

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
August 27, 2019**

CASE: ZBA-940, 8/19

PETITIONER: Stroud Engineering, P.A., applicant, on behalf of Maritime West Development, LLC, property owner.

REQUEST: Variances from the parking lot perimeter planting requirements per Section 62.1-5(2)(A) and the street yard planting requirements per Section 62.1-10(2)(A) of the New Hanover County Zoning Ordinance.

LOCATION: 4320 Highway 421 N
PID: R02400-001-048-000

ZONING: I-2, Heavy Industrial District

ACREAGE: 11.45 Acres

PETITIONER'S REQUEST:

Stroud Engineering, P.A., applicant, on behalf of Maritime West Development, LLC, property owner, is requesting two variances related to landscaping requirements on the site. The Zoning Ordinance requires the provision of parking lot perimeter landscaping with 5 or more parking spaces or 2,500 square feet or more devoted to vehicular use. Street yard landscaping is required for new construction of principal structures or expansions to existing structures, or whenever additional off-street parking is required. In general, the Zoning Ordinance states that the purpose of providing landscaping is to address visual character, aesthetics, glare, dust, noise, runoff, and other potential impacts associated with development. The applicant is proposing variances from two separate sections of the Zoning Ordinance:

- (A) A variance from the parking lot perimeter requirement to plant 32 deciduous or evergreen trees required per Section 62.1-5(2)(A) of the ordinance. The applicant has proposed planting ornamental grasses on a raised berm in lieu of the parking lot perimeter requirements.

- (B) A variance from the required 104 understory trees and 208 shrubs that would be required to satisfy the street yard landscaping requirements per Section 62.1-10(2)(A) of the ordinance. The applicant is proposing 52 understory trees and 104 shrubs in order to provide half of the required street yard plantings.

The applicant contends that multiple utility easements adjacent to US Highway 421, stormwater features, and the need for adequate access within the proposed development do not allow for the site to be designed to accommodate the required plantings. The surveyed locations of each easement on the property with the accompanying restrictions have been provided by the applicant and are included as attachments to this summary.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The subject property consists of 11.45 acres located on the eastern side of US Highway 421 N and is zoned I-2, Heavy Industrial. Currently, there is an existing 6,240 sq. ft. building located in the northwestern corner of the property. The applicant intends to construct 7 separate warehouse buildings, totaling 34 units and 132,100 square

feet, on the remainder of the site for general warehousing. As the proposal will require additional off-street parking exceeding 5 parking spaces, the provision of parking lot perimeter and street yard landscaping is required.

The applicable language in the Zoning Ordinance in Section 62.1-5 addresses landscaping in parking lot areas:

62.1-5: Additional Landscaping Requirements for Parking Lots

(2) Design Criteria - Landscaping shall be required for parking lot perimeters and for parking lot interiors.

(A) Parking Lot Perimeters - A landscaped strip ten (10) feet in width shall be required along any side of a parking lot abutting a street right-of-way, separate parking lot or residentially zoned property. This landscaping shall consist of, at a minimum, one 3" caliper evergreen or deciduous tree every eighteen (18) to twenty-seven (27) feet. If a buffer strip is required in accordance with Section 62.1-4, then the ten-foot width may be included as part of the buffer strip. (4/2/90) The landscaped strip may be interrupted by driveway connections between parking lots. If adjacent parking lots are developed concurrently then both properties can install a minimum of 5 ft. strip or any multiple agreed upon in writing by the two property owners that would equal 10 ft. of planted area between the parking lots. Adjacent lots that choose to share a double parking row split along the middle of a drive isle are exempt from this requirement.

The parking lot perimeter landscaping requirements consist of one 3" caliper evergreen or deciduous tree every 18 to 27 feet along a parking lot abutting a street right-of-way. With the proposed development of this site, 32 trees would be required to meet the parking lot perimeter standards. The applicant is asking for a variance from the parking lot perimeter planting requirements in lieu of the street yard plantings as well as the provision of ornamental grasses on a raised berm to provide vegetative screening.

Additionally, applicable language from Section 62.1-10 of the Zoning Ordinance requires all new construction or expansions to install street yard landscaping consisting of planted trees and shrubs:

62.1-10: Street Yard Landscaping

(1) A street yard, as defined herein, must be provided for new construction of principal structures or for expansions to existing structures or used whenever additional off-street parking is required. However, no street yard improvements shall be required for those portions of lot frontage used for driveways constructed in accordance with County or State driveway regulations.

(2) It is intended that street yards be landscaped by meeting the following requirements:

*(A) For every 600 sq. ft. of street yard area, the street yard shall contain:
One Canopy/Shade tree, (3"caliper) minimum or 3 understory story trees, six ft. in height, only when overhead power lines exist above the street yard; and six shrubs, 12" in height at planting.*

(5) The Street yard area is calculated by:

Step One: Multiplying the designated street yard factor in accordance with the zoning designation of the property by the linear street frontage of the property less the road fronting width of any access drives within the street yard to determine the base street yard area;

Step Two: Subtracting the area of any walkways, sidewalks or other bicycle and pedestrian facilities, and transit amenities from the base street yard area to get the total required street yard area.

The applicant may install the street yard in any configuration that provides the required amount of street yard square footage between the property line and any site improvements. The maximum and minimum widths as listed in the following table may not be exceeded in any portion of the street yard. (10/7/13)

| Zoning District | Streetyard Factor | Max | Min |
|---|-------------------|------|------|
| B-2, I-1, I-2, A-1 | 25 | 37.5 | 12.5 |
| B-1, O&I, EDZD, High Density | 18 | 27 | 9 |
| Non-Residential uses in Residential Districts | 12 | 18 | 8 |

When applying the formula specified above, using the designated street yard factor of 25 for the I-2 Zoning District, the base street yard area totals 20,825 square feet:

$$863 \text{ Linear Feet of Street Frontage} - 30 \text{ Linear Feet of Driveway} = 833 \text{ Linear Feet of Street Frontage}$$

$$833 \text{ Linear Feet of Frontage} \times 25 = 20,825 \text{ sq. ft.}$$

When applying the number of canopy trees and shrubs specified in Section 62.1-10(2)(A), the required number of plantings for this site are 35 canopy trees or 104 understory trees and 208 shrubs, all of which must be planted in a width ranging from 12.5' to 37.5' along the street frontage.



Figure 1: Recorded easements on property adjacent to US Highway 421 N in area of required landscaping.

The applicant contends that difficulties arise with providing the required number of plantings due to restrictions on vegetation within the multiple utility easements, which generally address interference with overhead lines and underground transmissions. The Zoning Ordinance allows for three understory trees to be planted for every canopy tree that would be required where the street yard is below overhead power lines. With the characteristics of the site, 104 understory trees would be required to be planted within the street yard area. Due to the presence of the easements along the street frontage, the available space for the planting of the required vegetation is limited.

The applicant has submitted a landscaping plan that proposes 52 understory trees and 104 shrubs, which is approximately half of the required plantings at this site.

In summary, the applicant is requesting a variance from the parking lot perimeter planting requirements detailed in Section 62.5-(2)(A) of the Zoning Ordinance. In addition, the petitioner is also requesting a variance from the street yard planting requirements in order to plant half of the required understory trees and shrubs as required in Section 62.1-10(2)(A).

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.**