



**TOWN OF DURHAM**  
8 NEWMARKET RD  
DURHAM, NH 03824  
PHONE: 603/868-8064  
[www.ci.durham.nh.us](http://www.ci.durham.nh.us)

\$200.00  
3/21  
Check # 195  
RECEIVED  
Town of Durham \$369  
MAR 21 2018  
Planning, Assessing  
and Zoning

## **ZONING BOARD OF ADJUSTMENT REQUEST PROCEDURE**

**MEETINGS:** The Zoning Board of Adjustment (ZBA) will meet on the second Tuesday of each month in the Council Meeting Room at the Town Hall.

**FILING OF APPLICATION:** Applications for ZBA are available at the Town Office. The application must be filed at the Town Office at least 15 days prior to a meeting, along with an application fee. A notice of the meeting will be published in the Foster's Daily Democrat and a similar notice will be sent, by certified mail, to abutters and nearby property owners. The filing fee will be used to meet these expenses. If the expenses exceed the filing fee, the applicant will be billed for the difference.

**LIST OF ABUTTERS:** You must prepare a list of all abutting property owners, have it verified at the Town Office, and attach it to your application. If you have any difficulty, consult the Assessor's Office, but **THE ACCURACY OF THE LIST IS YOUR RESPONSIBILITY**. An "abutter" means any person whose property adjoins or is directly across the street or stream from the land under consideration. The list of abutters must also include any holders of conservation, preservation, or agricultural preservation restrictions in accordance with RSA 676:4 (I) (a) of the New Hampshire Planning and Land Use Regulations.

**PLOT PLAN:** Applications must be accompanied by plot plans in order to be considered by the ZBA. Plans should show the location and shape of the subject structure in relation to lot lines and required setbacks, in addition to location and identification of abutters. Neither the review of any applications or plans by officials of the Town of Durham, nor any subsequent inspection of the premises, should be relied upon as an assurance of conformity to legal requirements. The applicant shall remain fully responsible for complying with all applicable United States, New Hampshire or Durham laws, ordinances, regulations or conditions.

**PRESENTATION AT MEETING:** The Petitioner should bring all documentation, which will assist the Board in understanding the proposal. Do not assume that anything submitted to a different Town Board will find its way to the ZBA file.

**NOTE:** Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. An appeal of Administrative Decision must be filed with the Board no later than 30 days from the date of the original decision as per the Zoning Board Rules of Procedure Section D(1)(b).

It is necessary that the applicant or his legal representative attend the meeting held for the review and consideration of this petition.

MAR 21 2018

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 8  
Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

Planning, Assessing  
and Zoning

**Appeal for Applicant**

State of New Hampshire

Strafford, SS

9/200

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

Name of Applicant: THOMAS A. TOYE IV

Address: 50 NEWMARKET RD, DURHAM NH Phone # 603-781-8600

Email: TOM@ARTHURTHOMASPROPERTIES.COM

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

Address: 9 TAVERN WAY, DURHAM NH 03824  
(If same as above, write "Same")

Location of Property: 9 TAVERN WAY, DURHAM NH; MAP 6  
(Street & Number, Subdivision and Lot number) LOT 9-9

Description of Property (Give Tax Map number, length of frontage, side and rear lines  
and other pertinent descriptive information) SEE ATTACHED SURVEY.

\_\_\_\_\_  
\_\_\_\_\_

**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.

\_\_\_\_\_  
\_\_\_\_\_

**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 FOUR DWELLING UNITS 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

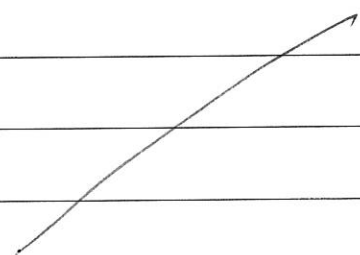
and

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:

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SEE ATTACHED

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

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SEE ATTACHED.

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## Mill Pond Center

### Application for Variance from Article 175 Section 53 (Land Use)

**To permit:** Four Dwelling Units 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 consists of a +/- 5000 SF Single family residence (known as Smith Tavern Circa 1686) and +/- 5000 Post and beam, gambrel roofed barn structure, collectively the property is known as "The Mill Pond Center".

The barn structure was used agriculturally from its original construction by the Chamberlain family in 1917 through 1979. In 1980, then new owners, Lew and Judy Roberts renovated the barn structure into a mixed-use structure with a performing arts center and accessory apartments. The property has had several owner/users from 1980-2015 including not-for-profit owners but the operation of the property as a whole has been used agriculturally, commercially and with multiple residences for approximately 100 years.

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)(07.07.2017 \$450,000\* Less +/-5Ac Building Lot at #30 Newmarket Road.

30 Newmarket Road- +/- 5 Acres development lot- Sold (10.02.2017 \$160,000)

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 the historic agricultural building will preserve heritage, including providing financial resources to the property owner to maintain the gambrel roofed barn structure which is a landmark that anchors the view-scape from Durham's southern arterial corridor- An interest that has been pre-established by a conservation easement that was placed on the former hay field. The requested use variance is for "use" of the existing structure which will be contained wholly within the existing structure.

**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 is unique to the RB Zone in that it 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 has been home to many different uses throughout its history and currently has three (3) Dwelling Units, which have been unoccupied since 2014.

**b. The proposed use is a reasonable one because:**

- 1.) The proposed use 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 or surrounding grounds/parking.
- 2.) Historic records indicate that in 1995 the property owner had a septic system designed, approved and installed for the barn structure providing onsite septic disposal system with an installed capacity of 6.75 Bedrooms.
- 3.) 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.
- 4.) The driveway and parking areas on the property are extensive due to past commercial uses and provide abundant parking in excess of the additional requirements for residential dwelling units.

5.) Limiting the uses at the property to "residential only" and adaptive reuse of the existing structure is in keeping with the stated purpose of the residence B zoning district.

6.) The existing conditions on the first and second floors of the barn are "finished" and already include electrical, plumbing and heating systems. Implementation of the requested variance will simply require renovations to modernize the space and

**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...

Granting the variance will help to preserve the 100 year old post and beam, gambrel roofed barn which punctuates the scenic view from route 108, which is the historic corridor for the Town of Durham.

**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. Zoning Varainace Granted 03-11-2017 for Mixed Use
3. Notice of Planning Board Decision from 4-8-2015 pertaining to subdivision of land at the Mill Pond Center. Reference Page 2, Item #5
4. Survey Map of Subject Property
5. Town of Durham Tax Map #6



# Map 6



PROPERTY MAP  
**DURHAM**  
NEW HAMPSHIRE

### Legend

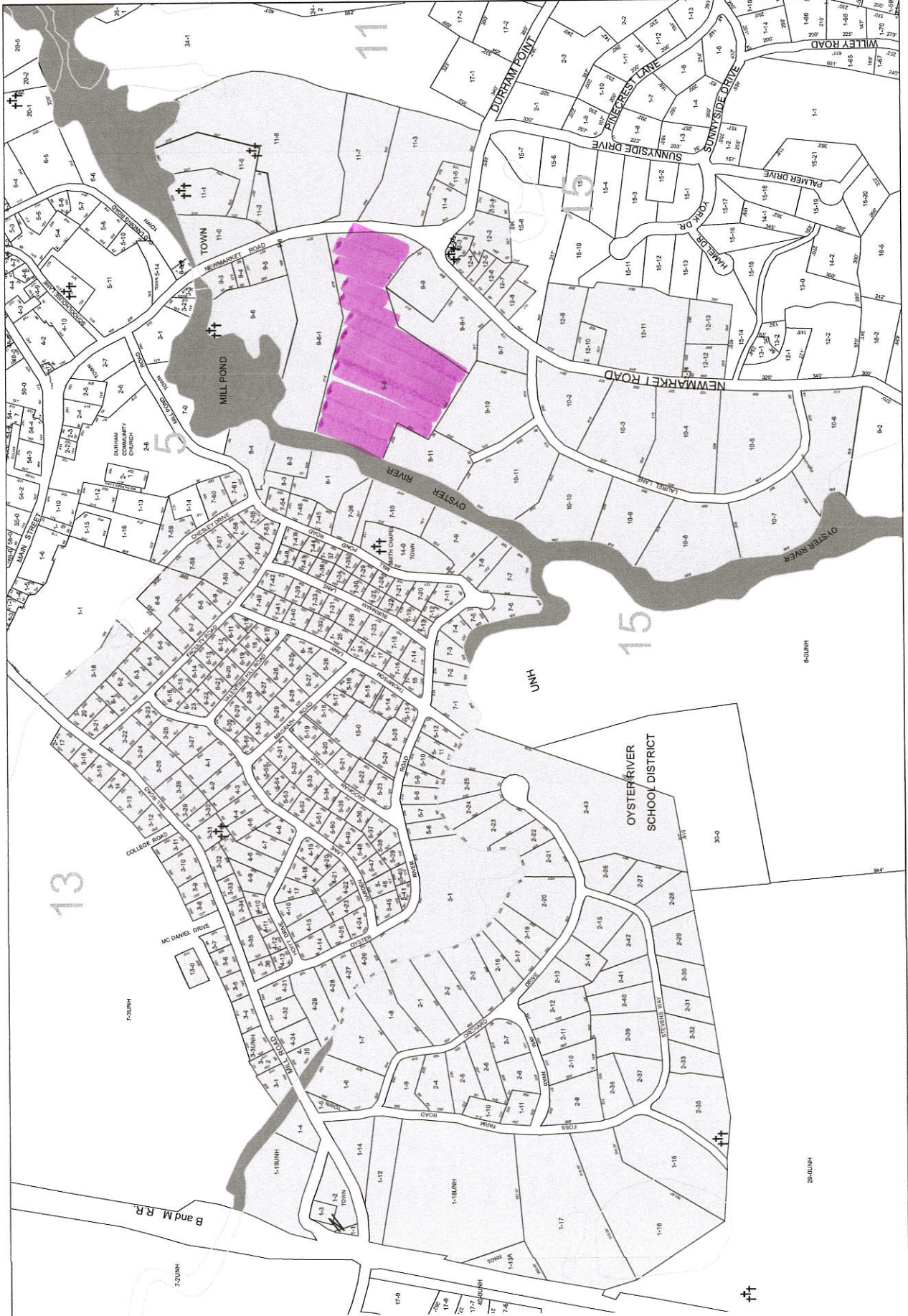
- Adjacent Map Sheets
- Current Map Sheet

#+ Cemetery

1 inch = 500 feet

This map was originally produced by  
Strafford Regional Planning  
Commission in October, 2004,  
and was updated by the  
Town of Durham in December 2017.

THIS MAP IS FOR  
ASSESSMENT PURPOSES.  
IT IS NOT INTENDED  
FOR LEGAL DESCRIPTION  
OR CONVEYANCE.

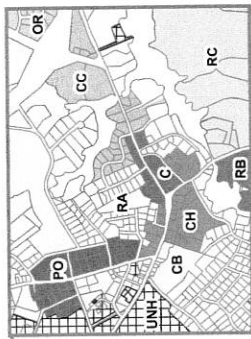




# Zoning Map March 2012 Durham, NH

## LEGEND

- CB - Central Business
- CC - Coe's Corner
- C - Courthouse
- CH - Church Hill
- DBP - Durham Business Park
- OR - Office And Research Rte. 108
- ORLI - Office And Research & Light Industry
- MUDOR - Multi-Unit Dwelling/Office Research
- PO - Professional Office
- RA - Residence A
- RB - Residence B
- RC - Residence C
- R - Rural
- UNH - UNH Properties



FOR PLANNING PURPOSES ONLY  
THIS MAP IS NOT INTENDED TO REPRESENT LEGAL DESCRIPTION OR CONVEYANCE

Map produced by  
Durham Planning  
Department  
October 2008  
Updated March 2012



TOWN OF DURHAM  
8 NEWMARKET ROAD  
DURHAM, NH 03824  
Tel: 603/868-8064  
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 Thomas A. Toye IV, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-53 of the Durham Zoning Ordinance to change the use of an existing barn to house a community center, performing arts, training & skill development, workshop & gallery, artisan space, business office and two 1-bedroom apartments. The property involved is shown on Tax Map 6, Lot 9-8, is located at 9 Tavern Way, and is in the Residence B Zoning District.

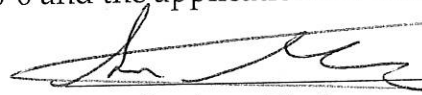
### DECISION OF THE BOARD

After review of the pertinent sections of the Zoning Ordinance of the Town of Durham, and after full consideration of the evidence submitted by Thomas A. Toye IV and testimony given at a Public Hearing on March 21, 2017 a motion was made and seconded:

*that the Zoning Board of Adjustment approve a petition submitted by Thomas A. Toye IV, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-53 of the Durham Zoning Ordinance to change the use of an existing barn to house a community center, performing arts, training & skill development, workshop & gallery, artisan space, business office and two 1-bedroom apartments as a mixed use building.*

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

3/28/17  
Date

  
Sean Starkey, 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.

As per RSA 674:33 Variances and Special Exceptions 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.

Any questions should be directed to Audrey Cline, Zoning Administrator/Code Enforcement Officer.



**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.

