

**VARIANCE REQUEST  
ZONING BOARD OF ADJUSTMENT  
March 27, 2018**

**CASE:** ZBA-926, 3/18

**PETITIONER:** Casco Signs, Inc., applicant, on behalf of Oak Ridge Properties at Porters Neck, LLC

**REQUEST:** Variance from the freestanding sign area allowance in the Office and Institutional Zoning District per Section 52.3-4 of the New Hanover County Zoning Ordinance

**LOCATION:** 212 Porters Neck Road  
PID: R02800-004-038-000

**ZONING:** O&I, Office and Institutional District

**ACREAGE:** 1.37 Acres

**PETITIONER'S REQUEST:**

Casco Signs, Inc., applicant, on behalf of Oak Ridge Properties at Porters Neck, LLC, property owner, is requesting a variance from the freestanding sign area allowance in the Office and Institutional Zoning District per Section 52.3-4 of the New Hanover County Zoning Ordinance. The property is located at 212 Porters Neck Road, Wilmington, NC.

**BACKGROUND AND ORDINANCE CONSIDERATIONS:**

In early 2004, a 1.83-acre rectangular shaped parcel, shown on the subdivision plat recorded at Map Book 44 Page 147 as owned by James A. Lanier, was requested to be rezoned from R-15, Residential District, to B-1, Business District. The adjacent properties owned by Oak Ridge Properties had already been rezoned to B-1, and the shopping center was under construction as a retail center including a grocery store. At the time, Planning Staff was concerned about commercial zoning encroaching into the adjacent residential area, and recommended the 1.83-acre parcel be rezoned to O&I, Office and Institutional District, instead of the requested B-1 district. Ultimately, the Planning Board recommended to rezone the 1.83-acre parcel partially to B-1 and partially to O&I. The applicant was receptive to this recommendation, and the Board of Commissioners approved the split-rezoning in February 2004.

In 2006, the 1.83-acre parcel subject to the 2004 rezoning was recombined into the adjacent properties on a subdivision plat recorded at Map Book 50 Page 139. This subdivision plat reconfigured the parcel boundary, resulting in the parcel shape currently on record. The subdivision plat also created the access easement areas which are now the driveways that serve the shopping center.

The subject parcel has remained vacant and undeveloped since the rezoning and parcel boundary reconfiguration. However, a fuel station is proposed to be developed on the subject parcel and has been approved for the necessary permits for construction (Project ID 17-3272).

Subsequently, a sign is proposed for the new fuel center that would be located on the subject parcel near the frontage along Porters Neck Road, in an area of the parcel that is zoned O&I. However, the proposed sign exceeds the 12 sq. ft. in area allowed for "advertising signs" in the O&I zoning district per Section 52.3-4(1) of the Zoning Ordinance:

**Section 52.3: O&I Office and Institutional District**

52.3-1: *The purpose of the Office and Institutional District shall be to provide areas where institutional uses, professional office uses and other uses compatible to uses of an office or institutional nature shall be encouraged to locate and to provide protection for this type land use from encroachment by other less desirable uses. The district's principal means of ingress and egress shall be along collector roads, minor arterials, and/or major arterials as designated on the County's Thoroughfare Classification Plan. (8/4/86)*

52.3-2: *DELETED (1/5/81)*

52.3-3: *DELETED (1/5/81)*

**52.3-4: Signs and Lighting for Office and Institutional Districts:**

- (1) *Advertising Signs: One sign of an advertising nature depicting the name or nature of a product, service or business located on that premise shall be permitted on any premise in the O & I District. Such signs shall be limited to twelve (12) feet in surface area and shall not exceed the height of the principal structure on the premise. Such signs, if illuminated, shall be indirectly illuminated with the source of light concealed from the view of any public street or any residential lot.*
- (2) *Directional Signs: Signs of a directional nature shall be permitted; however, each such sign shall not exceed two (2) square feet in surface area (one side) with no lighting and shall be limited to seven (7) feet in height.*
- (3) *Outdoor lighting: The source of any outdoor lighting in an O & I District shall be concealed so as not to be visible from any public street or any residential lot.*
- (4) *In the case of premises located adjacent to minor or major arterials as identified in the New Hanover County Thoroughfare Classification Plan, total signage shall be limited to 75 square feet in surface area. (1/2/96)*

The proposed sign area is 74" wide by 126" in height, resulting in a proposed area of 64.75 sq. ft., a difference of 52.75 sq. ft. over the 12 sq. ft. allowed under Section 52.3-4(1).

Section 52.3-4(4) allows for larger signs up to 75 sq. ft. in area in the O&I zoning district if the sign is located adjacent to a road classified as a minor or major arterial. According to the 2015 Functional Classification Map of roads in New Hanover County from the Wilmington Metropolitan Planning Organization, the portion of Porters Neck Road adjacent to the proposed sign location is classified as a major collector; therefore, the increased sign allowance in Section 52.3-4(4) is not applicable.

Area allowances for signs in other zoning districts are found in Section 94-4 of the Zoning Ordinance:

94-4: **Principal Use Signs**

(1) Freestanding Signs

(C) Primary - One primary freestanding sign per premises, as per Table -1 of this Article.

**Table 1: Freestanding Sign Standards**

Zoning District	Number of Lanes(1)	Street Frontage (Feet)	Front Setback(2)(3) (Min./Max.) (Feet)	Max. Primary Sign Height (Feet)	Max. Aux. Sign Height (Feet)	Max. Primary Sign Area (SF)	Max. Aux. Sign Area (SF)
B-1, PD	2	N/A	10 / 20	20	10	50	25
	4	< 100	10 / 20	20	N/A	50	N/A
		> 100	10 / 20	20	12	65	32
B-2, I-1, I-2, A-I, SC	2	< 100	10 / 20	20	N/A	65	N/A
		> 100	10 / 25	20	18	100	50
	4	< 100	10 / 25	20	N/A	100	N/A
		> 100	10 / 30	25	20	150	75
		> 300	10 / 30	30	20	175	90

**NOTE (1)** Number of lanes refers to the ultimate number of lanes based upon existing roadway conditions or upon construction plans approved as part of the current NC DOT Transportation Improvement Program.

**NOTE (2)** Notwithstanding the minimum and maximum front setback requirements indicated above, primary freestanding signs which do not exceed 6 feet in height and are less than 76 percent of the maximum sign area established above may be located within 5 feet of the front property line and shall have no maximum front setback.

**NOTE (3)** "Front Setback" refers to the setback from the front or corner side property lines.

Signs in the B-1 zoning district are allowed to be up to 50 sq. ft. if located adjacent to a 2-lane road or adjacent to a 4-lane road with less than 100' of street frontage. If located next to a 4-lane road with more than 100', signs are allowed to be up to 65 sq. ft. in area. The subject parcel has 30.01' of frontage according to the dimension shown on the subdivision plat that created the subject parcel's configuration.

For the record, Section 90 under Article IX of the Zoning Ordinance describes the purpose of the sign regulations found in that article:

**Section 90: Purpose**

*The purpose of this section is to coordinate the type, placement, and physical dimensions of signs within the different zoning districts; to recognize the commercial communication requirements of all sectors of the business community; to promote both renovation and proper maintenance of signs; and to guarantee equal treatment under the law through accurate record keeping and*

consistent enforcement. The general objectives of these standards are to promote the health, safety, welfare, convenience and enjoyment of the public, and in part, to achieve the following: (12/7/87)

- (1) Safety - To promote the safety of persons and property by providing that signs:
  - (A) Do not create a hazard due to collapse, fire, decay, collision, or abandonment;
  - (B) Do not obstruct fire-fighting or police surveillance; and
  - (C) Do not create traffic hazards by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs.
  
- (2) Communications Efficiency - To promote the efficient transfer of information in sign messages by providing that:
  - (A) Those signs which provide messages and information most needed and sought by the public are given priorities;
  - (B) Businesses and services may identify themselves;
  - (C) Customers and other persons may effectively locate a business or service;
  - (D) No person or group is arbitrarily denied the use of the sight lines from the public right-of-way for communication purposes; and
  - (E) Persons exposed to signs are not overwhelmed by the number or size of messages presented, and are able to exercise freedom of choice to observe or ignore said messages, according to the observer's purpose.
  
- (3) Landscape Quality and Preservation - To protect the public welfare and to enhance the appearance and economic value of the landscape by providing that signs:
  - (A) Do not interfere with scenic views;
  - (B) Do not create a nuisance to persons using the public rights-of-way;
  - (C) Do not constitute a nuisance to occupancy of adjacent and contiguous property by their brightness, size, height or movement;
  - (D) Are not detrimental to land or property values; and
  - (E) Contribute to the special character of particular areas of the community, helping to orient the observer within it.
  
- (4) Outdoor Advertising Signs - Outdoor advertising signs are herein regulated for the purposes of regulating excess signage, encouraging the positive economic development of the county, preserving and improving tourism views, promoting the safety of the traveling public, protecting existing property values in both residential and nonresidential areas, preventing the overcrowding of land, and protecting the aesthetics of the county.

The regulations are designed to prevent their over-concentration, improper placement, and excessive height, bulk, number and area. It is recognized that, unlike on-premise identification signs, which are in actuality a part of a business, outdoor advertising is a separate and distinct use of the public thoroughfare. With

*a view to this distinction, outdoor advertising signs are regulated differently from on-premise signs.*

The only zoning districts for which sign regulations are specifically outlined in Article V: District Regulations are the O&I zoning district and the Riverfront Mixed Use (RFMU) zoning district. Signs that fall within the Special Highway Overlay District (SHOD) are also subject to additional standards per Section 55.4-3(6):

- (6) *Signs - Signs shall be in accordance with Article IX except that only one free standing ground sign not to exceed six (6) feet in height and a maximum surface area of 150 square feet may be permitted within the 100 foot setback. No outdoor advertising signs shall be permitted. (3/14/94)*

The portion of the parcel proposed for the sign is outside of the SHOD by approximately 90' and therefore the sign regulations above are not applicable.

In summary, the petitioner is requesting a 52.75 sq. ft. variance from the 12 sq. ft. sign area allowance per Section 52.3-4(1). If approved, the variance would allow a sign with a face area up to 64.75 sq. ft. to be constructed on the portion of the subject site in the O&I zoning district. In the application, the petitioner has included draft findings of fact to support the four conclusions required to approve the variance, along with detailed site plans depicting the proposed sign location and design.

#### **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.**