AGENDA
Zoning Board of Adjustment Meeting
March 27, 2018, 5:30 PM

I. Call Meeting to Order (Chairman Ray Bray)

II. Approval of Meeting Minutes from February 27, 2018 Meeting

   February Attendees: Ray Bray, Hank Adams, Cameron Moore, Richard Kern, Mark Nabell

III. Regular Items of Business

   1. Case ZBA-926 – 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.

IV. Other Business

V. Adjourn
The New Hanover County Zoning Board of Adjustment held a regular and duly advertised meeting at 5:30 P.M. at the New Hanover County Government Center Complex, 230 Government Center Drive, in the Lucie Harrell Conference Room, Wilmington, NC, on Tuesday, February 27, 2018.

Members Present
Raymond Bray- Chairman
Hank Adams, Vice-Chairman
Cameron Moore
Richard Kern
Mark Nabell

Members Absent
Kristen Freeman
Brett Keeler
Joe Miller

Ex Officio Members Present
Ben Andrea, Executive Secretary
Sharon Huffman, Deputy Attorney
Denise Brown, Clerk

The meeting was called to order at 5:35 P.M. by the Chairman, Mr. Ray Bray.

Chairman Bray explained that the Zoning Board is a quasi-judicial board appointed by the Board of Commissioners to consider zoning ordinance variance from residents in New Hanover County where special conditions would create unnecessary hardships. He said the Board also hears appeals of the County’s interpretation and enforcement of the Zoning Ordinance. The appellants have thirty days in which to appeal any decision made by the Board to Superior Court.

APPROVAL OF JANUARY 23, 2018 MINUTES

Following a motion by Mr. Cameron Moore and seconded by Vice-Chair Hank Adams the minutes of the January 23, 2018 meeting was unanimously approved.

CASE ZBA-921

Chairman Bray then swore in County staff, Mr. Benjamin Andrea.

Mr. Andrea stated that Mr. Scott Stewart, applicant and property owner, is requesting variances from the yard requirements of Section 51.5-2 of the New Hanover County Zoning Ordinance. The property is located at 397 Whisper Park Drive, Wilmington, NC. The property is zoned R-20, Residential District.

Mr. Andrea presented stated the subject property on 397 Whisper Park Drive located off Middle Sound Loop Road. The adjacent property to the west is the Sandy Brook community zoned R15. Across from Middle Sound Loop Road area resides the Demarest Landing subdivision zoned R20S. Mr. Andrea stated the R20 land classification is for low density residential with intent to discourage that is detrimental to quiet residential nature of the area within the R20 zoning district. Mr. Andrea stated that the subject site is currently undeveloped with the exception of fencing on the site.

Mr. Andrea stated the county’s zoning and subdivision regulations allow for subdivision to utilize performance or conventional requirements. Mr. Andrea stated that under conventional requirements, lots that are created must adhere to the dimensional requirements of the zoning district. Mr. Andrea stated lots that are created with conventional
requirements under the R-20 zoning must meet the dimensional requirements of Section 51.5-2. This includes yard requirements.

Mr. Andrea stated a yard is an area of the lot that is not incumbent by any portion of the structure. Mr. Andrea stated the yard requirements essentially creates the building setbacks for structures on conventional residential lots. Mr. Andrea stated features such as decks, staircases, or porches cannot encroach into any required yard area.

Mr. Andrea stated the applicant is requesting variances from the front and side yard requirements for R-20 for the subject parcel, which was created under conventional residential regulations.

Mr. Andrea stated lots in the county can also be created under performance residential criteria. Mr. Andrea stated that lots created under performance residential criteria do not have to meet the same dimensional standards as lots created under the conventional residential requirements. There is no minimum lot size or yard requirement for performance lots. Mr. Andrea stated there is a periphery setback requirement of 20’ from the property line for performance residential projects, and that single family structures must be a minimum of 10’ apart.

Mr. Andrea explained that Demarest Village was approved in 1999 as a performance residential subdivision. The adjacent lot to the subject site, Lot 10A, was recorded in 2000 prior to the subject parcel site created in 2009. Mr. Andrea stated the townhome on the adjacent Lot 10A of Demarest Village is setback of 10ft from the front property line. This townhome has no yard requirements to meet because on a performance residential lot. However, there is a 20’ easement in which a structure cannot be located.

Mr. Andrea stated the applicant proposes to construct a single family residence on the subject property with an attached front porch that would abut the property line, an arbor walkway, and garage on the site. Mr. Andrea explained that because the structure, arbor, and garage are all proposed to be attached, all portions of the structure would require adhering to the county ordinance yard requirements.

Mr. Andrea stated the applicant’s request is to reduce the 30’ front yard setback to zero, and reduce the side yard setback to 3’. Mr. Andrea stated that although portions of the structure encroach into the required side yard different distances, only one variance is necessary to allow encroachment into the required side yard.

Chairman Bray inquired of the distance from 395 Whisper Park and the subject site property line.

Mr. Andrea stated the distance from the adjacent property line and the subject site is more than 20’. Mr. Andrea stated the applicant proposes to align the proposed home to the adjacent neighboring townhomes. Mr. Andrea due to the two lots were created under different sets of criteria, one lot has to adhere to the yard requirement and the other site does not.

Mr. Andrea stated to position the proposed structure inline to the adjacent lot the applicant must obtain a variance to move structure closer to the property line as well as the side property line.

Mr. Moore inquired of the subject site correct address. Mr. Moore inquired of the neighboring homes as it pertains to the proposed front porch alignment to the adjacent subdivision.

Mr. Andrea stated the variance request for the side yard requirement is due to existing trees at the location. The applicant does not want to remove the trees but rather construct the proposed arbor walkway around existing landscaping on the subject site.
Mr. Andrea presented pictures of the subject site provided by the applicant showing different views of the property. Also presented was the site plan that was submitted in the application packet.

Mr. Moore inquired of the pipes in the presented slides as it pertains to the subject site.

Mr. Andrea responded that they appeared to be temporarily stored on the site.

Chairman Bray asked whether the acreage of the subject site is 0.46 acres. Also, the Chairman inquired of the square footage of the walkway, porch, house and garage of the proposed structure subject site.

Mr. Andrea affirmed the parcel acreage and deferred to the applicant about the square footage of the proposed structure.

Mr. Moore inquired of the history of the lot.

Mr. Andrea stated the applicant has owned the lot for a number of years and his understanding is that the intent was always to construct a home on the subject site. He stated that although the site is close to Demarest Village, the subject site is a standalone lot and not subject to adjacent subdivision guidelines.

Mr. Miller inquired of the mapping error to the subject site.

Mr. Andrea stated it is his understanding that the property line was not supposed to include a jog on the subject site.

Chairman Bray inquired of stormwater regulations on the subject site.

Mr. Andrea stated to the best of his knowledge he is not aware of any stormwater regulations to the subject site parcel.

Mr. Kern inquired of the water and sewer easement existing on the map.

Mr. Andrea stated some of the existing easements surrounding the subject site were in place but reworked during the design and implementation of Demarest Village.

Chairman Bray then swore in Mr. Scott David Stewart.

**Mr. Scott Stewart (on behalf of SP3 LLC, applicant & property owner)** – Mr. Stewart presented today with residency at 6933 Running Brook Terrace in the Demarest Landing Subdivision for the past 19 years. Mr. Stewart stated in his 40-year career expansion he’s been involved in landscape architecture in various projects with extensive knowledge and experience licensed realtor and constructor of all his project involvement. Mr. Stewart stated he’s been involved in engineering consultant in projects in the northeastern area. Mr. Stewart stated he moved to Wilmington in 1993 to working with the Stewart family in constructing Demarest Landing as well as Demarest Village and bring new urbanist ideas in the subdivision with additions of alleys and unique park spaces.

Mr. Stewart previously he partnered with Cape Fear Tomorrow and closed on the Demarest Landing property in 1999 to compartmentalized various housing structures such as homes and town houses. Mr. Stewart stated he had a vision of bringing unique street scape to the southeastern region. Mr. Stewart stated the close proximity of Demarest Village and Demarest Landing has a sentimental uniqueness to his heritage as the subdivisions were named in tribute to his late father.

Mr. Stewart stated he previously owned parcels in Demarest Landing; however, in 2009 the neighborhood was turned over to the HOA. Mr. Stewart stated currently he maintains ownership of 2 lots adjacent to Demarest Village subdivision.
Mr. Stewart stated the 2 lots he owns are not affiliated with Demarest Landing. Mr. Stewart stated in 2009 he worked with the Planning Staff in subdividing the 2 lots in support of the mixed use project currently known as Rip Tide Aquatic Center and Daycare Center which sits on nearby 2 acres. Mr. Stewart stated the project was approved by county commissioners, stormwater improvements were implemented as required. Mr. Stewart stated a stormwater permit is initiated for the project at 397 Whisper Park with 750 impervious coverage.

Mr. Stewart stated currently his family is contemplating downsizing from current residence and constructing a home at the subject site. Mr. Stewart stated the plan has always been to create a Charleston-type homestead for the subject site. Mr. Statement stated he is huge on tree preservation; he does not want to remove trees on the lot. The pipes on the site are leftover remnants from past construction in the neighborhood. Mr. Stewart stated the plan is to rent the house until he and his spouse are prepared to move in the home.

Mr. Stewart stated he is planning to design the proposed home similar to the townhomes that reside at the neighboring Demarest Landing subdivision. Mr. Stewart stated the porches are approximately 4ft from the homes he is proposing similar design to ensure a view of the neighborhood.

Mr. Stewart stated in 2009 the lot was recorded however during the survey process the jog on the lot was incorrectly placed. Mr. Stewart stated he reserved himself an acre to design two reasonable size homes in the future for he or his four children. Mr. Stewart stated sewer and water were made accessible for the lots along with access easements.

Mr. Stewart stated he wanted to continue the pattern of 40-50 ft. lots. Mr. Stewart he was granted ingress, egress, drainage, utilities, and shared stormwater coverage for 397 & 407 Whisper Park. Mr. Stewart stated both parcels are outside of the Demarest subdivisions.

Mr. Stewart stated there have been variances granted in the past for parcels in Demarest Landing. Mr. Stewart stated the subject parcels were kept out of the Demarest Landing due to long term cost of HOA maintenance fees. Mr. Stewart stated with the close proximity of the subdivision he and his family will enjoy the surrounding landscape and scenery.

Mr. Stewart stated he is seeking a variance to construct a home similar to the nearby homes in the neighborhood. Mr. Stewart stated his plan is to construct a smaller home than he currently resides in for he and his wife.

Mr. Stewart stated in pushing the home forward he would have 35ft distance between the house and the garage. Mr. Stewart stated the proposed open arbor with a roof would be 6’x6’. Mr. Stewart stated the arbor would be 3’ from the property line.

Mr. Stewart stated realignment of the proposed home would require extensive research of entitlement previously approved permits would be timely and costly. Mr. Stewart stated he wanted to have a 10’ setback to mimic the homes in the neighborhood.

Chairman Bray then closed the public hearing.

Mr. Kern inquired to the length and distance of the arbor from the house and or the garage.

Mr. Kern inquired as to why cannot the property owner relocate the proposed home closer to property line.

Chairman Bray inquired about the 27.7 front yard allowance as submitted in the petitioner’s packet and was this dimension previously approved. Mr. Bray inquired of the proposed porch encroachment if any.

Mr. Moore inquired of the flag lot definition. Mr. Moore inquired the location of the front yard setback, whether it would be from Middle Sound Loop Road or not. Mr. Moore inquired of the address of the proposed home.
Mr. Moore inquired of ownership of a slight piece of the common area(jog) in close proximity of the applicant’s lot.

Mr. Stewart stated the neighboring subdivision requires every feet of square footage to meet open space requirements.

Mr. Moore inquired of the application necessity of a variance if the jog on the applicant’s parcel were eliminated.

Mr. Andrea stated that a variance would still be necessary.

Chairman Bray inquired what type of trees located on the subject site.

Mr. Stewart stated the trees on the subject site are not substantial trees; they are black gum trees nicely maintained.

Chairman Bray inquired of the walkway allocation.

Mr. Stewart stated all allocation of walkway for proposed home would be impervious. Mr. Stewart stated the declaration of restrictive conveyance book 5709, page 458, allots 397 Whisper Park 10,700 sf of impervious coverage.

Mr. Stewart stated the proposed home for the subject site is 3100 sf; consisting the porch and garage.

Chairman Bray inquired of the size of the porch.

Mr. Stewart stated the proposed home would have a two-story porch similar to the neighboring town homes.

Mr. Moore asked of the advertising requirements and or notification of ZBA cases.

Mr. Andrea stated neighbors located 500 ft. of the subject site are mailed the advertisement notice, the notice is also listed in the public newspaper two consecutive Mondays prior to the meeting, also a sign is posted on the site.

Mr. Moore inquired whether residents have been made aware of today’s proceedings and no one has presented objection to the variance.

Mr. Andrea stated he received two phone calls and a walk-in regarding inquire of the meeting. No opposition was made once he explained the applicant’s request.

Mr. Stewart stated two weeks prior he spoke to board members at Demarest Village to inform his proposal of seeking a variance for the subject site; he did not received opposition from the board.

Mr. Stewart stated the architectural review committee typically want homes to similar the theme of the neighborhood; and it appears the applicant is attempting to build on the original footprint to blend the home within the neighborhood scheme.

On a motion by Vice-Chairman Adams and seconded by Mr. Nabell the Board voted unanimously to GRANT a 30’ variance from the 30’ front yard requirement of Section 51.5-2 and a 12’ variance from the 15’ side yard requirement of Section 51.5-2 with no conditions.
The Board cited the following conclusions and findings of fact:

1. **It is the Board’s conclusion that, if the applicant complies with the literal terms of the ordinance, specifically the 30’ front yard requirement and 15’ side yard requirement per Section 51.5-2 of the New Hanover County Zoning Ordinance, that an unnecessary hardship would result.** This conclusion is based on the following **FINDINGS OF FACT:**
   - Strict application of the yard requirements in Section 51.5-2 would result in the location of a structure on the subject property to be highly inconsistent with the location of structures in the surrounding neighborhood and in particular the adjacent parcel.

2. **It is the Board’s conclusion that the hardship of which the applicant complains results from unique circumstances related to the subject property, such as location, size, or topography.** This conclusion is based on the following **FINDINGS OF FACT:**
   - The subject parcel directly abuts a developed lot in a subdivision created under performance residential criteria, which allows for flexibility in the location of structures and has resulted in structures to be located close to the existing road.
   - The subject parcel was created under conventional residential criteria, which the Zoning Ordinance requires strict front, side, and rear yard requirements to be met.

3. **It is the Board’s conclusion that the hardship did not result from actions taken by the applicant or the property owner.** This conclusion is based on the following **FINDINGS OF FACT:**
   - A “jog” was created adjacent to the subject parcel with the recordation of the Demarest Village subdivision plat and not realized until recently.

4. **It is the Board’s conclusion that, if granted, the variance will be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.** This conclusion is based on the following **FINDINGS OF FACT:**
   - Granting the requested variances would allow the placement of a structure on the subject property in a manner consistent with the adjacent property and surrounding neighborhood.
   - Allowing the proposed home to be situated in the manner as a result of the approved variances creates no hazard to public safety.

There being no further business before the Board, it was properly moved by Mr. Moore and seconded by Mr. Miller to adjourn the meeting.

All ayes.

__________________________________________  ________________________________
Executive Secretary                           Chairman

Date: ___________________
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

<table>
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<th>Zoning District</th>
<th>Number of Lanes(1)</th>
<th>Street Frontage (Feet)</th>
<th>Front Setback(2)(3) (Min./Max.) (Feet)</th>
<th>Max. Primary Sign Height (Feet)</th>
<th>Max. Aux. Sign Height (Feet)</th>
<th>Max. Primary Sign Area (SF)</th>
<th>Max. Aux. Sign Area (SF)</th>
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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.
Case ZBA-926
212 Porters Neck Road
Variance Request: Variance from the freestanding sign area per Section 52.3-4
Applicant: Casco Signs, Inc.
Owner: Oak Ridge Properties at Porters Neck LLC

New Hanover County Zoning Board of Adjustment
March 27, 2018
Case ZBA-926
212 Porters Neck Road
Variance Request: Variance from the freestanding sign area per Section 52.3-4
Applicant: Casco Signs, Inc.
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New Hanover County Zoning Board of Adjustment

March 27, 2018
Case ZBA-926
212 Porters Neck Road
Variance Request: Variance from the freestanding sign area per Section 52.3-4
Applicant: Casco Signs, Inc.
Owner: Oak Ridge Properties at Porters Neck LLC

New Hanover County Zoning Board of Adjustment

March 27, 2018
(EXHIBIT 'A')

MAP OF DIVISION FOR
JENKINS v. PARHAM - OO CVD 4238
DEED BOOK 1 I70 PAGE 533 & DEED BOOK 1 I03 PAGE 824
HARNETT TOWNSHIP - NEW HAMPSHIRE COUNTY, N.C.

STOCKS 
LAND SURVEYING, P.C.

FEBRUARY 22, 2003
55.29 AC (TOTAL)

Map Book 44 Page 147
# 2003039275
Recorded 01/24/03 at 1:57 pm

Recorded By: Shanna Nelly 719-003
## Variance Application

<table>
<thead>
<tr>
<th>Name</th>
<th>Owner Name</th>
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<tbody>
<tr>
<td>Brian Koloff</td>
<td>Oak Ridge Properties/Porter Week</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Company</th>
<th>Owner Name 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Casco Signs, Inc.</td>
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<table>
<thead>
<tr>
<th>Address</th>
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<tbody>
<tr>
<td>199 Wilshire Ave SW</td>
<td>826 2 Market St</td>
</tr>
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<table>
<thead>
<tr>
<th>City, State, Zip</th>
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<tr>
<td>Concord, NC 28026</td>
<td>Wilmington, NC 28406</td>
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<table>
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<tr>
<th>Phone</th>
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<tbody>
<tr>
<td>704-788-9057</td>
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<table>
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<tr>
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<tbody>
<tr>
<td><a href="mailto:b.koloff@casco.signs.com">b.koloff@casco.signs.com</a></td>
<td></td>
</tr>
</tbody>
</table>

### Subject Property Information

<table>
<thead>
<tr>
<th>Address/Location</th>
<th>Parcel Identification Number(s)</th>
<th>Total Parcel(s) Acreage</th>
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<tr>
<td>212 Porters Neck Rd</td>
<td>RO2800-004-038-000</td>
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<table>
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<tr>
<th>Existing Zoning and Use(s)</th>
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<tr>
<td>B-1 &amp; O-11 - Harris Teeter Fuel</td>
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### Application Tracking Information

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<tbody>
<tr>
<td>Z8A-926</td>
<td>2-5-18</td>
<td></td>
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</table>

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Page 3 of 6

Variance Application - Updated 3/2017
**PROPOSED VARIANCE NARRATIVE**

Subject Zoning Regulation, Chapter and Section: Article IX, section 94-4 Table 1

In the below space, please provide a narrative of the application. (Additional pages may be attached to the application if necessary)

Harris Teeter Fuel wishes to seek variance approval to be granted one (1) freestanding sign that exceeds current zoning regulations. The proposed ground sign is located within the O-1 zoning designation. Ground signs may not exceed 12 sq. ft in size within this zoning. The fuel center, however, is Zoned B-1, which allows 65 sq. ft of ground signage. The only feasible location for the proposed ground sign is off of Porters Neck Road site, approximately 11 ft from the fuel station itself. To be able to properly & safely direct patrons to the fuel station, the ground sign will need to be placed where proposed. To adequately display the appropriate fuel prices, Harris Teeter requests a variance to allow more secure feet of signage than currently allowed by right. From 12 square feet to 65.75.

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**CRITERIA REQUIRED FOR APPROVAL OF A VARIANCE**

The Zoning Board of Adjustment may grant a variance if it finds that strict application of the ordinance results in an unnecessary hardship for the applicant, and if the variance is consistent with the spirit, purpose, and intent of the ordinance. The applicant must explain, with reference to attached plans (where applicable), how the proposed use meets these required findings (please use additional pages if necessary).

1. Unnecessary hardship would result from 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.

   Presence of safety are the two main concerns. Without proper direction, motorists may be unable to react accordingly. Without public awareness/presence, 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. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance.

The distance of the fuel pumps from Portos Neck Road exceeds 400', which is unusual for a typical Harris Teeter fuel station. Motorists will need to rely on the ground sign to safely circumvent the intersection & view correct petroleum prices.

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.

The fact this fuel station parcel is located within (2) different zoning jurisdictions is not the fault of Harris Teeter. If the fuel station were substantially closer to the main road, this would not be as big of an issue. Motorists would be able to view the actual fuel station better, not the case as it stands now.

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.

Harris Teeter is requesting a modest variance adjustment. Again, this proposed ground sign would be allowed by right within the B-1 zoning jurisdiction. Public safety will be enhanced by properly directing motorists. Reaction times will be increased due to increased visibility.

Special note, recent precedence was set. The nearby Walmart shopping center was granted variance approval for a larger ground sign. Please refer to Case ZBA-885.
APPLICATION REQUIREMENTS

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialing under "Applicant Initial". Staff will not process an application for further review until it is determined to be complete.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Applicant Initial</th>
<th>Staff Initial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Complete Variance application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Application fee – $400</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Site plan or sketch illustrating requested variance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 1 hard copy of ALL documents</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ACKNOWLEDGEMENT AND SIGNATURES

By my signature below, I understand and accept all of the conditions, limitations and obligations of the variance application for which I am applying. I understand that I have the burden of proving why this application meets the require findings necessary for granting a variance. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.

I also appoint the applicant/agent as listed on this application to represent me and make decisions on my behalf regarding this application during the review process. The applicant/agent is hereby authorized on my behalf for:

1. Submit an application including all required supplemental information and materials;
2. Appear at public hearings to give representation and commitments; and
3. Act on my behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of this application.

Signature of Property Owner(s) / Manager

Signature of Applicant/Agent

NOTE: Form must be signed by the owner(s) of record. If there are multiple property owners a signature is required for each owner of record.

*The land owner or their attorney must be present for the case at the public hearing.

For Staff Only

Application Comments
GROUND SIGN VARIANCE PACKAGE

Sign Package Submittal

HT Fuel Center #191
Wilmington, NC

Originally submitted: July 6th, 2017
Latest revision: February 16th, 2018

PRESENTED BY:

casco signs
199 Wilshire Ave. SW
Concord, NC 28025
www.cascosigns.com
Contact: Darin Martin
704-788-9055
(1) 28,000-GALLON TWO COMPARTMENT FUEL TANK (PREMIUM & UNLEADED)

(1) 18,000 GALLON TWO COMPARTMENT FUEL TANK (DIESEL & ETHANOL FREE)

CANOPY SIGN

PROPAINE CAGE

VENT STACK

DUMPSTER ENCLOSURE

240 SF KIOSK

RETYING WALL

FIELD DELINEATED WETLANDS

MONUMENT SIGN

AIR/VAC

YARD HYDRANT

Exact location of pylon sign must be marked, located, called in and location approved by all authorities prior to digging and installation of pylon sign.

Site Map
Scale: 1/64" = 1'

Page 3 of 3
Please note that for quasi-judicial proceedings, either the land owner or an attorney must be present for the case at the public hearing.

The undersigned owner does hereby appoint an authorized the agent described herein as their exclusive agent for the purpose of petitioning New Hanover County for a variance, special use permit, rezoning request, and/or an appeal of Staff decisions applicable to the property described in the attached petition. The Agent is hereby authorized to, on behalf of the property owner:

1. Submit a proper petition and the required supplemental information and materials
2. Appeal at public meetings to give representation and commitments on behalf of the property owner
3. Act on the property owner’s behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition applicable to the New Hanover County Zoning Ordinance.

<table>
<thead>
<tr>
<th>Agent Information</th>
<th>Property Owner(s) Applicant</th>
<th>Subject Property</th>
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</thead>
<tbody>
<tr>
<td>Name</td>
<td>Owner-Name: Applicant</td>
<td>Address</td>
</tr>
<tr>
<td>Matthew A. Nichols</td>
<td>Casco Signs, Inc.</td>
<td>212 Porters Neck Rd.</td>
</tr>
<tr>
<td>Company</td>
<td>Owner Name 2</td>
<td>City, State, Zip</td>
</tr>
<tr>
<td>Law Office of Matthew A. Nichols</td>
<td></td>
<td>Wilmington, NC 28406</td>
</tr>
<tr>
<td>Address</td>
<td>Address</td>
<td>Parcel ID</td>
</tr>
<tr>
<td>3205 Randall Pkwy, Suite 104</td>
<td>199 Wilshire Ave. SW</td>
<td>R02800-004-038-000</td>
</tr>
<tr>
<td>City, State, Zip</td>
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<td></td>
</tr>
<tr>
<td>Wilmington, NC 28403</td>
<td>Concord, NC 28026</td>
<td></td>
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<tr>
<td>Phone</td>
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</tr>
<tr>
<td>(910) 508-7476</td>
<td>(704) 788-9055</td>
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<td></td>
</tr>
<tr>
<td><a href="mailto:matt@mattnicholslaw.com">matt@mattnicholslaw.com</a></td>
<td><a href="mailto:bkonoff@cascosigns.com">bkonoff@cascosigns.com</a></td>
<td></td>
</tr>
</tbody>
</table>

Application Tracking Information (Staff Only)

Case Number Reference: Date/Time received: Received by:

This document was willfully executed on the 14th day of March, 2018.

Casco Signs, Inc.

[Signature]

Applicant Signature: Brian Konoff
NEW HANOVER COUNTY
PLANNING & LAND USE

AUTHORITY FOR
APPOINTMENT OF AGENT

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<td>Owner-Name/Applicant</td>
<td>Address</td>
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<tr>
<td>Matthew A. Nichols</td>
<td>Harris Teeter, LLC</td>
<td>212 Porters Neck Rd.</td>
</tr>
<tr>
<td><strong>Company</strong></td>
<td>Owner Name 2</td>
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<td>Parcel ID</td>
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<tr>
<td>3205 Randall Pkwy, Suite 104</td>
<td>701 Crestdale Rd</td>
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<tr>
<td>Wilmington, NC 28403</td>
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<tr>
<td><strong>Phone</strong></td>
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<tr>
<td>(910) 508-7476</td>
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<td><a href="mailto:matt@mattnicholaslaw.com">matt@mattnicholaslaw.com</a></td>
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This document was willfully executed on the _____ day of March, 2018.

Harris Teeter, LLC

[Signature]

Applicant Signature

Vice President Legal Compliance

09/14
NEW HANOVER COUNTY
PLANNING & LAND USE

AUTHORITY FOR
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This document was willfully executed on the 16th day of MARCH, 2018.

Robert Glenn Lea

Owner 1 Signature

Robert Glenn Lea

Owner 2 Signature

09/14
ORDER TO GRANT/DENY A VARIANCE – Case ZBA-926

The Zoning Board of Adjustment for New Hanover County, having held a public hearing on March 27, 2018 to consider application number ZBA-926, submitted by Casco Signs, Inc., applicant, on behalf of Oak Ridge Properties at Porters Neck, LLC, property owner, a request for a variance to use the property located at 212 Porters Neck Road in a manner not permissible under the literal terms of the ordinance and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board’s conclusion that, if the applicant complies with the literal terms of the ordinance, specifically the 12 sq. ft. free standing sign area allowance per Section 52.3-4 of the New Hanover County Zoning Ordinance, that an unnecessary hardship would result/would not result. (It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.) This conclusion is based on the following FINDINGS OF FACT:

   • ____________________________________________________________________________.
   • ____________________________________________________________________________.
   • ____________________________________________________________________________.
   • ____________________________________________________________________________.

2. It is the Board’s conclusion that the hardship of which the applicant complains results/does not result from unique circumstances related to the subject 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.) This conclusion is based on the following FINDINGS OF FACT:

   • ____________________________________________________________________________.
   • ____________________________________________________________________________.
   • ____________________________________________________________________________.
   • ____________________________________________________________________________.
3. It is the Board’s conclusion that the hardship did/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.) This conclusion is based on the following FINDINGS OF FACT:

- ____________________________________________________________________________.
- ____________________________________________________________________________.
- ____________________________________________________________________________.
- ____________________________________________________________________________.

4. It is the Board’s conclusion that, if granted, the variance will/will not be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

- ____________________________________________________________________________.
- ____________________________________________________________________________.
- ____________________________________________________________________________.
- ____________________________________________________________________________.

**THEREFORE**, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE from New Hanover County Zoning Ordinance to allow a ____’ variance from the 12 sq. ft. area allowance for freestanding signs in the Office and Institutional Zoning District per Section 52.3-4 of the New Hanover County Zoning Ordinance be **GRANTED/DENIED**, subject to the following conditions, if any:

**ORDERED** this 27th day of March, 2018.

__________________________________________________________________________
Raymond Bray, Chairman

Attest:

__________________________________________________________________________
Benjamin Andrea, Executive Secretary to the Board