

APPLICATION FOR APPEAL

To:
Zoning Board of Adjustment
Town of Greenville
Greenville, NH 03048

Do not write in this space
Case No _____
Date filed _____

(signed - ZBA)

Name of applicant: Dan Hynes / Dunster Realty LLC
Address: 8 Dunster Ave Greenville NH 03048
Owner: Same
(if same as applicant, write "same")

Location of property: 8 Dunster Ave
8-370 Downtown
(number, street)
(map number & lot number, zoning district)

NOTE: Fill in Section 1, 2, 3, or 4 as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate. Sign application at end.

Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of zoning ordinance
Decision of the enforcement officer to be reviewed _____

_____ Number _____ Date _____
article _____ section _____ of the zoning ordinance in question

Section 2. APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a special exception as specified in the zoning ordinance article 3 section 4 A 3 + 5.9A

SEE ATTACHED MEMO

Section 3. APPLICATION FOR VARIANCE

A variance is requested from article _____ section _____ of the zoning ordinance to permit _____

Facts supporting this request:

1. The proposed use would not diminish surrounding property values because:

2. Granting the variance would not be contrary to public interest because:

3. Denial of the variance would result in "unnecessary hardship" to the owner. The applicant must either meet the criteria of I or II below.

I. Unnecessary hardship means owing to the 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 zoning ordinance provision and the specific application of that provision to the property; and

b. The proposed use is a reasonable one.

II. If the criteria for unnecessary hardship above are not met an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions on the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

I. Granting the variance would do substantial justice because:

II. The use is not contrary to the spirit of the ordinance because:

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Name of applicant Dan Hynes / Dunster Realty LLC
Address 8 Dunster Ave Greenville NH 03048
Owner Dane
(if same as applicant, write "same")

Location of property 8 Dunster Ave
(number, street)
8-37B Downtown
(map number & lot number, zoning district)

NOTE: Fill in Section 1, 2, 3, or 4 as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate. Sign application at end.

Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION

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Decision of the enforcement officer to be reviewed _____

article _____ section _____ of the zoning ordinance in question. Number _____ Date _____

Section 2. APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a special exception as specified in the zoning ordinance article _____ section _____

Section 3. APPLICATION FOR VARIANCE

A variance is requested from article 2 section 7.2.6(1) of the zoning ordinance to permit Dwelling on ground floor

SEE ATTACHED MEMO

Facts supporting this request:

1. The proposed use would not diminish surrounding property values because:

2. Granting the variance would not be contrary to public interest because:

3. Denial of the variance would result in "unnecessary hardship" to the owner. The applicant must either meet the criteria of I or II below.

I. Unnecessary hardship means owing to the 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 zoning ordinance provision and the specific application of that provision to the property; and

b. The proposed use is a reasonable one.

II. If the criteria for unnecessary hardship above are not met an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions on the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

I. Granting the variance would do substantial justice because:

II. The use is not contrary to the spirit of the ordinance because:

Section 4. APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from article _____
Section _____ of the zoning ordinance to permit _____

1. Does the request involve a dimensional requirement, not a use restriction?
() yes () no
2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town _____

- or -

*Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bonafide purchaser _____

And how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake _____

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area _____
4. Explain how the cost of correction far outweighs any public benefit to be gained _____

SIGNATURE

Applicant  Date 12-9-22
(Signature)

APPLICATION FOR APPEAL

To:
Zoning Board of Adjustment
Town of Greenville
Greenville, NH 03048

Do not write in this space
Case No _____
Date filed _____

(signed - ZBA)

Name of applicant Dan Hynes / Duaste Realty LLC
Address 8 Duaste Ave Greenville NH 03048
Owner Dane
(if same as applicant, write "same")

Location of property 8 Duaste Ave
(number, street)
8-37B Downtown
(map number & lot number, zoning district)

NOTE: Fill in Section 1, 2, 3, or 4 as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate. Sign application at end.

Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of zoning ordinance.
Decision of the enforcement officer to be reviewed _____

article _____ section _____ of the zoning ordinance in question
Number _____ Date _____

Section 2. APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a special exception as specified in the zoning ordinance article _____ section _____

A Section 3. APPLICATION FOR VARIANCE

A variance is requested from article A section 3a of the zoning ordinance to permit more than 6 units

SEE ATTACHED MEMO

Facts supporting this request:

1. The proposed use would not diminish surrounding property values because:

2. Granting the variance would not be contrary to public interest because:

3. Denial of the variance would result in "unnecessary hardship" to the owner. The applicant must either meet the criteria of I or II below.

I. Unnecessary hardship means owing to the 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 zoning ordinance provision and the specific application of that provision to the property; and

b. The proposed use is a reasonable one.

II. If the criteria for unnecessary hardship above are not met an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions on the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

I. Granting the variance would do substantial justice because:

II. The use is not contrary to the spirit of the ordinance because:

Section 4. APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from article _____
Section _____ of the zoning ordinance to permit _____

1. Does the request involve a dimensional requirement, not a use restriction?
() yes () no
2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town _____

- or -

Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bonafide purchaser _____

And how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake _____

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area _____
4. Explain how the cost of correction far outweighs any public benefit to be gained _____

SIGNATURE

Applicant  Date 12-9-22
(Signature)

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Location of property 8 Dunster Ave
(number, street)
8-37B Downtown
(map number & lot number, zoning district)

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Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of zoning ordinance.
Decision of the enforcement officer to be reviewed _____

article _____ section _____ of the zoning ordinance in question: _____
Number _____ Date _____

Section 2. APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a special exception as specified in the zoning ordinance article _____ section _____

Section 3. APPLICATION FOR VARIANCE

A variance is requested from article A section 3d of the zoning ordinance to permit not requiring 10 foot wide green belt

SEE ATTACHED MEMO

Facts supporting this request:

I. The proposed use would not diminish surrounding property values because:

2. Granting the variance would not be contrary to public interest because:

3. Denial of the variance would result in "unnecessary hardship" to the owner. The applicant must either meet the criteria of I or II below.

I. Unnecessary hardship means owing to the special conditions of the property that distinguish it from other properties in the area:

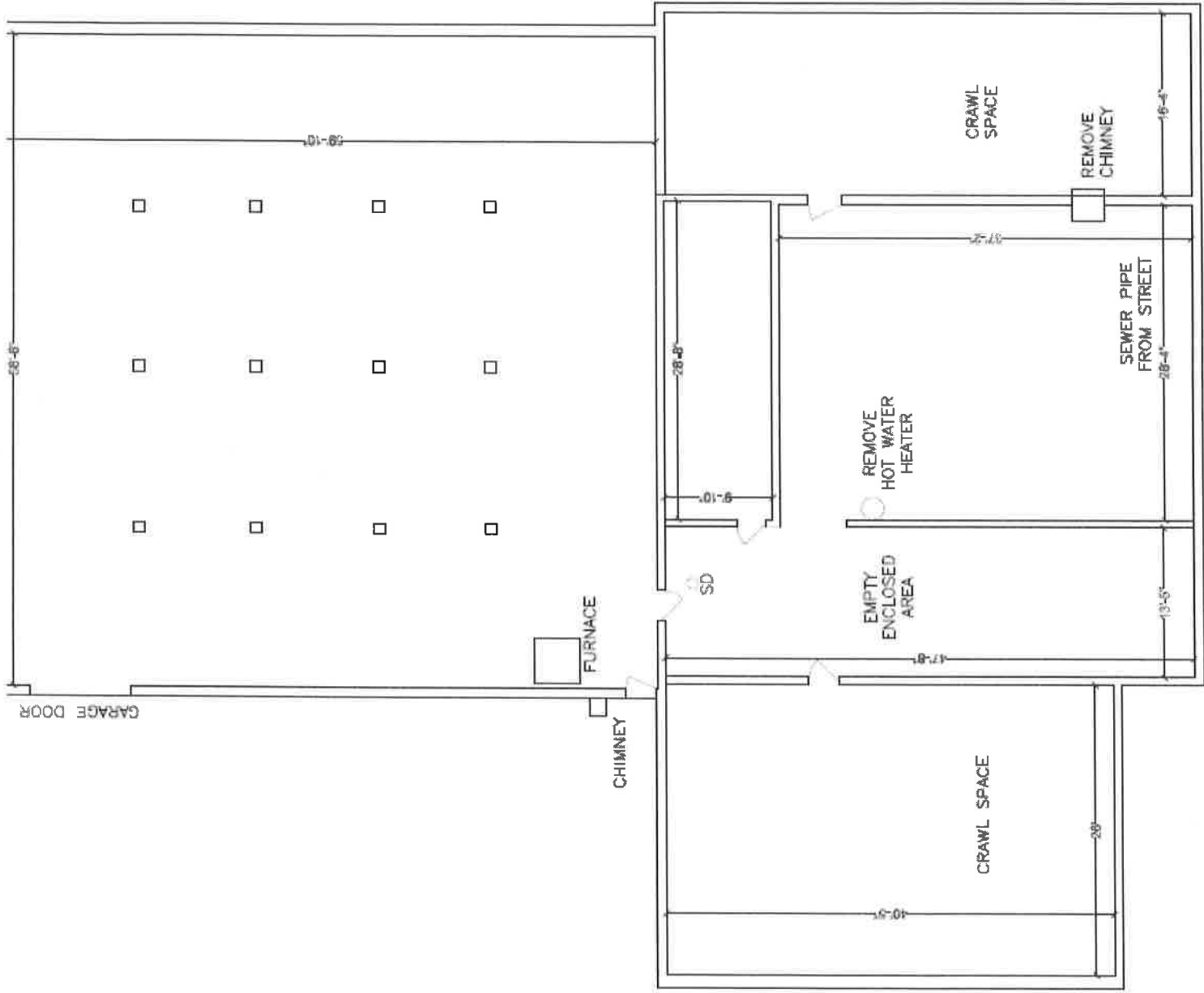
a. No fair and substantial relationship exists between the general public purposes of the zoning ordinance provision and the specific application of that provision to the property; and

b. The proposed use is a reasonable one.

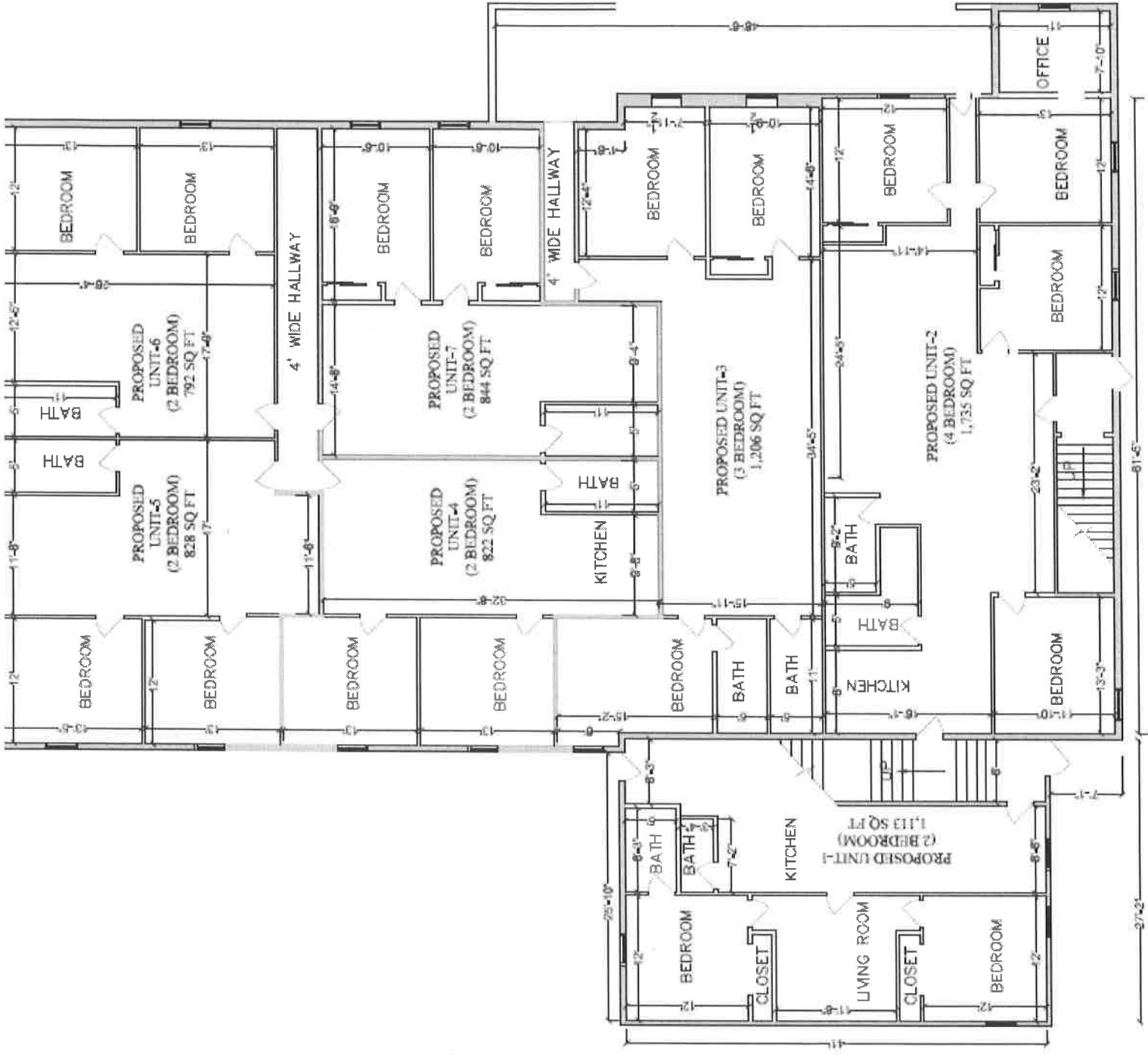
II. If the criteria for unnecessary hardship above are not met an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions on the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

I. Granting the variance would do substantial justice because:

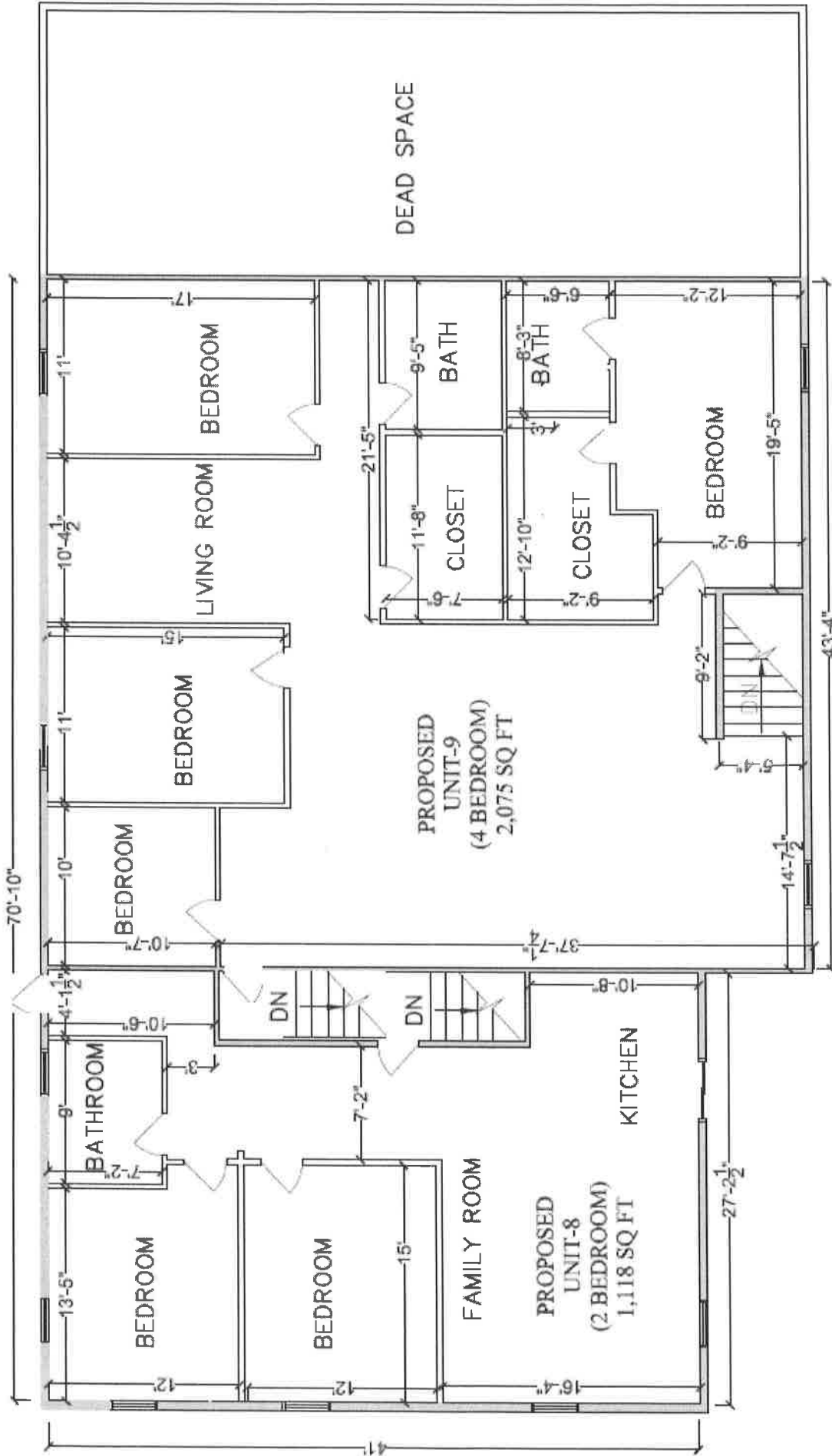
II. The use is not contrary to the spirit of the ordinance because:



GROUND FLOOR PLAN



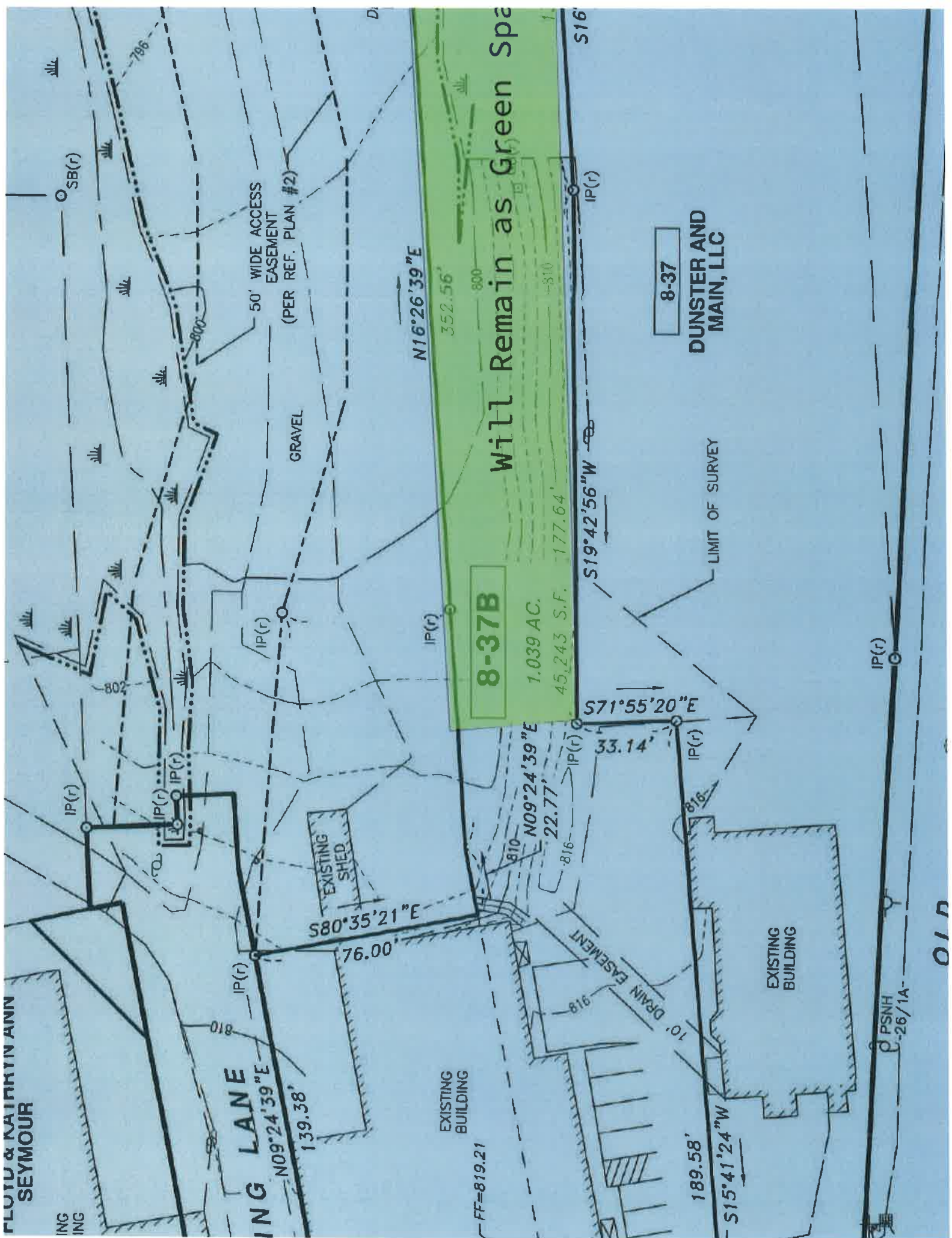
5TH FLOOR PLAN



TOP FLOOR PLAN

SCALE: 3/32"=1'

FLOU & KATHRYN ANN SEYMOUR



OLD

Zoning Board of Adjustment Application for 8 Dunster Ave.

I. Introduction

This application seeks Zoning Board of Adjustment approval of issues that have arisen in a site plan application for a change of use to multi-family housing with planning board. A copy of the determination that the use is not permitted is not presently available as the minutes have not been approved and posted for the Planning Board meeting that took place on December 7, 2022. Planning board continued the hearing to allow applicant to seek the required variances.

II. Background

Last year, applicant purchased 8 Dunster Ave, which was the Antiques Mall. This property is in the downtown district.

It is an approximately 17,000 square foot building that is presently vacant but was used as commercial; retail. There are multiple units in the building.

The history of the building includes it being used for various purposes including a liquor store, manufacturing/industrial, and most recently retail for the Antiques Mall of New Hampshire and a hair salon.

The plan for the building is to convert it to multi-family dwellings. The conversion likely includes workforce housing¹ as defined under N.H. RSA 674:58, and accordingly involves protections under N.H. RSA 674. Applicant seeks all possible protections under N.H. RSA 674:60 and Britton v. Chester.

Originally, applicant wanted to convert the building to a wedding venue. Applicant put forth a change of use plan to planning board, but eventually withdrew the application due to lack of parking. Applicant had thought he would be able to obtain parking from adjacent landowners, including the town, but no agreement to obtain additional parking was able to be reached. Although the downtown district is exempt from parking requirements, the venue would have held over 100 people. During a prior conceptual meeting with planning board, applicant was essentially told he could not proceed with the project under the present parking layout. The

¹ Rent rates to be set based upon <https://www.nhhfa.org/wp-content/uploads/2021/01/Payment-Standards-Town-Current.pdf> and other HUD formulas.

building presently has roughly 20 parking spots outside of the building. There is a garage under the building that could hold one or two more parking spots. While the area of the garage is over 2000 sq feet, the layout of various support beams makes it very impractical to safely maneuver cars throughout it.

The second idea applicant considered is to convert the building to a church; due to recently enacted RSA 674:76.

“674:76 Religious Use of Land and Structures. No zoning ordinance or site plan review regulation shall prohibit, regulate, or restrict the use of land or structures primarily used for religious purposes; provided, however, that such land or structures may be subject to objective and definite regulations concerning the height of structures, yard sizes, lot area, setbacks, open space, and building coverage requirements as long as said requirements are applicable regardless of the religious or non-religious nature of the use of the property and do not substantially burden religious exercise. 291:2 Effective Date. This act shall take effect upon its passage”.

Per N.H. RSA 674:76, the town is prohibited from having parking requirements for the religious use of the property. Accordingly, applicant could have a church, by right, which likely would host the same wedding events. Applicant informally brought this idea in front of the Board of Selectmen during the process of trying to obtain additional parking from the town. The Selectmen appeared to not like the idea for the wedding venue. While applicant could provide roughly 20 parking spaces for the church, all of the additional parking would be overflow on Main Street. While this would be allowed as a matter of right per the RSA, it might not be the most practical. It also would likely upset the residents and customers of businesses who already use Main St. for parking. While it would not be the most beneficial use for the applicant or the town, it is the next best (possibly only) option for applicant if the Change of use to multi-family is not allowed.

Applicant is presently applying to change the use of 8 Dunster Ave to multi-family housing. Originally, applicant was going to put in 11 units, but wound up consolidating some units to meet the guidelines in 5.2 (m). Although not required in the Downtown district, applicant attempted to use 5.2 as suggestions as to what the Town would likely want. Some of those subsections, however, are impossible to comply with as this is an existing building and new space cannot be obtained.

No additions are being proposed to the existing building. Further, parking is essentially remaining as it currently is, with slight adjustments to accommodate for handicapped spaces. Parking presently goes around the building, and will remain so.

The ground level (according to applicant) of the building is remaining as additional parking, storage and other accessory uses.

The middle and upper floor breakdown of units are:

Unit 1: 2 bedroom 2 bath: 1113 sq ft

Unit 2: 4 Bedroom 2 bath: 1735 sq ft

Unit 3: 3 Bedroom 2 bath: 1206 sq ft

Units 4: 2 Bedroom 1 bath 822 sq ft

Unit 5: 2 Bedroom 1 bath: 828 sq ft

Unit 6: 2 Bedroom 1 bath: 792 sq ft

Unit 7: 2 Bedroom 1 bath: 844 sq ft

Unit 8: 2 Bedroom 1 bath: 1118 sq ft

Unit 9: 4 Bedroom 2 bath: 2075 sq ft

(See attached drawings)

There will be 24 total parking spots available including required ADA parking spots. Each unit will have 2 dedicated spots with the remaining spots to be used as visitor parking and handicapped spots.

Due to the size of the building and the limited parking spots, multi-family housing is the best/only use of the building so that it does not remain vacant.

Per parking in section 4.3 of Greenville zoning ordinance, the following parking spots would be required:

Single family: 2

Multi family: 18

Place of worship: 100+

Inn: 30+

Restaurant: 75+

Professional office: 38

Nursing home: 30+

Industrial: N/A

Retail & other commercial: 35+

The only permissible use under those formulas is a residential use.

All bedrooms, and units, will be serviced by minisplits for HVAC.

All units to be provided with their own tankless water heaters.

All units will have their own electrical meter and the building will be serviced with 3 phase electricity which Eversource confirmed is available.

The building will remain on town sewer & water.

Every exterior exit/entrance will have a downward facing light.

There will be a Fire sprinkler system throughout to comply with NFPA 13R per engineer drawings.

The building will have one small sign attached to the building in place of the existing sign.

At the planning board completeness review held on Dec. 7, 2022, the board expressed concern that the proposal did not meet the requirements under Appendix A (Minimum Lot Size Ordinance)². Specifically, having more than 6 units and not having a 10 foot wide green belt. Accordingly, applicant seeks a variance for A.3 (a) and A.3(d).

There is also an issue of whether the floor Applicant considers to be the ground floor is actually the ground floor. Accordingly, applicant seeks a variance for 2.7.2 (b)(1).

III. Variances are not required for this specific change of use

At the outset, applicant does not believe he needs a variance for any of these things and they should be allowed as permitted. Accordingly, applicant seeks a determination by this board that no variances are required per the submitted plans.

²https://www.greenvillenh.org/sites/g/files/vyhlf3186/f/uploads/zoning_regulations_and_ordinances_reformat_march_2022.2_2.pdf

A: Ground floor

As it relates to the ground floor, it is important to note there is no definition of “ground floor” in the zoning ordinance. Contract law dictates that ambiguous terms go against the party who drafted the term (in this case, the Town). Applicant believes “ground floor” should reasonably mean/include a floor on the ground. The ground floor (garage) is on the ground of the building. It is street level with various parts of the property. However, because the property is built on a slope, it is not exactly street level with all sides of the property. The entire middle floor (which contains the proposed dwellings), is above the ground floor. Further, that level is not street level as you have to go up a few stairs to enter any of the dwelling units.

B: Open Space

The entirety of section A.3 is inapplicable to applicant. Section A.3 does not apply to the downtown district when used for residential purposes. Under 2.7.4 LOT REQUIREMENTS DOWNTOWN (D) DISTRICT, a. Minimum area: “Residential uses in the Downtown District are exempt from the minimum area provisions of Appendix A, Minimum Lot Size Ordinance, and Appendix B, Open Space Residential Development Ordinance.”

This is further supported by 2.7.4. “All residential and business uses in the Downtown District shall be subject to the lot requirements as defined below and as documented in Table 2-1, Building Schedule.” Applicant is complying with that table (in part due to the building being an existing building with an existing height above 35 feet which isn’t being modified)

IV. Special Exception Sought

This building is an existing building. No additions to the building are being made. It is simply undergoing a change of use. Accordingly, the building gets various protections that a newly built building would not under 3.4 (nonconforming regulations).

Applicant is entitled to a Special Exception under 3.4 A 3 “A lawfully existing nonconforming use may be changed to a different nonconforming use upon the granting of a Special Exception by the Board of Adjustment if the Board is satisfied that the proposed use is determined by the Board to be more in conformity with the permitted uses in the District than the existing use, and the proposed use meets the requirements defined in Section 5.9.A of this Zoning Ordinance, Special Exceptions for Nonconforming Uses and Buildings”.

A lawfully existing nonconforming use may be changed to a different nonconforming use upon the granting of a Special Exception by the Board of Adjustment if the Board is satisfied that the proposed use is determined by the Board to be more in conformity with the permitted uses in the District than the existing use, and the proposed use meets the requirements defined in Section 5.9.A of this Zoning Ordinance, Special Exceptions for Nonconforming Uses and Buildings

Under 5.9 A "5.9 SPECIAL EXCEPTION FOR NONCONFORMING USES AND BUILDINGS

The Board of Adjustment shall approve Special Exceptions as referenced by Section 3.4. Paragraphs A.3 and A.5 subject to the following criteria: If after presentation, including a review of the plan showing the location, layout, a scale drawing, and location of any signs and utilities, the Board in its judgment, finds that the use is more in conformity with the permitted uses for the District, and finds that the use will not create excessive traffic, congestion, noise or odors, will not tend to reduce the value of surrounding properties, has adequate sewage and water facilities, and will preserve the attractiveness of the Town, said use shall be granted"

Applicant is submitting the site plan, layout of floors, scale drawing, location of any signs (Sign to replace existing sign size and location) and location of utilities.

A: The use is in conformity with the permitted use

Downtown district permits multi-family housing

B: The use will not create excessive traffic, congestion, noise or odors

Prior uses of the building include commercial uses. Those uses generated more traffic than residential will. The proposed residential use will not lead to excess noise or odors.

C: The use will not tend to reduce the value of surrounding properties

The change of use will actually increase the value of surrounding properties. It is anticipated the value of the property will at least double after renovations are completed. Further, the building is presently vacant and would likely continue without this approved use. The building presently needs various cosmetic improvements including siding, paint, etc. As part of the rehabilitation

change of use, the appearance of the building will be restored/improved. This will further increase surrounding property values.

D: The use has adequate sewage and water facilities,

The building is presently on Town water & sewer. The property either has or will be upgraded to provide appropriate water and sewage facilities. Flow testing as already been performed and will support a fire sprinkler.

E: The change of use will preserve the attractiveness of the Town

The building is likely to go into disrepair in its vacant state. Part of the rehabilitation will include repairing/updating the exterior of the building.

Further, there is an overwhelming need for workforce and middle-income housing. This project will provide that need leading to some additional people being attracted to relocating to Greenville.

V. VARIANCES

At the outset, zoning ordinances of towns should not be considered in isolation. The authority for various regulations are provided in part through a town's master plan. See RSA 674:2, and generally 674. Further, under RSA 674:17, zoning ordinances should meet specific purposes.

Here, the 2017 Master Plan of Greenville gives support for the proposed change of use³.

In the master plan, residents of Greenville were surveyed as to what they would like to see in the town. "While respondents wish to maintain the rural characteristics, many also indicated that some change is needed to address many of the issues facing Greenville. Among the highest ranked issues are: a lack of commercial and industrial development; not enough local employment opportunities; and **a shortage of middle income housing**, recreational opportunities, and youth activities."⁴ (Emphasis added)

³ https://www.greenvillenh.org/sites/g/files/vyhliif3186/f/uploads/completed_plan_edits_1_17_18.pdf

⁴ Id. Pg 4

This change of use project will specifically add middle income housing to the Town. This is attractive to both residents of Greenville, as well as attracting other people to the Town to live and start a family.

“The types of development that respondents feel that the town should discourage include: large retail stores, fast food restaurants, hotels/motels, auto sales, mini-storage facilities, and large manufacturing⁵”. 8 Dunster Ave is an 18,000 Square foot building. If it were to again be used as commercial, it would likely entail a large retail store. This is not the type of project that would best suit the town. It would lead to significant traffic congestion as the customers would have to park on Main St. , which is a short walk from 8 Dunster Ave.

The Master Plan developed further guidance for land use regulations. “It is critical for a town to have a housing stock that meets the needs of all residents to maintain a healthy diversity.”⁶ Here, the proposal is a mix of units from 2 bedroom, 3 bedroom, and 4 bedrooms.

Further, the Master Plan states: “Objective: Implement innovative land use techniques to meet our housing needs while preserving our resources⁷” The plan in question will help preserve resources. The building already exists and is already on public water and sewer. This specific change of use is the most efficient way of adding much needed housing.

Finally, the Master Plan says the zoning use controls should “Encourage the development or rehabilitation of diverse housing types that meet the needs and preferences of multiple generations, diverse abilities, and a range of income levels⁸” As noted, 8 Dunster Ave is presently vacant and likely to remain so given the size of the building and present parking limits. The best/only use for the building is multi-family housing. Further, the housing being offered will be 2, 3, and 4 bedrooms which will serve a variety of preferences and different income levels.

A. Variance for 2.7.2 (b)(1) for Dwellings to be allowed on the ground floor

i. The proposed use will not diminish surrounding property values

Having dwelling units on both the top floor, and the floor that is slightly above street level of Dunster ave. will not diminish surrounding property value.

The proposed change of use will be unfeasible if units are not allowed on the floor that is somewhat street level with Dunster Ave as that floor makes up approximately 7000 square feet. Applicant is already leaving the garage level vacant to accommodate various intentions of

⁵ Id. Pg 86

⁶ Id. At 23.

⁷ Id at 73.

⁸ Id at 76

the zoning ordinance. Allowing this project to proceed will increase surrounding property values.

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

There is a housing crisis in New Hampshire. The State government is actively trying to make laws, create incentives, and help municipalities to create housing. There is a particular need for workforce and middle-income housing. This project will deliver those things. But, at the same time the project is not so large as to overwhelm any town services.

iii. Denial of the variance would result in an unnecessary hardship

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

There is no correlation between having dwelling units on the ground floor vs. only above the ground floor as it relates to property values. Applicant did a cursory search to see other towns who might have enacted ordinances allowing dwellings only above a ground floor. A few towns used that language as it related to "mixed use" buildings; where commercial is typically on the ground floor with dwellings above it. However, those ordinances were designed to be more inclusive and allow more dwelling units, not less. It might make sense in a mixed use building to have the dwelling units be on a second floor. Commercial traffic is much higher than residential so it would make some sense to have those be on the ground floor. Further, those benefit businesses where people can window shop. However, in a building that is to be used solely as residential, it is completely arbitrary to not allow dwelling units on a ground floor.

The proposed use is a reasonable one.

The same benefits that apply to housing on a top floor also apply on a ground floor. There is added benefit by reasonably allowing housing on both. Particularly, where there is a level below the housing that won't be used for residential. Finally, due to the size of the levels, the middle floor is the largest usable area, and the best area to put housing. The project is not feasible if this area were to be left vacant.

Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance and a variance is therefore necessary to enable reasonable use of it.

The existing building is over 18,000 square feet and 3 stories. Applicant intends to put housing on the middle (second) and top (third) story. It isn't reasonably possible to raise the building

slightly so that the garage/lower level (which applicant considers the ground floor) would become street level to be considered the ground floor.

iv. Granting the variance would do substantial justice

As thoroughly discussed, this project will benefit the town and cannot proceed without permission to put units on the middle floor.

v. The use is not contrary to the spirit of the ordinance

It is unclear what the spirit of the ordinance is as it is an arbitrary ordinance. It does not make any sense to allow dwelling units on a floor that is street level in a 1 floor building, but not in a multi floor building. The units serve the same purpose and function whether they are street level or not. All building codes will be met as part of this project.

If the spirit of the ordinance is to limit affordable/middle-income housing, then it is unconscionable and unenforceable as a matter of law.

If the spirit of the ordinance is to prevent overcrowding, then the spirit of the ordinance is met because the lowest level floor (which is on the ground), will not be used for dwelling units.

B. Variance for A.3 (a) related to maximum of 6 units

i. The proposed use will not diminish surrounding property values

As discussed, this project will significantly increase the value of the property. Renovations could likely cost the amount that the building is assessed for. It is expected the building will more than double in value once this project is completed. Further, renovations will include repair of the outside of the building which is somewhat in disarray and deteriorating. This will add further aesthetic value to the property. Each of these things will increase surrounding property values.

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

Here, the regulation allows up to 6 dwelling units. Applicant originally had plans for 11 units, but consolidated a couple of units in order to make fewer dwellings which contain more space per unit. It is important to note the building is 18,000 square feet. This is likely one of the largest buildings in the downtown area. Allowing at most 6 units would lead to an average unit size of 3,000 square feet. That would effectively make the units all 5+ rooms. That would not

lead to diverse units as promoted in the Master plan. It further would not lead to workforce or middle income units as further promoted in the Master Plan. By allowing just three extra units above the ordinance amount, the units are an appropriate size and variety.

Besides adding value to Greenville, the project will attract families to move to Greenville. New Hampshire courts have consistently and repeatedly held that the public interest should be considered not just for the town in question, but regionally as well. See Britton v. Chester 134 N.H. 434 (1991). “When an ordinance will have an impact beyond the boundaries of the municipality, the welfare of the entire affected region must be considered in determining the ordinance’s validity. “ Specifically, as it relates to middle and low income housing:

“ “[growth] controls must not be imposed simply to exclude outsiders, especially outsiders of any disadvantaged social or economic group. We reasoned that “each municipality [should] bear its fair share of the burden of increased growth.” Today, we pursue the logical extension of the reasoning in Beck and apply its rationale and high purpose to zoning regulations which wrongfully exclude persons of low— or moderate—income from the zoning municipality.” (internal citations omitted) Id.

iii. Denial of the variance would result in an unnecessary hardship

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

It is unclear why the ordinance allows up to 6 units, as opposed to any other number. Presumably, it is to cut down on massive apartment complexes (which is not even feasible given the geographic makeup of the downtown district). As discussed previously, applicant doesn’t believe this ordinance even applies to the downtown district.

However, the ordinance does require a minimum unit size of (600 sq ft). If that size were multiplied to the entire building size, it would amount to more than 30 units (assuming everything properly fit and would be up to code, which it likely couldn’t accomplish).

The ordinance suggests other various sizes depending on the rooms. For example 3 bedrooms should be a minimum of 1,100 square feet. (5.2(m)). Applicant carefully designed the units to comply with the recommendations of 5.2(m); even though they don’t apply to the downtown area. If applicant were required to only have 6 units, in the 18,000 sq foot building, that could

average out to 3,000 sq feet per unit. That is simply an impractical amount of square feet per dwelling unit as it is more than 1 and a half times the size of the average *house* in N.H.⁹.

The proposed use is a reasonable one.

Applicant is seeking just three additional units. This will not overwhelm Town services or otherwise negatively impact the Town.

Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance and a variance is therefore necessary to enable reasonable use of it.

Given the size of the building, it is simply not practical or reasonable to have at most six units in it.

iv. Granting the variance would do substantial justice

It is in the Town's interest to allow this project to go forward so that the building doesn't stay vacant and become blight.

v. The use is not contrary to the spirit of the ordinance

Applicant is meeting the spirit of the ordinance by carefully designing the units so that they meet the recommendations of 5.2(m). Further, the Master Plan, and various other parts of the zoning ordinance support having multi-family units.

C. Variance for A.3 (d)) related to not having a 10 foot wide green belt

i. The proposed use will not diminish surrounding property values

As discussed, this project will significantly increase the value of the property. Renovations could likely cost the amount that the building is assessed for. It is expected the building will more than double in value once this project is completed. Further, renovations will include repair of the outside of the building which is somewhat in disarray and deteriorating. This will add further aesthetic value to the property. Each of these things will increase surrounding property values.

It is important to note the applicant is keeping the outside of the building, including the open space, as it presently is (plus rehabilitating it). Applicant is not removing any open space.

⁹ <https://fred.stlouisfed.org/series/MEDSQUFEENH>

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

The open space presently there will be retained. Further, in order to comply with the ordinance (which is physically impossible), numerous parking spots would have to be removed.

iii. Denial of the variance would result in an unnecessary hardship

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

The downtown district is unique, and as discussed, Appendix A should not/ does not apply to it. The Downtown district has no setback, no greenspace belt width, and no minimum greenspace¹⁰. This existing building is too close to the property lines to have a 10 foot green space. Applicant is maintaining all existing open space which presently amounts to more than 35% of the property (as recommended in various regulations).

The proposed use is a reasonable one.

It is reasonable to have multi-family dwellings in the property. As mentioned earlier, residential use is the only acceptable use given the parking limits of the building (while parking regulations are exempt from downtown, Planning board previously told/inferred to applicant that his proposal for a wedding venue would not be approved given the existing parking limitations. This is the reason applicant withdrew that site plan change of use proposal)

Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance and a variance is therefore necessary to enable reasonable use of it.

The existing building does not have 10 feet available on each side to make an open space. It is physically impossible to create the open space required without demolishing the building (or at least a substantial portion of it, the costs of which would be astronomical).

iv. Granting the variance would do substantial justice

It is in the interest of the Community, Master Plan, and the Zoning ordinance when taken as a whole, to allow this project to be approved. A 10 foot boundary of green space is a very minor technicality that cannot physically be met.

v. The use is not contrary to the spirit of the ordinance

¹⁰ Table 2-1 Buildings of Zoning Regulations

The ordinance is intended to maintain open space for recreation. Various parts of the Zoning Ordinance reference 35% (A(3)(d), 5.2(k) Multi-family Special Exception for other districts) . The property contains 45,243 total sq feet. 35% of that equals 15,835. Applicant will be preserving a minimum of 15,934 sq. feet as open space (See attached site plan).

It is physically impossible to maintain a 10 foot green belt buffer on this property as the existing building, in part, is within 10 feet of the property line on two sides. Further, while applicant could make a 10 foot buffer around the remaining two sides of the building, that would have the effect of eliminating approximately 80% of the parking spots; leaving just 4 spots available to serve the entire building. That would mean almost all of the residents would have to park on Main St., which already lacks sufficient parking spots.

Thank you for your consideration,

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