



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

Fees \$524
 Received 12/23/20
 check # 85936

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 Scott Mitchell Real Estate, LLC

Address: 321 D Lafayette Road Suite D, Hampton, NH 03842

Phone # (603) 926-7770 Email: jmitchellsmre@gmail.com

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

Address: 25 Garden Lane, Durham, NH 03842
 (If same as above, write "Same")

Location of Property: 3 Dover Road, Durham, NH 03842
 (Street & Number)

Tax Map & Lot number Map 108, Lot 38

A Variance is requested from Article(s) XII.1 Section(s) 175-54 of the Zoning Ordinance to permit:

parking spaces (structure) to be located within the front, side, and rear setbacks.

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. 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 Scott Mitchell Real Estate, LLC 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): See attached authorization letter Date: 12/20/20

_____ Date: _____

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.

NARRATIVE IN SUPPORT OF VARIANCE APPLICATION
SCOTT MITCHELL REAL ESTATE, LLC

This variance application is related to the property located at 3 Dover Road in Durham (the "Property"). The Property is approximately 0.25 acres, and is located in the Courthouse Zoning District.

Historically, the Property was a gasoline station and convenience store, most recently operated as Cumberland Farms. In 2017, Cumberland Farms closed, and sold the station to the current owner, who briefly operated a towing business. The Property has sat vacant and unused for many years.

Scott Mitchell owns the property across the street, located at 4 Dover Road. That property is currently operating as an Irving Station and Dunkin' Donuts. Both Irving and Dunkin' Donuts wish to expand, but there is no room to do so at that location. Accordingly, Mr. Mithcell seeks to purchase the subject Property, and relocate Dunkin' Donuts across the street to it. Doing so would free up space within the existing convenience store for Irving to expand as well.

In the Courthouse Zoning District, there is a 15' minimum front and rear setback, and a 10' minimum side setback. See Zoning Ordinance §175-54. Under the Zoning Ordinance, parking spaces must comply with those setbacks.

The existing parking for the prior use of the Property is located within all of the required setbacks. Under the redevelopment proposal, the parking lot would be reconfigured and repaved. In order to accommodate the required parking lot drive aisle widths (24' per Site Plan Regulations), the parking spaces would shift slightly closer to the side and rear lot lines. However, that shift is relatively minor, and will not result in a materially different appearance or impact. There will be a net increase of only 149sf +/- of structures within the setbacks. See attached plans.

As such, Mr. Mitchell seeks a variance from §175-54 to allow parking to be within:

- a. approximately 3.4' of the rear lot line, where 15' is required;
 - b. approximately 6.7' from the westerly side lot line and approximately 2.3' from the easterly side lot line, where 10' is required; and
 - c. approximately 9' from the front lot line where 15' is required.
1. The variances will not be contrary to the public interest.

A variance is contrary to the public interest if "it unduly and in a marked degree conflicts with an ordinance such that it violates the ordinance's basic zoning objectives." Farrar v. City of Keene, 158 N.H. 684, 691 (2009) (internal quotations omitted). In determining whether a variance would violate basic zoning objectives, the Board should examine whether the variance would alter the essential character of the locality, or whether the granting of the variance would threaten public health, safety or welfare. Id.

Here, allowing the parking to be in the setbacks will pose no threat to the public safety, health or welfare, or alter the essential character of the locality. The existing parking has been within the setbacks for years without any known issues, and although the new parking will be slightly closer to the lot lines, the reduction in those setbacks over existing conditions is very minor. The parking along the easterly side lot line faces the rear of an existing building on the abutting property. The parking along the rear lot line abuts another parking lot on that adjacent property. And the parking along the westerly side lot line and front line abuts the driveway and street. As such, there will be no impact to the public, or to abutting lot owners, from the encroachments.

2. The spirit of the ordinance is observed.

The New Hampshire Supreme Court has determined that the requirement that a variance not be contrary to the public interest “is co-extensive and related to the requirement that a variance be consistent with the spirit of the ordinance.” Chester Rod & Gun Club v. Town of Chester, 152 NH 577, 580 (2005). As such, this criterion overlaps with the public interest requirement. For the reasons set forth above, the spirit of the ordinance will be observed. Additionally, the variances observe the spirit of the ordinance by allowing the redevelopment of a vacant lot in a way that provides safe access and parking. The redevelopment will be a dramatic improvement of existing (and historic) conditions on the Property.

3. Substantial justice is done.

Substantial justice is done where granting a variance will not cause harm to the general public that outweighs the benefit to the applicant. See Malachy Glen Associates v. Town of Chichester, 155 N.H. 102, 109 (2007). That is the case here, as allowing these variances would cause no harm to the general public. The proposed setbacks are consistent with other properties in the area and the historic use of the subject Property. Denying the variances would cause harm to the public because prime commercial property would remain vacant, undeveloped, and deteriorating, rather than being put to a productive use that will contribute to the tax roll and neighborhood services. Additionally, the benefit of the variances to the Applicant is substantial, because they are necessary to provide safe and compliant parking and drive aisles on the Property.

4. The value of surrounding properties is not diminished.

Granting these variances will not diminish surrounding property values, for the same reasons cited above. Absent the variances, the Property would remain undeveloped, which would negatively impact the surrounding property values. Redeveloping the site will foster surrounding business, and offer a popular service to nearby residents. As such, the project is expected to enhance surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because, 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.

The Property is unique in that it is a relatively small corner lot. Its dimensions are roughly 100' x 100', and when the required setbacks are factored in, there is very little buildable land area remaining. The fact that the Property has sat vacant for the past several years is a testament to the challenges redevelopment presents.

The proposed project includes a very modest building, at only 1,500+/- sf., yet the lot lacks the physical area to provide the required parking and drive aisles without the proposed encroachments into the setbacks. The only way the parking could meet the required setbacks would be if the building size were further reduced. However, that is not feasible given that most any permitted use in the District would require a building at least as large as proposed here. And, although the proposed parking will be slightly closer to the lot lines than the existing conditions, the change is very minor, and overall, the redevelopment will be a dramatic improvement both in terms of function and appearance.

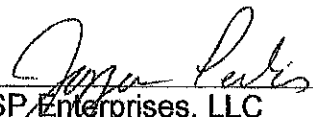


Tropic Star Development

321 D Lafayette Rd
Hampton, NH 03842
603.926.7770

LETTER OF AUTHORIZATION

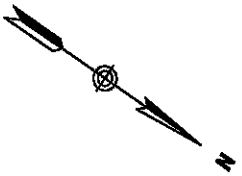
As owner of JESP Enterprises, LLC located at 3 Dover Road, Durham New Hampshire, Parcel ID: 108/38/00/0 (the "Property"), I do hereby authorize Scott Mitchell Real Estate, LLC and/or Tropic Star Development and its engineers, consultants and attorney to act on our behalf and as our agent concerning applications for any local, state or municipals approvals.



JESP Enterprises, LLC
Owner

Date: 6/4/24

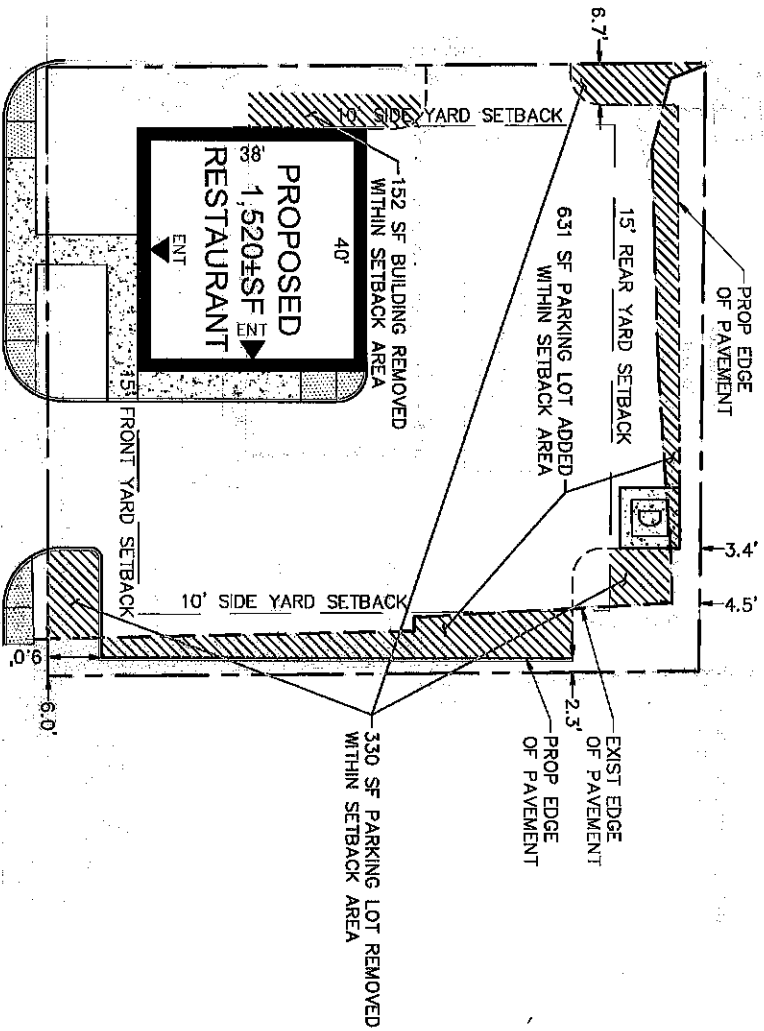
AMP
10 JSP



STRUCTURES ADDED WITHIN SETBACK AREA (+)	631 SF
STRUCTURES REMOVED WITHIN SETBACK AREA (-)	482 SF
NET	+149 SF

NOTE:

ARTICLE II SECTION 175-7 OF THE TOWN OF DURHAM ZONING ORDINANCE DEFINES STRUCTURE AS: THAT WHICH IS BUILT OR CONSTRUCTED WITH A FIXED LOCATION ON THE GROUND OR ATTACHED TO SOMETHING HAVING A FIXED LOCATION ON THE GROUND. STRUCTURE INCLUDES BUT IS NOT LIMITED TO A BUILDING, SWIMMING POOL, MOBILE HOME, BILLBOARD, PIER, WHARF, SEPTIC SYSTEM, PARKING SPACE/PARKING LOT AND DECK. STRUCTURE DOES NOT INCLUDE A MINOR INSTALLATION SUCH AS A FENCE 6 FEET HIGH OR LESS IN HEIGHT, A MAILBOX, A FLAGPOLE, OR AN ACCESSORY SHED.



DOVER ROAD (ROUTE 108)



Property Line Setback Exhibit
 3 Dover Road
 Durham, New Hampshire
 December 18, 2024

TRAFFIC SIGN SUMMARY						
ID NUMBER	WIDTH	HEIGHT	SYMBOL	TEXT DIMENSIONS (in)	NUMBER OF POSTS/ SIGN REQUIRED	NUMBER OF POSTS/ SIGNALS REQUIRED
RT-1	30	30		LETTER HEIGHT: 12 ROUTE SPACING: 12	2	2
RT-6	12	18		SEE MUTCD SIGN STANDARDS	2	2 POSTS
RT-50P	12	6		SEE MUTCD SIGN STANDARDS	1	1

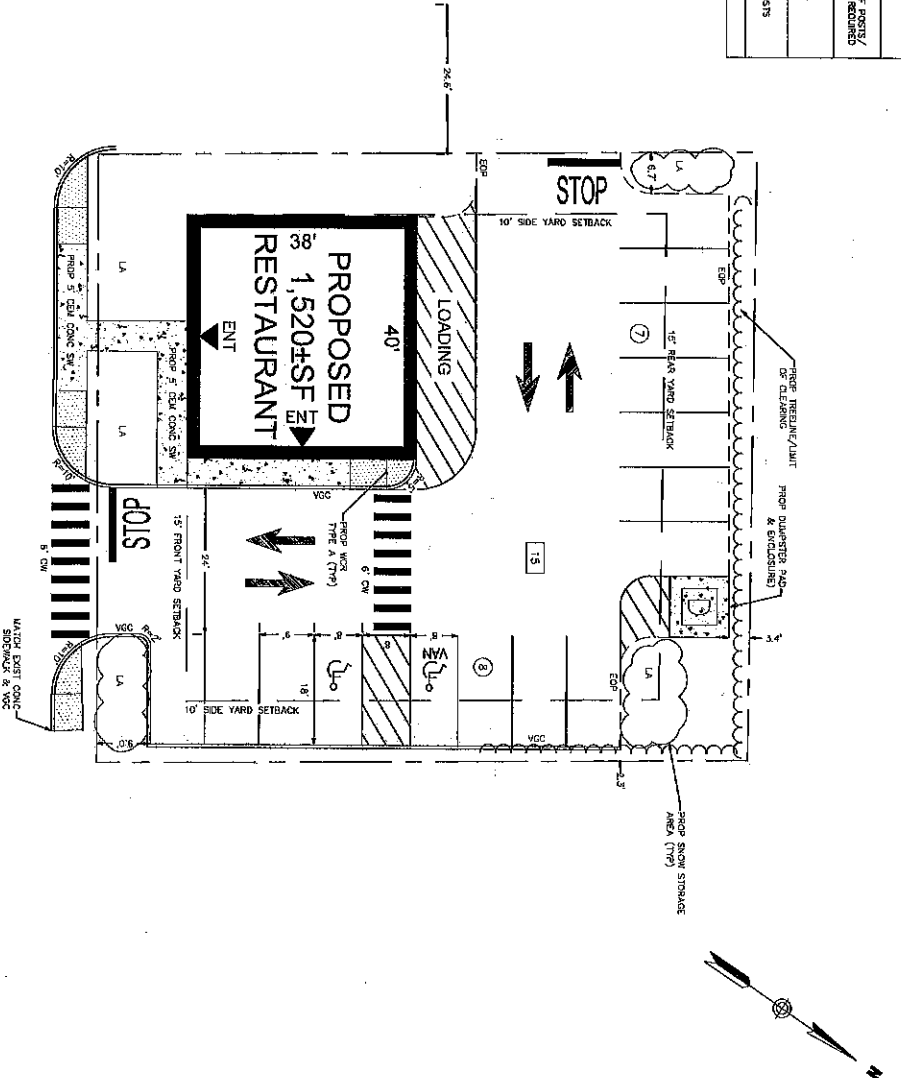
* HANDICAP PARKING SPOTS SHALL BE IN ACCORDANCE WITH TITLE OF DURHAM STANDARDS AND ADA REGULATIONS.
 ** PAINT SIGN SHALL BE LOCATED AT ALL ADA SPACES PER ADA ACCESSIBILITY GUIDELINES (AMENDED 2010) ANY SPACES WITH A VAN SIGN IS NOT REQUIRED TO BE RESTRICTED AND 15' WIDE.

PARKING TABLE		
PARKING REQUIREMENTS	REQUIRED	PROVIDED
RESTAURANT: 1,520 SF	1 SPACE / 100 SF PLUS 1 PER 1,000 SF	12 SPACES
HANDICAP ACCESSIBLE SPACES	2 SPACES	2 SPACES
STALL WIDTH	9 FT	9 FT
LENGTH OF SPACE	18 FT	18 FT
ISLE WIDTH	24 FT	24 FT

ZONING TABLE		
ZONING DISTRICT	COURTHOUSE DISTRICT	RESTAURANT
PROPOSED USE	REQUIRED	PROHIBITED
DIMENSIONAL REQUIREMENTS	5,000	10,880
LOT SIZE (SQ)	50	100
MIN LOT FRONTAGE (FT)	15	30*
FRONT YARD SETBACK (FT)	10	3.4*
REAR YARD SETBACK (FT)	10	2.5, 6.7*
SIDE YARD SETBACK (FT)	35	<35
MAX BUILDING HEIGHT (FT)	30	79

* VARIANCE BEING SOUGHT FOR FRONT, SIDE, AND REAR SETBACKS IN REGARD TO LOCATION OF PROPOSED PARKING SPACES.
 ** TO LOCATION OF PROPOSED PARKING SPACES OTHER THAN AS AN ACCESSORY TO A FINANCIAL INSTITUTION.

- NOTES:
1. PARKING SPACES SHOWN FOR REFERENCE ONLY.
 2. SNOW STORAGE TO BE LOCATED IN UNDESIGNED AREAS EXCESS TO THE REQUIRED SPACES.
 3. FINAL PLAN TO BE STAMPED BY A NH LICENSED PROFESSIONAL ENGINEER.



DOVER ROAD (ROUTE 108)

TEEC
 The Engineering Corp
 TEL, INC.
 283 Merrimack St., 100 Ocean Boulevard
 Zebra Point, Suite 101, PO Box 250
 Lawrence, MA 01840 (978) 681-9154
 (978) 794-1781 (978) 681-9154
 www.theengineeringcorp.com

DESIGNED BY: AMP
 DRAWN BY: SJD
 CHECKED BY: CPH
 DATE: 07/20/2024
 SCALE: AS SHOWN

CONTRACTOR:
 Tropic Star
 Development, LLC
 321 D Lafayette Road
 Hampton, NH 03842

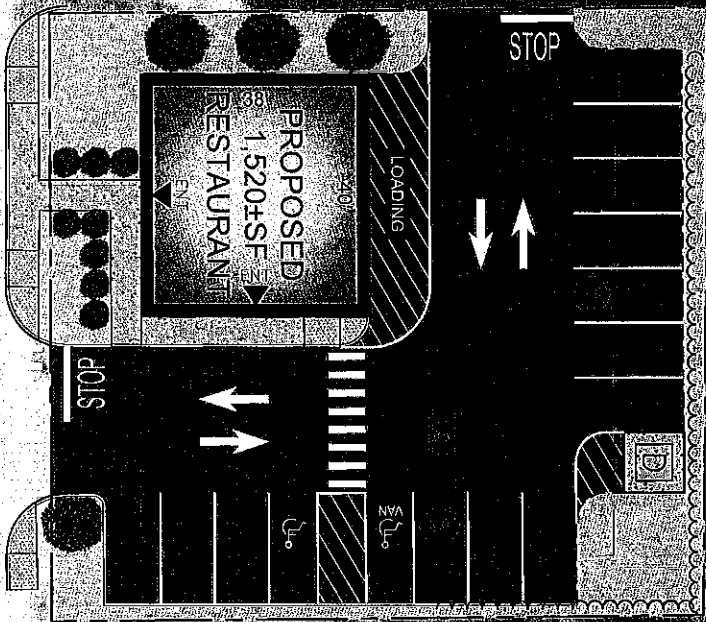
PROJECT TITLE:
 Proposed Restaurant
 at 3 Dover Road
 PROJECT LOCATION:
 3 Dover Road
 Durham, NH 03824
 DRAWING TITLE:
 Layout Plan

PROJECT NO.: 123
 TEEC DRAWING NO.: 1150_2A
 DRAWING NO.: C-1
 SHEET 1 OF 1

PARKING TABLE		
PARKING REQUIREMENTS	REQUIRED	PROVIDED
RESTAURANT: 1,520 SF	1 SPACE / 100 SF OF SEATING AREA, PLUS 1 PER EMPLOYEE ON MAXIMUM SHIFT	15 SPACES
HANDICAP ACCESSIBLE SPACES	2 SPACES	2 SPACES
STALL WIDTH	9 FEET	9 FEET
LENGTH OF SPACE	18 FEET	18 FEET
AISLE WIDTH	24 FEET	24 FEET

ZONING TABLE		
ZONING DISTRICT:	COURTHOUSE DISTRICT	
PROPOSED USE:	RESTAURANT*	
DIMENSIONAL REQUIREMENTS:	REQUIRED	PROPOSED
LOT SIZE (SQ)	5,000	10,881
MIN. LOT FRONTAGE (FT)	50	100
FRONT YARD SETBACK (FT)	15	15
REAR YARD SETBACK (FT)	10	55
SIDE YARD SETBACK (FT)	10	10
MAX. BUILDING HEIGHT (FT)	35	<35
MAX. IMPERVIOUS AREA (%)	80	79

* ALL DRIVE-THROUGH FACILITIES ARE PROHIBITED OTHER THAN AS AN ACCESSORY TO A FINANCIAL INSTITUTION.



DOVER ROAD (ROUTE 108)



TEC
The Engineering Corp

3 Dover Road
Durham, NH
SUMMARY
1,520± SF Retail/Restaurant Building
15 Parking Spaces