



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

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 Great Bay Animal Hospital, LLC

Address: 31 Newmarket Road, Durham, NH 03824

Phone # 603-828-8216 Email: drjim@greatbayah.com

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

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

Location of Property: 27-31 Newmarket Road
(Street & Number)

Tax Map & Lot number 06-11-8

A Variance is requested from Article(s) XII.1 Section(s) 175-53 of the Zoning Ordinance to permit: a portion of the existing permitted accessory use parking lot to be used as principal use leased parking in the Residential C (RC) Zone. See attached Variance Application and supporting Exhibits for more details.

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.

TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT

Applicant: Great Bay Animal Hospital, LLC

Property: 27-31 Newmarket Road

Map/Lot: 06-11-8

VARIANCE APPLICATION

The Applicant, Great Bay Animal Hospital, LLC, by and through its attorneys, Shaheen & Gordon, PA, respectfully requests a variance of Article XII.1, Section 175-53 of the Zoning Ordinance to permit a portion of the existing accessory use surface parking lot to be used as a principal use leased parking area.

Background

The Applicant owns and operates Great Bay Animal Hospital and Kennel located at 27-31 Newmarket Road (the "Property"). The Property is located within the Residential C (RC) Zone. The Property contains an existing accessory use surface parking lot for the Applicant's employees and customers, which is permitted in the RC Zone.

During the fall and winter months, the applicant's business slows down and the use of the existing parking lot decreases. At the same time, the demand for parking in the area in general greatly increases due to the returning University students, staff and visitors.

The Applicant is requesting this variance to allow for a portion of the existing surface parking lot to be used as leased parking during the school year. Such use would change a portion of the parking lot from an accessory use to a principal use, which is not currently permitted in the Residential C (RC) Zone.

Variance Criteria

- A. The variance will not be contrary to the public interest.

The variance will not be contrary to the public interest in any way. The use as a principal parking lot will be no different in any noticeable way from its use as an accessory parking lot. The only difference would be who is parking in the lot. The lot itself, and the Property as a whole, will not change in any way. There will be no new spaces, signs or structures on the Property. The existing parking lot is setback from Newmarket Road more than 200 feet and is located outside of the Historic District Overlay area. The lot is shielded from view by an existing old stone wall, trees and vegetation.

The public interest will actually benefit from this variance by providing badly needed off-street parking during the University school year.

B. The spirit of the ordinance is observed.

The spirit of the ordinance will be observed. The stated purpose of the zoning ordinance is to regulate the use of land for the purpose of protecting the public health, safety, convenience and general welfare of the residents of the Town of Durham. This variance will have no adverse effect on health, safety, convenience or general welfare of the Town. As stated above, the change from accessory use to principal use will have no noticeable change to the parking lot or its use. The only change would be that some of the people parking in the lot during certain months would be lessees instead of employees or customers.

The safety, convenience and general welfare of residents will actually benefit from the additional off-street parking resulting from this variance.

More specifically, the purpose of the Residence Coastal District is to protect the water quality of the community's principal surface waters and to preserve the rural character and scenic beauty of these coastal areas including the view of the shore as seen from the water. The variance will have no affect on the water quality or views from the water. The existing parking lot is set back approximately 500 feet from the shoreline and is shielded from the water by existing structures, trees and vegetation.

C. Substantial justice is done.

Substantial justice will be done by granting the variance. The proposed use is exactly the same in all physical and noticeable respects to the existing permitted use. The only difference would be the identity of some of the users of the parking lot during certain months of the year. Denying such use solely on the identity of certain users would be unjust when considering that all other physical and noticeable aspects would remain exactly the same as the existing permitted use.

D. The values of surrounding properties are not diminished.

The values of surrounding properties will not be affected at all by granting this variance. The Applicant already has a permitted accessory use surface parking lot. The lot itself, and the Property as a whole will not be changed in any way. The total number of parking spaces will remain the same. The only difference would be that some of the people using the parking lot would be lessees and not employees or customers. This would have no effect on property values whatsoever.

Several surrounding property owners have submitted their support of the proposed variance. See attached letters and emails from:

Leslie & David Schwartz, 24 Newmarket Road
Gregory Sancioff, 15 Durham Point Road

Amber Roy, 26 Newmarket Road
Christina Felix, 35 Newmarket Road
Jennifer L. Sayre, 35 Durham Point Road

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

To establish unnecessary hardship for a use variance, an applicant must show that: (1) the zoning restriction as applied interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others. Simplex Technologies v. Town of Newington, 145 N.H. 727, 728, 766 A.2d 713 (2001).

Leasing parking spaces is clearly a reasonable use of the Property given its unique setting. The Property is close to the University and Downtown areas, and has an existing parking lot which is underutilized during the same time that demand for off-street parking in those areas is greatly increased. The existing parking lot is sufficiently setback and shielded so as to not affect any surrounding properties.

There is no fair and substantial relationship between the purposes of the zoning ordinance and the prohibition of leased parking. As stated above, using a portion of the existing lot for principal use leased parking instead of accessory use parking would have no adverse effect to any of the express or implied purposes of the ordinance. In fact, it will have no effect whatsoever. All physical and noticeable aspects will remain exactly the same. The only difference would be the identity of some of the users of the parking lot.

The variance would not injure the public or private rights of others in any way. As stated above, this variance would have no affect, injurious or otherwise, on any of the surrounding property owners or the Town in general. In fact, several of the surrounding property owners have voiced their support for this variance.

Respectfully Submitted,
Great Bay Animal Hospital, LLC
By its attorneys,
Shaheen & Gordon, P.A.



Dated: July 24, 2019

Sean T. O'Connell, Esq., NH Bar #11341
Christopher E. Ratté, Esq., NH Bar #13857
353 Central Ave., Suite 200
PO Box 977
Dover, NH 03821-0977
Tel. (603)749-5000

soconnell@shaheengordon.com
cratte@shaheengordon.com

TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT

Applicant: Great Bay Animal Hospital, LLC

Property: 27-31 Newmarket Road

Map/Lot: 06-11-8

LIST OF ABUTTERS

Map/Lot	Property	Owner
05-6-6	Old Landing Road	Town of Durham 8 Newmarket Road Durham, NH 03824
06-9-6-1	Newmarket Road	Town of Durham 8 Newmarket Road Durham, NH 03824
06-11-6	23 Newmarket Road	Jeffrey S. & Joan B. Osborn 21 Newmarket Road Durham, NH 03824
06-11-2	25 Newmarket Road	Scott M. & Lorie Ann Jenkins 49 Old Country Road North Francestown, NH 03043
06-11-7	35 Newmarket Road	Christina H. Felix 35 Newmarket Road Durham, NH 03824
11-34-1	27 Durham Point Road	Gregory E. Sancioff One Harbour Place, Unit 4F Portsmouth, NH 03801

TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT

Applicant: Great Bay Animal Hospital, LLC

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Map/Lot: 06-11-8

SITE PLAN

See attached

MJS ENGINEERING P.C.
 CIVIL, STRUCTURAL & ENVIRONMENTAL
 1000 S. UNIVERSITY AVENUE, SUITE 100
 DURHAM, NC 27709
 TEL: 919.487.0000
 FAX: 919.487.0001
 WWW.MJS-ENGINEERING.COM

GRADING, DRAINAGE & EROSION CONTROL PLAN
 prepared for
GREAT BAY ANIMAL HOSPITAL, LLC
 31 NEWMARKET ROAD DURHAM, NH
 TAX MAP 6, LOT 11-8

DATE: 11/27/17
 SCALE: 1"=20'
 DESIGNED BY: MS
 DRAWN BY: MS
 APPROVED BY: MJS
 17-043 C10.dwg



NO.	REVISIONS	DATE
1	CONSTRUCTION OF COA & FINAL PLANS FOR SUBMITTAL	11/22/17 MS
2	COA	11/8/17 EM
3	UPDATES PER THE MITTING AND MARKER REVIEW	12/17/17 EM
4	FINAL SUBMITTAL TO THE PLANNING BOARD	12/17/17 MS

- CRITICAL DRAINAGE AREAS:** CRITICAL DRAINAGE AREAS SHALL BE IDENTIFIED AND SHOWN ON THIS PLAN. THESE AREAS SHALL BE PROTECTED BY THE PROPOSED EROSION CONTROL MEASURES. THE PROPOSED EROSION CONTROL MEASURES SHALL BE DESIGNED TO PREVENT EROSION AND SEDIMENTATION FROM OCCURRING IN THESE AREAS. THE PROPOSED EROSION CONTROL MEASURES SHALL BE DESIGNED TO PREVENT EROSION AND SEDIMENTATION FROM OCCURRING IN THESE AREAS. THE PROPOSED EROSION CONTROL MEASURES SHALL BE DESIGNED TO PREVENT EROSION AND SEDIMENTATION FROM OCCURRING IN THESE AREAS.
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 4. IDENTIFY CRITICAL DRAINAGE AREAS ON SHEET
 5. IDENTIFY CRITICAL DRAINAGE AREAS ON SHEET
- FINAL APPROVAL BY DURHAM PLANNING BOARD:**
 CERTIFIED BY MICHAEL BEHRENDT, TOWN PLANNER
 DATE: _____

TEST HOLE DATA:
 TEST HOLE LOGGED ON 10/27/17 BY MICHAEL J. SEVIRT, A.S.
 DURHAM, NH
 TEST HOLE LOGGED ON 10/27/17 BY MICHAEL J. SEVIRT, A.S.
 DURHAM, NH

VALUES:
 1. 100.00
 2. 100.00
 3. 100.00
 4. 100.00
 5. 100.00
 6. 100.00
 7. 100.00
 8. 100.00
 9. 100.00
 10. 100.00

LEGEND:
 UTILITY POLE
 STONE WALL
 PROPERTY LINE
 EXISTING EDGE OF GRAVEL
 STRUCTURE SETBACK LINE
 EXISTING CONTOUR
 PROPOSED CONTOUR
 PROPOSED SPOT GRADE
 EXISTING SPOT GRADE
 PROPOSED SLOPE
 AMBER WHEAT
 MAPLE TREE
 SPRUCE TREE

GRAPHIC SCALE:
 1" = 20'
 1" = 20'

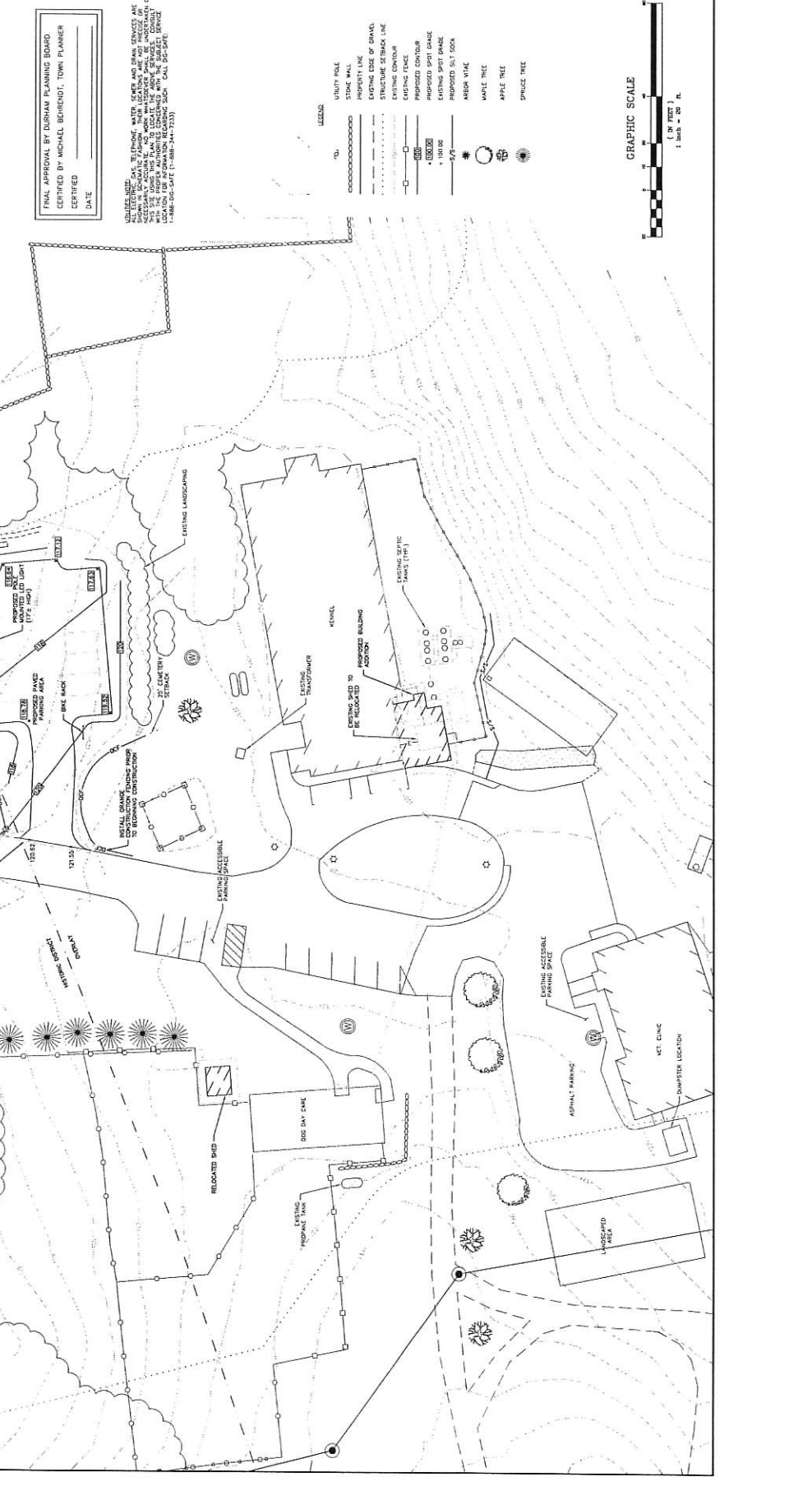
FINAL APPROVAL BY DURHAM PLANNING BOARD:
 CERTIFIED BY MICHAEL BEHRENDT, TOWN PLANNER
 DATE: _____

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GRAPHIC SCALE:
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ZONING BOARD OF ADJUSTMENT

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EXHIBITS

See attached letters and emails in support from:

Leslie & David Schwartz, 24 Newmarket Road
Gregory Sancioff, 15 Durham Point Road
Amber Roy, 26 Newmarket Road
Christina Felix, 35 Newmarket Road
Jennifer L. Sayre, 35 Durham Point Road

SCHWARTZ & ASSOCIATES PLLC

Attorneys at Law

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DAVID M. SCHWARTZ
LICENSED IN NH, ME, MA, VT,
FL, GA

FEDEX/UPS ADDRESS
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DURHAM, NH 03824

PHONE: 603.868.9300

DANIEL J. TOTHILL
LICENSED IN NH

FAX: 603.868.9399

To the Durham Zoning Board of Adjustment,

As the owners of 24 Newmarket Road in Durham, Leslie and I have no opposition to Dr. Jim McKiernan, owner of Great Bay Animal Hospital/ Kennel, renting school year parking to UNH students. Great Bay Animal Hospital/Kennel are great assets to the Town of Durham. They are first rate facilities that provide a great service to our community. Allowing students to park in a safe and protected area would be beneficial not only to the students but also to the town, alleviating parking congestion on Main Street benefiting our towns small businesses.

It is a win, win for all!

Yours truly,

Leslie & David Schwartz

From: Greg Sarcoff gs@livepureinc.com
Subject: Re: Variance sought by GBAH
Date: July 16, 2019 at 10:57 AM
To: Jim drjim@greatbayah.com

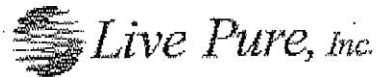


Dr. Jim,

I am reaching out to you in regards to your plan to supply some school year parking to UNH studentson your property. I am the owner of 15 Durham Point Rd. I have no opposition to providing parking to UNH students.

Wishing you the best of luck,

Gregory Sarcoff
President and CEO
Live Pure, Inc.
P.O. Box 21974
Portsmouth, NH 03802
603-319-8414 x6



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From: Amber Roy design@amberdawninteriorsne.com
Subject: Parking Spots
Date: July 14, 2019 at 11:12 AM
To: Drjim@greatbayah.com



Dr. Jim,

I am reaching out in regards to your plan to supply some school year parking to UNH students. I'd like it to be known that we, Amber, Tim, Robln, and Ray, the owners of 26 Newmarket Road, have no opposition to that. We don't see a problem, whatsoever, and believe it to be a mutually beneficial arrangement- for you, and the students- which we fully support.

Wishing you the best of luck,

Amber Roy

From: **Jim McKiernan** <drjim@greatbayah.com>
Subject: **Fwd: support of parking spot rentals**
Date: July 18, 2019 at 9:03 AM
To: soconnell@Shaheengordon.com



Last one

Begin forwarded message:

From: Christina <christinafelix@comcast.net>
Date: July 18, 2019 at 6:19:28 AM EDT
To: Jim McKiernan <drjim@greatbayah.com>
Subject: **support of parking spot rentals**

Dr. Jim,

In regards to your plan to supply some parking to UNH students off of our shared driveway. As the owner of 35 Newmarket Road and someone who will drive by the parking spots daily, I fully support the use of the parking spots by UNH students and/or other people. I don't foresee any issues with the driveway or parking spots.

All the best,

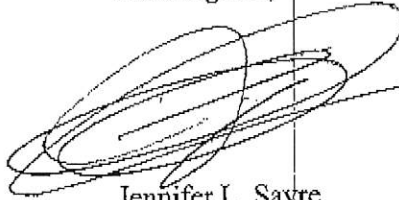
Christina Felix

7/16/2019

Dear Durham ZBA Board,

My name is Jennifer L. Sayre and I reside at 35 Durham Point Rd in Durham. I am writing this letter to cast my approval to grant a variance for the Great Bay Animal Hospital to rent parking spaces to UNH students during the academic calendar year. Additional parking for students is a genuine need in the community. I also like the fact that the parking lot to be used by students is almost 500 feet off of route 108. Please consider approving the Great Bay Animal Hospital's request for a variance to rent parking spaces on your August 13 meeting.

Kind regards,

A handwritten signature in black ink, appearing to read "Jennifer L. Sayre", is written over a horizontal line. The signature is somewhat scribbled and overlaps the line.

Jennifer L. Sayre