

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
January 23, 2018**

CASE: ZBA-923, 1/18

PETITIONER: Healing Hands Chiro Prak Tik LLC, applicant and property owner

REQUEST: Variance from the 50' parking area setback requirement per Section 55.4-3(4) of the New Hanover County Zoning Ordinance

LOCATION: 7649 Market Street
PID: R03600-003-004-000

ZONING: O&I, Office and Institutional District

PETITIONER'S REQUEST:

Greg Demetrious of Healing Hands Chiro Prak Tik LLC, applicant and property owner, is requesting a variance from the 50' parking area setback requirement per Section 55.4-3(4) of the New Hanover County Zoning Ordinance in order to locate a parking lot closer to the right-of-way than the Special Highway Overlay District (SHOD) regulations allow. The property is located at 7649 Market Street and is pending application for development as a new office building for his chiropractic business in addition to an upstairs area for Pilates and yoga classes.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The SHOD language was added to the county's zoning ordinance in 1986, and subsequent zoning actions were approved to apply the SHOD to certain significant highway corridors in the county, including the Market Street corridor from the Pender County line to Bayshore Drive, North College Road and I-40, and the I-140 corridor.

Section 55.4-1 of the Zoning Ordinance describes the purpose of the Special Highway Overlay District:

***Purpose** - The purpose of the Special Highway Overlay District (SHOD) is to protect the natural beauty and scenic vista that exists along Interstate Highways and other specially designated roadways that serve as major access ways and gateways into New Hanover County. Protection of these roadways is important and necessary to maintain and preserve the County's undisturbed roadsides that are characterized by their natural woodlands and open spaces. The continued protection of these scenic highways is also a valuable asset to the County's tourism economy and enhances the attractiveness of the area for trade and investment.*

If a property is wholly or partially within the SHOD, the additional regulations of Section 55.4 apply to the parcel, including screening and enclosure requirements, lot coverage maximums, requirements for smaller signs, and more stringent building and parking area setbacks.

Section 55.4-3(1) dictates the setback requirements for buildings for parcels within the SHOD:

All non-residential buildings and accessory uses shall set back no less than 100 feet from the right-of-way of the designated highway. No building shall be located less than 25 feet from any property line. However, the setback may be reduced for those buildings, accessory uses and off-street parking by a maximum of 25% if the project provides additional plantings along the right-of-way. At a minimum, these plantings shall consist of one deciduous or evergreen tree at least 2.5"-3" caliper for every 40 feet of road frontage.

These streetscape trees must be selected and planted in accordance with Section 62 of the Ordinance. Plantings must be located in the first ten feet of land adjacent to and parallel to the right-of-way except that plantings may be moved outside this area if it is determined that overhead power lines would interfere with the trees' natural growth. (3/9/95)

Section 55.4-3(4)(B) describes the requirements for setbacks for vehicular parking areas:

No vehicular or equipment parking except automobile parking shall be permitted in the yard area adjacent to the designated highway. All automobile parking shall be set back at least one hundred (100) feet from the right-of-way of the designated highway if such highway is an interstate or thoroughfare with controlled access. Other US and NC numbered highways shall require a fifty (50) feet setback for automobile parking.

Construction is expected to begin in 2019 for State Transportation Improvement Project U-4702, which will include improvements to Market Street adjacent to the subject site. The NC Department of Transportation is currently acquiring right-of-way to accommodate U-4702, including acquisition during the driveway permit review for new construction along Market Street.

After site design for the new office building, approximately 13' of lot depth from the subject site was conveyed to NC DOT. Because the new right-of-way line is now closer to the front proposed parking area, the site design does not meet the 50' parking area setback required per Section 55.4-3(4)(B), as the point of the parking area closest to the new right-of-way line is approximately 22'. As such, two options were available: redesign the site to comply with the SHOD setback requirement, or seek a variance.

Considering the first option to redesign the site, the petitioner concluded that the loss of 13 parking spaces would be detrimental to his business as the reduced parking would not be able to accommodate the staff and clients using the building. The petitioner contends that the proposed 39 parking spaces, while in excess of the minimum parking requirements of the Zoning Ordinance, are necessary due to the higher client frequency than a typical medical office. Additionally, a 36" oak tree on the site cannot be removed per the Zoning Ordinance to accommodate more parking than the minimum amount of spaces that are required. Based on these circumstances, the petitioner is seeking a variance to the parking area setback requirement.

Although the reduction in setback for the parking area would be nearly half of the required 50', the location of the parking area does appear harmonious with the parking areas on the developed parcels abutting the subject site on both sides, as shown on the diagram below that depicts the proposed site plan overlaid on 2016 aerial imagery of the subject site:



In summary, the petitioner is requesting a variance to allow a portion of a parking area to be as close as 22' from the right-of-way, a difference of about 28' from the 50' setback required per Section 55.4-3(4)(B) of the Zoning Ordinance. In his application, the petitioner has included draft findings of fact to support the four conclusions required to approve the variance.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Zoning Ordinance where, due to special conditions, a literal enforcement of the regulations would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. A concurring vote of four-fifths (4/5) of the voting members of the Board shall be necessary to grant a variance. A variance shall not be granted by the Board unless and until the following findings are made:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

ACTION NEEDED (Choose one):

1. **Motion to approve the variance request based on the findings of fact (with or without conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the variance request based on specific negative findings in any of the 4 categories above.**