



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

Fee paid  
 \$397 8/25/23  
 Check # 7280

**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 Henderson Family Properties, LLC c/o Bruton & Berube, PLLC

Address: 601 Central Avenue, Dover, NH 03801

Phone # 603-749-4529 Email: josh@brutonlaw.com

Owner of Property Concerned Henderson Family Properties, LLC  
 (If same as above, write "Same")

Address: 28 Main Street, Durham, NH 03824  
 (If same as above, write "Same")

Location of Property: 28 Dover Road, Durham, NH 03824  
 (Street & Number)

Tax Map & Lot number Map 108, Lot 48


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

Please see submission letter.

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 Josh Lanzetta, Esq. 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):  Date: August 23, 2023

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.



**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**

*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.*

**Applicant:** Henderson Family Properties LLC, 28 Main Street, Durham, NH 03824

**Date of order:** August 22, 2023

**Deadline for application for appeal:** September 22, 2023

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

Building Permit Application number \_\_\_\_\_, for property located at 28 Dover Road, Durham; Map & Lot 108/48/0/0/0, is **DENIED** as the proposal does not meet the requirements of the Durham Zoning Ordinance below:

ARTICLE XII.1

USE AND DIMENSIONAL STANDARDS

175-54. TABLE OF DIMENSIONS.

Maximum Front Setback in Feet - 25

By Durham's Building Inspector/Code Enforcement Officer:

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Audrey Cline CEO

**BRUTON & BERUBE, PLLC**

ATTORNEYS AT LAW

FRANCIS X. BRUTON, III  
CATHERINE A. BERUBE  
JOSHUA P. LANZETTA

601 Central Avenue  
Dover, NH 03820  
Office - 603.749.4529

Of Counsel  
JAMES H. SCHULTE

Cell - 603.777.0579  
josh@brutonlaw.com

August 23, 2023

Town of Durham, New Hampshire  
Zoning Board of Adjustment  
8 Newmarket Road  
Durham, NH 03824-2898

**Re: Variance Application to Expand Maximum Front Setback**  
**Applicant: Henderson Family Properties, LLC c/o Bruton & Berube, PLLC**  
**Owner: Henderson Family Properties, LLC**  
**MBLU: Map 108, Lots 48**  
**Zone: Courthouse (C)**

Dear Board Members:

The purpose of this letter is to submit a Variance Application (the "Application") on behalf of Henderson Family Properties, LLC (the "Applicant") to expand the maximum front setback on real property located at Map 108, Lot 48, otherwise identified as 28 Dover Road, Durham, New Hampshire 03824 (the "Property").

Pursuant to N.H. R.S.A. 674:33(I)(b)(1) – (5)<sup>1</sup> and the Zoning Ordinance of the Town of Durham, New Hampshire,<sup>2</sup> the Applicant seeks a variance to expand the maximum front setback from 25' to 57' under Ordinance section 175-54, and respectfully requests the Zoning Board of Adjustment (the "ZBA") schedule a hearing on September 12, 2023 and/ or at its next available meeting, to review and grant the Application.<sup>3</sup>

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<sup>1</sup> RSA 674:33(I)(b)(1) – (5).

<sup>2</sup> Zoning, Town of Durham, New Hampshire Ch. 175 (2023) (the "Ordinance").

<sup>3</sup> Ordinance § 175-54 (2023).

## I. ENCLOSED DOCUMENTS

Enclosed please find 1-each of the following:

1. Application dated September 23, 2023;
2. Abutters List dated September 23, 2023;
3. Zoning Exhibit Plan drafted by Civilworks New England (the "Plans").

## II. PROPERTY HISTORY & NARRATIVE

The Property comprises .81 acres fronting on New Hampshire Route 108 in Durham's Courthouse Zone. Currently, the Property is improved with a barn converted into a 4-unit residence.<sup>4</sup> The Applicant proposes preserving the existing barn by moving the barn off-site to construct a carwash,<sup>5</sup> and seeks a variance to locate the carwash 57' from the Property's front property line.<sup>6</sup> The Courthouse Zone permits Carwashes by-right, and is the only zone in Durham that permits carwashes.<sup>7</sup> Here, to provide safe vehicular access, and to comply with the Ordinance's landscaping requirements, a variance is required to facilitate an appropriate building location for safe ingress and egress to the Property.

## III. LEGAL ANALYSIS

**The project substantially complies with the Ordinance, the Application, and the 5-variance criteria as set forth in NH RSA 674:33.**

The variance criteria are enumerated and *italicized* below with the Applicant's responses following in plain text.

*A. The variance is not contrary to the public interest.*

The Applicant respectfully asserts the variance (i.e., expanding the maximum setback from 25' to 57') represents a reasonable use of the Property, and that the public interest is served, by permitting the orderly development of property in the Courthouse Zone. The Courthouse Zone is the only zone in Durham that allows carwashes. Expanding the maximum front setback does not 1) alter the essential character of the surrounding neighborhood, 2) impact abutters, and/or 3) affect the public.

*B. The spirit of the ordinance is observed.*

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<sup>4</sup> Multi-Unit Residence is defined as "a building and accessories thereto principally used, designed or adapted with three (3) or more dwelling units. *Ordinance* § 175-7 at 32.

<sup>5</sup> Automobile Carwash is defined as "a facility equipped for washing cars manually or automatically. *Ordinance* § 175-7 at 8.

<sup>6</sup> Table 175-54 provides a maximum front setback of 25' in the Courthouse Zone. *Ordinance* § 175-54 at 89.

<sup>7</sup> *Ordinance* § 175-53 at 87.

The spirit of the ordinance is observed because the project encourages the most appropriate use of land in Durham's Courthouse Zone—the only zone in the municipality that permits carwashes. Allowing the carwash to be appropriately and safely located away from Route 108 (i.e., by siting the building 57' from the front setback) is reasonable when balanced between the Property's frontage on a highly traveled state road, its situs in the Courthouse Zone, and the safety mandate provided in the Ordinance's preamble and throughout the Ordinance generally.<sup>8</sup>

*C. Substantial justice is done.*

Substantial justice is done by granting this variance because it allows the Applicant's property to be reasonably utilized considering abutting property uses and its locus in the Courthouse Zone. This proposal does not burden the public in any way, and substantially benefits the Applicant by allowing him to reasonably use his property with no detrimental effect to surrounding property.

*D. The values of surrounding properties are not diminished.*

The Applicant respectfully asserts that all surrounding properties have an associated value that is premised upon the existence of structures and features like those proposed on the Property. Here, the Project will not affect any abutting neighbor and is consistent with nearby uses.

*E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

*a) Owing to special conditions of the property that distinguish it from other properties in the area:*

*i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property because:*

The public is not served by prohibiting the Applicant from expanding the maximum lot line to 57'.

There is no fair and substantial relationship between the general public purpose of the Ordinance's provision limiting the maximum front setback to 25' and the specific application of this provision to the Property. The proposed carwash is permitted by right in the Courthouse Zone, however, to construct a carwash with safe ingress and egress on the Property, it is necessary to move the building away from the lot's road frontage on Route 108.

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<sup>8</sup> Ordinance § 175-3 at 1.

The 25' maximum front setback is designed to consolidate parking for businesses with building facades and parking on Route 108. Here, the proposed carwash is not accessed by parking in front of the business, it instead requires cars to drive through the carwash building. Subsequently, it is unreasonable and unsafe for the Ordinance to force a carwash to be located 25' from Route 108 when this dimension fails to consider the infrastructure and measurements necessary to operate a carwash on the Property.

*ii. The proposed use is a reasonable one.*

Allowing the Applicant to locate a carwash in a safe location on the Property and away from Route 108 is reasonable given the dimensions necessary to site a carwash on the Property, and the Property's location in the Courthouse Zone.

#### IV. RELIEF REQUESTED

Pursuant to NH RSA 674:33, the Applicant respectfully requests the ZBA:

1. Approve the Application; and
2. Grant all relief necessary to affect this request.

Please do not hesitate to contact me with questions or concerns at [josh@brutonlaw.com](mailto:josh@brutonlaw.com) or 603-749-4529.

Sincerely,



Joshua Patrick Lanzetta, *Esq.*



107 / 80  
 YOUNG DRIVE, LLC  
 P.O. BOX 2813  
 SEABROOK, NH 03074  
 4126 / 615

106 / 62  
 WESLEY R. SMITH  
 ROCKDALE TRUST  
 26 WOODROGGE ROAD  
 DURHAM, NH 03824  
 3447 / 734

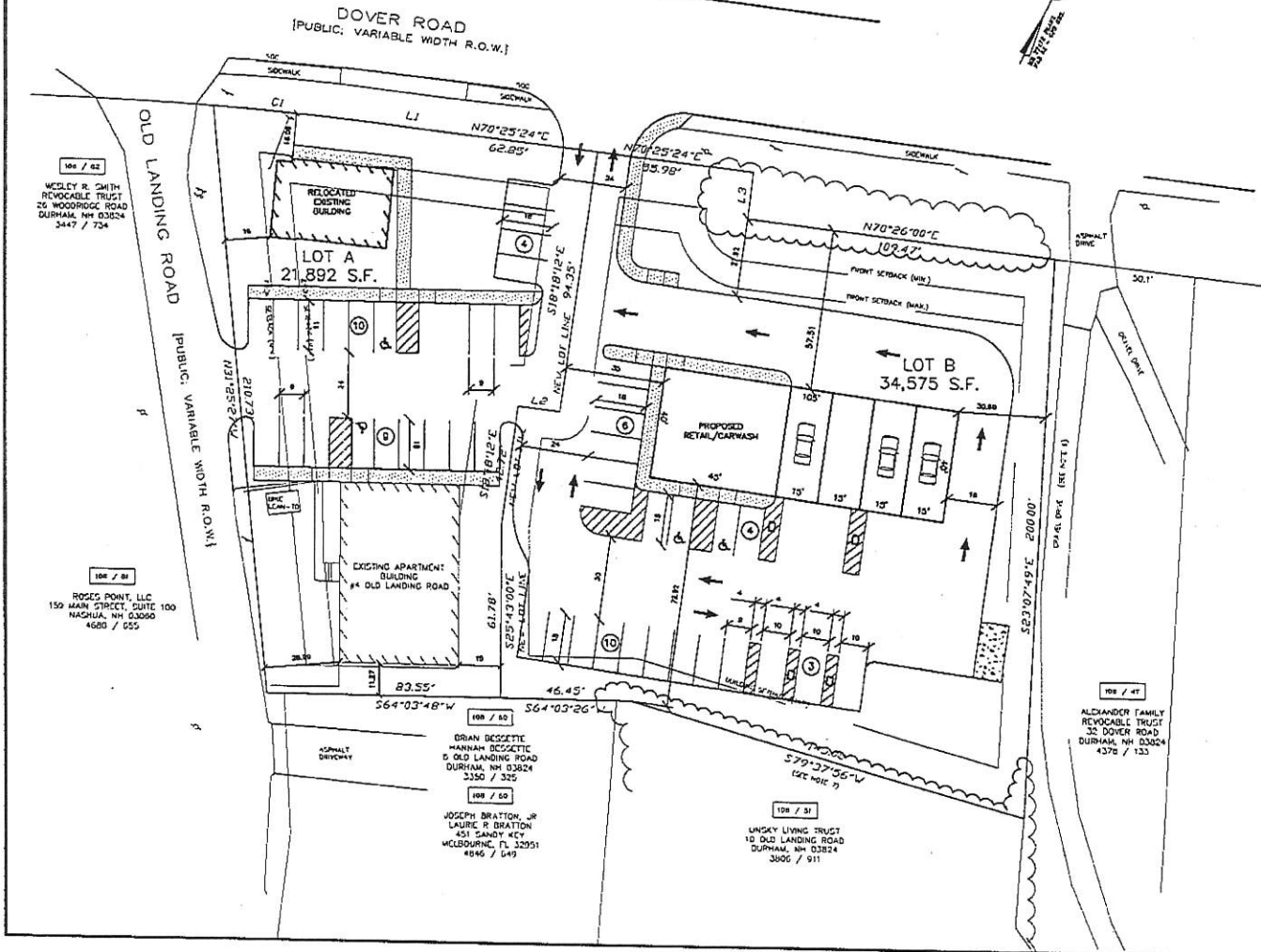
106 / 61  
 ROSES POINT, LLC  
 159 MAIN STREET, SUITE 100  
 NASHUA, NH 03060  
 4680 / 655

108 / 60  
 EBAN BECKETT  
 HANNAH BECKETT  
 6 OLD LANDING ROAD  
 DURHAM, NH 03824  
 3350 / 325

108 / 60  
 JOSEPH BRATTON, JR  
 LAURIE R BRATTON  
 451 SANDY KEY  
 WILBOURNE, FL 32951  
 4846 / 149

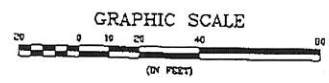
108 / 61  
 UNSKY LIVING TRUST  
 10 OLD LANDING ROAD  
 DURHAM, NH 03824  
 3606 / 911

108 / 47  
 ALEXANDER FAMILY  
 ROCKDALE TRUST  
 32 DOVER ROAD  
 DURHAM, NH 03824  
 4376 / 133



- NOTES:
- OWNERS OF RECORD:  
 HENDERSON FAMILY PROPERTIES, LLC  
 28 MAIN STREET  
 DURHAM, NEW HAMPSHIRE 03824  
 S.C.R.D. VOL. 2501, PAGE 338 (LOT 106/49)  
 S.C.R.D. VOL. 5005, PAGE 087 (LOT 106/46)
  - 108 / 48 - DENOTES TAX MAP AND PARCEL NUMBER.
  - BUILDING ZONE: COURTHOUSE DISTRICT (C)  
 MINIMUM LOT SIZE = 5,000 S.F.  
 MINIMUM AREA PER DWELLING UNIT = 4,200 S.F.  
 MINIMUM FRONTAGE = 50 FEET  
 BUILDING SETBACKS:  
 FRONT (MINIMUM) = 15 FEET  
 FRONT (MAXIMUM) = 25 FEET  
 SIDE = 10 FEET  
 REAR = 10 FEET  
 MAXIMUM BUILDING HEIGHT = 15 FEET  
 MAXIMUM IMPERVIOUS AREA = 80 PERCENT
  - THE INTENT OF THIS PLAN IS TO ADJUST THE LOT LINES AS SHOWN. PARCEL A (4,877 S.F.) WILL BE ADDED TO LOT 106/49 AND PARCEL B (4,207 S.F.) WILL BE ADDED TO LOT 106/46.
  - LOT ORIGINAL AREA NEW AREA  
 106/48 35,346 S.F. 34,575 S.F.  
 106/49 21,121 S.F. 21,892 S.F.
  - BASES OF BEARINGS IS NH STATE PLANE GRID FROM GPS OBSERVATION TAKEN ON FEBRUARY 14, 2022
  - THE SUBJECT PARCEL IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330446; PANEL 0316; 50'X75' MAP NUMBER 3301700216C; EFFECTIVE DATE SEPTEMBER 30, 2015.
  - THE OWNER OF PARCEL 106 / 48 HAS THE RIGHT TO USE THE DRIVEWAY ON PARCEL 106/47 FOR 200 FEET, MORE OR LESS, TO THE HIGHWAY FROM DURHAM TO DOVER AS DESCRIBED IN S.C.R.D. VOLUME 641, PAGE 45.
  - THE OWNER OF PARCEL 106/46 HAS THE RIGHT TO LAY, USE AND MAINTAIN WATER AND SEWER LINES FROM HIS PROPERTY TO OLD LANDING ROAD AS RESERVED IN S.C.R.D. VOLUME 641, PAGE 45.

- LEGEND:
- LR (20') - IRON ROD TO BE SET
  - LR (40') - IRON ROD SET 4/19/2022
  - MAGN (40') - MAGNETIC NAIL SET 4/15/2022
  - IP (10') - IRON PIPE FOUND
  - S-S (10') - STEEL STAKE FOUND
  - LR (10') - IRON ROD FOUND
  - NH05 - NEW HAMPSHIRE HIGHWAY BOUND
  - HY - FIRE HYDRANT
  - WC - WATER GATE VALVE
  - CS - CATCH BASIN
  - SM - SEWER MANHOLE
  - (TYP.) - TYPICAL
  - S.C.R.D. - STRAFFORD COUNTY REGISTER OF DEEDS
  - > UP - UTILITY POLE
  - - - - - EDGE OF PAVEMENT
  - SON - SIGN
  - R.O.W. - RIGHT OF WAY
  - F.F. - FINISH FLOOR
  - ELEV. - ELEVATION
  - SGC - SLOPED GRANITE CURB



DATE	BY	PROJECT	FILE NO.	REVISION	DATE
08-13-21	DRN: BR: SBO	APPROVED: BR: SBO			

HENDERSON FAMILY PROPERTIES LLC  
 28 MAIN STREET  
 DURHAM, NH

DOVER ROAD & OLD LANDING ROAD  
 DURHAM, NH