

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, June 4, 2018

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair
Joshua Gorman, Vice Chair
Sean Wallin
Michael Welsh

Staff Present:

Gary Schneider, Plans Examiner
John Rogers, Zoning Administrator

Members Not Present:

John Rab, Alternate
Jeffrey Stevens, Alternate
Louise Zerba, Alternate

I. Introduction of Board Members

Chair Stout called the meeting to order at 6:35 PM, introduced members of the Board and welcomed everyone to the meeting.

Chair Stout explained that the Board would consist of four members rather than five members and that it is the practice of the City to ask the applicant if four members would be appropriate.

II. Minutes of the Previous Meeting-May 2, 2018

Mr. Welsh noted a correction on page 8, second paragraph, first sentence, the word “defect” should be changed to “de facto”.

Chair Stout noted a correction on page 7, first paragraph, third sentence, the word “for” should be changed to “from”.

In addition, Chair Stout noted a correction on page 7, last paragraph, first sentence, the word “for” be removed from the sentence.

Mr. Welsh made a motion to accept the minutes from May 2, 2018 as amended. The motion was seconded by Mr. Gorman, which carried unanimously.

IV. Hearings

ZBA 18-09:/ Petitioner, Jim Phippard, of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests an Appeal of An Administrative Decision for property located at 83 Court St., Keene, and owned by John and Josephine Russell of 893 Old Walpole Rd., Surry, NH. The Zoning Administrator has ruled that a proposed wellness center is defined as a health and fitness center and is not a permitted use in the Office District per Section 102-602, Office District, Permitted Uses.

Chair Stout asked the applicant if they wished to proceed with a four member Board or postpone the hearing until the next meeting cycle. Mr. Phippard, of Brickstone Land Use Consultants, LLC, 185 Winchester Street, Keene, stated that he was representing the applicants. Speaking on behalf of the applicants, Mr. Phippard stated they wished to proceed with a four member Board.

Mr. Phippard began his presentation by explaining the applicants are proposing a wellness center at the former Red Cross building located at 83 Court Street. He explained the ruling by City staff was based on the findings that a wellness center best fits under the definition of a health and fitness center. Due to this ruling, the applicants have filed an Appeal of an Administrative Decision. Mr. Phippard referred to the definition of a health and fitness center according to the Zoning Ordinance. In addition, he referenced the zone change in a petition filed by the former Gold's Gym that requested to relocate to Bradford Street. He explained that when he filed the zoning amendment to allow the fitness center to relocate to the Industrial District, the Zoning Administrator recommended creating a definition that included all of the proposed activities and uses in this district. Mr. Phippard noted that he was the one who wrote the definition and attempted to include certain activities and uses. He read the definition of a health and fitness center from the Zoning Ordinance as follows, "*Health and fitness center means a business whose primary purpose is to conduct indoor and/or outdoor activities for members related to health, physical fitness, and exercise. Activities include, but are not limited to, weight training, circuit training, aerobic exercise, yoga, swimming, in-line skating, skate boarding, floor hockey, ice hockey, basketball, volleyball, dancing, batting cages, jogging, walking, climbing and biking*".

Mr. Phippard stated that he wanted to point out that all of these activities are for members. He explained that when people join the gym they pay a membership and come and go as they please. Mr. Phippard noted this was a big difference with the proposed wellness center. He stated the wellness center would consist of a group of offices and activity rooms. The activities would consist of massage therapy, Reiki, nutrition counseling, psychologists, psychiatrists, life style coaching, physical therapists, acupuncture, gym therapy, aromatherapy, yoga and fitness related exercises. Mr. Phippard noted the items in this list; each of them on their own could rent an office in the Office Zone and it would be a permitted use. He noted these activities and services are held by certified or licensed professionals. In addition, he explained that people could not just walk into the center and would need to have an appointment. He stated that interpreting this as a fitness center because it includes yoga and fitness training is an error. Mr. Phippard stated the nature of the business is primarily professional due to scheduled appointments and the type of activities provided.

Mr. Phippard explained that when the Office District was created years ago, a process that he was involved in, the City talked about allowing noncommercial offices. He explained this was primarily because the City wanted low intensity uses. Mr. Phippard noted the proposed application fits well under that intent. He stated that he understands the decision of City staff but feels their ruling is not proper in this case.

Vice Chair Gorman asked Mr. Phippard to further explain the intent of the Office District in terms of creating a buffer between the Central Business District and the intent for the Residential Use. Mr. Phippard replied that because this was an area that would transition from the busiest downtown area into the residential areas that surround Main Street, the discussion geared on what would happen if the area became business and offices. In addition, the City needed to determine the best way to limit the transition so as not to be intrusive or interfering with the privacy of the residents that abut the office buildings. Mr. Phippard noted there was a lot of discussion on this topic. The focus was on the large single family homes that people were trying to split into apartments or convert into business uses. He explained the idea was that it is much easier to control the impact of a professional noncommercial office due to scheduled appointments. Vice Chair Gorman asked, in Mr. Phippard's estimation, if the proposed group activities have any level of control if 12 people show up for a class. He noted that it seems that it could be fairly intense, given the limited parking in some of the office areas and has the potential to be contrary to the designated Office Zone. Mr. Phippard stated that the control would come from scheduled appointments and limited room size. He noted that a yoga class at the center would be held three times a week and the center would be available seven days a week.

Mr. Phippard stated the site does have 10 parking spaces and there is free parking on both sides of the street along Court Street. He stated that when he files applications of this nature, he drives the area during normal hours. Mr. Phippard reported that every day he's driven in the location of the proposed application, there has been available parking.

Mr. Phippard stated that he feels a wellness center is far less intensive compared to a health and fitness center. Vice Chair Gorman stated that in granting the use is to the property, not the owner and the future user may turn the whole property into an unlimited number of classes. Mr. Phippard stated the proposal is for a wellness center and not for a single yoga studio. He noted the idea of the wellness center is to look what can help the emotional and physical wellbeing for people.

Chair Stout explained to the audience that this is a review of an Administrative Decision and that the Board would not vote on the standard criteria for a Variance.

Chair Stout recognized Ed Snyder, 101 Court Street, Keene. Mr. Snyder stated that he recently purchased his home as a residence and that there are some restrictions where he cannot have a business in his home. Chair Stout noted that this was not a public hearing but allowed Mr. Snyder to continue with his comments. Mr. Snyder asked if there is a permitted use where the professionals in psychotherapy and yoga can only offer a certain amount of classes at a time. He referred to the free parking on Court Street, noting that this is a Residential area and may cause an issue. Mr. Snyder noted that he was not against the proposal but questioned the impact to the neighborhood.

John Rogers, Acting Health Director, stated he wrote the Administrative Decision after receiving a letter from the applicants. He stated that his interpretation was geared toward the use. Mr. Rogers said the use is not an office use as allowed in the Office District. Based on the letter submitted, the intensity could be almost anything and he based his decision on the intent of the Office Zone. Mr. Rogers read Section 102-601 from the Zoning Code as follows, *“The intent of the office (O) district is to provide for noncommercial offices within walking distance to the downtown. The uses are intended to be low intensity such as professional offices. This zone is intended also to serve as a buffer between the intense uses such as those in central business, central business limited, commerce zones, and residential areas”*.

Mr. Rogers stated that a health and fitness center is an allowed use in the Central Business District, Neighborhood Business District, Central Business Limited, Commerce District, the new Business Growth and Rezoning District and the Industrial District. He said the type of intensity of the proposed use within the Office District is encroaching into these zones. Mr. Rogers reported the letter he received spoke to a lot of different activities and time frame. The time frame he noted was 6:30AM until 9 PM. He explained this timeframe is reaching into commercial type time periods as compared to the intent of a noncommercial office. Mr. Rogers stated in his opinion more commercial activity would occur. He referred to the statement made by Mr. Phippard that if this was a single licensed yoga instructor that it would be an allowed permitted use in the Office Zone. He stated that he would disagree with this statement because a license from the state does not make it a professional office type use.

Chair Stout asked when the Board sees a wellness center, by definition, should it equate this to a health and fitness center. Mr. Rogers replied in the affirmative.

Chair Stout asked if Mr. Phippard had further comment. Mr. Phippard stated that the owner of the property, Josephine Russell wished to make a statement. Chair Stout asked if there was objection from the Board. With no objection, Chair Stout recognized Josephine Russell, of 893 Old Walpole Road, Surry. Ms. Russell stated that she has lived in the community for over 42 years and thanked the Board for their time. She stated that she has had the idea for a wellness center for many years. Ms. Russell stated that she wanted everyone in the City of Keene to be a healthier person in body and mind.

Ms. Russell stated that when she saw the Red Cross building for sale she thought this would be the perfect place for a wellness center. She noted that what the Red Cross did at the building was similar in a certain way to what she would like to do. Ms. Russell explained that the building has offices that could be used for Reiki, massage therapists, nutritional councilors and other kinds of therapy. She stated that the Red Cross used the community space for LNA trainings, CPR trainings and other trainings that were much bigger than what would be offered at the wellness center.

Ms. Russell reported the building needs a big uplift and cosmetic work. All of the floors need revamping and the walls need to be redone. She stated the basic structure is there and in place.

Ms. Russell referred to the statements made about the number of people at a time at the proposed center. She stated that the average proposed class would have eight students. Ms. Russell noted that this is not a high number compared to a class offered at a gym.

Ms. Russell asked the Board for time for her husband to speak. Chair Stout stated it is not the typical procedure and that further comments can be heard during the Variance which will be heard if the Appeal is denied. Mr. Russell stated that he could wait to speak as his wife's comments were stated very well.

Vice Chair Gorman asked City staff what zone the Red Cross was located in. Mr. Rogers replied that the property was a nonconforming use prior to the rezoning of the Office District. Chair Stout asked when was the Office District was created. Mr. Schneider replied this was done in the mid 1990's. Chair Stout asked if the property became nonconforming use after the rezoning. Mr. Rogers replied that it became a nonconforming use at that point in the Office District.

Mr. Phippard stated that he wanted to summarize their position. He stated that they were asking for the Board's help to define a wellness center and not looking for permission for a blanket use as a health and fitness center. Mr. Phippard noted this was the reason why they were very specific about the professions they want to occupy the building.

Chair Stout explained that if the Board votes in the negative, there is another Variance application for the same property. He noted this decision was to either affirm or deny the Administrative Decision.

Mr. Wallin made a motion to affirm the Administrative Decision. Mr. Welsh seconded the motion.

After a brief discussion among the Board members ensued, the Board agreed to withdraw the motion.

Mr. Wallin stated that he had no problem with the application but his concern was the intensity of the use and parking. Vice Chair Gorman stated that when he reads the definition of a wellness center it parallels with a health and fitness center. He stated that Ms. Russell's intentions are wonderful but from a definition standpoint the Administrative Decision was correct.

Mr. Welsh concurred with Vice Chair Gorman's statement. He stated that the proposed uses are things that he would like to see but an Appeal of an Administrative Decision is based on finding error. He noted that he does not find any error with the decision.

With a vote of 4-0, the Zoning Board of Adjustment voted against the request to overturn the Administrative Decision.

Mr. Welsh made a motion to deny the request of overturn to the Administrative Decision. The motion was seconded by Vice Chair Gorman.

With a vote of 4-0, the Zoning Board of Adjustment denied ZBA 18-09.

ZBA 18-10:/ Petitioner, Jim Phippard, of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests a Variance for property located at 83 Court St., Keene, and owned by John and Josephine Russell of 893 Old Walpole Rd., Surry, NH. The Petitioner requests a Variance to permit a Health and Fitness Center in an existing 3,962 square foot building (formerly the Red Cross) where Health and Fitness Center is not a permitted use in the Office District per Section 102-602, Office District, Permitted Uses.

Mr. Phippard stated that the applicants have requested to wait for a five member Board.

Mr. Phippard noted that 83 Court Street was not owned by John and Josephine Russell as stated in the agenda and is owned by the American National Red Cross.

Vice Chair Gorman made a motion to postpone ZBA 18-10 until July 2, 2018 at 6:30 PM. The motion was seconded by Mr. Welsh.

With a vote of 4-0, the Zoning Board of Adjustment agreed to postpone ZBA 18-10 until a five member Board is present.

ZBA 18-11:/ Petitioner, Jim Phippard, of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests a Variance for property located at 96 Dunbar St., Keene and owned by Dunbar Opportunity, LLC of 55 Main St., Keene. The Petitioner requests a Variance to permit self-storage units inside an existing warehouse building where a self-storage facility is not a permitted use in the Central Business District per Section 102-482, Central Business District, Permitted Uses.

Mr. Rogers indicated the location of the property was at the end Dunbar Street, which is a dead end street. He stated the property is currently a vacant warehouse which has been vacant for quite a long time. The property is located in the Central Business District. Mr. Schneider asked Mr. Phippard if the request was for the second floor of the building. Mr. Phippard replied the application was a portion of the ground floor and the second floor.

Vice Chair Gorman asked if the previous use as a warehouse was nonconforming. He also noted that the property is a defunct use because it has set longer than a year. In addition, Vice Chair Gorman asked if the application was for a warehouse use. Mr. Rogers replied the application is for a self-storage use with self-service use. Mr. Schneider stated that warehouse and self-storage units are separately defined uses in the Zoning Code.

Chair Stout recognized Jim Phippard of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene. He stated that he is representing Knotty Pine Antiques and filed an application for a Variance to allow self-storage inside the building. The building was built in 1875 and was used as a manufacturing and storage facility. Over the years it became a warehouse for several different businesses and there is still storage in the building today. He noted there are several different entities that use the building for storage. The businesses are the

Salvation Army, D.A. Brothers Construction, CFX Bank, Private Label Bottles, Toy City, Linda's Closet, and Senator Jay Kahn.

Mr. Phippard provided the Board with a picture of how the building exists on the property. He noted the parking area in the front of the building and a strip of land on the east side of the building is part of the property. The building footprint is approximately 6,300 square feet and is a two story building with a total of 12,655 square feet of floor space. The primary use will become Knotty Pine Antiques, which City staff has determined is a permitted use. Mr. Phippard reported the applicant will have storage and auctions at the property.

Mr. Phippard reviewed the criteria for a Variance.

Granting the Variance would not be contrary to the public interest because:

Mr. Phippard stated the storage area would be caged areas inside the building in units that are different sizes. The sizes could be as narrow as 5 feet x 10 feet and 30 feet x 30 feet in order to meet market needs. Mr. Phippard noted that he has been working on a lot of storage buildings in the area due to market demand. He stated the proposal is to use approximately 4,900 square feet on the ground floor of the building for his auction business, 1,800 square feet on the ground floor and the entire second floor, 5,955 square feet for inside self-storage units. He stated there is no outside storage proposed. Mr. Phippard said granting the Variance will allow the owner to fully utilize the second floor of this large warehouse building with a low intensity use. Mr. Phippard noted that is in the public interest to allow vacant buildings to be re-purposed with a low intensity use. The vacant building will be renovated, brought up to current building code standards, and the property value will be improved. In addition, he noted that the building is badly in need of help.

If the variance were granted, the spirit of the ordinance would be observed because:

Mr. Phippard stated the property is located in the Central Business District and this district is intended to allow mixed uses in a manner which does not create a public hazard or threaten public welfare. The repurposing and renovating of a vacant warehouse building as proposed will improve the appearance of the building and add to the property value. The self-storage units will be inside and on the second floor of the building and will not be visible from the outside. Mr. Phippard stated this is a low intensity use which will not add significant traffic and will not create noise or obnoxious fumes. He said granting the Variance will allow the property to be used in a manner similar to the previous uses on the property. Mr. Phippard stated that it will not result in public hazard or diminish public safety, and therefore, observes the spirit of the ordinance. Mr. Phippard reported they looked at the Institute of Transportation of Engineers Trip Generation Manual and based on the square footage and number of units they predict the average trips per day would be 27 vehicles. He noted this was between 7 AM until 9 PM. During the peak hour time, 7AM-9AM there would be two vehicle trips and during the night peak hours 6PM-8PM there would be four vehicle trips. He noted these numbers are based on national studies. In addition, Mr. Phippard reported that he spoke with Dave Thomas and Bob Furlong who own storage units in the area that have gated control. He explained that every time the gate is opened it is registered. Mr. Phippard stated that these storage owner numbers are half of what the ITE Manual predicts. He noted based on these reports the use is a very low traffic generator.

Granting the variance would do substantial justice because:

Mr. Phippard stated granting the Variance will do substantial justice because it will allow the building to be repurposed, renovated and brought up to current building code standards. It will improve the building appearance and it will not result in a hazard or threat to public safety. In addition, he said that it will not diminish surrounding property values.

If the variance were granted, the values of the surrounding properties would not be diminished because:

Mr. Phippard stated the existing building has been vacant for many years and has become run down. He said granting the Variance will allow the owner to renovate the building and bring it up to current building codes. Mr. Phippard provided the Board with a picture of the building to demonstrate the large window openings on the second floor. He noted that all of the window opening will be enclosed. Mr. Phippard said approving the Variance will not result in a threat to public safety or be a nuisance to vehicles and pedestrians. It will repurpose an empty building and greatly improve the property value.

Unnecessary Hardship

A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:*

Mr. Phippard said the existing building is a 12,655 square feet, two story warehouse which was built in 1875. The building has been vacant for many years and has become run down. It is not insulated and is out of date with the current building codes. Mr. Phippard stated that this creates a special condition for this property which severely limits the feasibility of renovating and repurposing of the building. He stated self-storage units inside the building allow the owner a use which makes it feasible to save the building and bring it up to the current building code. Granting the Variance to allow self-storage will result in improving the property with no negative impact to public safety or public welfare. Mr. Phippard stated that it is not fair or reasonable to deny the Variance in this case when there is no public benefit and no threat to public safety or welfare. Mr. Phippard reported the owner of the property is a Realtor, Mitch Greenwald. He reported that Mr. Greenwald could not make the property work after several attempts and that the building sits and continues to deteriorate. Mr. Phippard stated that John Pappas, the owner of Knotty Pine Antiques has a use that can work. He concluded stating that denial of the Variance would result in an unnecessary hardship in this case.

ii. *The proposed use is a reasonable one because:*

Mr. Phippard stated that self-storage is a low intensity use and will not generate significant traffic. It will be located inside the building and will not be visible from surrounding properties.

He stated granting the Variance will allow the building to be saved. It will improve the property value and will not result in a threat to public safety or diminish surrounding property values. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Phippard said the existing building is a 12,655 square feet, two story warehouse which was built in 1875. The building has been vacant for many years and has become run down. He stated that the building is not insulated and is out of date with the current building codes. Mr. Phippard explained that based on this information it creates a special condition for this property which severely limits the feasibility of renovating and repurposing the building. He stated that self-storage units inside the building allow the owner a use which makes it feasible to save the building.

Mr. Welsh referred to the existing use as a storage facility is that used by local various businesses. He asked if these businesses pay. Mr. Phippard replied in the affirmative. Mr. Welsh stated that it has an existing use as a storage facility. Mr. Phippard replied this was probably not a legal use and that people who knew Mr. Greenwald asked to use the facility as storage. Mr. Welsh referred to incidental warehousing and asked if the capacity to store a client's goods on site before going to auction is part of the auction's business model. Mr. Phippard replied in the affirmative. He explained that auctions would occur once a month and during that time period between auctions the owner would be acquiring different lots of good. These goods would then be stored in the facility until the next auction.

Vice Chair Gorman asked when speaking to the intensity of storage units, if Mr. Phippard had any data that storage units located directly above a storage house have an increase in intensity. He noted that it seems to him that someone that is participating in providing the auction house with sellable goods from their storage unit may promote an increase in activity, as opposed to a home owner storing their unwanted goods. Vice Chair Gorman asked if his interpretation was correct. Mr. Phippard said there is no intensity with a storage facility but that Vice Chair Gorman had a good idea. Chair Stout asked if there would be off-the-street retail sales. Mr. Phippard replied there would be none. Chair Stout asked if the number of storage units was known. Mr. Phippard replied the last layout he saw indicated that there would be 91 units that varied in size. Chair Stout asked the size of the average unit. Mr. Phippard replied the units varied in size from 5 feet x 5 feet to 30 feet x 30feet. Chair Stout asked if there are designated parking areas at the property. Mr. Phippard replied there are 35 onsite marked parking spaces. He noted that some of the designated spaces would be for handicap and employee parking.

Mr. Wallin asked if the hardship is cost effectiveness. Mr. Phippard replied it is the physical condition of the property that makes it unmarketable in the Central Business District.

Chair Stout asked Mr. Phippard to refer to his map to designate the first floor that is affected by the Variance. In addition, he asked if City staff has given Variances by floors. Mr. Rogers stated that the Board could condition the Variance.

Chair Stout stated that he thought the Board was hearing a Variance for the upper floor and not the entire building. Mr. Phippard stated the Variance is for the self-storage and that it is up to the Board to act on exactly what the applicant requests. He noted that the proposal for square footage is appropriate and that the applicant would need to come back before the Board for the remaining area, for a request to enlarge a non-conforming use. Chair Stout recommended conditions should include the square footage requested and outline the majority of that storage that would be on the second floor. Mr. Rogers explained that it is up to the Board to make the conditions, if any at all.

Mr. Phippard explained that the proposal was to take out all windows on the second floor so there will be artificial light and that it would make sense to convert this building to a different use under these circumstances. He stated that the owner should not be prohibited from changing the auction gallery to another permitted use in the Central Business District. He agreed that it makes sense to limit the square footage dedicated to self-storage. Chair Stout stated that 1,800 square feet on the northwest side of the lower floor and 5,955 square feet on the second floor would be the condition.

Mr. Schneider stated that by placing a condition that is specific, the applicant would be limited to making any changes. He noted the applicant could make changes as long as the applicant was compliant with square footages. Vice Chair Gorman would agree with Mr. Schneider in the fact that if the numbers are the same he finds the location of where the owner wants to auction his goods fairly arbitrary. Mr. Rogers stated at this point in time any change of use occurring would cause the applicant to go before the Planning Board.

Chair Stout welcomed public comment. With no comment, Chair Stout closed the public hearing.

The Board reviewed the criteria for a Variance.

Granting the Variance would not be contrary to the public interest because:

Chair Stout stated there isn't anything with the proposal that is contrary to public interest. He stated that he personally believes these improvements would not only help the building, it would also help the neighborhood. Vice Chair Gorman stated he would agree with Chair Stout. He noted the blight of the building is contrary and to turn it around could benefit public interest. Mr. Welsh stated that if public interest is defined by the existing zoning and its approval, people that live downtown could possibly use a facility of this nature. He stated that this creates an interest in facilities and at some point in the future it is worth reconsidering the need for a Variance for self-storage.

If the variance were granted, the spirit of the ordinance would be observed because:

Chair Stout cited the intention of Central Business listed in section 102.41 of the Zoning Code. It reads as follows, *"The intent of the central business (CB) district is to be the center or hub of the community. The zone provides commercial, financial, retail, government and multifamily uses oriented primarily toward pedestrian access. A mixture of uses side by side and in the same*

structure is to be encouraged'. Chair Stout stated he thinks the proposal falls in line with what is expressed.

Granting the variance would do substantial justice because:

Chair Stout stated that given the history of the property and making good use of a building in this condition, is a question of justice for the owner of the property.

If the variance were granted, the values of the surrounding properties would not be diminished because:

Vice Chair Gorman stated that it was fairly obvious that it would help the surrounding properties. Chair Stout stated that he would concur.

Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:*

Chair Stout stated that in his view there is no substantial or fair relationship between the public purposes of the Ordinance provision and the specific application. Mr. Wallin stated that any business that goes into the building will have to do repair and does not consider this a hardship. In addition, he stated that cost effectiveness for a business model is not considered a hardship.

Vice Chair Gorman stated that the financial aspect is not a hardship and agreed with Mr. Wallin that the cost effectiveness is not considered a hardship. Vice Chair Gorman also stated that it's important to note that there is already an allowed use for the property and that the applicant is taking advantage that use with the auction house. Vice Chair Gorman stated to say that it is a hardship that the petitioner cannot have a storage facility as well as a use that benefits the community. In addition, he stated that having two uses for a property is not necessarily a given and is rare. In this case, he stated the hardship is that the petitioner cannot have a second use for the property.

Mr. Welsh referred to his statements about incidental warehousing and that there is a second use being proposed for a portion of the building. He stated that this does strike him that it is a complimentary use as far as the owner goes and for the people that utilize the storage. Mr. Welsh stated that it seems to even some degree, with the spirit of ordinance. He said as far as cost of renovation that seeks to utilize the structure, he is fairly convinced that the people have explored those ideas in the past and come up wanting for reconfigurations. Therefore, he stated that it seems like an opportunity out of that hardship.

Chair Stout stated that he questions the viability of a building that is half operating and is convinced that any other use for the property is not likely to come up. Based on those two factors

together, Chair Stout stated that it would be a hardship in the expectation that only part of the building is used. Vice Chair Gorman stated the fact that the petitioner is choosing to use half building for the allowable use is certainly their choice. He stated that people cannot make choices to create hardships. Vice Chair Gorman asked if the Central Business District was the most relaxed commercial zone. Mr. Rogers replied that the Central Business District has the largest number of mixed uses.

ii. The proposed use is a reasonable one because:

Chair Stout stated that incidental warehousing is allowed in this district and that he does not see any glaring difference between what might be perceived as incidental. He stated that he sees a direct relationship that is quite refined and that the storage being proposed would be reasonable. Mr. Wallin stated that he could see incidental warehousing as a hardship if there was no warehousing to store products for a business. He noted that the petitioner is storing products for a profit. Mr. Rogers stated there are incidental and accessory use. He stated that incidental use is something that can occur on the property that is not necessarily tied to the primary uses. Mr. Rogers explained that with the accessory use is directly used for the permitted use.

Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Vice Chair Gorman stated that he believes in driving through that area of town, that the existing building is in contrast to the surrounding buildings. He stated that he thinks this is a reasonable use and a good thing for the City and the applicant. Vice Chair Gorman stated that the fact remains there is an empty blighted building in the City, for over a decade, that no one has found to use. He noted that this could be considered a hardship. Mr. Wallin stated that, in his opinion, the applicant could put more conforming uses in the building and put more conforming uses and not just storage.

With no further comment, Chair Stout asked for a motion.

Vice Chair Gorman made a motion to approve ZBA 18-11 to allow a 7,555 square foot self-storage facility and to place a condition to stay within the existing building footprint. The motion was seconded by Mr. Welsh.

The Board reviewed the Findings of Fact.

Granting the Variance would not be contrary to the public interest because: Granted- 4-0

If the variance were granted, the spirit of the ordinance would be observed. Granted 3-1, Mr. Wallin opposed

Granting the Variance would do substantial justice. Granted 4-0

If the Variance were granted, the values of the surrounding properties would not be diminished. Granted 4-0

Unnecessary Hardship –

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship.

i. No fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property.

Denied by a tie, 2-2, vote; Vice Chair Gorman and Mr. Wallin oppose

ii. The proposed use is a reasonable one. Granted 3-1, Mr. Wallin opposed

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. Granted 3-1, Mr. Wallin opposed

With a vote of 3-1, the Zoning Board of Adjustment approved ZBA 18-11 to allow a 7,555 square foot self-storage facility and to place a condition to stay within the existing building footprint. Mr. Wallin voted in opposition.

V. New Business:

Mr. Rogers reported that the Planning staff will present information on the City's Land Use Code Project. City staff will be providing general updates on the project to City Council at its first meetings in July, September and November. The Board will be asked to participate in these workshops and a date for the workshop has yet to be determined.

Chair Stout asked if there was an update on new Board members. Mr. Rogers replied that he will set-up a meeting with the Mayor to discuss and report back to Board at the next meeting.

VII. Adjournment

Mr. Wallin made a motion to adjourn the meeting, which was seconded by Vice Chair Gorman and carried unanimously. Hearing no further business, Chair Stout adjourned the meeting at 8:34 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker