



**TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT**
8 NEWMARKET RD
DURHAM, NH 03824
PHONE: 603/868-8064
www.ci.durham.nh.us

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Town of Durham
OCT 24 2018
Planning, Assessing
and Zoning

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Check #
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VARIANCE

Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or an approval by the Planning Board.

Name of Applicant TooMerfs, LLC Peter Murphy

Address: 37 Main Street, Unit O, Durham, NH 03824

Phone # 603-868-7332 Email: petermurphy6@comcast.net

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

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

Location of Property: 18 Main Street & 12 Cowell Drive
(Street & Number)

Tax Map & Lot number Map 4 Lots 55 & 38-5

A Variance is requested from Article(s) XII.1 Section(s) 175-53VI of the Zoning Ordinance to permit:

A driveway on Lot 38-5 as an accessory use to access a surface parking lot on Lot 55 whereby, the
surface parking lot is not an allowed use in the RA district which Lot 38-5 is allocated.

PLEASE SUBMIT A WRITTEN STATEMENT ADDRESSING HOW THE REQUEST FOR VARIANCE CONFORMS TO THE FIVE VARIANCE CRITERIA (A) THROUGH (E) BELOW.

RSA 674:33 Powers of the Zoning Board of Adjustment:

I(a)The zoning board of adjustment shall have the power to:

- (1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and
- (2) Authorize, upon appeal in specific cases, a **variance** from the terms of the zoning ordinance if:
 - (A) **The variance will not be contrary to the public interest;**
 - (B) **The spirit of the ordinance is observed;**
 - (C) **Substantial justice is done;**
 - (D) **The values of surrounding properties are not diminished; and**
 - (E) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

(b)(1) For purposes of this subparagraph I(a)(2)(E), "**unnecessary hardship**" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (B) The proposed use is a reasonable one.

(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish 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.

(3)The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

EXPIRATION PERIOD FOR VARIANCES

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.

**LETTER OF INTENT FOR
ZONING RELIEF**

TooMerfs, LLC (Owner / Applicant)
Tax Map 4, Lot 55 & 38-5
18 Main St. & 12 Cowell Dr.
Durham, NH 03824

RECEIVED
Town of Durham
OCT 26 2018
Planning, Assessing
and Zoning

October 24, 2018

Dear Board Members,

Please accept the following application submitted by MJS Engineering, PC, in support of the variance relief sought by Peter Murphy (the "Applicant") for property located at 18 Main Street, Tax Map 4, Lot 55 & 12 Cowell Dr. Tax Map 4 Lot 38-5 (the "Property(s)"). A review of the project by planning director Michael Behrendt and code enforcement officer Audrey Cline, determined that the application would require a variance from Article XII, Section 175-54 Table of Uses of the zoning regulations. A variance from this section only applies to Lot 38-5 for an accessory use, however we are including the adjacent lot because it is part of the project.

I. PROPERTY

The subject parcels are located in two zoning districts. 18 Main St. (lot 55) is in the Church Hill District (CH) and 12 Cowell Dr. (lot 38-5) is located in the Residence A District (RA). The parcels are bordered on the south by Main Street with approximately 140' of frontage, on the north by Cowell Dr. with approximately 146' of frontage, on the west by the US Post Office and a residential student rental property, and on the east by St. George's Episcopal Church and another residential property. The structure at 18 Main St. is currently a 4-unit apartment for student rental with 5 paved parking spaces and 12 gravel parking spaces on the lot. The structure at 12 Cowell Drive is currently a single-family residential house used for student rentals with three parking spaces on a paved driveway and parking area.

II. INTRODUCTION

The proposal is to construct a new parking lot on the rear portion of lot 55. The entire parking lot will be contained on this lot with only the access to the surface parking lot across lot 38-5. The existing paved parking lot will remain and be part of the proposed parking lot but the 12 parking spaces on the gravel area will be incorporated into the new paved parking lot. The existing number of parking spaces on the parcels is 17 on lot 55 and 3 on lot 38-5 for a total of 20 spaces between the two lots. The new total number of parking spaces between the two lots will be 48 spaces. The number of spaces on lot 38-5 will remain at 3 and the increased spaces will all be located on lot 55. The net increase in parking spaces is 28.

III. VARIANCE RELIEF

As stated above, a variance is being requested from Article XII, Section 175-54 Table of Uses, for an accessory use for the proposed driveway. Below, the Applicant has addressed each of the (5) statutory criteria as they apply to the variance now being sought for the Property Lot 38-5.

A. Granting the variance would not be contrary to the public interest

Driveways are an allowed use in the RA district, and the lot currently has a driveway. Off street parking and surface parking are allowed as an accessory use in the RA district which would require a driveway for access, therefore this driveway as an accessory use to access the surface parking lot on the adjacent lot is not contrary to the public interest as driveways are allowed and customary in the district.

B. By granting the variance the spirit of the ordinance would be observed:

Relating back to the public interest test, because the driveway exists, will require very minor changes and provide access to the off-street parking on the lot and the surface parking on the adjacent lot. The spirit of the ordinance would be observed because granting the variance will not alter the essential character of the neighborhood or threaten the public health, safety or welfare.

C. Granting the variance would do substantial justice

There would not be a public benefit achieved by denying the variances sought for the approval of the use of the proposed driveway as an accessory use because it exists now and will require minimal changes for the intended use. The harm to the owner by denial of the variance would outweigh any benefit to the public because the location proposed for the additional access provides a much safer and less congested access than the current access location to the adjacent lot where the surface parking lot is proposed. Providing this additional access will improve the traffic congestion that will exist by only having access from Main St. There will be no physical change in the appearance or use of the property with the granting of the variance therefore substantial justice is done.

D. Granting the variance would not diminish the value of surrounding properties:

The proposed driveway to the property and proposed surface parking lot would not diminish surrounding property values. There is currently an existing driveway to this parcel for access and parking, and the existing use of student housing is not changing. The use as rental student housing has existed for many years and the adjacent property is used for the same purpose. Granting the relief would create no additional impact to abutters above and beyond the impacts that currently exist as there would be no physical changes to the property and the traffic on the street is high due to the existing uses.

E. Unnecessary Hardship, owing to special conditions of the property that distinguish it from other properties in the area;

This parcel is situated close to the intersection of Cowell Dr. and Madbury Road and at the beginning of the neighborhood. The student rental use exists and is the same as adjacent parcels and this parcel is directly adjacent to the parcel where the parking lot is proposed and owned by the client. This parcel has an existing driveway that accesses the lot and ends approximately 30'+/- from lot 55 to which it will provide access. This lot is an extension of lot 55 and is uniquely situated to provide access given its location and current use.

1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

The general public purpose is to allow associated accessory uses, but not overburden the neighbors. Off-street parking and surface parking are allowed accessory uses on this lot and either would require a driveway for access. The more intense surface parking use is on the adjacent lot where it is allowed but a safer and much less congested access is available via lot 38-5 which is already being used for student rental, access and parking. Providing an extension of the driveway to access the proposed parking lot is reasonable and does not burden adjacent properties.

2. The proposed use is reasonable;

Driveways, access, off-street parking and surface parking are all allowed or accessory uses within the RA district. The use of the Property is permitted by right within the applicable zoning district and is similar in nature to adjacent properties. As such, the driveway as an accessory use is reasonable.

V. CONCLUSION

MJS Engineering, on behalf of the Applicant has established above that the criteria for granting the variance sought has been met. Accordingly, the Applicant respectfully requests that the Board approve the application.

Respectfully Submitted,



Michael J. Sievert, President
MJS Engineering, PC

