

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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Town of Durham

FEB 22 2017

Planning, Assessing
and Zoning
Strafford, NH

Appeal for Applicant

State of New Hampshire

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

Name of Applicant: THOMAS A. TOYE IV

Address: 9 TAVERN WAY Phone # 603-781-8600

Email: TOM @ ARTHUR THOMAS PROPERTIES .COM

Owner of Property Concerned: THOMAS A. TOYE IV REVOCABLE TRUST
(If same as above, write "Same")

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

Location of Property: 9 TAVERN WAY, DURHAM NH
(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) MAP 6, LOTS, FRONTAGE

542.76', 14.13 ACRES WITH 5,078 SF RESIDENCE
AND A SEPARATE DETACHED BARN WITH 5,640 SF

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.

263.00
Pl. 2/22
Check
916

SECTION 2: APPLICATION FOR SPECIAL EXCEPTION

Any Special Exceptions granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

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

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: _____

SECTION 4: APPLICATION FOR A VARIANCE

STANDARD OF REVIEW: 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.

Any Variances granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

A Variance is requested from Article 175 Section 53 of the Zoning Ordinance to permit COMMUNITY CENTER, PERFORMING ARTS,

TRAINING AND SKILL DEVELOPMENT, WORKSHOP & GALLERY

ARTISAN SPAKE, BUSINESS-OFFICE, AND TWO - 1

BEDROOM APARTMENTS WITHIN AN EXISTING ± 5000 SF BARN WITH EXISTING SPRINKLER SYSTEM.

The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Please answer the following questions in support of the variance request either on this form or on a separate sheet of paper.

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

SEE ATTACHED

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

SEE ATTACHED

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

and

b. the proposed use is a reasonable one because:

SEE ATTACHED

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.

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

SEE ATTACHED

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

SEE ATTACHED

Mill Pond Center

Application for Variance from Article 175 Section 53

To permit: Community Center, performing arts, training and skill development, workshop & gallery artisan space, Business-Office, and two 1-bedroom residential apartments within an existing +/- 5000 SF barn with existing sprinkler system.

Property Address:

9 Tavern Way (aka. 50 Newmarket Rd)

Durham NH 03824

Zone: RB

Criteria for Zoning Variance

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

The subject property operated with the proposed uses from 1980 until 2014. The Following is a list of abutting properties that have sold in recent years which establishes a basis for stability of market valuation:

28 Newmarket Road- Sold: (10.10.2010 \$445,000)

44 Newmarket Road- Sold: 10.2.2003 \$556,200

56 Newmarket Road- Sold: (7.3.2009 \$235,000) (4.1.2013 \$100,000 Foreclosure) (7.31.2015 \$318,000)

53 Newmarket Road- Sold: (10.23.2003 \$315,000) (4.3.2014 \$265,000)

6 Laurel Lane- Sold: (4.5.2007 \$330,000)

10 Laurel Lane- Sold: (6.30.2004 \$485,000) (3.17.2008 \$464,000) (11.24.2009 \$413,000)

12 Laurel Lane- Sold: (1.5.2017 \$440,000)

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

The adaptive re-use of an historic agricultural building will preserve heritage. As well the proposed uses will help to promote a sense of community and will contribute to economic and social vitality.

3) Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because:

a. No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because:

The subject property consists of 14.128 Acres of land of which 9.878 Acres are subject a conservation easement administered by the South East Land Trust of NH. Structural improvements on the property consist of a +/- 5000 SF residence, a detached carriage house, and a 3 story post and beam, gambrel roofed barn. The barn structure is known to the community as the Mill Pond Center and has been a center for community activities including performing arts, weddings, family events, anniversary parties, birthday parties, summer camps, etc. for almost 40 years. In addition, the barn currently has three (3) 1 bedroom apartments, which have been unoccupied since 2014.

Previous uses of the barn were "pre-existing, non-conforming" uses with the Residence B zoning district. These uses were discontinued in 2014 due to necessary life safety improvements, which were unaffordable at the time by the previous owner, a non-profit organization.

The proposed uses for which the variance is requested will all take place within the barn. The barn has a full sprinkler system and fire alarm monitoring system which have been recently inspected and deemed to be serviceable by Burns Security.

b. The proposed use is a reasonable one because:

The proposed uses will maintain the character and appearance of the 100 year old barn and will not alter or otherwise require an expansion of the existing barn structure. Further, the uses will all take place inside and will not be seen or heard by any of the neighboring properties.

The residential structure that is onsite, historically known as Smith Tavern, is a family home and the proposed uses in the barn are intended to be low intensity, non-disruptive uses that will not impact the peaceful enjoyment of that residence nor the neighboring residential properties.

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

The Mill Pond Center is an icon for the community. It has its own flag on the scale model of the Town that resides at the entrance to Town Hall... The conservation easement that was installed in 2004 references the scenic vista from the towns Southern artery (Rt. 108) which includes the +/- 5 acre hay field and the gambrel roofed barn... There is a generation of people that have grown up taking classes and attending functions at the property...

Further, granting the variance promote a sense of community and will contribute to economic and social vitality of the community.

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

The purpose of the Residence B District as defined in the Town of Durham Zoning Ordinance is:

To maintain the integrity of existing medium density residential areas while ensuring that new development, redevelopment and expansions of existing buildings and structures are consistent with and maintain the established character of these neighborhoods.

Adaptive reuse of the 100 year old barn promotes the character of the route 108 historic district and the character of the existing neighborhood as the proposed uses were in place from 1980, when it was first renovated by Lew and Judy Roberts until 2014, when they were discontinued by the Seacoast Reparatory Theater.

Supporting Documentation, Attached:

1. Zoning Variance Granted 7-17-2009 for mixed land use of residential/art center/theater/community center
2. Notice of Planning Board Decision from 4-8-2015 pertaining to subdivision of land at the Mill Pond Center. Reference Page 2, Item #5
3. Survey Map of Subject Property
4. Town of Durham Tax Map #6



TOWN OF DURHAM
15 NEWMARKET ROAD
DURHAM, NH 03824-2898
603/868-8064 • 603/868-8065
FAX 603/868-8033
www.ci.durham.nh.us

Property Referenced:
Tax Map 6, Lot 9-8

ZONING BOARD OF ADJUSTMENT

RE: PUBLIC HEARING on a petition submitted by the Seacoast Repertory Theatre, Portsmouth, New Hampshire on behalf of Federal Savings Bank, Dover, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-53 of the Zoning Ordinance to change the use of a property from single family land use with accessory buildings to commercial land use of art center/theater/dormitory/community center. The property involved is shown on Tax Map 6, Lot 9-8, is located at 50 Newmarket Road, and is in the Residence B Zoning District.

DECISION OF THE BOARD

After review of the pertinent sections of the Zoning Ordinance of the Town of Durham, and after full consideration of the evidence submitted by the Seacoast Repertory Theatre, and testimony given at a Public Hearing on July 14, 2009, a motion was made and seconded:

that the Zoning Board of Adjustment approve the petition submitted by the Seacoast Repertory Theatre, Portsmouth, New Hampshire on behalf of Federal Savings Bank, Dover, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-53 of the Zoning Ordinance to change the use of a property from single family land use with accessory buildings to mixed-land use of residential/art center/theater/community center with the following conditions: 1. The maximum number of residents in the main house shall be nine, 2. A live-in, onsite, full-time property manager shall reside in the apartment of the main house, 3. All living space on the property shall be limited to non-rental, nonprofit use only, including the two apartments in the barn, and 4. The Zoning Board of Adjustment requests that the Planning Board focus on mitigating all abutters' concerns during the Site Plan Review process.

The motion PASSED on a vote of 5-0-0 and the application for variance was granted.

7/17/09
Date

Jay Gooze
Jay Gooze, Chair
Durham Zoning Board of Adjustment

NOTE: Any person affected by this decision has the right to appeal this decision. If you wish to appeal, you must act within thirty (30) calendar days from the date of the hearing. The necessary first step before any appeal may be taken to the courts is to apply to the Zoning Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds upon which you will base your appeal. See New Hampshire Statutes, RSA Chapter 677, for details.

Any questions should be directed to Tom Johnson, Zoning Administrator/Code Enforcement Officer.



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898
603/868-8064
www.ci.durham.nh.us

Supporting Doc. #2

NOTICE OF DECISION

Project Name: Former Mill Pond Center Subdivision
Project Description: 2-lot subdivision
Address: 50 Newmarket Road
Applicant: Seacoast Repertory Theatre
Surveyor: Matt Faginger-Auer for Doucet Survey
Engineer: MJS Engineering (for shared driveway)
Map and Lot: Map 6, Lot 9-8
Zoning: Residence B
Date of approval: April 8, 2015

This project has been approved as stated herein. "Applicant", herein, refers to the property owner, business owner, individual(s), or organization submitting this application and to his/her/its agents, successors, and assigns.

PRECEDENT CONDITIONS

[Office use only. Date certified: _____; As-built's received? _____; All surety returned: _____]

All of the precedent conditions below must be met by the applicant, at the expense of the applicant, prior to the plans being certified by the Planning Department. Certification of the plans is required prior to issuance of a building permit or recording of any plans. Once these precedent conditions are met and the plans are certified the approval is considered final.

Please note. If all of the precedent conditions are not met within 6 calendar months to the day of the board's approval - by September 25, 2015 - the board's approval will be considered to have lapsed and resubmission of the application will be required (unless an after-the-fact extension is granted by the Planning Board). ***It is the sole responsibility of the applicant (or his/her agent) to ensure that these conditions are met by this deadline. We urge the applicant to carefully track his/her progress in meeting the individual conditions. See RSA 674:39 on vesting.

Plan Modifications

Plan modifications. The plan drawings are to be modified as follows:

- 1) Road profile. Obtain approval for the slope of the new pavement at the mouth of the shared driveway from the Department of Public Works and NHDOT, if approval from the latter is required.

- 2) Street name and addresses. Determine a street name for the shared driveway and addresses for the 2 lots to be approved by the Fire Department. Show the name and street addresses on the plans. (Use of a historical name is encouraged, though not required. The applicant is encouraged to check with a representative of the Historic District Commission for suggestions.)
- 3) Utilities. Show new location of above ground electrical utilities along the shared driveway/driveway to the rear lot or clarify that the existing utilities are to remain and add an appropriate note to the plan. If the latter, provide an acceptable easement for the rear lot to use the utilities.

Plan Notes

- 4) Plan notes. Add the following notes (or equivalent) to the plan drawings:
- 5) Access easement. Add additional sentences to Note 13: “The access easement allows for a potential broad range of commercial and residential uses on the rear lot, including but not limited to single family residence, elderly single family, duplex and multi-unit housing, eldercare facility, adult daycare center, childcare center, nursery school or preschool, bed and breakfast, recreational playing fields, forestry and temporary sawmill, religious facility, governmental facility and governmental uses. The terms of the easement, as approved and as recorded herein may not be changed without the express approval of the Durham Planning Board.”

Other Precedent Conditions

- 6) Addressing. Develop a numbering system for the two lots to be approved by the Fire Department.
- 7) Easement. The Planning Department shall approve the final maintenance and access easement. The access easement shall allow for access to the rear lot for a potential wide range of uses. Add language that the owner of the rear lot may make any improvements to the shared driveway that are approved by the Town as part of any approved use/development of the rear lot.
- 8) NHDOT permit. Obtain driveway access permit from NHDOT for the increased use and changes to the shared driveway.
- 9) Signature. Sign this notice at the bottom.
- 10) NHDES approval. Obtain NHDES approval for the subdivision.
- 11) Boundary markers. Set boundary markers for the new lot (actually physically set in place in the field) and note on plans (“marker set” or equivalent) or place an acceptable surety with the Planning Department to place them at a later time.
- 12) Indemnification form. Submit draft indemnification form per RSA 674:41 for approval to the Planning Department (to be recorded below) for the rear/residual lot (It is not needed for the new front lot). This form is required under state law for lots that do not take direct access from a public or comparable street. The purpose is to clarify that the Town does not maintain the shared driveway and to indemnify the Town of Durham in the event that the

property owner fails to properly maintain the shared driveway, thereby impacting access for emergency vehicles.

- 13) Final drawings. The following complete sets of final approved drawings shall be submitted for signature (except the electronic version) by the Town, including all 5 sheets: (a) one large set of mylars; (b) one large set of black line drawings; (c) one set of 11"x17" drawings; and (d) one electronic version by pdf or CD. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect responsible for the plans.

GENERAL AND SUBSEQUENT TERMS AND CONDITIONS

All of the conditions below are attached to this approval.

- 1) Erosion and sedimentation. All erosion and sedimentation control structures alongside the road improvements shall remain in place and be maintained until vegetation is established and the ground surface is stabilized.
- 2) House location. The location of the house shown on the topographic plan is for illustrative purposes only. The house may be located anywhere within the setback lines subject to other applicable requirements, including HDC approval. However, the house may not be located in the steep part of the lot, anywhere within the 224DH, 224EH, nor 343DH soil areas.
- 3) Shared driveway improvements. The buyer of the new front lot is responsible for construction of improvements to the shared driveway. The shared driveway shall be satisfactorily completed prior to issuance of a certificate of occupancy for any building on the front lot. An appropriate surety, to ensure either completion of the improvements or reclamation of the driveway should the improvements not be completed, shall be placed with the Planning Department prior to issuance of a building permit. The amount shall be approved by the Department of Public Works and the Town Business Manager shall approve the form of surety.
- 4) Building permit and recording. No building permits on the new lot shall be approved until there is proof of the items below having been recorded at the Registry of Deeds.
- 5) Street sign. A street sign, if required and as approved by the Department of Public Works, bearing the name of the approved street name, above, shall be installed prior to issuance of a certificate of occupancy for the front lot.
- 6) Recording. The plat (2 pages labeled "Subdivision Plan"), this notice of decision (per RSA 676:3 III), all easements/deeds, and the indemnification form (above) must be recorded at the Strafford County Registry of Deeds within two (2) calendar months to the date the plat is certified (e.g. if certified September 9th it must be recorded by November 9th). See RSA 478:1-a regarding plat requirements. Failure to comply with this requirement herein shall render the subdivision null and void.
- 7) Waivers. The Planning Board granted a waiver to allow for above ground utilities.
- 8) Execution. The project must be executed exactly as specified in the approved application package unless modifications are approved by the Town.

- 9) Approval. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
- 10) Shared driveway and HDC. The Durham Historic District Commission approved the improvements to the shared driveway as presented to the HDC, including the gravel shoulders, grading, removal of five trees as shown, and the pavement changes at the mouth. The applicant shall coordinate with DPW and NHDOT on plans to relocate the stone walls along Route 108 and inform the HDC of those plans once they are in place.
- 11) Other permits. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project.

Findings of fact. As part of this review and approval the Durham Planning Board finds the following: **A)** The applicant submitted an application, supporting documents, and plans for the project; **B)** The Planning Board accepted the application as complete; **C)** The Planning Board held one or more public hearing(s) on the application; **D)** The applicant revised and updated the plans and other documentation numerous times pursuant to comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; **E)** The application was first reviewed under the Design Review process; **F)** The Planning Board reviewed the application in accordance with state law, the Durham Zoning Ordinance, the Durham Subdivision Regulations, and other applicable law and found that the application meets all requirements (except where waivers or variances may have been granted); **G)** This project is considered to not be a Development of Regional Impact; **H)** The Planning Board duly approved the application as stated herein; **I)** Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project will be prepared as needed; **J)** Zoning Compliance. This application complies with zoning requirements in terms of lot area, frontage, and other requirements. The frontage in the RB zone is 150 feet. Both lots meet this along Newmarket Road; **K)** As a 2-lot subdivision this is exempt from the Conservation Subdivision requirements.

Signature of applicant

date

Printed name of applicant

Signature of Planning Board Chair

date

Printed name of Planning Board Chair

