

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
November 14, 2018**

CASE: ZBA-929, 11/18

PETITIONER: Bohler Engineering, NC PLLC, applicant, on behalf of O'Reilly Automotive Stores Inc.

REQUESTS:

- Variance to reduce side setback requirements of Section 60.3:
 - Reduce side building setback to 15' (37.25' variance)
- Variances to reduce the landscape buffer requirements of Section 62.1-4:
 - Reduce building side buffer to 7.5' (18.62' variance)
 - Reduce building rear buffer to 20' (15.43' variance)
- Variance to allow dumpster 5' from property line (15' variance) with 2.5' buffer (17.5' variance)

LOCATION: 2608 Castle Hayne Road
PID: R03315-001-001-000

ZONING: B-1, Business District

ACREAGE: 0.87 Acres

PETITIONER'S REQUEST:

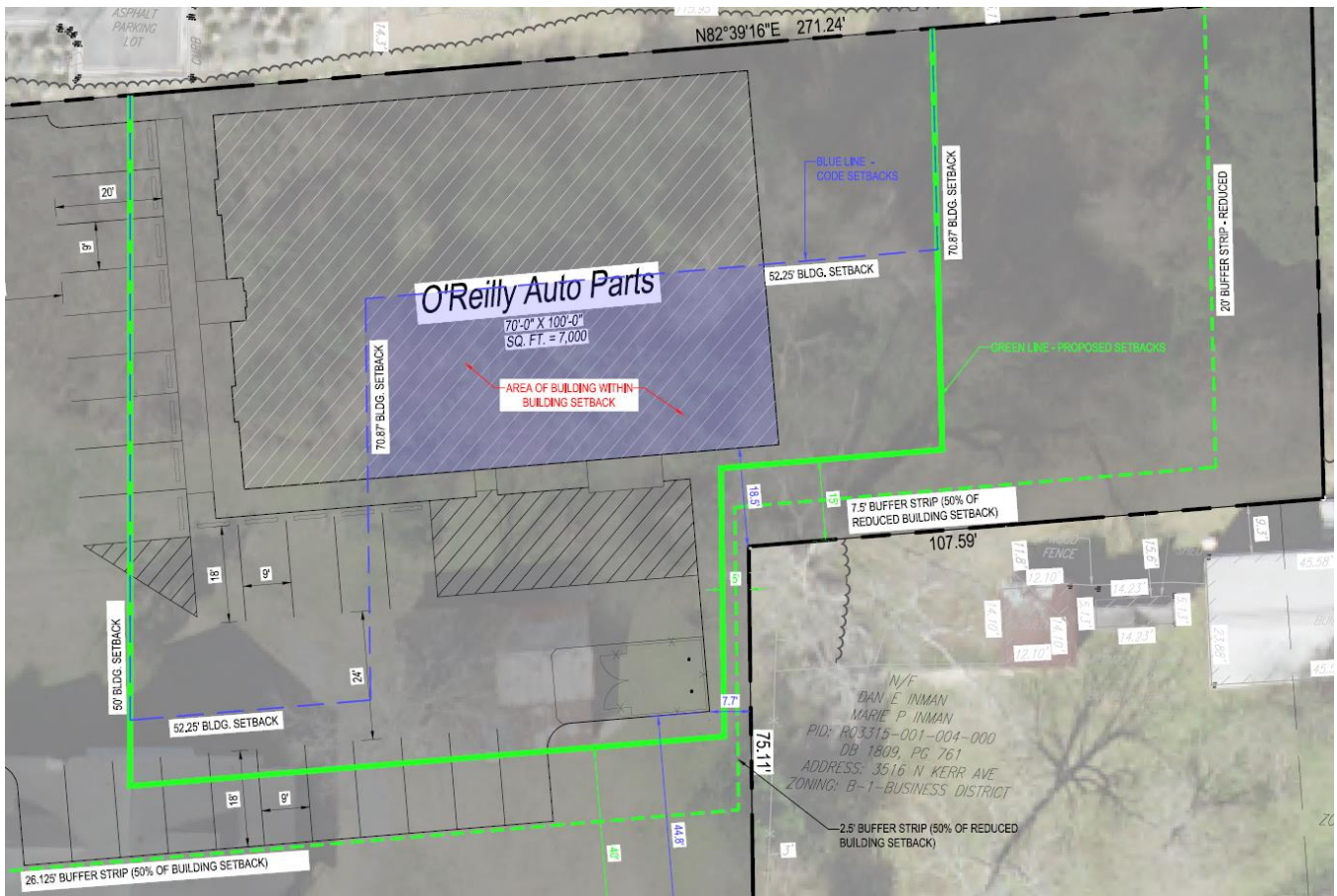
Bohler Engineering, NC PLLC, applicant, on behalf of O'Reilly Automotive Stores Inc, property owner, is requesting variances from the setbacks required per Section 60.3 and the buffers required per Section 62.1-4 of the New Hanover County Zoning Ordinance. The property is located at 2608 Castle Hayne Road, Wilmington, NC.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The subject property is located in the Wrightsboro community near the intersection of Castle Hayne Road and N. Kerr Avenue. It includes 0.87 acres, most of which is undeveloped except for an old house that is no longer occupied. The property was initially zoned R-20 in 1974 when zoning was applied to this area of the county, and then rezoned to B-1 in 2009 (Case Z-899), along with four other lots on the northeast corner of Castle Hayne Road and N. Kerr Avenue. At the time of this rezoning, the structures on these lots were being used as residences.

The property to the north (Family Dollar) was zoned B-1 Conditional Zoning District in May of 2013 in order to construct a Family Dollar Store. Because the property adjacent to the south was a vacant B-1 zoned parcel at the time of the rezoning, no side setback per Section 60.3 was required. After the rezoning, the property received a variance in February 2013 to encroach approximately 3.5 feet into the required rear setback (Case ZBA-872).

The subject property is L-shaped which adds additional property lines adjacent to residentially used property. The setback from this fifth property line creates another setback requirement which reduces the useable building area of the lot.



Section 60.3 of the New Hanover County Zoning Ordinance requires buildings on commercially-zoned properties to be setback from residential districts and uses based on the height of the structure and the zoning district in which they are located.

Section 60.3: Setbacks

For the purposes of this Ordinance, setbacks shall not be required for nonresidential structures located within Commercial, Office and Institutional and Industrial Districts that abut nonresidential uses in Commercial, Office and Institutional and Industrial Districts. (12/17/2012)

Setbacks shall be measured from the structure. If a roof overhang extends more than two (2') feet from the structure, the setback shall be measured from the drip line of the roof. (12/17/2012)

The required minimum setbacks for structures located within Commercial, Office and Institutional and Industrial Districts abutting residential uses and/or platted lots on residentially zoned property shall be calculated from Table 60.3 utilizing the following formulas. Where the adjacent residential district is occupied by non-residential uses, the minimum setback shall be twenty (20) feet. (5/4/98)

- (1) Side yard Required setback
- (2) (Building Height) x (Factor from Column B, Table 60.3)
- (3) Rear yard Required setback
- (4) (Building Height) x (Factor from Column D, Table 60.3)
- (5) Reductions in setbacks

(6) The required setbacks may be reduced as specified in Section 62. In no case, however, shall any side or rear yard setback be less than specified in Table 60.3 (3/9/88)

For the subject property, which is zoned B-1, setbacks are calculated by taking the yard factor from the table in Section 60.3 and multiplying it by the building height of 19'. The side setback based on a building height of 19' would be 52.25':

Side Yard Factor from Section 60.3	Proposed Building Height	Required Setback	Minimum Setback Required Per Section 60.3	Requested Setback	Variance Needed
2.75	19'	52.25'	25'	15'	37.25'

Per Section 62.1-4, required within this required setback area is a buffer to shield residences from noise, lights, threats to privacy and aesthetic impacts from more intense land uses. The buffer width is required to be a minimum of half the setback, with a minimum buffer width of 20'.

62.1-4: Additional Requirements for Berms and for Yards in which Buffers are Required

Buffer strips are designed to protect adjoining land uses, particularly residential, from the noise, heat, dust, lights, threats to privacy, and aesthetic impacts from more intense land-uses. Buffer strips shall be required along all property lines adjacent to a residential use or district, except where a reduced building setback precludes placement of a buffer strip in situations where the adjoining property contains a nonresidential use on residentially zoned property, such as a church or school. The more intense land use shall be required to provide the buffer as part of its yard requirements. The following requirements shall be met for buffer strips and the yards in which buffers are required:

- (1) Location of buffer strips - Buffer strips shall be required to screen any non-residential use from any residential use or district. Buffers strips shall also be required to screen the below developments from the adjacent land uses, however, no buffer will be required for high density detached lots provided lots equal or exceed 5000 square feet (10/7/91). Buffer strips shall be required only along the perimeter boundary of an EDZD (3/1/10).

New Development of Subject Site	Must Provide Buffer Strips From:
<ul style="list-style-type: none"> Attached residential developments; Mobile home parks; High density developments; or Planned developments. 	<ul style="list-style-type: none"> Detached or duplex residential structure; Undeveloped residentially zoned land within the General Residential or Rural Residential place types; Platted residential lots; or Proposed residential lots included within an approved and valid preliminary plat for a major subdivision.

- (2) Width of buffer strips - The buffers shall have a base width equal to at least 50% of the required setback. In all cases the base of the buffer shall be equal to or greater than 20 feet. Where a utility easement occupies a portion of the buffer, sufficient buffer must be provided outside the utility easement to meet the required opacity standards.

- (3) *Allowance for a decrease in setback with an increase in buffer width - The setback for structures may be decreased if the base width of the buffer strip, as determined in Section 62.1-4(2) above, is increased by the same amount.*
- (4) *Uses in the buffer - No activities shall occur in the buffer except for maintenance of the buffer and the installation and maintenance of water, sewer, electrical and other utility systems where the installation causes minimal disturbance of existing vegetation. No bufferyard required by this section may contain any building or structure, or extension of any building or mechanical system. This prohibition shall apply at the time of issuance of a certificate of occupancy and at any time thereafter, and shall include but not be limited to: porches, decks, patios, HVAC components, waste containers, storage buildings or any other fixture or structure, whether temporary or permanent.*

The Zoning Ordinance requires the width of the buffer to be at least half the required building setback, and in all cases the Zoning Ordinance requires a minimum buffer width of 20'. With the proposed site plan, the side setback that is required is 52.25' which would require a 26.12' buffer. The site plan proposes a 7.5' buffer, resulting in a variance needed of 18.62'.

Required Side Setback	Required Side Buffer	Requested Side Buffer	Variance Needed
52.25'	26.12'	7.5'	18.62'

Similarly, the required rear building setback is 70.87', which would make the required buffer 35.43 feet. The applicant is asking that the rear buffer be reduced to 20 feet, the minimum required by the Zoning Ordinance, resulting in a variance needed of 15.43 feet. The placement of the site's storm water pond is reason the reduction is being requested. Storm water ponds are an allowed use in the buffer provided there is sufficient space for required plantings and the 100% opacity can be achieved.

Required Rear Building Setback	Required Rear Building Buffer	Requested Rear Building Buffer	Variance Needed
70.87'	35.43'	20'	15.43'

Section 62.1-4.1(2) of the Zoning Ordinance dictates what types of buffers can be utilized to provide the screening for the more intensive (commercial) use against the lesser intensive (residential) adjacent use:

- (2) *Types of buffer strips - Buffer strips shall provide approximately 100% opacity. Buffer strips may be occupied only by natural and/or planted vegetation, berms and fencing, as specified below:*
 - (A) *Natural vegetation must be retained in accordance with Section 62.1-3(1)(A).*
 - (B) *One or more of the following means shall be used to supplement the natural vegetation as necessary or to provide an adequate buffer where no natural vegetation exists:*
 - 1. *Planted buffer strips - The planted buffer strips shall be at least six feet tall and give approximately 100% visual opacity within one year of planting. Three (3) rows of planted materials shall be required.*

2. *Combination planted buffer strip with artificial fencing:*
 - a. *Artificial fencing shall be between six (6) to ten (10) feet in height,*
 - b. *If solid artificial fencing is used, two rows of planted materials shall be provided at a minimum height of three (3) feet at initial planting, and give at least 50% visual opacity of the fence at planting.*
 - c. *If permeable artificial fencing is used, two rows of planted materials shall be provided and give approximately 100% visual opacity of the fence within one year of planting.*
 - d. *The buffer vegetation shall be located between the fence and the common property line.*

3. *Combination berm with vegetation:*
 - a. *An earthen berm may be used in conjunction with planted vegetation provided that the combined height of the berm and planted vegetation shall be at least six (6) feet and provide approximately 100% opacity within one year of planting.*

 - b. *The slope of the berm shall be stabilized with vegetation and no steeper than 3:1. The height of the berm shall be 6 feet or less, with a level or rounded area on top of the berm. The berm shall be constructed of compacted earth. (3/9/88)*

Dumpsters are not a structure based on the definition of structure in the Zoning Ordinance and therefore they do not need to meet the setback requirements. However, they are not permitted to be in the buffer and must be screened as required in Section 62.1-4(3).

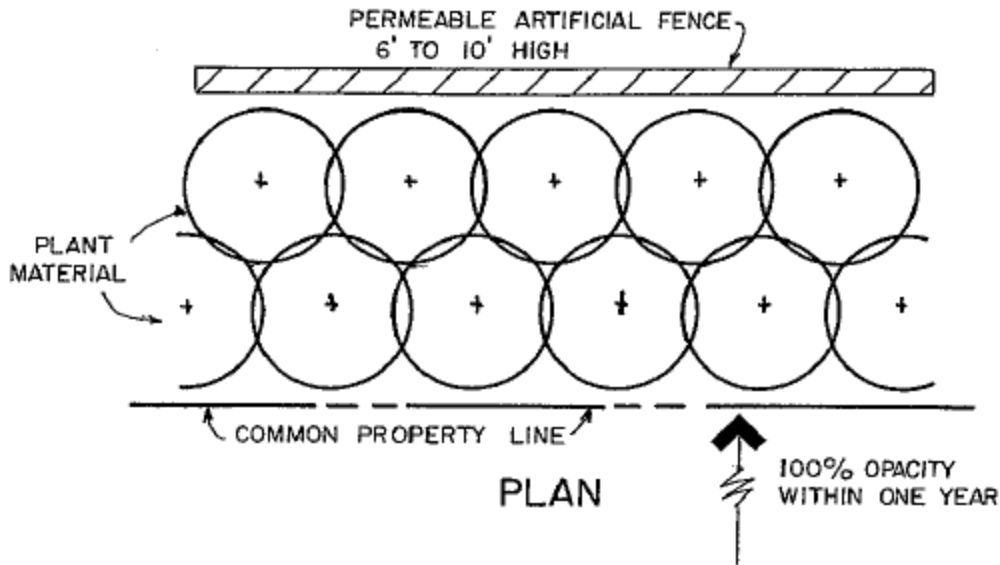
(3) Screening for Dumpsters and Outside Storage along Public Right-Of-Ways *The following uses shall be screened from the view of any public right-of-way or adjacent property. Screening shall be at least 8 ft. in height and may consist of living and nonliving material as specified in this section.*

1. *The rear side of a building where that side abuts a street right-of-way, or any dumpster or trash receptacle storage area used in connection with any business establishment.*

The site plan proposes that the buffer be 2.5' from the property line, effectively resulting in a buffer behind the dumper to be 2.5' wide versus the required 20' buffer, necessitating a 17.5' variance.

Required Rear Dumpster Setback	Required Rear Dumpster Buffer	Minimum Buffer Required	Requested Rear Dumpster Buffer	Variance Needed
20'	20'	20'	2.5'	17.5'

Section 62.1-4.1(2) provides three options for buffers, including three rows of vegetation, two rows of vegetation and a fence (example figure below), or two rows of vegetation with a berm, all designed to be used in a buffer of a minimum of 20'.



Based on the list in the *Tree and Plant Material for Landscaping Manual*, the screening shrub with the least spread is 5 feet, with most shrubs averaging 9 feet. For the screening trees, the least spread is 12 feet with others increasing to a spread as large as 35 feet. Buffer areas need to be of a size sufficient to accommodate the growth of this vegetation in order for the plants to have healthy grow. The proposed buffer widths of 7.5' and 2.5' will not provide sufficient area to accommodate any of the three buffer options.

On the site plan provided, the proposed structure is 7,000 sq. ft. According to Section 81, the minimum amount of parking required would be one parking space for every 400 sq. ft. of floor area for a retail use. Based on the calculation, the required parking for this site would be 18 spaces. The proposed plan shows 24 parking spaces, which are 6 additional spaces over what is required by the Zoning Ordinance.

In summary, the petitioner is requesting a 37.25' variance from the 52.25' side yard building setback a requirement of Section 60.3: Setbacks. The petitioner is also asking for an 18.62' variance from the 26.12' side buffer; a 17.51' variance from the 20' rear buffer adjacent to the dumpster; and a 15.43' variance from the 35.43' rear building buffer a requirement of Section 62.1-4. If approved, the variance would allow smaller setbacks and buffers against residentially used lots in the B-1 zoning district. The petitioner states these are necessary in order to have a building footprint large enough to accommodate a retail establishment. In his application, the petitioner has included draft findings of fact to support the four conclusions required to approve the variance, along with detailed site plan depicting the proposed location of the structure.

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.**