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Town of Durham

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

Planning, Assessing, pd. 8/26
Zoning & Durham, Sent

Check #
13423
\$220

Appeal for Applicant

State of New Hampshire

Stafford, SS

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

Name of Applicant: EZT Holdings, LLC

Address: 561 Central Ave., Dover, NH 03820 Phone # 603-742-5222

Owner of Property Concerned: Theodore Finnegan

(If same as above, write "Same")

Address: 25 Worthen Road Apt. 317 Durham, NH 03824

(If same as above, write "Same")

Location of Property: 15 Madbury Road Map 2 Lot 12-5

(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 has 63' of frontage along Madbury Road and approximately 100' of frontage along Mathes Terrace on the south. The parcel area is 6,728sf and is currently improved with a single family residence. 8 Mathes Terrace is the abutting parcel to the west.

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 – 15 MADBURY RD. AND
8 MATHES

A Variance is being requested from Article XII, Section 175-41.F.2 of the Zoning Ordinance to permit a portion of the front wall of the principal buildings to be setback up to 28' from the front property line when the maximum allowable setback to principal buildings in the CD district is 15'.

- 1) No decrease in value of surrounding properties would be suffered because:
This proposal more closely matches the existing condition at the property and will maintain the general character while providing a pedestrian friendly area on the Madbury Road frontage.
- 2) Granting the variance would not be contrary to the public interest because:
Mixed-use development is permitted in the CB district and the wide pedestrian friendly area on the Madbury Road frontage enhances the streetscape appeal of downtown consistent with proposed zoning changes. It is consistent with other variances in the CB district. The extended front setback is in keeping with presently proposed zoning changes.
- 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 aesthetics of the overall project will be improved.
 - b) the proposed use is a reasonable one because: Wide pedestrian friendly areas on the Madbury Road frontage enhance the streetscape appeal of the downtown. It is consistent with other variances in the CB district.

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 because: With the building front up close to the property line, it will make the building look bigger, detract from the aesthetics, discourage pedestrian use and walkability to the site.
- 4) Substantial justice would be done because: Granting of the variance will allow the development to better conform to the pedestrian area requirements of Article XII Section 175-41.F.3 of the zoning ordinance. The area can be approved with landscaping and other appropriate amenities to link the building with the sidewalk to encourage pedestrian and customer use.

- 5) *The use will not be contrary to the spirit and intent of the ordinance because:*
The development meets the purpose of the CB district by providing mixed use pedestrian oriented re-development or enlargement of existing buildings while maintaining the character of the downtown. It also provides denser building construction within the limited area of the downtown. The proposed variance is in keeping with currently proposed zoning changes encouraged by the Town.

ADDENDUM B: APPLICATION FOR A VARIANCE – 15 MADBURY RD. AND
8 MATHES

A Variance is being requested from Article XIII, Section 175-59.A.d.2 of the Zoning Ordinance to permit the construction of a mixed-use building within the 75' wetland buffer setback.

- 1) No decrease in value of surrounding properties would be suffered because:
The redevelopment of the mixed-use building will provide new commercial and residential uses and will reduce the impervious coverage within the wetland buffer setback compared to the existing improvements.
- 2) Granting the variance would not be contrary to the public interest because:
The impervious coverage within the buffer will be reduced and the area can be enhanced with vegetation.
- 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 development will improve the conformity by reducing the impervious coverage and provide the opportunity for additional vegetation within the buffer.
 - b) the proposed use is a reasonable one because: it is consistent with other variances in the CB district.

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 because: the development proposal provides both an aesthetically pleasing, pedestrian friendly area in the front to enhance the streetscape appeal while reducing the impervious coverage within the 75' buffer setback.
- 4) Substantial justice would be done because: the property will be brought closer to conformity with reduced impervious coverage in the buffer setback and better stormwater management.
- 5) The use will not be contrary to the spirit and intent of the ordinance because: the purposes of the WCO district are served by bringing the property closer towards conformity and providing enhanced protection to the brook and wetland.

ADDENDUM C: APPLICATION FOR A VARIANCE – 15 MADBURY RD. AND
8 MATHES TERRACE

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 that portion of the first floor of the structure depicted on Exhibit A attached; and
 - (b) to permit residential units on a fourth floor to be constructed on that portion of the structure shown on Exhibit A for which first floor residential space is also requested.
- 1) No decrease in value of surrounding properties would be suffered because:
The two existing buildings are currently residential, including the first floor on the 8 Mathes Terrace lot. The proposed project will remove these two older buildings and offer a mixture of commercial and retail space on the first floor in the front portion of the building closest to Madbury Road. The remainder of the building including the first floor of the rear portion of the building will be newly constructed residential units similar to the existing conditions. 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:
Mixed-use development is allowed in the CB district. Offering commercial and retail space in the front at Madbury Road is consistent with the ordinance and the vacancy rate will be decreased with the remainder of the building being developed with new residential units, thereby not placing an undue burden on the feasibility of the proposed development. It is also maintain a similar use of the 2 properties has they exist currently.
- 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 property's special conditions include a sloping topography, going downhill away from Madbury Road, and poor geotechnical soils and wet soils that inhibit developing a partial below-grade use in the rear structure (depicted on Exhibit A for which this variance is sought). Adding a fourth floor is reasonable.

Based on the performance of other newly constructed mixed use buildings, the developer believes that constructing the building with commercial and retail space on the entire first floor is not financially viable over the long term. The variance will allow flexibility to reduce the commercial space to an appropriate amount based on Durham's demand for non-residential space in the CB district.

b) the proposed use is a reasonable one because. The redevelopment of the project will bring a new mixed use building with commercial frontage on Madbury Road where only residential uses exist on the current buildings. It is consistent with other variances in the CB district.

Adding a fourth floor is reasonable. It will mix the varying roof lines among immediately abutting structures within the zone now built, and to be built, including specifically the much longer, abutting 3-story roof line proposed residential structure for the abutting "Commons" proposed development. Residential use of this fourth floor is reasonable for all the reasons stated in this Addendum C.

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 because. The visibility, access and parking is very limited to the rear of the building being on a dead end which will negatively impact the viability of leasing the commercial space in the rear. Placing the commercial and retail space on the frontage at Madbury Road will improve the lease ability of the commercial space.

- 4) Substantial justice would be done because. it would reduce the redevelopment's burden of having to finance a high percentage of empty commercial space within the building and provide additional higher quality residential space, which is at a greater demand.
- 5) The use will not be contrary to the spirit and intent of the ordinance because. providing first floor residential units in the rear portion of the building still meets the purpose of the CBD by providing mixed-use pedestrian oriented character within the downtown and is a redevelopment and enlargement of a previously existing building which currently provides residential space at the ground floor.