



**TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT**
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DURHAM, NH 03824
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Town of Durham
MAY 26 2022
Planning, Assessing
and Zoning

VARIANCE

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

\$479 pd.
5/26
check #
1497

Name of Applicant PETER MURPHY

Address: 6 PARK ST. Newburyport, MA

Phone # 617-312-4112 Email: petermurphy6@comcast.net

Owner of Property Concerned 60 MAIN STREET RE, LLC (Peter Murphy)
(If same as above, write "Same")

Address: 37 MAIN ST. UNIT 0 DURHAM NH 03824
(If same as above, write "Same")

Location of Property: 58 MAIN ST
(Street & Number)

Tax Map & Lot number 109/104

A Variance is requested from Article(s) XII Section(s) 175-42.100 of the Zoning Ordinance to permit:

THERE SHALL BE A MAXIMUM OF 2 BEDROOMS IN ANY
dwelling unit WITHIN A MIXED USE WITH RES. BUILDING
OR DEVELOPMENT

All applications must include a statement explaining how the applicant meets each of the five (5) statutory requirements for granting a variance, (A) through (E), which are found on page 2. (See page 3 for guidance.) The Zoning Board of Adjustment may consider the variance application incomplete if these five statements have not been addressed. In addition all applications must be accompanied by adequate plans and exhibits.

Owner Authorization and Signature:

1. I/we do hereby authorize MICHAEL SIEBERT to file this application with the Zoning Board of Adjustment, to appear before the Board and to act on my/our behalf.
2. I/we do hereby authorize members of the Zoning Board of Adjustment and/or staff to enter upon the property on the afternoon prior to the Zoning Board meeting for purposes of reviewing this application.
3. To the best of my/our knowledge the information contained in this application is complete and accurate.

Owner's Signature(s): [Signature] Date: 5/25/2022

Date: _____

**LETTER OF INTENT FOR
ZONING RELIEF**

60 Main Street RE, LLC (Owner / Applicant)
Tax Map 109, Lot 104
58 Main St.
Durham, NH 03824

May 25, 2022

Dear Board Members,

Please accept the following application submitted by Horizons Engineering, in support of the variance relief sought by Peter Murphy (the "Applicant") for property located at 58 Main Street, Tax Map 109, Lot 104 Unit 1-4 (the "Property"). A review of the project by code enforcement officer Audrey Cline, determined that the application would require a variance from Article XII, Section 175-42.B.10 Number of bedrooms, of the zoning regulations.

I. PROPERTY

The subject parcel is located in the central business districts. There are two existing buildings on the property. The subject building is located at 58 Main St. and has commercial uses on the first floor and residential uses on the second floor. The commercial uses include Town and Campus Store, and Ciao Italia Resturant. The property is bordered on the south by Main Street, on the north by a mixed use commercial building, on the west by the Town of Durham parking lot and on the east Jenkins Ct.

II. INTRODUCTION

The proposal is combined two 2-bedroom residential units that are occupied by 7 students, 4 in one unit and 3 in the other, into one 7- bedroom unit. There are currently 3 residential units on the second floor. Two years ago, there were 4 residential units and the front one facing Main Street was converted into one 6- bedroom unit. The reason for the conversion is to provide better living space, with single occupancy in each bedroom and internal common living space with exterior windows. The current configuration has the internal living space with no windows and small common area for the number of residents. The previous conversion of the other unit provided the same living arrangements, and the combined 6-bedroom unit has been successfully rented for the past two years and is already rented for next year.

III. VARIANCE RELIEF

As stated above, a variance is being requested from Article XII, Section 175-42.B.10 Number of bedrooms, for conversion to a unit with greater than the maximum allowed bedrooms. Below, the Applicant has addressed each of the (5) statutory criteria as they apply to the variance now being sought for the Property.

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

Residential units are allowed in the Central Business District. These residential units and the existing building have been occupied since the 1970's, and have always had more than two bedrooms and some bedrooms have historically had more than one occupant. Therefore, combining the unit into one larger unit with individual bedrooms and larger common spaces with exterior lighting is not contrary to the public interest as this use has been customary in this building and 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 historic multiple occupancy use of greater than two bedrooms per unit has always existed in this building, this minor change will provide better space working with the existing conditions of the building, therefore, 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 combining the two units into one larger unit because these units exist at the property 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 larger unit will provide each resident with individual bedrooms and larger common space with windows to the exterior. This combined unit will provide a much safer and less congested than the current separated units due to the existing building layout. 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 combining of the existing two units, with no exterior changes would not diminish surrounding property values. There is currently multiple bedroom units with greater than 2-bedrooms in the existing building, so there is no change in the current use or total occupancy. The use as rental student housing has existed for many years. 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 on the exterior.

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

The size, shape, stairway access, windows and hallways currently exists and the second floor of the building has been used as student housing for 50 years in this location. The building fronts on Main Street and is across the street from the University. Combining the two units allows for individual bedrooms, and provides common space that can take advantage of exterior air and light from existing windows when the reconstruction is complete. There is no expansion of the building footprint to allow for other configurations to fit 2-bedroom units. This building is unique in the fact that it has been split into separate condominium units so the applicant does not have the ability to modify the whole building but only his portion.

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 provide smaller units with less occupants per unit. However, due to the age and historical use of these apartments with multiple occupants per unit, combining the unit actually provides more space per occupant because hallways, and a kitchen can be eliminated thereby providing more common space and the ability to utilize existing windows to be incorporated into the space instead of the existing hallway.

2. The proposed use is reasonable;

Residential units are allowed in this district on the second floor of mixed-use buildings. The historical use of the Property with units having greater than 2-bedrooms per unit has existing in this building for more than 50 years. As such, the conversion of this unit to provide better, safer and less congested space per occupant is reasonable.

V. CONCLUSION

Horizons 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, VP Structural Eng.