



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898

AUDREY CLINE
Zoning Administrator
Code Enforcement Officer
Health Officer

TEL: (603) 868-8064
acline@ci.durham.nh.us

Decision or Order of the Building Inspector/Code Enforcement Officer

Applicant: Torrington NH OP LLC, 121 Box Street, Portsmouth, NH 03801

Date of order: February 18, 2026

Deadline for application for appeal: March 19, 2026

Decision or Order of the Building Inspector/Code Enforcement Officer:

Building Permit Application number 2026-00037 dated February 18, 2026 for property located at 31 Main Street, Durham, NH 03824 is DENIED as the proposal does not meet the requirements of the Durham Zoning Ordinance below:

ARTICLE XII BASE ZONING DISTRICTS

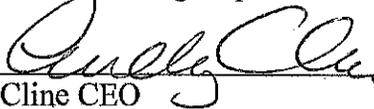
175-42 Central Business-1 District (CB-1) and Central Business-2 District (CB-2)

C. Development Standards in the Central Business District In addition to the dimensional standards, development in the Central Business District shall conform to the following additional requirements:

(7) Required office/retail uses for a mixed-use with residential building

(d) For a building where there are distinct sections with a different number of stories and for sites where there are multiple buildings, the required minimum overall office/retail gross square footage is determined by the sum of the minimum office/retail area required by each distinct section, or by each separate building, using the required office retail space specified above. For these sites, the disposition of office/retail and residential space on the site is flexible provided the minimum overall amount of office/retail required is included and the Planning Board determines that the configuration of the building and its uses meets the intent of this subsection 7.

By Durham's Building Inspector/Code Enforcement Officer:


Audrey Cline CEO

175-12. Administrative Appeals.

Any person who believes that the Zoning Administrator has made an error in the interpretation or application of the provisions of this Ordinance, may appeal such determination to the Zoning Board of Adjustment as an administrative appeal under the provisions of Section 175-19. If the Board finds that the Zoning Administrator erred in his/her interpretation of the Ordinance, it shall modify or reverse the decision accordingly.

175.19. Powers and Duties

B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

Fees: \$451 paid 2/18/26
check # 076822 + 076835



**TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT**

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

RECEIVED
Town of Durham

FEB 18 2026

Planning, Zoning
and Assessing

VARIANCE

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

Name of Applicant Torrington NH OP LLC

Address: 121 Bow Street, Portsmouth, NH 03801

Phone # 617-366-7318 Email: jmg@torprops.com

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

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

Location of Property: 31 Main Street, Durham, NH 03824
(Street & Number)

Tax Map & Lot number Tax Map 108, Lot 14

A Variance is requested from Article(s) 175.42 Section(s) (c) (7) (d) of the Zoning Ordinance to permit: An interior renovation that would permit a building-use redesignation of 31 Main Street from commercial to single-family residential, intended for student housing.

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 Donahue, Tucker & Ciandella, PLLC 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: 2.27.26

Owner's Signature(s): _____ Date: _____

PRINTED NAME(S): Jeffrey Gannon Date: 2.27.26

PRINTED NAME(S): _____ 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.

APPLICATION OF TORRINGTON NH OP LLC

Map 108, Lot 14

APPLICANT'S NARRATIVE

I. THE PROPERTY:

Torrington NH OP, LLC owns the mixed commercial/residential property at 25–35 Main Street, Durham, NH, and seeks a variance to permit the interior conversion of 31 Main Street from commercial use to a single-family residential unit intended for student housing. The building at 31 Main Street has been functionally non-commercial for an extended period; aside from an approximately eight-month tenancy in 2020–2021, the space has remained largely vacant over the past decade. In light of persistently weak market demand for commercial occupancy at this location, the Applicant proposes an interior-only conversion that preserves the building envelope and site configuration while returning the property to continuous, productive use.

Overall, the relief request follows a clear and simple sequence. First, the conversion does not alter the exterior form, footprint, or site circulation and therefore does not change the streetscape, scale, or architectural character that define the neighborhood. Second, the conversion responds to demonstrated market realities: prolonged vacancy, limited commercial showings despite professional brokerage, and the absence of a practicable path to sustained commercial tenancy. Third, granting the variance advances the Ordinance's substantive objectives: orderly land use, preservation of neighborhood character, and productive reuse of existing infrastructure, more effectively in this instance than insisting on literal numeric compliance that would likely perpetuate vacancy.

The legal and equitable analyses follow those facts. Under the public-interest and spirit-of-the-Ordinance standards, the proposal produces only routine residential impacts and preserves the physical attributes the Ordinance protects. Under the substantial-justice balancing analysis, the private burden of denying reasonable residential reuse outweighs any speculative public benefit of maintaining an unoccupied commercial floor-area requirement. Under the unnecessary-hardship standard, literal enforcement would impose a disproportionate economic burden given the site-specific market conditions and the lack of

disproportionate economic burden given the site-specific market conditions and the lack of feasible alternatives. Finally, the conversion will not diminish surrounding property values and is more likely to stabilize or enhance neighborhood marketability by eliminating the negative effects of prolonged vacancy.

The sections that follow develop each of these points in order: public interest and spirit of the Ordinance, substantial justice, effect on surrounding property values, and unnecessary hardship, providing the factual support and legal reasoning that demonstrate why the requested variance is appropriate, narrowly tailored, and consistent with the public welfare.

II. VARIANCE CRITERIA

A. **The Variance will not be contrary to public interest.**

The “public interest” and “spirit and intent” requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether granting a variance would be contrary to the public interest or to the spirit and intent of the Ordinance is whether the variance would substantially alter the characteristics of the neighborhood or threaten the health, safety, and welfare of the public.

Granting the requested variance will not substantially alter the characteristics of the neighborhood nor threaten public health, safety, or welfare. The project is an interior-only conversion of an existing two-story office building to a single residential unit with five bedrooms and two full bathrooms (See Exhibit A). All work is confined to the building interior (See Exhibit B). The first floor will be reconfigured to provide a new bathroom with a washer/dryer, one bedroom, and a new open-concept kitchen/living area; the second floor will be arranged with an efficient layout of four additional bedrooms and a full bathroom (See Exhibit B). There are no exterior modifications and no changes to the building footprint, height, setbacks, parking layout, or stormwater systems. Because the building envelope and site configuration remain unchanged, the project preserves the visual character, scale, and streetscape relationships that define the neighborhood.

The proposed residential use will generate routine, predictable activity comparable to adjacent multi-occupancy and mixed-use buildings and will not materially increase traffic, noise, parking demand, or public-safety burdens. Daily vehicle movements are expected to be modest and residential in character: the building will function as a single multi-bedroom dwelling rather than a commercial use, and the existing on-site parking configuration will remain unchanged (See Exhibit A). Given the property's close proximity to downtown amenities and grocery options, residents are likely to walk for routine errands and services, which will further reduce vehicle trips and curbside parking pressure. Noise and activity patterns will be consistent with those of neighboring residences, primarily evening and overnight occupancy rather than daytime peaks associated with office operations. Public-safety impacts are negligible because no new access, egress, or circulation changes are proposed, and the Applicant will ensure full compliance with building, fire, and life-safety codes prior to occupancy.

Accordingly, because the conversion is strictly interior, preserves the building envelope and site functions, and will produce only routine, residential-scale impacts consistent with surrounding properties, granting the variance would neither alter neighborhood character nor jeopardize public health, safety, or welfare, and therefore accords with the public interest and the spirit of the Durham Zoning Ordinance.

B. The Spirit of the Ordinance is Observed.

The spirit and intent of the Durham Zoning Ordinance are served where a proposal advances the Ordinance's objectives: orderly land use, preservation of neighborhood character, and productive reuse of existing buildings and infrastructure, without undermining the protections the Ordinance establishes. Section 175-42(c)(7)(e) of the Ordinance provides the operative rule for sites with distinct sections or multiple buildings:

"For a building where there are distinct sections with a different number of stories and for sites where there are multiple buildings, the required minimum overall office/retail gross square footage is determined by the sum of the minimum office/retail area required by each distinct section, or by each separate building, using the required office retail space specified above. For these sites, the disposition of office/retail and residential space on the site is flexible, provided the minimum overall amount of

office/retail required is included, and the Planning Board determines that the configuration of the building and its uses meet the intent of this subsection 7.”

1. Relief requested and procedural context

The Applicant requests a variance from Section 175-42(c)(7)(e) to permit the site to contain less than the Ordinance-required minimum office/retail gross square footage following an interior conversion to a single-family residential use. A variance is required because the proposed conversion will result in a shortfall relative to the Ordinance minimum.

2. Application of the Ordinance’s purpose to the proposed conversion

a. No exterior change; preservation of streetscape and scale.

The conversion is strictly interior; there are no exterior alterations and no change to the building footprint, height, setbacks, parking layout, or stormwater systems (see Exhibit A and Exhibit B). Because the building envelope and site configuration remain unchanged, the project preserves the visual scale, massing, and streetscape relationships that the Ordinance seeks to protect.

b. Orderly land use through adaptive reuse.

The project adaptively reuses an existing structure and existing utilities rather than prompting demolition or new construction. This conserves infrastructure and avoids the disruptive impacts associated with redevelopment, outcomes consistent with the Ordinance’s objective of promoting orderly, efficient land use.

c. Use compatibility and reduced daytime intensity.

The proposed single-family residential use will generate residential-scale activity rather than the daytime intensity associated with commercial operations. Given the property’s proximity to downtown amenities and grocery services, routine errands are likely to be pedestrian trips, which further reduces vehicle trip generation and curbside parking pressure.

d. Public welfare and safety preserved.

The conversion does not introduce hazardous or high-impact uses, nor does it alter access, egress, or emergency response conditions. The Applicant will

ensure compliance with all applicable building, fire, and life-safety codes prior to occupancy.

- e. Market and vacancy context demonstrates the practical infeasibility of continued commercial use.

Over the past decade, the building has been largely vacant. In 2020–2021, it was occupied for approximately eight months by a fitness group that subsequently went out of business; otherwise, the property has been vacant for most of the last ten years. The Applicant engaged a commercial broker, The Boulos Company, to market the space; since 2020, the broker has recorded fewer than ten showings. These facts demonstrate limited market demand for continued office/retail use on this site and explain why preservation of commercial occupancy is not a viable outcome in practice.

3. The spirit of the Ordinance is satisfied despite the numeric shortfall

- a. Section 175-42(c)(7)(e) contemplates flexibility in the allocation of office/retail and residential space where the Planning Board determines the configuration meets the subsection’s intent. Although the proposed conversion will create a numeric reduction in on-site office/retail area and therefore requires a variance, the conversion nonetheless aligns with the Ordinance’s substantive objectives because it: (1) preserves the building envelope and streetscape the Ordinance seeks to protect; (2) promotes orderly land use by adaptively reusing existing infrastructure rather than prompting redevelopment; (3) results in a use compatible with the immediate neighborhood and unlikely to impose new burdens on municipal services; and (4) responds to demonstrated market realities that make continued commercial occupancy impracticable. The Board’s variance power exists to reconcile the Ordinance’s numeric requirements with these substantive goals where strict application would defeat the Ordinance’s broader purposes.

C. Substantial Justice is Done.

Substantial justice requires a balancing test: the Board must weigh the burden the Applicant would suffer if the variance is denied against any public benefit that would result from denial. If the private burden outweighs the public interest in strict enforcement, then substantial justice favors granting the variance. Allowing a property owner reasonable use of land is itself a component of substantial justice.

Strict enforcement of Section 175-42(c)(7)(e) would require retention or restoration of the Ordinance-required minimum office/retail area on a site that has been functionally non-commercial for an extended period. As previously mentioned, the building has been vacant for most of the last ten years. The Applicant engaged a commercial broker, The Boulos Company, and has recorded fewer than ten showings since 2020. Continued marketing and holding costs, deferred maintenance, and the economic carrying cost of an underutilized commercial property impose a concrete, ongoing financial burden. Requiring the Applicant to preserve or restore commercial occupancy in the face of demonstrated market absence would force continued vacancy, increased carrying costs, and an unreasonable denial of the property's productive use.

The requested interior conversion to a single-family residential use is a reasonable, productive use of the property that does not require exterior alteration or redevelopment. This outcome is consistent with the public interest in maintaining active, maintained properties in the neighborhood.

Denying the variance would preserve a numerical commercial requirement on paper but would not produce a realistic public benefit given the demonstrated lack of market demand. There is no evidence that denial would result in viable commercial occupancy, increased pedestrian activity, or enhanced economic vitality; instead, denial would likely prolong vacancy and deterioration. Any abstract public interest in retaining commercial square footage is outweighed by the practical consequence of continued vacancy and the attendant negative externalities.

The burden to the Applicant from denial would be immediate and substantial. The public interest in strict numeric compliance is speculative and, in practice, insubstantial. On balance, the private burden substantially outweighs any public benefit of denial.

The Applicant considered alternatives (continued marketing to commercial tenants, partial conversion, or shared commercial/residential configurations) and engaged a professional broker to conduct marketing without success. The proposed conversion is the least intrusive means of returning the property to productive use while preserving the building envelope and neighborhood character.

Denial would impose a concrete and disproportionate burden on the Applicant while producing no meaningful public benefit in light of demonstrated market conditions; therefore, granting the variance effectuates substantial justice by permitting a reasonable and productive use of the property.

D. The Values of Surrounding Properties is Not Diminished

The proposed interior conversion will not produce visual, traffic, noise, parking, or safety impacts that would reasonably depress the market value of surrounding properties. Returning a long-vacant building to active, well-maintained residential use is more likely to stabilize and enhance neighborhood marketability by eliminating vacancy-related blight and restoring consistent occupancy. Because the project preserves the building envelope and streetscape, generates only residential-scale activity, and responds to existing market realities, it will not diminish nearby property values.

The proposed conversion work is confined to the building interior, and the exterior form and site configuration remain unchanged. The project will not alter the streetscape, scale, or architectural character that contribute to the marketability of adjacent parcels.

Restoring the building to continuous, occupied use will eliminate the adverse effects associated with prolonged vacancy and underuse. An extended vacancy tends to accelerate physical deterioration, reduce pedestrian activity, and create uncertainty for prospective buyers and tenants; conversely, a

well-maintained, occupied residence promotes regular upkeep, consistent presence, and positive neighborhood perception, all of which are factors that support, rather than undermine, surrounding property values.

The proposed single-family residential use is inherently compatible with the immediate context and market expectations. It will generate residential-scale activity concentrated in evenings and overnight hours rather than the daytime intensity, deliveries, and customer traffic typical of many commercial operations. This pattern of use is unlikely to create nuisances or functional impacts that would diminish the desirability of nearby properties.

Traffic, parking, and noise impacts from the conversion are expected to be modest. The existing parking configuration and site circulation will remain unchanged, and the property's proximity to downtown amenities makes pedestrian trips for routine errands a realistic alternative to short vehicle trips. Because the project does not increase curbside parking pressure or introduce new safety hazards, there is no reasonable basis to anticipate a negative effect on neighboring market values.

Finally, while the Ordinance expresses a policy preference for maintaining commercial capacity, denying a viable residential reuse would be more likely to harm adjacent property values than the proposed conversion.

E. Literal Enforcement of the Provisions of the Ordinance Would Result in an Unnecessary Hardship

Literal enforcement of Section 175-42(c)(7)(e) would compel the Applicant to retain or restore a minimum amount of office/retail area on a property that cannot reasonably sustain such use. The building has been functionally non-commercial for an extended period, professional marketing has produced minimal interest, and the ongoing carrying costs of an underutilized commercial property are substantial.

Requiring expensive tenant fit-outs, prolonged vacancy while awaiting speculative commercial demand, or other costly measures to meet a numeric floor-area requirement would force the owner to absorb economic losses with little prospect of recovery.

The circumstances giving rise to this burden are site-specific and not self-created. The property's tenancy history and the demonstrated lack of market demand distinguish it from other sites where strict compliance might be feasible. The Applicant has explored alternatives, but those options have proven impracticable in this market. Under these facts, insisting on literal compliance would deprive the owner of a reasonable, productive use of the land and would likely perpetuate vacancy and physical decline rather than advance the Ordinance's objectives.

The variance sought is narrowly tailored to address only the numeric shortfall and does not expand the building's physical presence or introduce new external impacts. Granting relief would allow the property to return to continuous, productive use while preserving the exterior form and neighborhood character that the Ordinance protects. Given the disproportionate economic burden that literal enforcement would impose and the absence of a practicable alternative that both satisfies the Ordinance's numeric requirement and restores occupancy, the requested variance is an equitable and necessary remedy.

Therefore, since strict enforcement would cause undue and unnecessary hardship to the Applicant, the variance requested is justified.

III. CONCLUSION

Granting the requested variance would restore purpose and permanence to a property that has long stood idle, aligning equitable relief with the community's broader interest in well-used, well-kept places. It is a measured, just outcome that honors both the letter and the spirit of local Ordinance while allowing the property to fulfill its practical and civic potential.

February 18, 2026

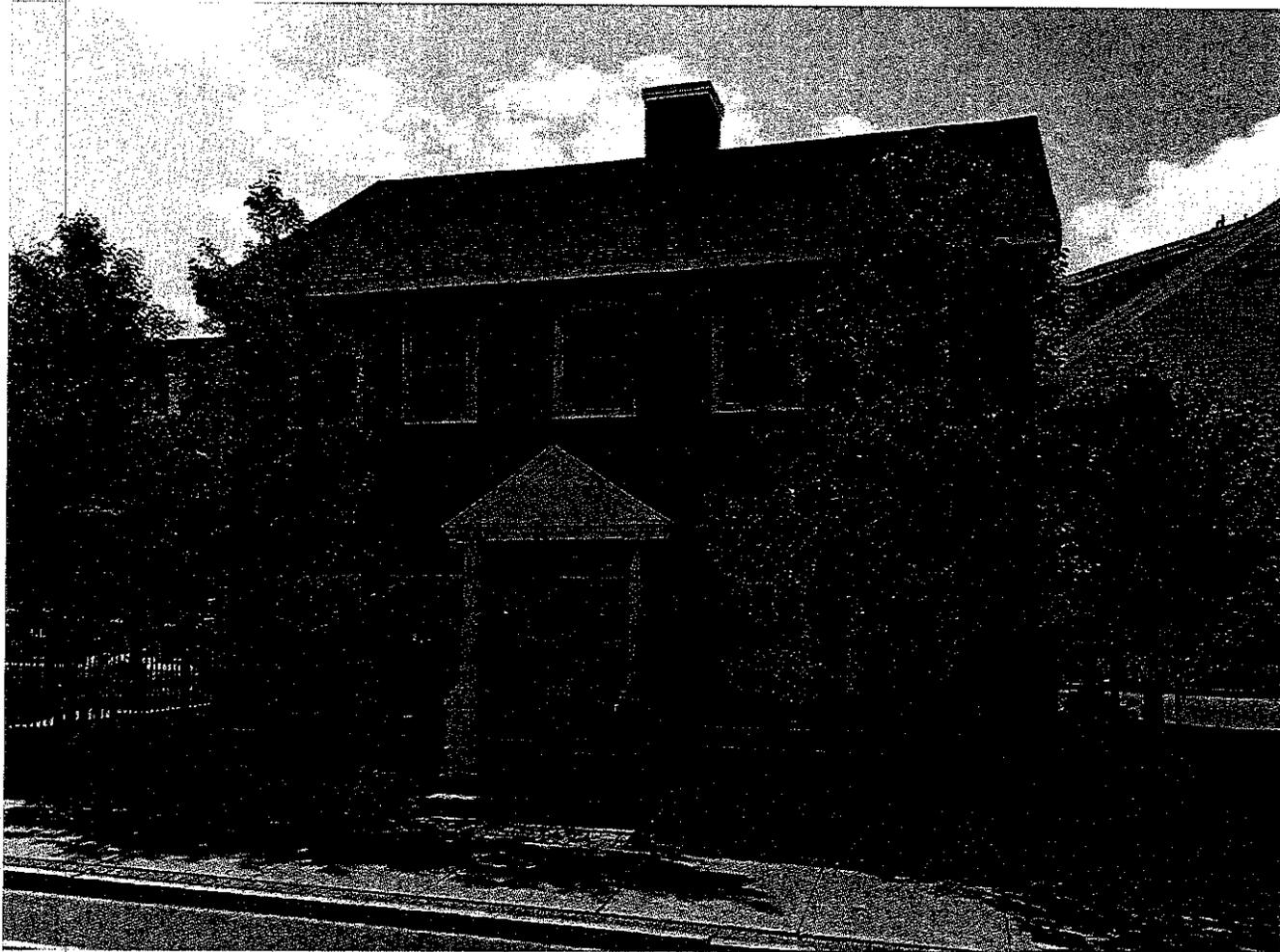
Respectfully submitted,

John K. Bosen, Esq.

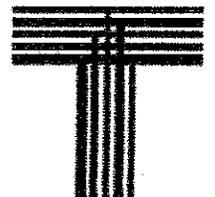
Exhibit A

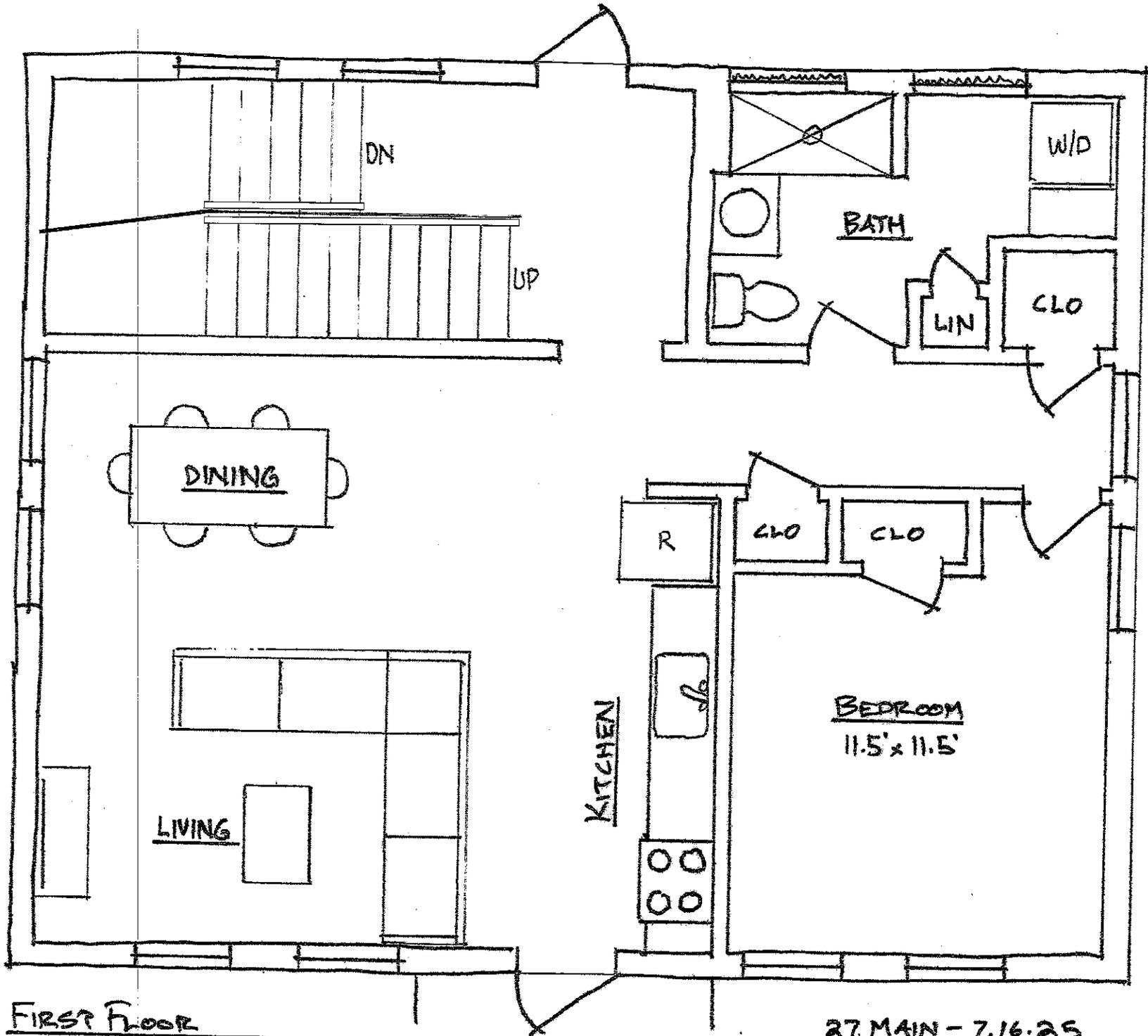
27 MAIN STREET - DURHAM, NH

OFFICE TO HOUSING CONVERSION
CONCEPTUAL DESIGN - 7.16.25



TORRINGTON PROPERTIES

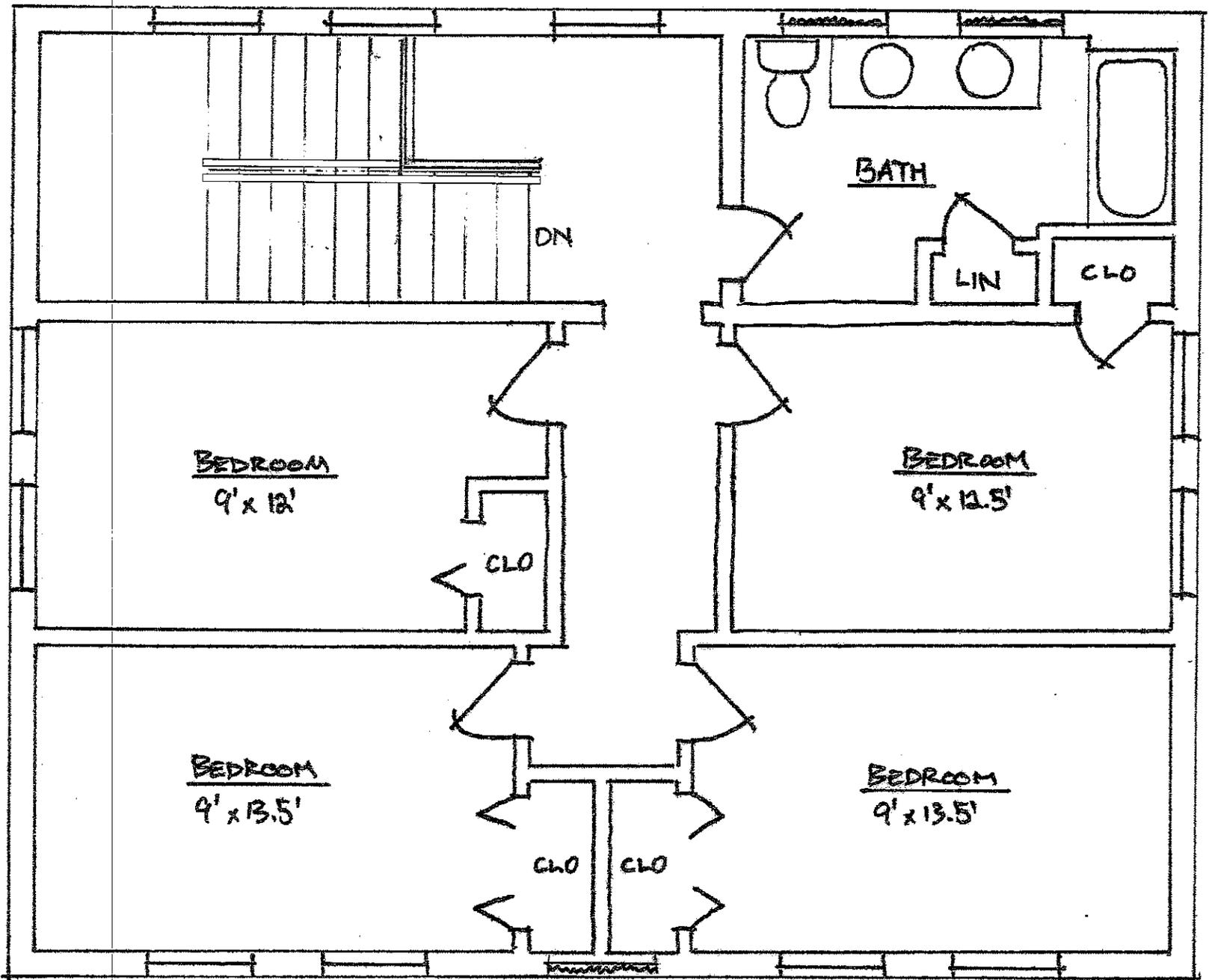




FIRST FLOOR
 1/4" = 1'-0"

27.MAIN-7.16.25



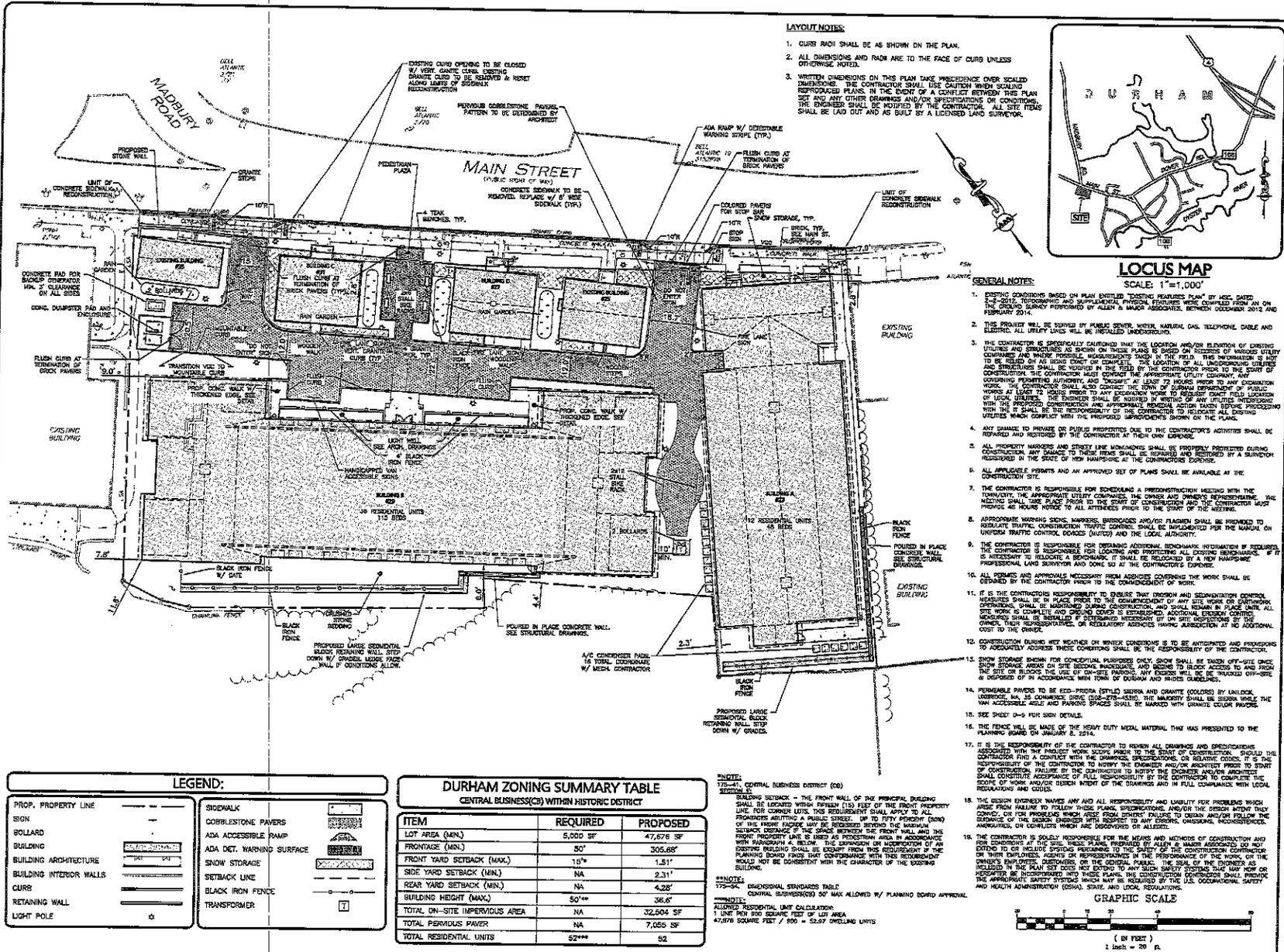


SECOND FLOOR
1/4" = 1'-0"

27. MAIN - 7.16.25



Exhibit B



23 High Street
Portsmouth, NH 03801
P: 603.431.8701
F: 603.422.8701

DIA
Design & Architecture

FIVE APPROVAL BY DURHAM PLANNING BOARD.
CERTIFIED BY MICHAEL GERHARDT, TOWN PLANNER.

MICHAEL GERHARDT DATE

PROFESSIONAL ENGINEER FOR
ALLEN & MAJOR ASSOCIATES, INC.

APPLICANT/OWNER:
ORION UNH LLC
225 VANHULN STREET, 26TH FLOOR
BOSTON, MA 02110

PROJECT:
STUDENT HOUSING
25/35 MAIN STREET
DURHAM, NEW HAMPSHIRE

PROJECT NO. 1925-01 DATE 06-09-14

SCALE 1"=20' DWG. NAME LAYOUT

DRAFTED BY: SM CHECKED BY: RJC

DESIGNED BY:

ALLEN & MAJOR ASSOCIATES, INC.
350 COMMERCIAL STREET
SUITE 300
MANCHESTER, NH 03101
TEL: (603) 625-5585
FAX: (603) 625-5585
WWW.ALLENMAJOR.COM

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Commercial Area Analysis 2/25/26

25 - 35 MAIN STREET - DURHAM, NH

Current Design with Basements and Building A				2026 VARIANCE
Building A				
	Ground Floor	7,118	1,472	
	Second Floor	7,118	1,472	
	Third Floor	7,116		
	Total	22,824		
Building B				
	Basement	9,473		
	Ground Floor	14,510		
	Second Floor	14,510		
	Third Floor	14,510		
	Total	53,003		
Building C				
	Basement	980		
	Ground Floor	980		
	Second Floor	980		
	Total	2,940		
Building D				
	Basement	980		
	Ground Floor	980		
	Second Floor	980		
	Total	2,940		
25 Main St.				
	Ground Floor	959		
	Second Floor	959		
	Total	1,918		
35 Main St.				
	Ground Floor	648		
	Second Floor	648		
	Total	1,296		
	Total Ground Floor Area	26,667		
	Total Ground Floor Commercial	3,432	-980	2,452
	Percentage of Ground Floor Commercial	12.87%		9.19%
	Total Building Area	84,921		
	Total Commercial	8,824	-1,960	6,864
	Total Percentage of Commercial	10.39%		8.08%