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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.

Appd. 8/26
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13422
\$215

Appeal for Applicant

State of New Hampshire

Strafford, SS

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

Name of Applicant: 9 Madbury Road, 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: 9 Madbury Road Map 4 Lot 12-0
(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 total parcel is 15,266sf and is located at the interior of intersection of Madbury Road and Pettee Brook Lane. The subject parcel has 125' of frontage along Madbury Road, frontage along Pettee Brook Road that is unaccessible because of the location of Pettee Brook and is approximately 100' deep. This parcel is 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 – 9 MADBURY RD.

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, precluded from viable commercial visibility and access.
 - 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 first floor space for which a variance is sought to allow commercial use in the rear of the property, is neither visible nor easily accessible from the commercially viable access of Madbury Road. This site is also unique (see attached site plan) in that considerable commercial space exists along with the Pettee Brook Lane (southerly) side of the building despite there being no viable access from Pettee Brook Lane. The applicant, however, has developed his property with an adjoining outdoor courtyard between the structure and Pettee Brook (and Pettee Brook Lane), making commercial pedestrian traffic from Madbury Road inviting and accessible to this portion of the building. Still, luring this traffic to the back corner of the building has been a hardship. Allowing the flexibility of residential use in these areas will help decrease the high vacancy rates and significant turnover of commercial

tenants. The variance offers the owner flexibility to reduce the commercial space to an appropriate amount based on the 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 creates 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. 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. The site is at the inside of two intersecting roadways with a brook cutting off access from one of the roads thereby limiting access to only one street front. This limits the access to the building for commercial/retail tenants making the back of the building and the upper floors of the building restrictive to attracting commercial use. Also the unique property boundaries of the lot creates square footage 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.

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.

