

NEW HANOVER COUNTY

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AGENDA

Zoning Board of Adjustment Meeting

May 22, 2018, 5:30 PM

I. Call Meeting to Order (Chairman Ray Bray)

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

February Attendees: Ray Bray, Hank Adams, Joe Miller, Mark Nabell, Brett Keeler

III. Regular Items of Business

1. **Case ZBA-927** – Trinity Express Development, LLC, applicant, on behalf of Hasi Burns, property owner, is requesting a variance from Special Highway Overlay District building setbacks per Section 55.4-3 of the New Hanover County Zoning Ordinance. The property is located at 8128 Market Street, Wilmington, NC.

IV. Other Business

V. Adjourn

MINUTES
ZONING BOARD OF ADJUSTMENT
March 27, 2018

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, March 27, 2018.

Members Present

Raymond Bray, *Chairman*
Hank Adams- Vice-Chairman
Joe Miller
Mark Nabell
Brett Keeler

Members Absent

Cameron Moore
Richard Kern
Kristin Freeman

Ex Officio Members Present

Ben Andrea, Executive Secretary
Sharon Huffman, County Attorney
Denise Brown, Clerk

The meeting was called to order at 5:30P.M. By the Chairman, Mr. Raymond Bray.

Mr. Bray explained that the Zoning Board is a quasi-judicial board appointed by the Board of Commissioners to consider zoning ordinance variances from residents in New Hanover County where special conditions would create unnecessary hardships. He said the Zoning Board also hears appeals of the County's interpretation in 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 FEBURARY 27, 2018 MEETING MINUTES

Following a motion by Vice-Chair Mr. Hank Adams and seconded by Mr. Keeler the minutes of February 27, 2018 meeting was unanimously approved.

CASE ZBA-926

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

Mr. Andrea explained that Casco Signs, Inc.; applicant, on behalf of Oak Ride Properties at Porters Neck, LLC, property owner, is requesting a variance form 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. The property is zoned O&I, Office and Institutional District.

Mr. Andrea stated the variance request is for a proposed sign for a gas station that is pending development adjacent to the existing Harris Teeter Grocery Store and Shopping Center. Mr. Andrea stated the proposed sign will be located at 212 Porters Neck Road; just behind the existing shopping center area. Mr. Andrea stated the subject parcel is a unique flag lot shaped parcel consisting of 1.37 acres.

The parcel has a split zoning of the B-1 and the O&I, Office and Institutional. Mr. Andrea stated the property to the southeast and across Porters Neck Road is zoned R-15, Residential District.

Mr. Andrea stated the subject property is currently underdeveloped with pending development of a fuel station closer to the shopping center buildings.

Mr. Andrea stated the subject parcel was original part of a 1.83 acre rectangular-shaped parcel that was requested to be rezoned from R-15, Residential District to B-1, Business District in 2004.

Mr. Andrea stated the adjacent properties were previously rezoned to B-1 and at that time they were under construction for the retail center including the Harris Teeter grocery store.

Mr. Andrea stated at the time of the rezoning request, the 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.

Mr. Andrea stated ultimately the Planning Board suggested to the applicant to rezone the entire tract with the exception of the 55' wide strip of O&I at the southeastern edge. The County Commissioners approved this request in 2004.

Mr. Andrea stated in 2006 the rectangular-shaped parcel was reconfigured by a recombination plat. Mr. Andrea presented a subdivision plat that showed the reconfigured parcel boundary resulting in the final shape of parcel in county records. Mr. Andrea stated the subdivision plat also created the access easement areas that mimicked the driveways to and within the shopping center. Mr. Andrea stated a number of outparcels were created at the time.

Mr. Andrea stated that the existing Harris Teeter is expanding its store and developing a fuel center, and is seeking a variance for a new sign for the fuel center.

Mr. Andrea stated the location for the proposed free standing sign is located within the O&I Zoning District. The proposed sign area is 126" tall with a 74" width, totaling 64.75 sq. ft. in area. Mr. Andrea stated that free standing signs are limited to 12 sq. ft. in the O&I district per Section 52.3-4 of the Zoning Ordinance. Mr. Andrea stated calculation of the sign area is limited to the area that comprises the message of the sign.

Mr. Andrea stated the purpose of the Office and Institutional zoning district is to provide areas where institutional uses, professional office uses and other similar uses are compatible to an office or institutional nature.

Mr. Andrea stated freestanding signs are limited to 12 feet in surface area in Office and Institutional zoning districts, however, signs can be up to 75 sq. ft. on roads classified as minor or major arterial areas. Mr. Andrea stated Porters Neck Road is adjacent to the subject site and is classified as a major collector road and therefore freestanding signs on the subject site are limited to 12 sq. ft. in area.

Mr. Andrea then explained the purpose of the county's sign regulations per Section 90 of the Zoning Ordinance. He then showed a map comparing the possible sign sizes and heights in the vicinity based on the different zoning of the properties. He explained that for signs in the B-1 district that are also within the Special Highway Overlay District, signs could be up to 65 sq. ft. and 6' tall. For signs in B-1 but not in the SHOD, signs could be up to 65 sq. ft. and 20' tall. Signs for non-residential uses in R-15 could be up to 35 sq. ft. and up to 6' tall.

Mr. Andrea stated had the proposed sign be offered in a B1 zoning district adjacent to a four lane road that has 100 ft. of frontage road the sign could be up to 50 sf.

Mr. Keeler inquired of the northwest site adjacent to the subject parcel and its ownership.

Mr. Andrea stated to his knowledge property's around the subject site are owned by the same entity.

Mr. Miller inquired of gas station regulations in the O&I zoning district.

Mr. Andrea stated gas stations are not allowed in the O&I zoning district. Mr. Andrea stated fuel stations are allowed in a B-1 zoning district.

Chairman Bray inquired about the power lines running near the proposed sign location.

Mr. Andrea stated utility and electrical easements are standard requirements at these sites.

Mr. Miller inquired of the nearby Exxon Station sign is conforming or not conforming.

Mr. Andrea stated the Exxon station is conforming; no variance was required.

With no further questions from the Board for Staff, Chairman Bray then swore in Mr. Matt Nichols, Mr. Darren Martin and Mr. David Sneed.

Mr. Matthew Nichols, PLLC - Mr. Nichols stated he's representing the applicant and property owner in the variance request of a freestanding sign in the O&I zoning district for 212 Porters Neck Road. Mr. Nichols stated the proposed development of a fuel center will be added to the Harris Teeter Grocery Store located in the Porters Neck community. Mr. Nichols stated the grocery store has been an added asset to the community. Mr. Nichols stated in speaking with the owner of the subject site the grocery store chain is mainly focused on providing a positive customer shopping experience by making all things are accessible such as grocery goods and fuel at their shopping centers. Mr. Nichols stated the goal is to reduce trips for consumers and provide a one stop-shop of multiple services needed in today's market.

Mr. Nichols stated the application provided pictures and layout of the proposed fuel center and signage. Mr. Nichols stated the sign is designed to be easily identified by the motorist; the applicant feels what is proposed is within safety regulations for the entrance of the proposed fuel center. Mr. Nichols stated Harris Teeter has been a great neighbor to the area and they want to provide the consumer proper guidance in accessing the new fuel center with ease. Mr. Nichols stated they want to have the consumer utilize the proper entrance to the fuel center. Mr. Nichols stated they want to assist the public in accessing the fuel center site without the need of traveling further to make a U-turn which could potentially be hazard.

Mr. Nichols stated the measurements of the signs are minimal with safety for the motorist in identifying the fuel center entrance. Mr. Nichols stated the sign would be located at a safe area if approved. Mr. Nichols stated the board could implement conditions on the variance if approved and the applicant would agreeable comply. Mr. Nichols stated the applicant will comply to all regulations imposed by all parties. Mr. Nichols stated the applicant has a hardship due to the unique lot size and shape and the split zoning.

Mr. Nichols stated with the O&I zoning, the applicant is severely limited in sign area, and presented a 12 sq. ft. board to the Board for a visual representation of how large the sign could be based on the Zoning Ordinance requirements. Mr. Nichols stated the current ordinance sign size limits the applicant in adequately informing motorists of the fuel center. Mr. Nichols stated the hardship of the split zoning is not actions of the applicant, since the lots were subdivided in 2006. Mr. Nichols stated the variance request is within harmony with the county zoning ordinance.

Mr. Darren Martin, Cacao Signs - Mr. Martin stated the fuel centers have become a new addition to the Harris Teeter flagship grocery chain stores. Mr. Martin stated fuel sites have been implemented after Kroger Foods purchased the Harris Teeter chain. Mr. Martin stated the model is to have a fuel center, drive-thru pharmacy, and possibly a 24-hour store for consumers to access at one shop. Mr. Martin stated in 2016 & 2017 there has been an increase in fuel centers

implemented by Harris Teeter. Mr. Martin stated a fuel station has become a model that Harris Teeter would like to be implemented at all of their grocery stores in the future.

Mr. Martin stated the 65 sq. ft. what they are proposing for the future fuel center at 212 Porters Neck Road. Mr. Martin stated the proposed sign would be about 414' from the current sign location. Mr. Martin stated the sign location from Market Street is approximately 600'. Mr. Martin stated due to the location and distant from a busy highway corridor they feel the proposed sign would be effective in the area.

Mr. Martin described the sign details and appearance and stated the signs are typically one-inch metal. Mr. Martin stated they will rout out the acrylic area of the sign and implement translucent vinyl to provide the sign with indirect lighting.

Mr. Miller inquired of the standard size sign that is used for Harris Teeter stores.

Mr. Martin stated in 2017 all signs implemented at the grocery sites are the same standard size with the lighting. Mr. Martin stated in 2015 the grocery chain has updated the fuel signs in providing the LED pricing boards which has been effective for consumers.

Mr. Martin stated solely the HT Fuel language and logo will be illuminated. Mr. Martin stated he is not aware of what the current sign will be used for. Mr. Martin stated to his knowledge he is not aware of additional signage on the site.

Mr. Martin stated for what the company is proposing in signage if approved it would be in compliance to the zoning ordinance in relations to wall signage regulation.

Mr. Martin stated the Harris Teeter fuel signage has evolved from first implementation and with the added attraction of the signs motorists recognize the HT Fuel sign logo. Mr. Martin stated the grocery chain is providing signage that is attractive to the fuel centers and the HT pricing boards attracts consumers. Mr. Martin stated additional signage will be located on the canopy of the fuel center sign with the grocery store logo.

Mr. David Sneed, Oak Ridge Properties at Porters Neck, LLC property owner- Mr. Sneed stated all the lots within the shopping center site were subdivided and are owned by common ownership to Oak Ridge Properties. Mr. Sneed stated 212 Porters Neck Road parcel is under purchase contract with Harris Teeter.

Mr. Sneed stated the sign variance request is a part of the due diligence by the grocery store for the sign. Mr. Sneed stated the surrounding lot will not be purchased by Harris Teeter.

Mr. Keeler inquired about the sign on the adjacent parcel.

Mr. Sneed stated there is a standard monument Harris Teeter sign located adjacent to the subject site. Mr. Sneed stated the Harris Teeter sign is about 5' tall with exterior lights and landscaping; the sign is barely visible.

Mr. Sneed stated they came to an agreement on additional signage for the grocery store about 12 years ago during the lease negotiation prior to opening of the store. Mr. Sneed in agreement of the lease additional signage was to be implemented at the nearby lot. Mr. Sneed stated fuel is needed in the area and with the lot sits far off the road the store is requesting a larger visible sign informing of the fuel center.

Mr. Keeler asked if the current Harris Teeter additional sign provided by Oak Ridge could be located across the street from subject site.

Mr. Sneed stated there is no reason they could not relocate the current advertised sign across the street from the subject site.

Chairman Bray inquired how will the current sign be utilized in the future.

Mr. Keeler inquired of additional internal signage located on the property of the grocery store; also he inquired of the liability for the shopping center to propose additional signage for the center.

Mr. Miller inquired of the liability of the shopping center with signage as to it relates to the size of the center.

Mr. Andrea stated there are allowances for additional signage for shopping centers such as wall signs.

Mr. Miller inquired of the 20' tall proposed sign being a safety concern; including square footage.

Mr. Andrea stated in the O&I zoning district the sign height cannot exceed the structure site. Mr. Andrea stated the maximum building height allowed in O&I is 40' and the sign must be equal to or shorter than the structure.

Chairman Bray inquired of the utility easement, and the elevation of the lowest electrical wire at on the pole.

Mr. Sneed stated he's not aware of electrical elevation. Mr. Sneed stated the sign is below the height that is allowed by the Zoning Ordinance. Mr. Sneed stated the electrical wire is the distribution line. Mr. Sneed stated the utility easement is right on the edge of the property and the proposed sign would not be under or near the power line. Mr. Sneed stated the applicant would need to obtain approval from Duke Energy prior to the fuel center sign placement near the utility easement.

Mr. Martin stated once signage has been approved the company will check all safety concerns such as overhead power lines that would conflict machinery implementing the HT signs. Mr. Martin stated to avoid proper operational conflict the sign would be placed at the appropriate location for safe display.

Mr. Nabell inquired of the location of the R-15 undeveloped area to the East of the subject site ownership.

Mr. Sneed stated Oak Ridge Properties does not own the undeveloped R-15 site to the East of the subject site.

Chairman Bray then swore in Mr. Al Canady, who signed up to speak in opposition to the variance request.

Mr. Al Canady - Porters Point Community Resident - Mr. Canady stated he's been a resident of the community for many years prior to the grocery store development. Mr. Canady presented that he and fellow residents of the Porters Point community are in opposition of the proposed fuel sign variance as the applicant's application is inadequate and misleading fitting the variance criteria. Mr. Canady stated the proposed sign is grossly inconsistent with current area signage and is inappropriate to the Porters Neck corridor. Mr. Canady stated the proposed sign will introduce safety hazards to the area rather than eliminate as the application suggest.

Mr. Canady stated the variance application states the sign will safely direct motorist to the fuel center. Mr. Canady stated the purpose of a variance application is to safely enhance safety which the applicant sign proposal does not address. Mr. Canady stated the propose sign does not include direction elements such as arrows, wordings as it states in the application submitted.

Mr. Canady stated the proposed sign will add safety concerns rather than address safety concerns as the application suggest. Mr. Canady stated the sign proposal misrepresents the sign size of 64-65 square feet. Mr. Canady stated the applicant did not include the columns that are supporting the sign. Mr. Canady stated an appropriate sign size for the

fuel center should be represented. Mr. Canady stated the 2' columns would add sizing to the proposed sign and is not in the applicant's calculation. Mr. Canady stated the application stated a precedence in signage size was set in reference to ZBA-885 (Walmart at Bayshore Commons). Mr. Canady stated in review of ZBA-885 stated signage approval is not a precedence in the SHOD and B-2 zoning located on a four lane divided highway.

Mr. Canady stated the case ZBA-885 request was to relax the signage height from 6ft to 13ft. in allowance for more signage of 150-217 sq. ft. for the Bayshore Commons shopping center. Mr. Canady stated the Bayshore Commons shopping center would have about 20 businesses that would need to be represented on the sign. Mr. Canady stated the current single business applicant is requesting a 5-7 ft. taller sign that will service a two-lane street for one business.

Mr. Canady stated the Bayshore Commons shopping center ZBA-885 case requested a 13' tall monument sign. The applicant is requesting a 20' tall sign for the Harris Teeter fuel center. Mr. Canady reiterated ZBA-885 case is not a reasonable precedence for the current variance request of additional height signage by today's applicant.

Mr. Canady stated the application does not speak the need of why the size is requested by the applicant. Mr. Canady stated the application misrepresents the signage proposal size; which depicts the columns that are proposed to be 20' in height to support the sign.

Mr. Canady stated the Zoning Ordinance states regulation of signs are to prevent overcrowding of land affecting the aesthetics of the county. Mr. Canady stated there is one sole monument ground sign for the Oak Landing Shopping Center. Mr. Canady stated there are no other commercial signs located from the corner of Market Street to the first development.

Mr. Canady stated there are several businesses near the site on Porters Neck Road such as Walgreens, FirstBank, Exxon, have ground signs of approximately 50 sq. ft. that face Market Street that are in a B-2 zoning. Most businesses on Market Street and the Porters Neck area utilize monument or ground signage which are less intrusive and blend easily within the area aesthetics. Mr. Canady reiterated the proposed sign proposed is 20' tall and 8' wide and is inconsistent with what is located in the vicinity and would totally impact the area of Porters Neck Road.

Mr. Canady stated the adverse impact of the sign would affect surrounding property value. Mr. Canady concluded the application fails to meet the criteria of variance approval for the signage and aesthetics; the size and scale will likely introduce safety issues to a presently complicated section for motorists. Mr. Canady stated motorists are unable to make an outbound left turn at this site. Mr. Canady stated the applicant can accomplish the objective of presenting a minute sign for the fuel center at the same location.

Mr. Matt Nichols, PLLC (Rebuttal) - Mr. Nichols stated the size of the sign is measured according to the Zoning Ordinance. Mr. Nichols stated the signage proposed is to keep information presented to a minimum for information directing folks to the Harris Teeter fuel site. Mr. Nichols stated in reference to the Bayshore Commons shopping center signage, all cases heard by the board are unique in circumstance. Mr. Nichols stated the board has the authority under general statute to approve or deny variance cases based on circumstances.

Mr. Nichols stated it's in the applicant's favor as a resident to present their case with testimony to the board who has the authority to listen and make sound judgement on a case by case scenario. Mr. Nichols stated all cases presented are unique in circumstances whereby the zoning ordinance does not address all scenarios of unique cases.

Mr. Nichols stated the case presented is of a unique scenario due to the split zoning applied. Mr. Nichols stated variances do not set a precedence for any particular situation. Mr. Nichols stated each case is unique; some applicants may be granted a variance where as others are not. Mr. Nichols stated the board is charged with weighing the evidence and testimony presented and that the required conclusions are proved by applicants.

Mr. Nichols stated the neighbors of the Porters Neck community have the benefit of a major local grocery store with access of taking a right turn to their residence area making it safe in travel for the motorists.

Mr. Nichols stated Harris Teeter recognized the need for a fuel center at the site in which address the right turn into the center and a right turn out of the site to Porters Neck Road community. In addition, motorists don't have to take a U-turn to access the facility which can impact traffic flow.

Mr. Nichols stated the applicant is not required to demonstrate in absence of the variance no reasonable use to be made of the property. Mr. Nichols stated with case presented he implores the board to consider granting a variance and if conditions apply the applicant will agreeably comply as instructed provided the conditions are related to the variance.

Mr. Darren Martin; Casco Signs (Rebuttal)- Mr. Martin stated as the fuel centers were added to the inventory at the Harris Teeter store monument signs were placed at the fuel centers. Mr. Martin stated as the signs were raised and implemented they received feedback that the monument signs were obstructing views of motorists trying to turn in or out of shopping centers. Current signs used are easily visible for motorist to see at a further distance due to the height of the sign.

Mr. Martin stated as of 2017 Harris Teeter no longer utilize monument signs at the fuel sites. Mr. Martin stated the sign presented currently is the standard sign for the Harris Teeter fuel sites.

Mr. Sneedeen (Rebuttal) - Mr. Sneedeen stated the grocery store was constructed in 2005 and the Porters Neck community had less traffic. Mr. Sneedeen stated over the years the area has flourished in many ways in traffic and most recently a school has been added to the area located on Edgewater Club Road. Mr. Sneedeen stated at request and in collaboration with NCDOT, Oak Ridge Properties will spend \$220,000 to widen both sides of Porters Neck Road equally with the addition of a turn lane for the west bound traffic of Porters Neck, Figure Eight Island and the school commuting from Market Street for a better flow of traffic as it approaches the stop light.

Mr. Sneedeen stated there is a significant amount of road improvement to the driveway to the subject site. Mr. Sneedeen stated traffic has increased in the area due to development. Mr. Sneedeen stated NCDOT has implemented a median at Porters Neck Road and Market Street. Mr. Sneedeen stated several traffic accidents have been observed as to motorists traveling the areas making U-turns at the intersection to enter the fuel station. Mr. Sneedeen stated with ongoing road improvements should result in less U-turns, decreased traffic accidents, and less congestion at the intersection. Mr. Sneedeen stated fuel delivery will be utilized at this section.

Chairman Bray inquired of a traffic assessment study for the subject site.

Mr. Sneedeen stated NCDOT has implemented a median to assist traffic. Mr. Sneedeen stated the goal after road improvements is to alleviate some of the U-turns at the median.

Mr. Keeler inquired of the speed limit for Porters Neck Road.

Mr. Sneedeen stated the speed limit posted for Porters Neck Road is 45mph. Mr. Sneedeen stated there are several turn points along Porters Neck Road, i.e. Porters Point, Brays Drive, Blue Point with past small road improvements completed to keep traffic flowing.

Mr. Sneedeen stated with an elevated, sign motorists will be able to view oncoming traffic. Mr. Sneedeen stated a monument sign will hinder traffic visibility; traffic visibility will be obscured. Mr. Sneedeen stated the sign proposed would be 15ft from the curb due to the existing electrical easement. Mr. Sneedeen stated the base of the sign would be 10' from the curb due to the 10' utility easement between the curb and the parallel sign.

Mr. Bray inquired how far back will the proposed sign be placed from the curb. Mr. Bray inquired of an acceleration lane.

Mr. Sneeden stated the sign is will most be placed 20ft in rear of the property line; 10ft inside of the driveway. Mr. Sneeden stated the sign will be 30ft off the right-of-way.

Mr. Canady (Rebuttal) – Mr. Canady stated there is a Harris Teeter fuel site located on Carolina Beach Road that utilizes a monument sign at the site and it displays the gas prices. Mr. Canady stated the applicant could continue consistency in implementing a monument sign for the future fuel center.

Chairman Bray then closed the public hearing and board discussion began.

Mr. Keeler stated the same owner owns the adjacent parcel to the subject site and other options could be explored for the fuel sign. Mr. Keeler stated the sign proposed is not harmonious with the area. Mr. Keeler stated in his opinion the applicant's proposal is inconsistent with the 4th required conclusion.

Mr. Andrea stated the board could apply conditions to the variance if approved.

Mr. Keeler inquired did the applicant receive a variance for the monument sign on the adjacent parcel.

Mr. Andrea stated to his knowledge that sign did not receive a variance.

Mr. Miller stated he's in agreement of a bigger than the ordinance allowance of 12 sq. ft. Mr. Miller stated he would be in favor of the monument style sign at the proposed area of 65 sq. ft. that applicant is requesting. Mr. Miller stated he does not see a safety concern to motorist of a blind spot.

Mr. Keeler stated if the zoning was B-1 It would be allowed, however due to the O&I zoning the proposed sign is not consistent with the ordinance. Mr. Keeler stated the underdeveloped parcel of the O&I zoning was classified to serve as a transition for more intensive nonresidential uses to the R-15 community. Mr. Keeler stated this case is different from previous sign variance requests that the board has heard because other requests have typically been for signs in B-1 or B-2 zoning districts and not O&I zoning. Mr. Keeler stated the sign would be one of its kind being adjacent to a residential district.

Mr. Adams stated he travels the area frequently and would like to see the monument sign replaced. Mr. Adams stated the monument sign obstructs views of traffic from the left side; motorist must pull out towards the road to see oncoming traffic.

Mr. Miller stated the taller sign would stick out in the community.

Mr. Adams stated he would like to see the monument sign removed. The location of the sign is a hazard as landscaped and low visibility of oncoming traffic for a right turn.

Mr. Adams stated the vacant lot zoned R-15 may be developed in the future and signage could be requested.

Mr. Adams inquired of sign allowance in a B-1 zoning district.

Mr. Keeler stated conditions could be applied to the variance to protect any foreseen use of the proposed sign.

Mr. Miller made a motion to approve the variance request with conditions of a maximum height of 10', maximum area of 65 sq. ft., and that the sign be set back at least 10' from all property lines.

Mr. Adams second the motion. The Board approved the motion with a 4-1 vote, with Mr. Nabell voting against the motion.

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 12 sq. ft. free standing area allowance per Section 52.3-4 of the New Hanover County Zoning Ordinance, that an unnecessary hardship would result. This conclusion is based on the following FINDINGS OF FACT:**
 - Strict interpretation of the ordinance would impose a sign area maximum based on the sign regulations for the O&I, Office and Institutional zoning district although the use is a B-1 permitted use and physically located within a B-1 zoning district on the same 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 property is split-zoned B-1, Business District and O&I, Office and Institutional District.
 - The majority of the property is within the B-1 zoning district, including the fuel center for which the sign is intended.
 - The parcel's frontage along Porters Neck Road is 30' and is zoned O&I, while the remainder of the property is zoned B-1.
- 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:**
 - The split-zoning was applied in 2004 by the Board of County Commissioners, and at that time the parcel was a rectangular shape until its shape was reconfigured in 2006.
- 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:**
 - With the conditions imposed as part of the variance approval, the sign area would be what would be allowed for any other B-1 use in a B-1 zoning district but at a height more harmonious with others signs in the area.

There being no further business before the Board the meeting was adjourn.

Executive Secretary

Chairman

Date: _____

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
May 22, 2018**

CASE: ZBA-927, 5/18

PETITIONER: Trinity Express Development, LLC, applicant, on behalf of Hasi Burns, property owner

REQUEST: Variance from Special Highway Overlay District building setbacks per Section 55.4-3 of the New Hanover County Zoning Ordinance

LOCATION: 8128 Market Street
PID: R03600-005-009-000

ZONING: B-2, Highway Business District

ACREAGE: 1.54 Acres

PETITIONER'S REQUEST:

Trinity Express Development, LLC, applicant, on behalf of Hasi Burns, property owner, is requesting a variance from Special Highway Overlay District (SHOD) building setbacks per Section 55.4-3 of the New Hanover County Zoning Ordinance. The property is located at 8128 Market Street, Wilmington, NC.

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 portions of the parcel within the SHOD, 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)

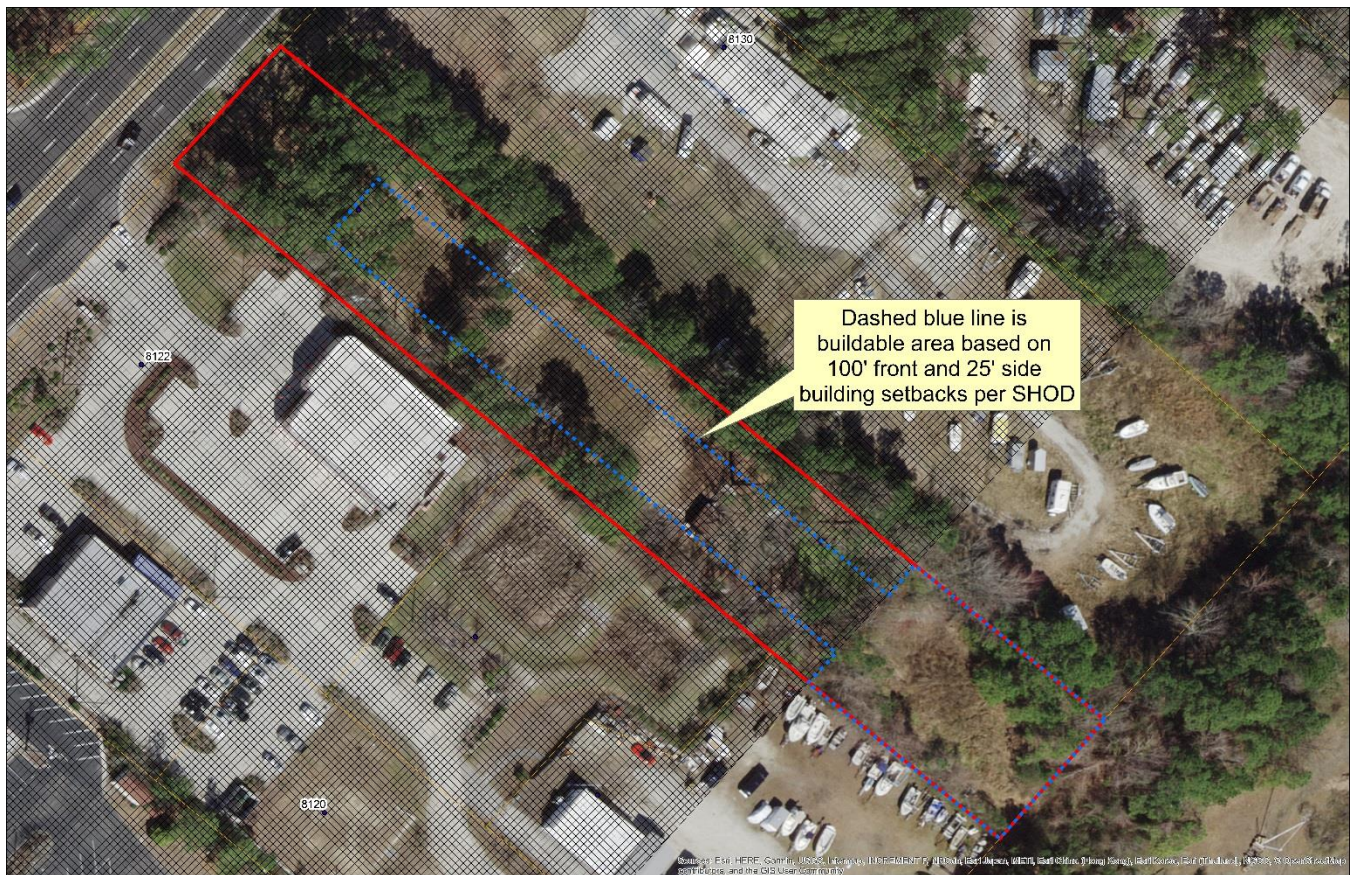
The subject property consists of 1.54 acres and has been on record with its existing configuration since at least 1972 when it was included as Tract 4 on a survey of the lands of Charity P. Sidbury (MB 14, Page 6). The parcel is rectangular-shaped with about 100' in width and around 670' deep.



Trinity Express Development, LLC, the petitioner, is seeking to develop the property for a vehicle service center with two buildings: one three-bay oil service building in the front and a larger service building behind the front building. The site plan submitted with the variance application shows the front three-bay building 10' from one side lot line and at least 22' from the other lot line, while the larger six-bay service building behind the front building is 10' from one side lot line and 46.6' from the other side lot line.

The building setbacks for the property would be 100' from the line shared with the Market Street right-of-way and 25' from the side lot lines. The rear of the property is outside of the SHOD and adjacent to non-residential zoning so there is not a building setback required from the rear lot line.

The topography of the site is relatively flat, and the soils on the site are Lynn Haven fine sand and Leon sand according to the Soil Survey of New Hanover County. As such, there are not likely any wetlands or other environmental features that would impede site design.



No buffers would be required since the parcel is surrounded by non-residential zoning and uses; however, streetscaping along Market Street and other interior landscaping would still be required. Because no buffers are required, the areas between the minimum building setback and the side lot lines could conceivably have a drive aisle that would run between a building and the property line.

In summary, the petitioner is requesting 15' variances from the 25' building setbacks required per Section 55.4-3(1). The site plan included with the application shows the need for one 15' variance and one 3' to 5' variance based on the proposed location of the buildings; therefore, the board may expect to hear during the public hearing the need to reduce the required 25' setback down to 10' for both side lot lines. 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 building locations.

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:

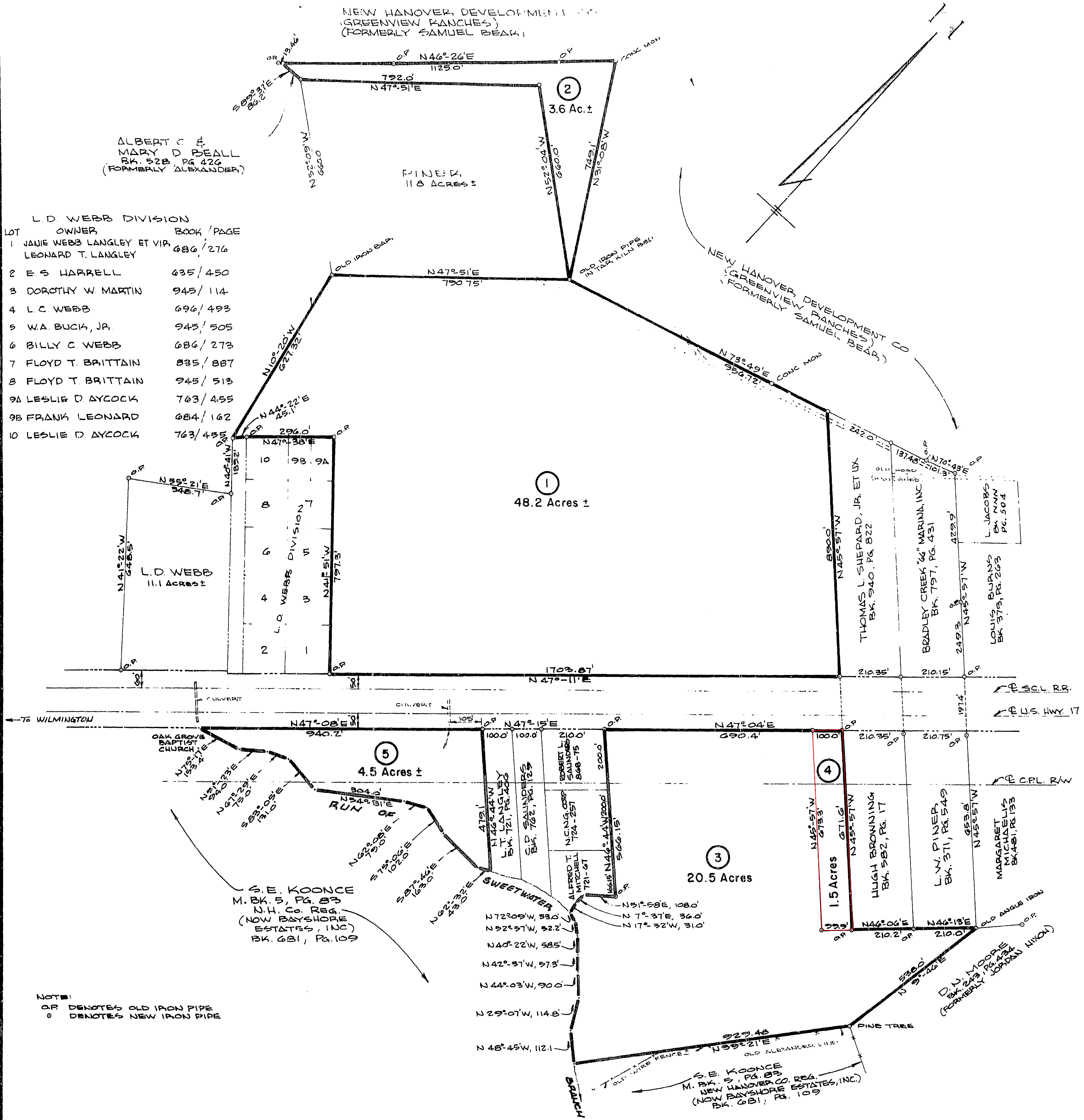
1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, 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):

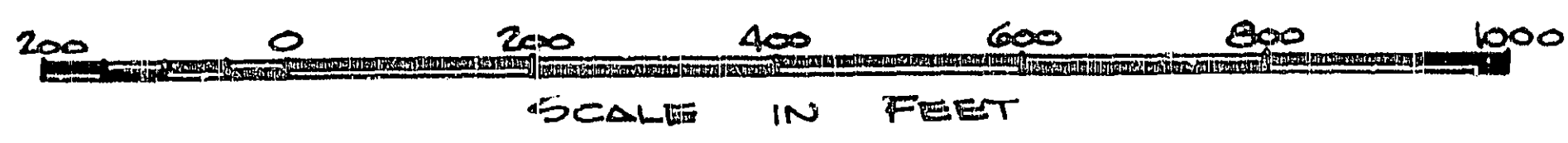
1. **Motion to approve the variance request based on the findings of fact (with or without conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the variance request based on specific negative findings in any of the 4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



SURVEY OF THE **V. SIDBURY, FORMERLY BATSON, BACKWOODS TRACT** **(FORMERLY N. F. NIXON)** HARNETT TOWNSHIP, NEW HANOVER CO. NORTH CAROLINA FOR **CHARITY P. SIDBURY** WILMINGTON, N.C.

M.F. UNDERWOOD
 REG. LAND SURVEYOR
 WILMINGTON, N.C.

DATE: DEC. 12, 1972
 SCALE: 1" = 200'



NORTH CAROLINA NEW HANOVER COUNTY

I, M.F. UNDERWOOD, CERTIFY THAT THIS MAP WAS DRAWN FROM AN ACTUAL SURVEY MADE BY ME, THAT THE ERROR OF CLOSURE AS CALCULATED BY LATITUDES AND DEPARTURES IS 1:19600, THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH GS-47-30 AS AMENDED. WITNESS MY HAND AND SEAL THIS 12TH DAY OF DEC. 1972.

M.F. Underwood
 M.F. UNDERWOOD
 REG. LAND SURVEYOR

SWORN TO AND SUBSCRIBED BEFORE ME THIS 12TH DAY OF DEC. 1972.

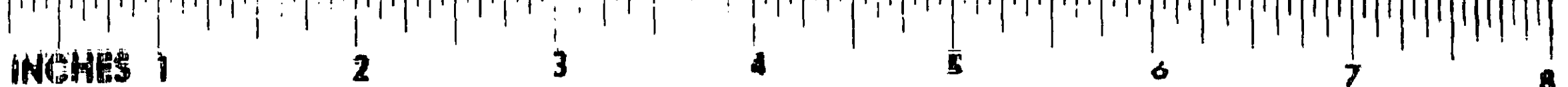
LOIS C. LERAY
 REGISTER OF DEEDS

M.F. Underwood
 M.F. UNDERWOOD
 N.C. REG. NO. 1747

NORTH CAROLINA NEW HANOVER COUNTY
 FILED FOR REGISTRATION ON THE 12TH DAY OF DEC. 1972
 AT 11:19 A.M. AND DULY RECORDED IN MAP BOOK 14
 PAGE 6

LOIS C. LERAY
 REGISTER OF DEEDS

Jeannie B. Stinson, Deputy





May 22, 2018



Case ZBA-927

Aerial Map

8128 Market Street

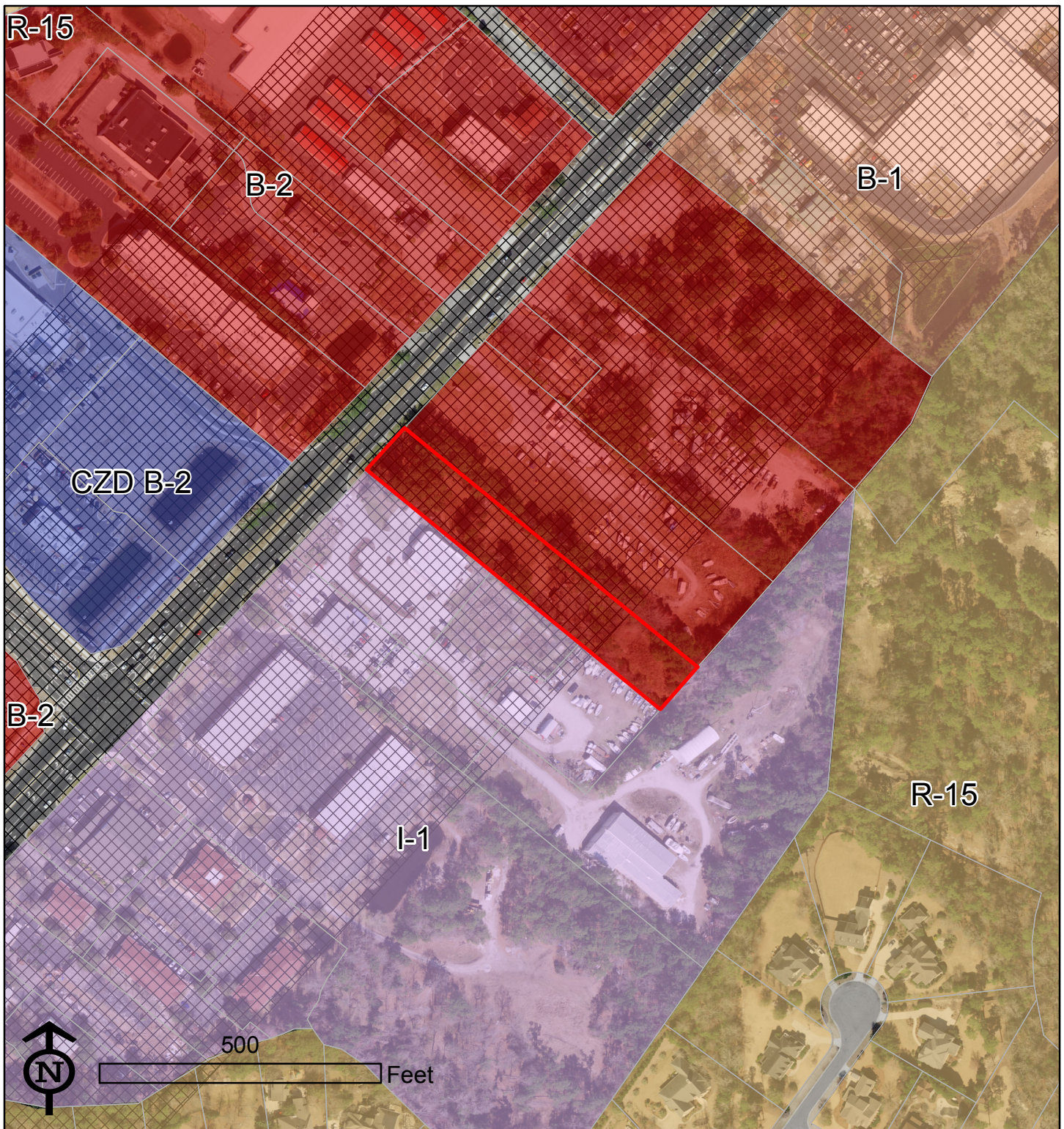
Variance Request: Variance from building setbacks per Section 55.4-3

Applicant: Trinity Express Development, LLC

Owner: Hasi Burns

New Hanover County Zoning Board of Adjustment

May 22, 2018



Case ZBA-927

Zoning Map

8128 Market Street

Variance Request: Variance from building setbacks per Section 55.4-3

Applicant: Trinity Express Development, LLC

Owner: Hasi Burns

New Hanover County Zoning Board of Adjustment

May 22, 2018

NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE
730 Government Center Drive, Suite 110
Wilmington, North Carolina
Telephone (910) 798-7165
FAX (910) 798-7053
planningdevelopment@nhcgov.com



VARIANCE Application

Applicant/Agent Information		Property Owner(s) <i>If different than Applicant/Agent</i>
Name Mike Soignet	Owner Name Hasi Burns	
Company Trinity Express Development, LLC	Owner Name 2	
Address 651 Bonum Road	Address 7376 Stoney Point Rd,	
City, State, Zip Clover, SC 29710	City, State, Zip Fayetteville, NC 28306	
Phone	Phone	
Email msoignet@live.com	Email hasi_burns@live.com	
Subject Property Information		
Address/Location 8128 Market Street, New Hanover County, NC 28411		
Parcel Identification Number(s) R03600-005-009-000		
Total Parcel(s) Acreage 1.54 Acres		
Existing Zoning and Use(s) Highway Business (B-2), Land use: vacant.		
Application Tracking Information (Staff Only)		
Case Number ZPA-927	Date/Time received: 5-1-18	Received by: BIA

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 indicating under "Applicant Initial". Staff will not process an application for further review until it is determined to be complete.

Required Information		Applicant Initial	Staff Initial
1	Complete Variance application		
2	Application fee - \$400		BA
3	Site plan or sketch illustrating requested variance		BA
4	1 hard copy of ALL documents		BA NA

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 requirements 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 to:


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)



 Signature of Applicant/Agent



 Print Name(s)

Michael Soignet

 Print Name(s)

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

PROPOSED VARIANCE NARRATIVE

Subject Zoning Regulation, Chapter and Section: ARTICLE V - SECTION 55.4

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

This project proposes to to construct an Express Oil Service Station on the above
mentioned property. Two buildings are proposed on the site. One is an oil service building
and the other is a car service building. There will also be associated parking, drive aisles,
lighting, landscaping, utilities, etc. As per Article V, Section 55.4 of the North Hanover
County Zoning Code, this lot is subject to a 25 foot building setback from all property lines
as it is located in the Special Highway Overlay District. As part of this application we are
requesting a variance to reduce the building setback from 25 feet to minimum of 10 feet.

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.*

The requirement of the 25 foot building setback on all property presents a hardship
to the property as 50' of the 100' frontage along Market Streets cannot be
developed. The contemplated use requires a drive aisle (code minimum width: 22')
beside the front building to access the rear of the site. After the 2 - 25' setbacks and
22' drive aisle only 28' of lot width is available for a building. Only a skinny deep
building would fit on the lot and this architectural layout does not lend itself to

common uses. Most smaller retail spaces are no deeper than 60-70'. Due to the
deep skinny geometry of the lot, a drive beside the front

building is the most feasible way to access the rear

building. The zoning ordinance requirements have reduced the building width which
can be constructed by 72%.

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 building setback hardship impacts the development potential of the lot as the right of way facing portion of the lot is very narrow at 100 wide. 50% of the lot's width is occupied by setbacks. While the lot is deep, it does not afford development potential without a drive aisle as mentioned in item 1.

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 building setback requirement is an existing condition to the property and is not a result from the applicant rezoning, subdividing, etc. The more stringent SHOD setback requirements are the only reason for this request and the unlying zoning setbacks would be met with this plan.

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.**

The variance for the building setback reduces the setback from 25 to 10 feet minimum. This reduction does not adversely affect the health and public safety of the area. As stated above, if the SHOD did not touch the property, the 25' setback would not be required.



1. THIS PLAN IS BASED ON NEW HANOVER COUNTY GIS INFORMATION.

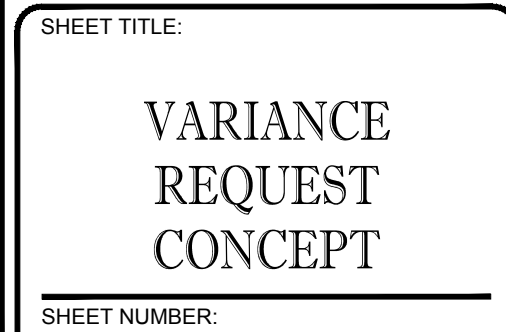
2. THE CONCEPT REPRESENTED HEREIN IDENTIFIES A DESIGN CONCEPT RESULTING FROM LAUREY PRESENTATIONS IDENTIFIED BY OWNER COUPLED WITH A PRELIMINARY REVIEW OF ZONING AND LAND DEVELOPMENT REQUIREMENTS AND ISSUES. THE FEASIBILITY WITHIN OF OBTAINING AN OBTAINING A ZONING AND LAND DEVELOPMENT APPROVAL IS NOT WARRANTED AND CAN ONLY BE ASSESSED AFTER FURTHER EXAMINATION AND VERIFICATION OF SAME REQUIREMENTS AND PROCUREMENT OF JURISDICTIONAL APPROVALS.

3. THE CONCEPTUAL PLAN IS PREPARED FOR CONCEPTUAL PRESENTATION PURPOSES ONLY AND IS NOT INTENDED FOR UTILIZATION AS A ZONING AND/OR CONSTRUCTION DOCUMENT. THE EXISTING CONDITIONS SHOWN HEREON ARE BASED UPON INFORMATION THAT WAS AVAILABLE TO BOTH DESIGN FIRMS AT THE TIME OF PREPARATION AND MAY BE SUBJECT TO CHANGE UPON AVAILABILITY OF ADDITIONAL INFORMATION.

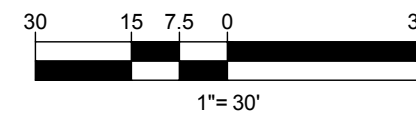
THE FOLLOWING STATES REQUIRE NOTIFICATION BY
EXCAVATORS, DESIGNERS, OR ANY PERSON PREPARING TO
DISTURB THE EARTH'S SURFACE ANYWHERE IN THE STATE
IN VIRGINIA, MARYLAND, THE DISTRICT OF COLUMBIA, AND
DELAWARE CALL - 811
(WV 1-800-245-4848) (PA 1-800-242-1776) (DC 1-800-257-7777)
(VA 1-800-552-7001) (MD 1-800-257-7777) (DE 1-800-282-8555)

PROJECT No.:	NCR182039
DRAWN BY:	ERB
CHECKED BY:	WLB
DATE:	5/1/18
SCALE:	1" = 30'
CAD I.D.:	XB0

LOCATION OF SITE
8128 MARKET STREET
NEW HANOVER COUNTY
WILMINGTON, NC 28411



CA-1





NEW HANOVER COUNTY

ZONING BOARD OF ADJUSTMENT

230 GOVERNMENT CENTER DRIVE, LUCIE HARRELL CONFERENCE ROOM #601
WILMINGTON, NORTH CAROLINA 28403

Raymond Bray, Chair Henry "Hank" Adams, Vice Chair
Joe Miller, Board Member Cameron Moore, Board Member Mark Nabell, Board Member
Kristin Freeman, Alternate Brett Keeler, Alternate Richard Kern, Alternate

Wayne Clark, Planning & Land Use, Director – Sharon Huffman, Deputy County Attorney

ORDER TO GRANT/DENY A VARIANCE – Case ZBA-927

The Zoning Board of Adjustment for New Hanover County, having held a public hearing on May 22, 2018 to consider application number ZBA-927, submitted by Trinity Express Development, LLC, applicant, on behalf of Hasi Burns, property owner, a request for a variance to use the property located at 812 Market Street 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 25' building setbacks required per Section 55.4-3 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 25' building setbacks required per Section 55.4-3 of the New Hanover County Zoning Ordinance be GRANTED/DENIED, subject to the following conditions, if any:

ORDERED this 22th day of May, 2018.

Raymond Bray, Chairman

Attest:

Benjamin Andrea, Executive Secretary to the Board