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Town of Durham

AUG 26 2013

Planning, Assessing,
Zoning & Code Enforcement

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 15 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

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Appeal for Applicant

State of New Hampshire

Strafford, SS

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: 6 Jenkins Court, LLC

Address: P. O. Box 313 Durham, NH 03824 Phone # 203-339-0370

Owner of Property Concerned: same
(If same as above, write "Same")

Address: same
(If same as above, write "Same")

Location of Property: 6 Jenkins Court Map 4 Lot 8-0
(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information) The parcel is 9,382sf (0.215)ac, has 107' of frontage on Jenkins Court and is approximately 90' deep with its rear boundary adjacent to the parking lot for Tedeschi Food store. The subject parcel is currently improved with a 4-story mixed-use building.

Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

Appeal must be filed no later than 30 days from the date of the original decision.

Relating to the interpretation and enforcement of the provision of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: _____
Number _____ Date _____

Article _____ Section _____ of the Zoning Ordinance in question.

N/A

SECTION 2: APPLICATION FOR SPECIAL EXCEPTION

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____ Section _____

N/A

SECTION 3: APPLICATION FOR EQUITABLE WAIVER

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: _____

N/A

SECTION 4: APPLICATION FOR A VARIANCE

STANDARD OF REVIEW: The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

1. No decrease in value of surrounding properties would be suffered;
2. Granting the variance would not be contrary to the public interest;
3. Denial of the variance would result in unnecessary hardship to the owner seeking it;
4. By granting the variance substantial justice would be done;
5. The use must not be contrary to the spirit and intent of the ordinance.

A Variance is requested from Article _____ Section _____ of the Zoning Ordinance to permit _____

See attached addendum for specific Article and Section.

Facts supporting this request:

1. No decrease in value of surrounding properties would be suffered because:

see attached addendum

2. Granting the variance would not be contrary to the public interest because:

see attached addendum

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(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:

a. 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 because:

see attached addendum

and

b. the proposed use is a reasonable one because:

see attached addendum

Or

3(B). Owing to special conditions of the property that distinguishes 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.

see attached addendum

4. By granting the variance substantial justice would be done because:

see attached addendum

5. The use will not be contrary to the spirit and intent of the ordinance because:

see attached addendum

ADDENDUM A: APPLICATION FOR A VARIANCE – 6 JENKINS CT.

A variance is being requested from Article 175-53.A.VII.A and Article XII, Section 175-41.F.7 of the Zoning Ordinance

- (a) to permit residential units on the first floor of an existing 4-story building, specifically to convert up to 50% of the existing commercial/retail space to residential units; and
 - (b) to permit residential units on the fourth floor of the existing 4-story building.
- 1) No decrease in value of surrounding properties would be suffered because:
The building character would not change and the residential space is in greater demand than the commercial/retail space. Other mixed-use buildings already constructed in the same zone, as well as significant abutting development in the process of permitting, have been granted similar variances such that these comparable properties will not end up being substantially disparate in their mix of commercial to residential use. As such, the value of these abutting properties, both existing and to be built, would not be adversely impacted. Other surrounding properties have established uses which would not be affected by such residential use conversion.
 - 2) Granting the variance would not be contrary to the public interest because:
The building will still be a mixed-use development maintaining its original character. The current high commercial vacancy rates, however, would be decreased, thus promoting Town policy (as promoted by the Economic Development Committee) to promote a vital downtown mixed-use environment. Granting the variance will help prevent a glut of commercial space developing in downtown between existing and future developments. Specific to this property, the first floor space sought to be converted to residential use by the variance is to the rear of the building where commercial visibility and access is not good.
 - 3) (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:

a) 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 because: The attached site plan depicts the first floor area (highlighted) for which a variance is requested to change the use to residential. Additional evidence will be presented at public hearing with this to show how this property's special conditions (boundaries, location, size, etc.) make this portion of the first floor not conducive to viable commercial use. The property's most viable commercial use is along Jenkins Court and the northerly side along the pedestrian sidewalk built as a part of (and under cover of) the structure as an amenity to the site and to the Town generally. The rear portion sought to be converted to residential use as well as the fourth floor have neither viable commercial visibility nor access.

Having the entire first floor as commercial space has been a burden to the owner, which has experienced high commercial vacancy rates and significant turnover of commercial tenants. The current fourth floor is also not commercially viable, given its access, commercial space demand, and the abundance of

commercial space already developed and to be developed (including other mixed-use buildings currently permitted and others in the process of being permitted) in the zone. The variance offers the owner flexibility to reduce the commercial space to an appropriate amount based on demand.

(b) The proposed use is a reasonable one because: It is consistent with other variances in the CB district. The unique conditions of the lot create less desirable square footage on the fourth floor and in the back portion of the structure that is land locked by surrounding parcels/buildings and doesn't have frontage on main travel paths that deter commercial viability and rentability. Commercial use in these areas is reasonable. It is particularly reasonable given the amount of commercial space generally developed and to be developed (including existing mixed-use buildings and those currently seeking permits) in the zone.

OR

(B) Owing to special conditions of the property that distinguishes 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. Historically, existing buildings along Jenkins Court have experienced higher commercial vacancy rates than otherwise in the Town; this has been accentuated since construction of this new mixed-use building. This property's unique boundary lines creates square footage in the back portion of the structure that is land locked by surrounding parcels/buildings and has frontage on less than main travel paths that deter commercial viability and rentability.

4) Substantial justice would be done because: Granting the variance will not unduly and in a marked degree conflict with the Ordinance and its objectives. Other mixed-use buildings developed in the zone, and currently being permitted, have been granted or seek similar variances. Substantial justice is done by not creating disparate economic hardships between similarly situated property owners in the Commercial Business District. Substantial justice is also accomplished by helping the applicant deal with its commercial vacancy rates, encouraging economic vitality in the downtown core, and further discouraging student rentals in outlying zones around town.

5) The use will not be contrary to the spirit and intent of the ordinance because: For all the reasons previously expressed, the mixed-use character of the building will be maintained if the variances are granted. In fact, the property's vitality can be enhanced. No part of the property's preferred mixed-use, pedestrian oriented character within downtown will be harmed.