



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

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.

Name of Applicant Slipknot Properties, LLC

Address: 26 Newmarket Road, Durham, NH 03824

Phone # 541-408-0466 Email: sletomd@gmail.com

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

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

Location of Property: 15 Newmarket Road
 (Street & Number)

Tax Map & Lot number Map 108, Lot 69

A Variance is requested from Article(s) II & XVII Section(s) 175-7 & 175-96.G.4 & 175-96.H of the Zoning Ordinance to permit:

conversion of office space into two hotel suites and installation of signage in the Historic District in excess of six square feet per sign

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.

SLIPKNOT PROPERTIES, LLC
15 NEWMARKET ROAD
APPLICATION FOR VARIANCE
RE: HOTEL SUITES

INTRODUCTION

Slipknot Properties, LLC recently purchased what was the former Town Hall property located at 15 Newmarket Road. The applicant is currently before the Durham Planning Board seeking approval to develop the property as a food truck location and to renovate and develop the former Town Hall into a “Tap Room” and related retail facility. The applicant is tentatively proposing office space in a portion of the second floor of the building. However, in recent meetings with the liquor commission regarding the liquor license for the “Tap Room” the Applicant learned that separate bathrooms would be needed for the office area. This requirement caused the applicant to rethink the use of the second floor and decide to pursue instead a small boutique hotel on the second floor which would complement the Tap Room and the other uses on the property and would be a more valuable use of the two bathrooms which the liquor commission will require. See attached plans (Exhibit A) depicting location of the hotel suites on the second floor.

While a hotel use is a use permitted as of right in the Courthouse District, the use is only considered a “hotel” if it contains at least seven rooms or suites, and the small boutique hotel will consist only of two suites. As a result, a variance is needed for the size of the proposed hotel.

FACTS SUPPORTING THE REQUEST

1. The variance will not be contrary to the public interest:

Granting the variance to allow a hotel containing two suites where seven sleeping rooms or suites is required will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly and to a marked degree, violate the relevant ordinance’s basic zoning objectives. The zoning ordinance is silent as to the objective of requiring a specific number of sleeping rooms or suites for a hotel, but it is possible that the ordinance is structured so as to distinguish it from other types of lodging such as an inn. In addition, the purpose of the Courthouse District itself should be taken into account in analyzing whether the proposed two suite hotel is contrary to the public interest. Specifically, the purpose of the Courthouse District includes the express intent to revitalize that portion of the community and to encourage multiple uses on a property. See Article XII, Section 175-45. Here, the proposed hotel suites will meet the definition of “hotel” in all respects in that they will provide overnight lodging to the general public for stays of less than thirty consecutive days. The applicant will also provide on site dining in the Tap Room, recreation and small function rooms. Housekeeping and laundry for the hotel suites will be contracted and/or provided for off site. The small number of suites will compliment rather than overtake the primary uses on site and the fact that there will be a small

boutique hotel on site together with an assortment of other uses means that the objective of the Courthouse District to encourage multiple uses will be met here.

Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential locality of the locality, or by whether it would threaten the public health, safety or welfare. Here, the locality consists of a mix of uses, including student housing, auto repair and an inn and restaurant. Adding a two suite hotel will not alter the essential character of the locality or endanger the public health, safety or welfare.

2. The spirit of the ordinance is observed:

The New Hampshire Supreme Court has virtually merged the variance “public interest” standard with the spirit of the ordinance” standard. For the reasons set forth above, the spirit of the ordinance will be observed if the variance is granted.

3. Substantial justice is done:

The relevant analysis under this element of the variance criteria is whether the benefit of granting the variance to the applicant is outweighed by a detriment or loss to the individual or to the public at large. The benefit to the applicant by being able to create a small boutique two suite hotel is significant in that it maximizes the value of the bathrooms required by the liquor commission, and the on site presence of two hotel suites will only enhance the atmosphere at the combined eating, drinking and retail location. There is no known detriment to any individual or to the public at large in allowing a small boutique hotel at this site to have two suites rather than the required seven. Accordingly, substantial justice is done by granting the requested variance.

4. The values of surrounding properties are not diminished:

Granting this variance will not diminish the values of surrounding properties which consist primarily of other commercial operations including a gas station and a restaurant and inn. Including a very small hotel alongside the permitted activities of the food trucks, Tap Room and retail, all of which are part of a revitalization of this lot, will only likely enhance, not diminish, the value of the properties. The applicant is not aware of any information or evidence that would tend to suggest that the proposed small sized hotel will decrease the value of the surrounding properties.

5. Unnecessary hardship:

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:

The lot is nearly an acre in size, and larger than many of the neighboring properties. See attached Site Plan. Exhibit B. The existing building on the lot is located at one of the lot, and the entire site is ideal for a redevelopment in keeping with the Courthouse District and the Historic District. A hotel is permitted as a matter of right in the district. Denying

the ability to have a smaller hotel as part of an array of uses on an otherwise ideal location is an unnecessary hardship.

- B. 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 because:

The ordinance itself is silent as to its purpose, but it can be reasonably assumed that the requirement of a certain number of sleeping rooms or suites, together with other factors, is meant to help in distinguishing a “hotel” from an inn. Given that the two hotel suites will not function as a traditional inn, and that the proposed use in all other respects meets the definition of a “hotel”, then there is no fair and substantial relationship between the general purpose of the ordinance and its application here.

- C. The proposed use is a reasonable one:

The proposed two suite “boutique hotel” is reasonable in that it will comply with all other elements of the hotel definition, including the limitation of occupancy to thirty days, but for the number of sleeping rooms. The presence of two hotel suites as part of an array of other uses on site will not create an “inn” or other form of lodging which is addressed under the ordinance and the relief requested is more modest than requesting other types of relief.