

**TOWN OF FRANKLIN
ZONING BOARD OF APPEALS
Municipal Building
355 East Central Street
Franklin, MA 02038
508-520-4926
ZBA APPLICATION FORM
GENERAL INFORMATION**

The undersigned hereby petitions the Zoning Board of Appeals for the following:

Special Permit: X Variance: X Appeal:

PETITIONER: **Dean Development Partners LLC**

PETITIONER's ADDRESS: **55 West Central Street, Franklin, MA 02038**

LOCATION OF PROPERTY **19 Dean Avenue, Franklin, MA 02038**

TYPE OF OCCUPANCY: **Currently, Retail and Office Use; Proposed Multi-unit Mixed Use
(an allowed use within the Property's
Downtown Commercial Zoning
District)**

ASSESSORS MAP & PARCEL: 279-169

REASON FOR PETITION:

<u> </u> Additions	<u> X </u> New Structure
<u> X </u> Change in Use/Occupancy	<u> X </u> Parking
<u> X </u> Conversion to Add'l Dwelling Unit's	<u> </u> Sign
<u> </u> Dormer	<u> </u> Subdivision

 Other: Relief from Height limitations, Parking Requirements,

DESCRIPTION OF PETITIONER'S PROPOSAL:

The building currently on the site is a retail and office building built in 1900, lying within the Downtown Commercial Zoning District. It contains two floors (5,454 of finished space) and an unfinished attic and basement built on a 0.088 acre parcel of land (per the tax assessor's property card).

Dean Development Partners LLC (the "**Developer**"), the current owner of the Property, wishes to redevelop the Property by demolishing the existing building thereon but keeping for the most part the existing foundation and constructing a four-story, 16 unit (located on all floors) residential apartment or condominium building, with one retail space on the on the rear garden level.

By this Application, the Developer seeks special permits, variances and/or such other relief as this Board deems appropriate under the Franklin Zoning Code as a preliminary step before applying to the Planning Board of the Town for site plan relief.

SECTIONS OF ZONING ORDINANCE CITED:

**Article V Section 185- 18(A)(3) and
Attachment 9**

**Special Permit or Variance to Allow up to 50' Height on
Bldg. in Downtown Commercial District.**

Article V Section 185-18(A)(3)

**Special Permit to Demolish and Redevelop Prior, Non-
Conforming Bldg. on Prior, Non-Conforming Lot**

**Article IV, Section 185-10 and
Attachment 9, Footnote 9**

**Special Permit or Variance to Waive Requirement for
15 Foot Front Setback on Bldg. between 40 and 50 feet in
height in Downtown Commercial District**

**Article III Section 185-7, Attachment 7,
Section 6.1, Footnote 5**

**Special Permit or Variance to Allow 16 Residential Units
Built above Garden level commercial unit, one half-story
above street level,**

Article V, Section 185-21

**Variance or Other Relief to Continue to Allow Bldg.
Usage without Dedicated Off-Street Parking**

**Article V, Section 185-18(A)(3),
Attachment 9**

**Variance, Special Permit or Other Relief to Reduce
Rear Setback from prescribed minimum 15 feet in
Downtown Commercial District to 1.2 feet, which is a
larger setback than the current prior, non-conforming
0.8 foot setback**

In addition, upon the Zoning Board of Appeals grant of the relief requested herein, the Applicant shall seek a Special Permit from the Franklin Planning Board at Site Plan Approval Stage under Article III, Section 185-7, Attachment 7, Footnote 6 of the Zoning Code (per guidance at Footnote 6) to allow more than 1 residential unit per 2,000 square foot lot in Downtown Commercial District

Applicants for a Variance must complete Pages 1-5

Applicants for a Special Permit must complete Pages 1-4 and 6

Applicants for an Appeal to the ZBA pursuant to Zoning Bylaw section 185-45(D) must attach a statement concerning the reasons for the appeal.

Original Signature(s): **DEAN DEVELOPMENT PARTNERS LLC**

(Petitioner(s)/Owner)

By: 

Marc Fantasia, Manager, duly-authorized
55 West Central Street, Franklin, MA 02038
Telephone: (617) 929-7271
E-Mail: mf@redbrickco.com

Date:

**TOWN OF FRANKLIN
ZONING BOARD OF APPEALS
Municipal Building
355 East Central Street
Franklin, MA 02038
508-520-4926
ZBA APPLICATION FORM
DIMENSIONAL INFORMATION**

APPLICANT: **DEAN DEVELOPMENT PARTNERS LLC**

PRESENT USE/OCCUPANCY: **RETAIL AND OFFICE USE**

LOCATION: **19 DEAN AVENUE, FRANKLIN, MA** ZONE: **DOWNTOWN COMMERCIAL (DC)**

PHONE: **DEAN DEVELOPMENT PARTNERS LLC**
Attn. Marc Fantasia, Manager (617) 909- 7271; mf@redbrickco.com

Applicant's
Counsel: **MADOFF & KHOURY LLP**
Attn: Michael Khoury, Esq.
124 Washington St, Suite 202
Foxborough, MA 02035
Tel: (508) 543-0040
Fax: (508) 543-0020
Email: khoury@mandkllp.com

REQUESTED USE/OCCUPANCY: **Multi-Family, Mixed Use (16 residential condominium units and 1 retail space at garden level)**

	<u>EXISTING CONDITIONS</u>	<u>REQUESTED CONDITIONS</u>	<u>ORDINANCE REQUIREMENTS</u>
<u>Lot Area:</u>	3,433sq feet	3,433 sq. feet (No Change)	5,000 sq. feet (min) (pre-existing, non-conforming)
<u>Continuous Frontage:</u>	74 feet	74 feet (No Change)	50 feet (min) (fully compliant)
<u>Size of Lot:</u>	Width 47.5 feet	47.5 feet (No Change)	45.0 feet (min) (fully compliant)
	Depth 38.9 feet	38.9 feet (No Change)	50 feet (min) (pre-existing, non-conforming)
<u>Setbacks in Feet:</u>	Front 1.0 to 2.7 feet	2.7 to 5.0 feet Note: extent of non-conformity will be will be reduced or eliminated	5 feet(min) (pre-existing, non-conforming)

	Rear	0.8 feet	1.2 feet	15 feet (min)
		Conformity will be Reduced	Note: extent of non-conforming	(pre-existing, non-
	Left Side:	1.5 feet	1.5 feet	0 feet (min)
	Right Side	1.5 feet	1.5 feet	0 feet (min)
<u>Building Height:</u>	Stories:	2.5 stories	4.5 stories	N/A (max)
	Feet	Less than 40 feet	No more than 50 feet above street level	40 feet, subject to increase to 50 feet on Special Permit if front setback is 15 feet or more
<u>No. of Dwelling Units</u>		0 residential units (4 retail/office units)	16 units One commercial Unit	N/A (Mixed Use allowed of right)
<u>No. of Parking Spaces:</u>		0 Spaces	0 Spaces	24 spaces for 16 residential units; 1 unit for garden level commercial unit

Describe where applicable, other occupancies on same lot, the size of adjacent buildings on same lot, and type of construction proposed, e.g.; wood frame, concrete, brick, steel, etc.

**TOWN OF FRANKLIN
ZONING BOARD OF APPEALS**

Municipal Building
355 East Central Street
Franklin, MA 02038
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ZBA APPLICATION FORM - OWNERSHIP INFORMATION

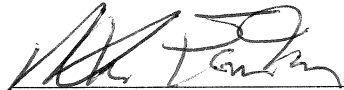
To be completed by OWNER, signed and returned to the Secretary of the Zoning Board of Appeals.

DEAN DEVELOPMENT PARTNERS LLC, Marc Fantasia, Manager (*OWNER*), having a business address at 55 West Central Street, Franklin, Massachusetts 02038, hereby states that **we own the property located at 19 Dean Avenue, Franklin, Massachusetts 02038** which is the subject of this zoning application.

The record title of this property is in the name of Dean Development Partners LLC pursuant to a deed duly recorded on November 5, 2020 at the Norfolk County Registry of Deeds in Book 38573, Page 50, a copy of which is attached.

DEAN DEVELOPMENT PARTNERS LLC

(Petitioner (s) /Owner)

By: 

Marc Fantasia, Manager, duly-authorized
55 West Central Street, Franklin, MA 02038
Telephone: (617) 929-7271
E-Mail: mf@redbrickco.com

**MEMORANDUM IN SUPPORT OF APPLICATION **
FOR VARIANCES, SPECIAL PERMITS AND OTHER RELIEF FROM
THE TOWN OF FRANKLIN ZONING BOARD OF APPEALS
[19 Dean Avenue, Franklin, Massachusetts]

I. Background

By the foregoing Application, Dean Development Partners LLC (the "**Applicant**"), the owner of that 3,433 square foot lot located at **19 Dean Avenue in Franklin Massachusetts** (the "**Property**"), seeks to obtain from the Board of Zoning Appeals for the Town of Franklin (the "**Board**") those variances, special permits and other relief that the Applicant submits are necessary to proceed with a redevelopment of the Property from a retail and office building containing six units ranging in size from approximately 350 square feet to approximately 1,0000 square feet, which current development has been in place since the Property's original construction on or about 1900, predating the enactment of the first iteration of the Zoning Code in Franklin, into a mixed-use condominium development containing 16 residential units and one commercial unit in which "*Guys & Dolls*," a long-standing hair and nail salon at the location, would be located in the rear garden level of the redeveloped building. **A mix of residential and commercial use is allowed of right within the applicable Commercial Zoning District as defined in the Code, but the Applicant has filed this application to seek special permits, variances and other appropriate relief to allow for certain deviations from dimension and parking requirements contained within the Code that the Property in its current state is exempt from due to its prior, non-conforming status.**

The Property is located in the downtown commercial district, which district allows for residential and commercial use (mixed). However, because of the space limitations that have existed for 120 years, and the fact that the Property was built without dedicated off-street parking (the Property was developed prior to the widespread use of automobiles), the proposed re-development needs certain relief with respect to setbacks, lot size, parking and other requirements.

The Applicant submits to the Board that the redevelopment of the Property, which is within 136 feet (per the GIS map) the downtown train station as well as a number of retail shops and restaurants, as a residential development (primarily) would substantially assist and serve its commercial neighbors as well as the community as a whole. The Property could be cosmetically updated more cheaply and with little zoning relief to provide still more retail and commercial space(of which there is a glut in the Downtown area) but that would in no way serve the local or general Franklin community and would not justify the major financial commitment needed to bring the Property up to current health and safety standards and to update the appearance of the lot and its fit within the neighborhood. Another commercial/retail building would simply compete with other existing commercial properties for the limited demand for such purposes and not support the substantial financial and other commitment that

the Property given that it is over a century old and has had no major renovations, updating or repairs .

Instead, the Applicant is seeking to bring residents to the downtown area, residents who would exploit the Property's proximity to the train and enjoy and exploit the local businesses in the area. The Applicant submits that the proposal contained in the foregoing Application would substantially serve the community, the local business neighbors and the interests of all by establishing a residential base to revitalize the neighborhood, provide customers for the retail, restaurant and other service businesses in the downtown and increase the tax base for the Town by providing a property use that is actually needed.

As the Board may be aware, communities like Norwood and Walpole have a thriving downtown business district, including restaurants, small shops and service facilities, due to the concerted effort of the municipal authorities and the business to support and encourage local residential development within and around each center. We submit that the development of the Property as a 16 unit residential and commercial condominium development, with residential units sized between 500 and 600 square feet and the commercial unit (for Guys & Dolls Salon) having approximately 1,000 square feet, would serve the local business community and the interests of the Town in general in a vigorous downtown community generating healthy tax revenues; the Applicant hopes that the proposed development would be the first of several downtown residential projects for the Town.

The residential housing inventory in Franklin is woefully behind demand - as of the date of this Application, there were 18 residential housing units on the Multiple Listing Service in Franklin; sadly, there is a glut of available commercial/retail and restaurant space available. By adding to the very few residential options in the downtown area, the Applicant hopes to revitalize local business neighbors whose products and services such residents would patronize and bolster commuter train ridership given the proximity of the Franklin downtown train station.

Furthermore, the Property is in need of repair. Built in 1900, the Property has not had any meaningful renovations in its history and, due to its history, does not meet and cannot in its current form be made to meet a number of building and other Code standards. It is old and not such an attractive element in the Dean Avenue neighborhood.

The Applicant is proposing to tear down the existing structure and build the residential/commercial mixed-use development on a slightly smaller footprint than the existing building on the Property that would comply with modern, current fire and other construction code requirements and would, as shown below, diminish several of the pre-existing, non-conforming dimensional aspects of the current building. The tear down and rebuild, as shown in the accompanying renderings, will provide a much more attractive and safer building and would serve the needs of the current

community. The redevelopment of the Property as a mixed-use, primarily residential, project is essential to justify the substantial expenditure that would be incurred in a demolition and rebuild.

If the Property were to stay in its current form with its strictly commercial use, the Applicant could not undertake the complete overhaul because the return would not justify the expenditure. By allowing the redevelopment of the Property as a mixed-use, residential and commercial development, the Property would be modernized, brought to code and otherwise a far more attractive element of the Dean Avenue neighborhood.

For these reasons, we urge the Board to work with us in granting the variance, special permit and other relief requested to allow the construction of the project proposed herein.

II. Summary of Proposed Development.

As reflected in the plans, renderings and foregoing Application, the Applicant would like to demolish the current building on the Property, a 2 1/2 story commercial development with an unfinished basement and attic and build a four and one half story building containing 16 residential units of between 500 and 600 square feet on the four floor above the garden level commercial unit., and one 1,000 square foot commercial unit on the garden level of the building, which would rise one-half story above street level, to be occupied by the established Guys & Dolls Salon. The building footprint will decrease by 400 square feet, from a 2,700 square foot footprint belong in go the existing, prior non-conforming building to 2,304 square feet for the new proposed building.

The residential units would occupy each floor above the garden level unit, starting about one half-story above street level. The building would be built no higher than 50 feet and would be constructed so that the setback deviations from those required under the current Code would remain the same or be closer to the required measures than the existing prior, non-conforming building. Again, this mixed use development is allowed as of right in the Downtown Commercial District in which the Property is located; this application seeks relief only from certain dimensional and parking requirements that the Property is currently exempt from given its prior, non-conforming status.

The Applicant seeks the Board's approval of the dimensional, parking and other relief as a prerequisite to its going before the Planning Board of the Town to obtain site plan approval. The Applicant submits that, given:

- (a) The dimension limitations of the lot, established prior to the passage of a first iteration of a zoning code within the Town; and

- (b) the current critical need for residential rather than commercial/retail property;

the proposal for redevelopment presented herein as a residential/commercial mixed-use is the only economically viable option for the Property. The Property needs a thorough rebuild, but the only way to justify that economically is to redevelop the Property to provide in part residential units. To deny the redevelopment for this purpose on the basis of the dimensional limitations and parking unavailability which have always and will continue to exist would deprive, without a real purpose or objective, the Town and the local business community from a valuable and beneficial opportunity to revitalize the downtown area.

III. Specific Relief Requested.

Addressing the specific relief requested, the Applicant submits as follows:

1. Request for Special Permit or Other Relief as the Board Deems Appropriate under Article IV, Section 185 – 18(A)(3) to Permit Reconstruction and Redevelopment of Prior Non-Conforming Building/Property.

As reflected in the foregoing Application, because the current dimensions of the Property do not because the current dimensions of the Property as it exists and as it is proposed to be redeveloped do not meet the existing dimensional limitations within the Downtown Commercial district, the Applicant seeks relief by way of a Special Permit or as otherwise determined by the Board, to allow the development to be rebuilt with the dimensions noted below.

	Existing Conditions	Requested Conditions	Code Requirements
Lot Area	3,433 sq feet	3,433 sq feet	5,000 square feet (min) (prior, non-conforming)
Continuous Frontage	74 feet	74 feet	50 feet (min)
Size of Lot:			
Lot Width	47.5 feet	47.5 feet (no change proposed)	45 feet (min) (fully compliant)
Lot Depth	38.9 feet	38.9 feet (no change proposed)	50 feet (min) (fully compliant)
Setbacks (in feet)			
Front	1.0 to 2.7 ft	2.7 to 5.0 ft (note: extent of non-compliance will be reduced or eliminated)	5 feet (min) (pre-existing, non-conforming)
	Existing Conditions	Requested Conditions	Code Requirements
Rear	0.8 ft	1.2 ft.	15 feet (min)

		note: extent of non-compliance will be reduced)	(pre-existing, non-conforming)
Left side	1.5 ft.	1.5 ft (no change)	0 feet (fully compliant)
Right side	1.5 ft.	1.5 ft (no change)	0 feet (fully compliant)
<u>Building Height:</u>			
Stories	2.5 stories	4.5 stories	Not Addressed in Code
Feet	Less than 40 ft	No more than 50 feet	40 feet subject to increase to 50 feet by Special Permit if front setback is 15 feet or more

The existing building on the Property as developed in 1900 does not meet the dimensional requirements currently in place under the Code for the Downtown Commercial district; the building's construction predates the first version of the Town's zoning code by 30 years. The dimensions of the proposed development, as reflected above, will not change or in a few cases diminish the non-conforming nature of the setbacks from property lines. Further, the frontage, depth lot and side setbacks in the existing building as well as the new proposed development meet the minimum requirements imposed under the Code for the Property.

Under **Article IV, Section 185-18(A)(3) of the Code**, a demolition and reconstruction of the Property, whose current development predated zoning but does not comply with dimensional requirements currently in effect under the Code may be granted by this Board under a Special Permit upon showing that such demolition and redevelopment will not be substantially more detrimental to the neighborhood to the existing nonconforming building or structure.

The Applicant submits that the standard for a Special Permit for the proposed redevelopment on the terms proposed is clearly met. First, the building is in need of a major overhaul. By reconstructing the building from the foundation up, it will comply with all current building, fire and other codes and be substantially more attractive and enhance the appearance and value of the neighborhood generally. Secondly, the change in primary use of the Property (from retail/commercial to residential) will provide a badly needed addition to the residential thing supply in the town generally, and in particular the downtown. These residents, many of whom would be taking advantage of the train station in close proximity, would also patronize local commercial, retail and restaurant establishments. This would be far better for the local and general community than to redevelop the Property an existing overstock of commercial Property, particularly in the downtown area.

- (a) Front and Rear Setback and Footprint Improvements. Further, as explained in the chart above, the current Code calls for front and rear setbacks of 5 feet and 15 feet for the Property, not met by the existing

building, whose front setback is between 1 foot and 2.7 feet and rear setback is 0.8 feet. In contrast, the proposed development would put the new building between 2.7 and 5 feet of the front property line and 1.2 feet from the rear property line, reducing or eliminating non-compliance with current front and rear setback requirements. Also, the new building would be completed within the footprint of the existing building and will result in a 400 square foot reduction in the overall footprint (from 2,700 square feet to 2,3045 square feet)

- (b) No Change in Lot Size, Lot Depth. Further, while the current Code calls for lots measuring at minimum 5000 square foot and having a minimum lot depth of 50 feet in the Downtown Commercial district, the existing building on the Property, constructed again 30 years before any zoning ordinance was enacted, measures 3,433 square feet and has a depth of 38.9 feet; neither the lot size nor depth of the proposed new development will change for the new development.
- (c) Compliance with Frontage, Side Setback and Minimum Depth. The existing building and proposed new development will meet or exceed the minimum continuing frontage, side setback and minimum lot depth requirements under the current Code.
- (d) Building Height. Finally, as to building height. the current building has approximately 2.5 developed stories, with an unfinished basement and attic. The height is slightly less than 40 feet. To construct the minimum count of 16 residential units that the Applicant has determined is needed to make the redevelopment financially possible, the Applicant needs this Board's approval to redevelop the Property with a 4 and 1/2 story building, with the commercial unit operating at the garden level, which level rises from the basement to about one-half story above street level; the remaining four floors to house the 16 residential units. The development as proposed would rise to no higher than 50 feet above street level.

2. Request for Special Permit, Variance or Other Relief as the Board Deems Appropriate under Article III, Section 185 – 7, Attachment 7, Section 6.1 and Footnote 5 to Allow Residential Units Above Commercial Unit on Garden Level, One Half-Story above Street Level.

Section 6.1 and Footnote 5 of Attachment 7 of the Code requires that no residential units in a mixed-use development be built on the street level of the subject property. To keep the building height at no more than 50 feet, the Applicant must locate the commercial unit in the garden level (rising from the basement to one-half story above street level). Residential units will not be located on the street level; but because they are to be located one half story above street level, **the Applicant**

requests that the Board grant, if and as necessary, a variance under Code Section 185-7, Attachment 7, Section 6.1, footnote 5) to allow the commercial development to occupy the garden level unit, rising one half-story above street level and to allow residential units to be built on four floors, beginning on top of the building's garden level, one half story above street level.

The Applicant submits that it cannot establish commercial units on the full first story of the Property, build residential units higher than four stories and maintain a maximum height of no more than 50 feet. Development of the residential units beginning above the street level, albeit half the story rather than the full story, meets the spirit and intent of the Code requirement by keeping passersby from looking in on residential occupants on the first floor. The grant of this requested variance is appropriate - the minimum number of units that would make the project economically viable is 16 and, to keep the development height below 50 feet, this relief is necessary. It will not adversely affect any neighboring properties or impact the neighborhood in any material negative way; to the contrary, the development of a residential unit with having a height of no more than 50 feet in the predominantly commercial neighborhood will enhance and improve the neighborhood, the surrounding businesses, the tax base and the aesthetic in that district. We urge the Board to grant a variance from the requirement of Code Section 185-7 to allow the development of residential units one half story above street level.

3. Request for Special Permit, Variance or Other Relief as the Board Deems Appropriate under Article IV, Section 185-10, Attachment 9, Footnote 9 to Allow a Maximum Height of 50 Feet and to Waive Requirement of 15 Foot Front Setback for Buildings No More than 50 Feet in Height.

Given the proposed height of the redevelopment to a maximum of 50 feet, the Applicant requests a special permit, variance or such other relief as the Board sees fit from the requirements of Section 185-10, Attachment 9, Footnote 9 to allow the proposed building to be constructed to a maximum height of 50 feet while also waiving the requirement of a 15 foot front setback for the proposed building to reach a height from street level of not more than 50 feet .

Under Footnote 9 of Attachment 9, a building in the downtown Commercial district is allowed by Special Permit to exceed 40 foot maximum height up to an extended maximum of 50 feet) as long as the Property enjoys a 15 foot setback.

Despite the limitations on the size of the Property, the Applicant has designed the proposed development to improve and maximize the front setback of the building to reduce the extent of front setback non-conformity and, in certain sections of the building's front, to satisfy the currently prescribed 5 foot front setback (the existing building does not meet the front setback requirement at any point along the building's front). But the Applicant cannot achieve a 15 foot setback on this non-conforming lot laid out and approved prior to the passage of any zoning code in the Town.

As a result, the Applicant seeks from the Board a Special Permit, Variance or other relief to allow the construction of the proposed building to a maximum height above street level of 50 feet and to waive the requirement of a 15 front setback therefor listed in Footnote 9 of Attachment 9 in order that it may construct the building to a height no higher than 50 feet from street-level, even though the front setback dimensions run between 2.7 feet and the general requirement of 5 feet.

The Applicant submits again, that the proposed development has been carefully designed to meet as close as possible all the requirements of the Code and to exceed limits only to the minimum extent necessary to achieve the minimum-sized development (16 residential units, one commercial unit) needed to make the redevelopment economically feasible. The Applicant has gone to great lengths to keep the maximum height of the development at no more than 50 feet but cannot increase the setback to more than setbacks increased to between 2.7 and 5 feet (5 feet being the standard general front setback called for in the Code for Downtown Commercial properties) . The Applicant submits that no party would be prejudiced by the relief granted; again, the redevelopment would be a substantial improvement to the existing safety, appearance and fit as would improve the general economic mix and prospects within the neighborhood.

A special permit and/or variance to allow a maximum height to the development of fifty feet while also waiving the 15 foot front setback requirement that would otherwise allow such maximum height under Footnote 9 of Attachment 9 is, in the Applicant's view, entirely appropriate. It is essential to the development in that the Applicant requires a minimum of 16 residential units within the proposed building and to develop the project within the constraints of the limited sized lot, which the Applicant can do nothing to change – no additional land is available and the only economically viable option is to develop the property for mixed use, an otherwise permitted use under the Code within the Downtown Commercial District. Granting the special permit, variance or other relief to allow a maximum height of 50 feet in the absence of a 15 foot setback will harm no one and will in fact inure to the benefit of the neighborhood, its predominantly commercial, retail and restaurant neighbors and the taxpayers of the Town. No interest would be harmed by the grant of such relief and no material interest would be preserved or protected by denying the setback reduction for a proposed building of up to 50 feet in height.

4. Special Permit, Variance or Other Relief to Allow Reduction of Required Rear Setback of the Property under Article V, Section 185-18(A)(3) to 1.2 Feet.

Under Attachment 9 of the Code, the minimum rear setback for the Property is 15 feet. However, the existing building, again built on or about 1900, thirty years prior to the enactment of the first zoning code in 1930, has a rear setback of less than 1 foot that, absent a beneficial redevelopment of the, can remain in a less than highest and best use of the Property.

The Applicant seeks relief in the form of a Special Permit, Variance or otherwise to allow the construction of the proposed building with the improved rear setback of 1.2 feet from the property line. This setback will remain non-compliant with the minimum 15 foot setback prescribed under Attachment 9 of the Code, but represents a material improvement over the existing building's setback and the highest improvement in the rear setback measure achievable in the development of the Property to its highest and best use as a mixed (residential and commercial development). By allowing the relief to permit construction with a 1.2 setback, the Property could be substantially improved from a safety, aesthetic and macro-economic standpoint and would be an improvement over the existing rear setback that may continue if the Property remains dedicated to the less than optimal use as a commercial building.

5. Variance Requested from Requirement of Article V, Section 185-21 to Permit Continued Exploitation of Building without Dedicated Off-Street Parking

The Property, as developed in 1900, did not provide any off-street parking. In fact, no real estate developed at that time would have provided for off-street parking due to the fact that automobiles were not widely used and the zoning code did not exist.

The Property has functioned as a commercial/retail development over the past 120 years without any off-street parking. And the Property could continue to function as a commercial operation without future requirement for off-street parking due to its prior, non-conforming status.

But a continued use of the Property as a commercial/retail development no longer makes any sense. The economics of the Property in the neighborhood are such that a residential development, with limited commercial usage, is the only viable economic option that justifies the cost of the needed reconstruction. Further, a redevelopment of the Property for residential purposes primarily would substantially benefit the neighboring the neighborhood, the surrounding businesses, the tax base of the Town and the health and safety aspects of the community. Section 185- 21 of the Code establishes the parking requirements for the Property. Section 21(a)(1) states

"adequate off – street parking must be provided within reasonable distance to service all parking demands created by new construction, whether through new structures or through additions to existing ones or by change of use creating a higher parking demand."

The schedule incorporated into the Code through Section 185 – 21(B) makes clear that this is a change in use of a prior nonconforming building, and accordingly, absent relief from the requirements of Section 185-21 to permit the continuation of the Property's 120 year history of operation without dedicated off-street parking, the Applicant would need to provide 1.5 parking spaces for each residential unit and 1 parking space for each 500 square foot section of commercial space – essentially a total of 27 dedicated off-street spaces for the 16 residential units and three spaces for the 1,500 square foot commercial unit.

Such off-street parking spaces are not available in proximity to the Property. The neighboring properties are densely developed with either a small number of private parking spaces on premises or operating as the Property has as prior, non-conforming developments for which no off-street parking requirement can be enforced under the Code

While private parking is not available on the Property and excess private spaces are not available for lease at neighboring lots, the neighborhood enjoys public, on-street parking that well exceeds the current needs therefor and, particularly after work hours when residents of the Property would require parking when the streets are fairly quiet and business traffic has gone. These public spaces could serve the residents at the Property without detriment or adverse impact on the neighborhood, local business or other residents of the area. There are far more public spaces than are needed at any time of the day or week. To discount their availability and to deny the ability to develop the Property as a mixed use development due to lack of off-street private parking that has never existed in the history of the Property or the modern history of the downtown district would be contrary to the interests of the local area and the Town in general. While the Applicant would like to provide parking, it has not been available in the 120 year current history of the history of the current Property and this should not be an obstacle to its much more useful redevelopment.

If the Applicant were to continue to use the Property as offices, commercial or retail operations, it could do so without any dedicated off-street parking and without objection under the Code. But such use, as submitted above, would not serve anyone's interests, not the Applicant's, not the Town's, not the neighborhood's. The Town needs more residential housing units, particularly ones in the downtown area and the residents of those units who would enliven the area, exploit businesses and add to the general economic welfare of the town to patronize the local businesses there that have over the past 18 months and beyond struggled to varying degrees. The downtown does not need any more commercial space. The addition of residential units at the

Property would begin to fill the neighborhood's and the Town's demands for residential property and the people-customers who occupy them

The Applicant seeks to undertake this mixed-use development while relying on the same parking availability as the existing building has for more than a century. The adverse impact, however, will be, minimal. There is substantial and under-utilized on-street parking in the Downtown Commercial district, particularly at the end of the workday when residents' parking needs would peak. A need for up to 30 on-street parking spaces is easily met, particularly after 5 PM in the downtown area. Further, given the proximity to the commuter rail, it is likely that certain residents of the Property will not have or want vehicles for which they would need permanent parking availability.

IV. Relief Cited is Justified Whether under the Standards for Allowance of Special Permit or of Variance.

A. Applying the Special Permit standards

First, the development of residential units within the downtown commercial district will be consistent with and will substantially benefit the neighborhood and the Town and their needs going forward. The Town is in significant need of additional residential housing inventory. The downtown commercial district is particularly lacking in residential housing. The development of residential housing will substantially benefit the neighboring businesses, particularly service and restaurant business, and the residents of the proposed redevelopment would patronize the neighboring commuter rail without demanding additional parking for the train in using such service (it is a short walk to the station).

The redevelopment of the Property would also substantially improve the safety of the building in the neighborhood as well as the appearance and other aesthetic elements of the neighborhood.

Secondly, the redevelopment of the Property as a mixed-use development will not adversely impact traffic flow access to pedestrian safety. The proximity to the train will make the residential units particularly attractive to occupants who would exploit the train, thus limiting traffic and parking demand. Further, the neighboring businesses are in substantial need of customers who would need and want local food, service and other business opportunities.

Third, the public roadways drainage and utilities are clearly adequate to support the redevelopment of the Property to the proposed mixed-use laid out in this Application.

Fourth, and most importantly, the neighborhood character and social structure will not be negatively impacted. To the contrary, the neighborhood would be

substantially enhanced by more local residents and the Property safety aspects is and appearance would be substantially improved by the redevelopment for the benefit of all.

Fifth, the proposed development will not destroy or cause damage at all to any environmental aspect of the town or any natural resource.

B. The Relief Requested by Variance is Fully Justified as Well.

This Board may grant the relief requested with respect to: (i) elimination of an off-street parking requirement; a waiver of the 15 foot setback as a condition to allowing a building to be constructed with a height up to 50 foot; and ((iii) such other relief requested herein if the Board finds it must do so via a variance from the Code sections involved.

To grant a variance, Massachusetts law requires that the Board find:

- (a) That a literal enforced of the particular section of the Code would impose a substantial hardship, financial or otherwise, on the Applicant;
- (b) That the hardship is owing to circumstances relating to soil conditions, lot shape, topography of the land or structures and especially affecting the lot and not the zoning district generally;
- (c) That granting the relief requested will not impose a substantial detriment to the public good; and
- (d) That the relief requested would not nullify or substantially derogate the intent or purpose of the Code or the section involved.

The Property, as developed in 1900, was established as a legal, valid lot of land of relatively small size and did not provide any off-street parking . Surrounding smaller lots were similarly created with development abutting closely the boundaries of the Property. Drawing such boundary lines without requirements for parking or other considerations were all legal and proper given that automobiles were not widely used when the building was originally built and no zoning ordinance would exist in the Town for another 30 years

The continued use of the Property as a commercial/retail development no longer makes any sense. The economics of the Property in the neighborhood are such that a residential development, with limited commercial usage, is the only viable economic option that would justify the reconstruction/redevelopment that the building needs from an economic, safety and aesthetic standpoint.

Further, a redevelopment of the Property for residential purposes primarily would substantially benefit the neighborhood, the surrounding businesses, the tax base of the town and the health and safety aspects of the community.

Section 185-21 of the Code establishes parking requirements for properties within the Downtown Commercial district and per the language of the Code, *"adequate off – street parking must be provided within reasonable distance to service all parking demands created by new construction whether through new structures or through additions to existing ones or by change of use creating a higher parking demand."*

The schedule incorporated at Section 185-21(B) of the Code states that, with a change in use of a prior, non-conforming building, an applicant must show that minimum parking requirements of subsection B are met. The Code schedule calls for 1.5 parking spaces to be provided per each residential unit in a mixed-use development in the Downtown Commercial district, with non-residential units requiring one parking space for each 500 square feet within such unit. If the Property were to continue in its current commercial/retail function, the Code would not require any off-street parking (which just does not exist in the downtown area) and would permit the Property to continue to operate as a four unit commercial bldg. without the 12-16 parking spaces that would otherwise be required of these commercial units due to the building's grandfathered status. No off-street parking is or will at any time soon be available and the Property was originally designed without parking or setback considerations and the lot cannot be reconfigured to provide additional space for parking or added setback dimensions. To impose them in the present time, with significant changes in the economic climate and demographics would limit the Property to use as a commercial building whose economics would not allow the extensive reconstruction that the Applicant is proposing.

But, a continued commercial-retail usage of the Property, as submitted above, would not serve anyone's interests -- not the Applicant's and not the Town's and not the neighborhood's or the neighbors' interests. The Town does not need more commercial space within the downtown district. Rather, the Town needs residents who would enliven the area, exploit businesses and add to the general economic welfare. The addition, also, of residential units in the Town would begin to address the urgent need for the residential housing units in Franklin.

By this Application, we seek to authority to redevelop the Property as a mixed-use development relying on the same measure of off-street parking (namely none) and setback constraints that the Property and most all of the neighbors have relied upon. There will be no adverse impact on the neighbors or the Town.

By allowing the development of the Property as a mixed-use project, with 16 residential units, the Town will not put the Property or the downtown area in any parking crisis. There is substantial on street parking that is underutilized in the

Downtown Commercial district – sixteen to twenty on-street parking spaces are always available in the Downtown Commercial district, all in close proximity to the Property, particularly after 5 PM. Further, given the proximity of the Property to the downtown train station and the type of resident that is most attracted to the small, one to two bedroom units to be built at the Property, it is likely that a number of residents may not have or want vehicles requiring permanent parking availability in proximity to the Property.

While the Applicant would like to provide parking and greater setback dimensions, these elements have not been available in the 120 year current history of the Property and the imposition of these discrete requirements on a use that is otherwise allowed within the Downtown Commercial district and is clearly needed for the well-being of the area, economically and otherwise – the continued unavailability of off-street parking and compliant setback limits should not serve as an insurmountable obstacle to its much more useful redevelopment for mixed use purposes.

Granting the Variances requested hereunder to allow the development without off-street parking and to grant relief with regard to imposition of unavailable and impossible setback requirements to achieve the needed 50 foot height of the building are entirely appropriate.

A literal enforcement of the parking requirement would involve a significant financial hardship for the Applicant and present a very unattractive alternative for all, including neighbors and residents neighbors and the Town generally. If the installation residential units at the Property is not allowed without off-street parking and if the needed building height to make redevelopment economically possible is not permitted without setback dimensions that are and will never be available, the Applicant will be forced to continue to use the Property as a commercial/retail purpose, in its current unattractive state subject to limited demand and without contribution to the local economy.

Such denial would not serve the interests of the Town in any way, would create more competition for a dwindling demand for downtown commercial space and would reduce the Town's real estate and other tax bases, given that the Property will not be used for its highest and best use (i.e., residential).

The parking limitation is due to the fact that this Property was developed and this Property was carved out as a single lot and developed in such a way as to not provide for off-street parking (again, there was no need for parking in 1900). The Applicant can do nothing in terms of increasing its lot size and has explored the concept of underground parking, but such option is not available because there is only one way in and out of any such underground lot, the size of the lot does not allow for turnarounds under the building and the lot is surround by municipal and business property owners who have not been willing to grant access easements across their properties.

For the foregoing reasons, request that the Board grant the special permits, variances and/or other relief it deems appropriate to allow the construction of the project as proposed.