the following sets of minutes:
  - January 26, 2021
  - February 23, 2021
  - March 23, 2021
  - April 27, 2021 meeting
  - May 25, 2021
  - June 22, 2021