

Town of Winchester
Zoning Board of Adjustment
Notice of Public Hearing
10-14-21

The Winchester Zoning Board of Adjustment will be meeting on 10-14-21 at 7:00pm on the Main Floor of the Town Hall, 1 Richmond Road for the following:

The board will review for acceptance an application for a variance to Article III, J2, K4&5 of the Zoning Ordinance for property at 94 Main St. map 26 lot 19. The request is to convert vacant commercial space that is part of a duplex into an apartment, creating a multifamily building.

If a decision is not reached the hearing will continue at the following meeting without further notice. The application is available for review in the Land Use Office during regular business hours and on the town website winchester-nh.gov.

Respectfully,
Margaret Sharra, Land Use

Rcd
9/22/21

Application for: Variance Request

Date: 9/20/2021

Map# 26 Lot# 19

Name & address of applicant: MIRIAM FENTON, 47 BEACHVIEW TERRACE
MALDEN, MA 02148

Email: miriamfenton@gmail.com Phone: 1-215-869-3619

Name & address of owner: DAVID EINIS
47 HILLCREST RD, WESTON, MA, 02493

Email: _____ Phone: 1-215-869-3619

Location of property: 94 Main St Zoning District: Central business district

Description of property (include a plot plan, frontage, side & rear lines, water, structures, etc.) 2 family property on .05 ACRE

Proposed use/existing use: Propose: residential unit (1 or 2 bedroom)
current: commercial shell.

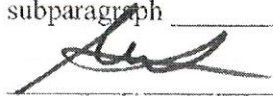
Fill out the attached abutters list and submit the non refundable fee of \$150 with the completed application and other necessary forms at least 21 days prior to the review by the ZBA. The ZBA generally meets on the second Thursday of each month if there is business. A complete application will be reviewed for acceptance before a public hearing is held within 30 days. You or your representative must be present at the hearing. All owners NOT representing themselves must submit a letter of representation for the applicant with the application.

Please complete and submit the following appropriate page(s) for the request of a variance, a special exception, an equitable waiver of dimensional requirements, an appeal from an administrative decision or a rehearing. Attach all other supporting documentation to the application.

After the public hearing, the board will typically render a decision within 30 days. You will be sent notice of this decision. If you believe the board's decision is wrong, you have the right to appeal. The Selectboard or any party with standing has similar rights of appeal. With an appeal, you must first ask the board for a rehearing. All requests shall be submitted on the appropriate ZBA forms and include the required fee. The motion must be made within 30 days of the decision and must set forth the grounds on which the claimed the decision is unlawful or unreasonable. The board may grant a rehearing if it is determined there were errors of law or new information is stated in the motion. Notice to the public and abutters are required for a rehearing. Refer to RSA 677:2 and RSA 676:7 for details.

Variance:

The undersigned hereby requests a variance to the terms of Article ^{III} J, K, section 2, 4 & 5, subparagraph _____, of the Winchester zoning ordinance.

 9/20/2021
Signature of applicant and date

Signature of owner and date

Facts supporting the variance request: see attached.

1. Granting of the variance will not be contrary to the public interest because:

2. The spirit of the ordinance is observed because:

3. By granting the variance substantial justice would be done because:

4. The value of surrounding properties are not diminished because:

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship; owing to special conditions of the property that distinguish it from other properties in the area, because:

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 because:

and b) the proposed use is a reasonable one because:

Or: explain how if the criteria of (a)&(b) 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.

Facts supporting the variance request

We are currently under contract for 94 Main Street, which at present is a three-unit property with 2 residential units and one commercial unit. The commercial unit is just a shell, and to upgrade this space for commercial use including 2 means of egress, handicap accessibility and ADA compliant rest rooms would be cost prohibitive. In addition, there is a great housing shortage in the State of New Hampshire, and we would like to provide additional high-quality housing for Winchester residents. Therefore, we would like to convert the shell into a third residential unit, which would be either a 1- or 2-bedroom apartment.

In order to do this, we are requesting a variance adjustment for the commercial unit shell. There are three reasons to request the variance:

- 1) The building does not conform to the **lot size** requirements: “ Multi-Family units: (a) In areas served by sewer and water: ☐ Minimum lot size - 40,000 square feet ☐ Minimum lot area per dwelling unit - 10,000, square feet.” (page 6, zoning ordinance 2021)
- 2) The building does not conform to minimum housing requirement number 4: “20% of the calculated living space will be allocated for **outside recreation area**. Excluding the parking area.” (page 7, zoning ordinance 2021)
- 3) According to minimum housing requirement number 5, additional street parking will be required “Each dwelling unit shall have two (2) off-street **parking spaces**.”

We will address each of the below in general, and will also refer to these specific reasons

Granting of the variance will not be contrary to the public interest because:

Our proposal will provide additional high-quality housing in the neighborhood will be provided which is in the public interest and will attract high quality tenants.

- Lot size: This property already exists as a three-unit building and is situated in downtown which is already built up and has public water and sewer. It is not contrary to public interest because additional high-quality housing is needed, and public water and sewer are provided. Further, a residential unit would likely create less density than a commercial unit.
- Outside recreation area: This property already exists without the 20% outside recreation area, which is difficult for that position given the proximity to the water. However, this particular unit does have a large deck which will be restored to provide private outdoor space. We would also be willing to put up a fence around the front yard to reduce traffic onto the street, and we will focus on high-quality tenants that will be respectful of the area.
- Parking Spaces: If this property were to be used for commercial needs rather than residential, it is likely that this would create a need for more vehicle parking, rather than less (e.g. parking for owners, employees, customers), therefore conversion to a residential unit would not be contrary to public interest. Further, the town provides additional parking at town hall or the overflow parking area to reduce the parking burden

The spirit of the ordinance is observed because:

The property is currently in the “central business district” which is established to encourage and facilitate a balance of residential, public, and commercial uses at a scale appropriate to a small downtown. The intent of this provision is to create a healthy downtown, providing pedestrian as well as vehicular access to business. To create an additional residential unit is in the spirit of the ordinance, and appropriate given the other two residential units are residential, and the cost-prohibitive nature of restoration for commercial use. To convert this commercial unit into a 1- or 2-bedroom residential unit won't impact the burden on the school district, and will be developed in a way that will attract high quality tenants to the neighborhood

- Lot Size: The unit would otherwise sit empty, and to convert it into a residential unit is aligned with the spirit of the ordinance that indicates that multifamily is permitted in the central business district. This will be a small residential unit and will likely attract high quality tenants to the area.
- Outside recreation area: We truly respect the purpose of having space, but this building already exists and has town water and town sewer. If we were to purchase property on the outskirts of town, this outdoor space would be vital.
- Parking: The residential unit will not increase parking needs over a commercial unit and may decrease them if residents use the parking overflow.

By granting the variance, substantial justice would be done because:

Additional high-quality housing would be provided to residents in Winchester and the surrounding towns, at a time when there is a real lack of housing in the state. The focus will be on providing good quality housing, and we will take care of the property and the tenants, providing added value to the town of Winchester. The commercial unit is cost-prohibitive, therefore, to not request the variance would mean an empty unit that could have been used for high quality housing. To make use of an empty unit provides substantial justice.

- Lot Size: The unit would otherwise sit empty, and to convert it into a residential unit provides substantial justice for tenants who need high-quality homes.
- Outside recreation area: The focus on high-quality tenants will ensure not detrimental impact on the area, and the unit residents will have access to their personal deck.
- Parking: The unit will be a one or two bedroom apartment, therefore will likely only create the need for one additional parking space, which seems appropriate with the alternative of not using the space for housing.

The value of surrounding properties are not diminished because:

By providing high quality housing for tenants, and restoring the beauty of the building, and enhancing the attractiveness of the position (lake front, proximity to town center) the value of surrounding properties will be increased. The risk of a commercial property in its place is twofold:

- First, the commercial property would be cost prohibitive to build, therefore it is likely this unit will be empty for the near future at least.

- Second, since Winchester has a relatively low lease rate versus other towns in the area, if we were to fund a commercial build there would be difficulty finding the right commercial tenants, and there is a likelihood that this unit would sit empty even after restoration.

At a minimum this would have no impact on the value of surrounding properties, however the risk is that an empty building could encourage vandalism, squatters etc. which could in fact diminish the value. It would seem that the alternative residential scenario is more desirable to the surrounding properties

- Lot Size: As mentioned above, the lot already exists, we are proposing to use that space to enhance the area
- Outside recreation area: By taking care of the outdoor space that exists, including fencing the yard and restoring the deck we will enhance the area
- Parking: The need for one or two additional parking spots will not diminish the value of surrounding properties, particularly since a commercial unit would require many more parking spaces

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship; owing to special conditions of the property that distinguish it from other properties in the area, because:

- 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 because:**

At present there does not appear to be a substantial demand for commercial uses for this unit. In comparison, there is a high demand for residential units, and to reduce the potential number of available high-quality units would result in unnecessary hardship for potential tenants. To upgrade this space for commercial use is cost prohibitive and would create financial hardship for the owners.

- Lot Size: There are other rental properties on the street, and this is currently being used as a rental property
- Outside recreation area: The unit residents will have access to their deck for outdoor space
- Parking: The other two units are residential, and the variance required to secure an on-street parking for the third unit is reasonable, and will not result in more parking traffic than a commercial unit would (additional parking provided, see response to question 1)

- b. The proposed use is a reasonable one because:**

The other units in the building are already being used for residential purposes, and it is reasonable for this one to be used for residence too. There is a lack of residential units in the area, it is reasonable to adjust this unit to residential in order to improve the housing situation for residents. There will be difficulty to restore and lease for commercial use.

- Lot Size: This property already exists, and it is reasonable to leverage the existing space to address the housing shortage in the area
- Outside recreation area: It is reasonable for a property in the downtown area to have less outdoor space than less densely populated areas. We will restore the deck and would be willing to fence the front yard too.
- Parking: The additional parking spot is reasonable since will not increase parking vs commercial

ABUTTERS LIST

For use with all Land Use Applications

Applicant: Miriam Fenton ✓
Address: 94 Main St
Map# 26 Lot# 19

MAP# LOT# NAME & ADDRESS Sent/Rec'd

26 20 51 Keene Rd, LLC ✓

26 18 104 Main St. Wm ✓

26 14 U.S. Bank-trust N.A ✓
96 Rushmore loan, 15480 Laguna Canyon Rd. Suite 100. Irvine, CA 92618

26 14 United Church of Winchester ✓

26 14-1 99 Main St. Winchester ✓

26 14-1 Daniel & Margaret Berger 97 Main St. Wm ✓

26 36-1 Helen Tatro c/o Shirley Powers, 636 Warwick Rd. Wm ✓

~~26 36~~

David Einis 47 Hillcrest Rd. Weston, MA 02493 ✓