

**Jorge O. Elorza**  
Mayor

**Marc Greenfield**  
Chair



## **Zoning Board of Review**

### **RESOLUTION NO. 2022-21**

October 27, 2022

**FILED**  
**2022 OCT 28 A 11:37**  
**DEPT. OF CITY CLERK**  
**PROVIDENCE, R.I.**

IN RE: Application for Dimensional Variances  
(Minimum Lot Area Per Dwelling Unit; Lot Width)

PROPERTY: Tax Assessor's Plat 28, Lot 260  
215 Broadway  
(R-P Residential-Professional and Historic Overlay Zoning Districts)

OWNER/  
APPLICANT: Mr. Aref Shehadeh  
81 Gentian Avenue  
Providence, RI 02908

COUNSEL: Dylan Conley, Esq.  
123 Dyer Street, 2<sup>nd</sup> Fl.  
Providence, RI 02903

On September 14, 2022, the within matter came before the Zoning Board of Review (the "Board") for a duly noticed public hearing on the request by the Owner and Applicant (the "Applicant") for a dimensional variance at the above-designated Property. The following members of the Board were present throughout the hearing: Chair Greenfield, Ms. Maniotes, Ms. Rodriguez, Mr. Mitchell, and Mr. Scott. Mr. Wolf and Mr. Strother were absent.

WHEREAS, the Applicant sought dimensional relief from Section 402, Table 4-1 of the Providence Zoning Ordinance of November 24, 2014, as amended (the "Ordinance") with respect to the number of dwelling units allowed for lot area and lot width; and

WHEREAS, prior to the hearing, the members of the Board individually made inspections of the Property and of the surrounding neighborhood; and

WHEREAS, Attorney Dylan Conley presented the Application and the testimony of the Mr. Aref Shehadeh, the Owner/Applicant; and

WHEREAS, on June 9, 2021 the Board heard requests for a greater degree of dimensional relief at this property and denied those requests;<sup>1</sup> and

WHEREAS, the Board heard no public comment for or against the application; and

WHEREAS, the Board received, and the Chair read into the record, the September 14, 2022 recommendation of the Department of Planning and Development (“DPD”) recommending approval of the requests for dimensional relief.

NOW, THEREFORE, after consideration of the application, the testimony, Exhibit 1,<sup>2</sup> and all the evidence of record, upon motion by Mr. Mitchell, seconded by Ms. Rodriguez, the Board voted unanimously (5-0) to find that the doctrine of Administrative Finality does not bar the application from being heard by the Board; and, upon motion by Mr. Scott, seconded by Mr. Mitchell, the Board voted unanimously (5-0) to APPROVE the application for dimensional variances.

**THE BOARD HEREBY MAKES THE FOLLOWING  
FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The Applicant filed a prior application for dimensional variances to the required lot area and lot width for 12 residential units, which was heard by the Board on May 12, 2021. Prior to a vote, the Applicant withdrew the application.
2. The Applicant filed a second application for dimensional variances to the required lot area and lot width for 10 residential units, which was heard by the Board on June 9, 2021. The Board did not consider the testimony from May 12, 2021 and considered the second application de novo. The Board denied the request heard on June 9, 2021 pursuant to a vote of three members in favor, two against.
3. The Property, located in an R-P Residential-Professional Zoning District and HD Historic Overlay Zoning District, consists of a lot of 9,200 square feet, improved with a structure with a footprint of 2,458 square feet. The historic Victorian structure has three floors above grade, totaling 6,040 gross square feet. The basement has approximately 2,175 gross square feet. The current legal use of the Property is 5 dwelling units on the second and third floors, and 2 law offices on the first floor.<sup>3</sup>

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<sup>1</sup> See ZBR Resolution No. 2021-23.

<sup>2</sup> Exhibit 1 is a letter from Douglas Jeffrey, a real estate broker for the Property, regarding unsuccessful efforts to market the Property’s vacant first floor offices since July 1, 2021.

<sup>3</sup> The previous applications inaccurately reflected that the legal use of the Property is seven apartments and law office(s). Two basement apartments were constructed by the prior owner without building permits or certificates of occupancy, rendering those apartments and their use illegal. The current application does not include basement units, and there was testimony that the illegal units had been removed.

4. The Applicant purchased the Property on December 24, 2020, and the instant (third) application proposes to convert the structure to a fully residential property with 8 dwelling units by converting the law offices on the first floor to 3 dwelling units. The upper two floors are to remain the same with the 5 existing dwelling units. The proposed use is permitted in the R-P Zone.
5. The Board finds that the instant application is not barred by the doctrine of administrative finality because the request for dimensional relief is significantly different based on revised plans for 8 units instead of 10 units, requiring less per unit dimensional relief, and no longer seeking relief from parking requirements.
6. Section 402, Table 4-1 of the Ordinance provides that multi-family dwellings in the R-P zone require 1,650 square feet of land area per dwelling unit. The lot area is 9,200 square feet, which would permit 5.5 dwelling units. The Applicant proposes 8 dwelling units, which would require a lot area of 13,200 square feet. The Applicant seeks relief from 4,000 square feet for the additional 2.5 dwelling units.<sup>4</sup>
7. Section 402, Table 4-1 of the Ordinance requires 12 feet of lot width per dwelling unit. The Property is 90.23 feet wide. Eight (8) dwelling units would require a lot width of 96 feet. The Applicant seeks relief for 5.77 feet in lot width. This amount of relief is within 10% of the lot width requirement, qualifying it to be granted via the administrative modification process set forth in Section 1903 of the Ordinance.
8. The Board finds that the Applicant seeks relief based on the unique characteristics of the Property and not due to the general characteristics of the neighborhood, specifically the relationship between the size of the lot and that of the structure, and the height of the first floor entrance above the right of way (nine steps from the sidewalk, without a ramp or viable alternative ingress or egress) which results in difficulty achieving the standards for accessibility often required for non-residential uses. There was no claim or evidence presented that the relief sought is due to a physical or economic disability of the Applicant.
9. The Board finds that the hardship is not the result of any prior action of the Applicant, who bought the Property in its current condition.
10. The Board finds that the granting of the dimensional variance will not alter the general character of the surrounding area or impair the intent or purposes of the Ordinance or the Comprehensive Plan. The DPD indicated that the use of the structure for residences is appropriate and that the Comprehensive Plan identifies its general location as one for increased growth or density. The Board and agrees with and incorporates the recommendation of the DPD.

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<sup>4</sup> There is an inconsistency within the application. Item 3 of the application and the DPD recommendation indicate the total lot area is 9,200 square feet. Item 12 of the application states the Property has 9,045 square feet and that the Applicant requires relief of 4,155 square feet.

11. The Board finds that the proposed conversion to 8 one- and two-bedroom dwelling units of average size for the area does not result primarily from the desire of the Applicant to realize greater financial gain. The Board accepts the testimony of the Applicant and the letter from Mr. Jeffrey that the existing offices were marketed for lease for over a year without success. It appears that the Applicant is seeking reasonable enjoyment and beneficial use of the Property by utilizing the three above-grade floors for appropriately marketable residential units, and the plans proposed allow for the use of the first floor with a layout that reflects that of the second floor above.
12. The Board finds that the request represents the least relief necessary for reasonable enjoyment of the Property for a legally permitted use, accepting the Applicant's testimony that eight is the least number of units needed in order for remediation of the commercial space not to be cost prohibitive, and would, if denied, amount to more than a mere inconvenience, due to the longstanding vacancies on the first floor not for lack of effort.

WHEREFORE, upon motion by Mr. Mitchell, seconded by Ms. Rodriguez, the Board voted unanimously (5-0) to find that the doctrine of administrative finality does not bar the application from being heard by the Board; and, upon motion by Mr. Scott, seconded by Mr. Mitchell, the Board voted unanimously (5-0) to APPROVE the application for dimensional variances.

By Order of the Zoning Board of Review.

  
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MARC GREENFIELD  
CHAIR

**NOTICE TO OWNERS/APPLICANTS:**

- A** SECTION 1901/1902 OF THE ORDINANCE REQUIRES THAT ANY VARIANCE OR SPECIAL USE PERMIT GRANTED BY THE BOARD SHALL EXPIRE SIX MONTHS AFTER THE DATE OF THE FILING OF THE RESOLUTION IN THE OFFICE OF THE BOARD UNLESS THE APPLICANT SHALL, WITHIN THE SIX MONTHS, OBTAIN A LEGAL, COMPLETE BUILDING PERMIT AND PROCEED WITH CONSTRUCTION; IF NO CONSTRUCTION IS REQUIRED, THE APPLICANT SHALL OBTAIN A LEGAL BUILDING PERMIT FOR THE USE, OR A CERTIFICATE OF OCCUPANCY. DEMOLITION AND FOUNDATION PERMITS ARE NOT BUILDING PERMITS FOR PURPOSES OF THIS REQUIREMENT. NO PERMIT OR CERTIFICATE OF OCCUPANCY WILL ISSUE UNTIL THE OWNER AND/OR ITS REPRESENTATIVE COMPLIES WITH PARAGRAPH B BELOW.

- B. THE ORIGINAL RESOLUTION IS ON FILE IN THE OFFICE OF THE ZONING BOARD OF REVIEW. THE OWNER OR THEIR REPRESENTATIVE MUST OBTAIN THE ORIGINAL RESOLUTION FROM SAID OFFICE, RECORD THE RESOLUTION IN THE CITY'S LAND EVIDENCE RECORDS, AND PROVIDE COPIES OF THE RECORDED RESOLUTION TO BOTH THE OFFICE OF THE ZONING BOARD OF REVIEW AND THE DEPARTMENT OF INSPECTION AND STANDARDS.

MOTION TO FIND THAT THE INSTANT APPLICATION IS NOT BARRED BY THE DOCTRINE OF ADMINISTRATIVE FINALITY:

MADE BY: Mitchell  
SECONDED BY: Rodriguez  
MEMBERS VOTING IN FAVOR: Mitchell, Rodriguez, Maniotes, Scott, Greenfield  
MEMBERS VOTING AGAINST: None

MOTION TO APPROVE THE APPLICATION FOR DIMENSIONAL VARIANCES:

MADE BY: Scott  
SECONDED BY: Mitchell  
MEMBERS VOTING IN FAVOR: Scott, Mitchell, Rodriguez, Maniotes, Greenfield  
MEMBERS VOTING AGAINST: None