

**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)

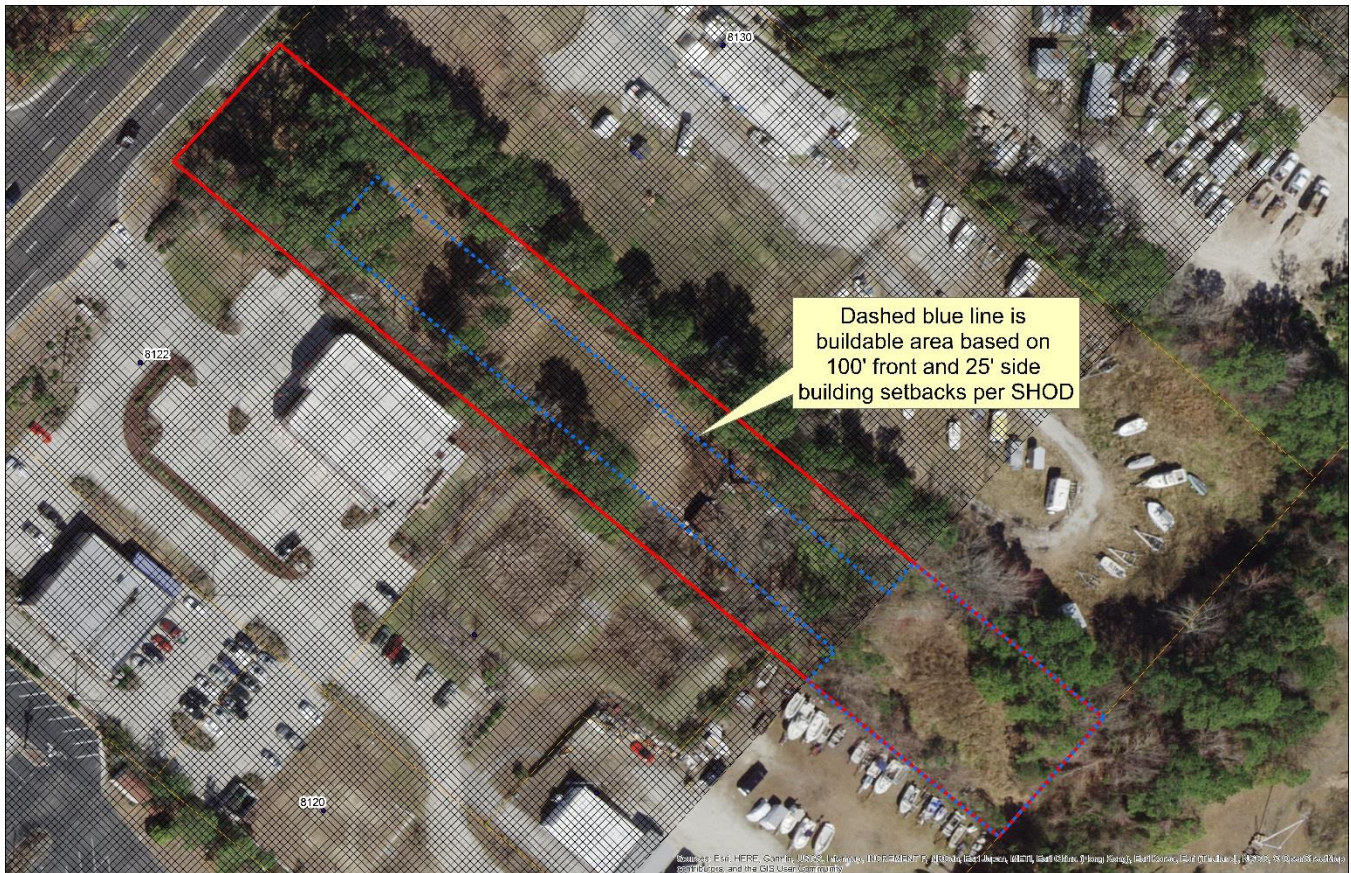
The subject property consists of 1.54 acres and has been on record with its existing configuration since at least 1972 when it was included as Tract 4 on a survey of the lands of Charity P. Sidbury (MB 14, Page 6). The parcel is rectangular-shaped with about 100' in width and around 670' deep.



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.**