



NEW HANOVER COUNTY

ZONING BOARD OF ADJUSTMENT AGENDA

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Raymond Bray, Chair | **Henry "Hank" Adams**, Vice-Chair

Joe Miller | **Cameron Moore** | **Mark Nabell**

Board Alternates

Kristen Freeman | **Brett Keeler** | **Richard Kern**

Wayne Clark, Director of Planning & Land Use | **Sharon Huffman**, Deputy County Attorney

September 24, 2019, 5:30 PM

I. Call Meeting to Order (Chairman Ray Bray)

II. Official Approval of August Minutes (*currently in draft status*)

August Member Attendees: Hank Adams, Cameron Moore, Mark Nabell, Brett Keeler, Richard Kern

III. Regular Items of Business

1. **Case ZBA-941** - Caliber Car Wash Wilmington, LLC, applicant and owner, is requesting variances from the minimum front yard setback requirement per Section 52.2-4(2), minimum side yard setback per Section 60.3, buffer strip width requirements per Section 62.1-4(2), parking area screening requirements per Section 62.1-5(2)(D), and street yard landscaping requirements per Section 62.1-10 of the New Hanover County Zoning Ordinance. The property is located at 7032 Market Street, Wilmington, NC.
2. **Case ZBA-942** - Mihaly Land Design, PLLC, applicant, on behalf of Chase & Dylan Mihaly, LLC, property owner, is requesting variances from the side yard setback requirements per Section 60.3 and the buffer strip width requirements per Section 62.1-4(2) of the New Hanover County Zoning Ordinance. The property is located at 7031 Market Street, Wilmington NC.

MINUTES

ZONING BOARD OF ADJUSTMENT

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, August 27, 2019.

Members Present

Hank Adams, Vice- Chairman
Cameron Moore
Brett Keeler
Mark Nabell
Richard Kern

Members Absent

Ray Bray, Chairman
Kristin Freeman
Joe Miller

Ex Officio Members Present

Ken Vafier, Executive Secretary
Sharon Huffman, County Attorney
Linda Painter, Zoning Official
Ron Meredith, Current Planner
Denise Brown, Clerk

Vice-Chairman Hank Adams 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. 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.

Vice-Chairman Adams inquired as to corrections to the July 27, 2019 minutes.

Mr. Keeler made a motion to approve the July 27, 2019 minutes. Mr. Moore second the motion. The motion passed unanimously.

CASE ZBA-940

Vice-Chairman Adams swore in County staff, Mr. Ken Vafier and Ms. Linda Painter.

Ms. Painter presented an overview of the request, stating the petitioner, Stroud Engineering, P.A., on behalf of Maritime West Development, LLC property owner, is requesting two variances related to the landscaping with 5 or more parking spaces or 2,500 square feet or more devoted to vehicular use. The street yard landscaping is required for new construction of principal structures or expansions to existing structures, or whenever additional off-street parking is required.

The property is located on US Highway 421, approximately 1-mile north of I-140 in the northern end of the county. The property is zoned I-2, Heavy Industrial district. The applicant has provided a site plan which depicts an existing building to the northeast of the subject site. The applicant is proposing an additional seven buildings for storage.

Ms. Painter stated The New Hanover County Zoning ordinance requires one three-inch tree to be planted along the street right-of-way at every eighteen to be planted twenty-seven feet. The property has 863 linear feet of street frontage which

requires 31 deciduous or evergreen trees. A private utility easement on the subject site limits the mature height of plantings to 12 ft., which is a factor in obtaining the appropriate number of plantings for the project.

The front utility easement on the site only allows plantings of shallow root systems. Ms. Painter stated with the referenced restrictions, the ability to adhere to the county's landscape in vegetation planting requirements are limited.

The street yard landscaping requirement for this site is based on one tree for every 600 square feet of street yard area. If under a power line, understory trees are allowed. However, there must be three plantings for every tree that is required.

Ms. Painter stated the street yard factor for I-2 zoning district is 25 ft. and vegetation should be planted between 12-37.5 ft. along the front of the property. Ms. Painter stated the project dimensions total 833 linear ft. of street frontage. Using the calculation for street yard area, 20, 825 sf is required.

Ms. Painter stated that the calculations affirmed the applicant would be required to provide 34.5 trees and 207.5 shrubs. The calculations for the site would differ to the restrictions of planting with the presence of the easement and power lines at the site.

The applicant is proposing to plant half of the required vegetation; 52 under story trees and 104 shrubs, along the southern 2/3 of the property line. The northern side of the subject site has the CFPUA easement which requires shallow rooting plants. The applicant proposes a three-foot berm with ornamental grass on the top, providing street yard vegetation as an alternate to the required street yard plantings.

Ms. Painter presented an aerial photo of the subject site and adjacent area which consists of industrial businesses, signage and multiple easements on the site with no visible significant trees.

Mr. Moore inquired as to the definition of an understory tree.

Ms. Painter stated an understory tree can be described as a crepe myrtle tree as opposed to an oak or maple tree.

Attorney Huffman stated in lieu of the applicant's request it may be useful in deciding factors if the board solicited testimony from the applicant and reference the four findings in the decision.

The Vice- Chairman then swore in Mr. Luke Menius, Mr. Scott Gerow and Mr. Will Leonard.

Mr. Luke Menius-Stroud Engineering, - Mr. Menius stated he proposed the site plan and based on the multiple constraints at the subject site he request that the four findings listed on the submitted application be entered and reviewed by the board as they decide on the variances request. Mr. Menius stated the plan was presented to accommodate fire services as required by the state of NC. The property is located along Highway 421 and with the utility lines and easement it is difficult for the applicant to adhere to county ordinance requirements as well as the landscape requirements. The many easements on the site were granted by previous owners and cannot be relocated.

Mr. Menius stated the subject site is surrounded by heavy industrial uses and has multiple utility and sewer lines. With the patchwork of easements that have been placed around the subject site it is difficult to adhere to the county's landscaping requirements as written. The easements and utility lines are not subject to relocation. The proposed landscaping plan will provide an attractive street frontage with plantings and ground coverings along the entire length. The landscaping internal to the project is consistent with the ordinance and will enhance the appearance of an existing parking lot and structure located on the site.

Mr. Menius stated that substantial justice can be achieved by the implementation of this plan. Public health and safety will be best served by fully utilizing this industrial site for which it is zoned; significant infrastructure has been installed.

Newly constructed public water and sewer mains, a large existing driveway and an acceleration lane has been put in place to the area designed to support the continued growth to this corridor.

Mr. Kern inquired as to the retention pond being a requirement.

Mr. Menius stated NCDEQ requires the infiltration retention pond due to its high density and anticipated stormwater.

Mr. Moore inquired as to the width of the site.

Mr. Menius stated they are providing the 25 ft. street yard width from the right-of-way to the back of the curb. The plantings are proposed to be about 2/3 of the northern area of the site. There is a CFPUA easement at the site whereby woody vegetation is not allowed within that easement area.

Mr. Moore inquired of the berm area and is a parking lot required in that area of placement.

Mr. Menius stated there are proposing a raised berm and approximately 2 ft. of ornamental grass to be planted at the site to offset in the street yard landscaping frontage requirements at the subject site.

Ms. Painter stated that the west side of the subject site is a parking lot which is 50 ft. from the right- of- way.

Mr. Kern inquired of the proposed ornamental grass to the front being allowed.

Mr. Menius stated that to his knowledge, there is not an easement beyond the CFPUA easement although there may be some fiber optic presence adjacent to the site. The proposed grass plantings will be installed away from the property line to avoid easements and gas lines around the area to minimize additional digging at the site.

Mr. Vafier inquired if the 52 understory trees and 104 shrubs suggestion could be accommodated by the applicant. Mr. Vafier stated that if the board decides to choose in favor of both variances to include specifics on the variance request and street yard variance request for clarity.

Mr. Menius stated they are confident that they can plant the suggested vegetation referenced today at the site.

Mr. Moore inquired as to the proposed plantings at the site.

Mr. Menius stated there are restrictions on plantings, thus they are proposing crepe myrtles for low trees for the site.

Mr. Keeler inquired of the size requirements of the understory trees.

Mr. Menius stated the height of the proposed trees should not be taller than 6-8 ft. per county requirements.

PUBLIC HEARING CLOSED.

BOARD DISCUSSION:

Mr. Keeler stated he is typically not in favor of altering the landscaping requirements in granting variances, however this site presents a unique corridor and long frontage area site.

Vice-Chairman Adams stated the fire lane requirements presents a hardship for the applicant.

Ms. Huffman suggested the board refer to page 1 presented in the staff summary in making their variance decision.

Mr. Keller made a motion to approve the variance from the parking and plantings requirement per Section 62.1-5(2)(A) in the street yard plantings requirements per Section 62.1-10(2)(A) of the New Hanover County Zoning ordinance with conditions:

- A. Approved variance from the parking lot perimeter to plant 32 deciduous or evergreen trees required per Section 62.1-5(2)(A) of the ordinance. The applicant will be required to plant ornamental greases on a raised berm in lieu of the parking lot perimeter requirements.
- B. A variance from the required 104 understory trees and 208 shrubs from the ordinance, that would be required to satisfy the street yard landscaping requirements per Section 62.1-10(2)(A) of the New Hanover County Zoning ordinance. The applicant plants 52 understory trees and 104 shrubs in order to provide half of the required street yard plantings although this number is not based on being half.

Mr. Keller stated this motion is made in accordance with the four findings of fact and in agreement with the testimony presented by the applicant.

The motion was unanimously approved.

All ayes to the motion presented.

OTHER BUSINESS:

Mr. Moore stated there may be a high number of cases on next month's docket regarding tree standards and request members continue in quorum for ongoing meetings.

BOARD DECISION:

On a motion by Mr. Brett Keeler and seconded by Mr. Cameron Moore, the board voted 5-0 to grant the variance at 4320 US Highway 421 North, Wilmington NC.

The Board's decision was based on 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 parking lot perimeter planting requirements in Section 62.1-5(2)(A) and the street yard planting requirements in Section 62.1-10(2)(A) of the New Hanover County Zoning Ordinance, that an unnecessary hardship would result. This conclusion is based on the following FINDINGS OF FACT:
 - The shifting of site improvements to accommodate the required plantings would provide inadequate area for loading to support warehouse uses.
 - Required area for fire apparatus could not be provided if the site improvements were shifted further back on the site.
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:
 - Pre-existing utilities underground, at grade and overhead to support industrial uses in this area of the County, significantly encumbers the site frontage in those areas where required landscaping would normally be planted.

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 easements were granted by a previous owner.
 - The current owner has no ability to amend the existing easements or relocate the utilities.
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 FACTS OF FINDING:
- The proposed landscaping will provide an attractive property frontage.
 - The proposed internal landscaping is in compliance with the Zoning Ordinance.
 - Public health and safety will be best served by fully utilizing this site with an approved use in the I-2 zoning district.

MEETING ADJOURNED.

Please note the minutes are not a verbatim record of the proceedings.

Executive Secretary

Chairman

DATE: _____

**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
September 24, 2019**

CASE: ZBA-941

PETITIONER: Caliber Car Wash Wilmington, LLC, applicant and property owner.

REQUEST: Variances from the minimum front yard setback requirement per Section 52.2-4(2), minimum side yard setback per Section 52.2-4(3), buffer strip width requirements per Section 62.1-4(2), parking area screening requirements per Section 62.1-5(2)(D), and street yard landscaping requirements per Section 62.1-10 of the New Hanover County Zoning Ordinance.

LOCATION: 7032 Market Street
PID: R04409-003-027-000

ZONING: B-2, Highway Business District

ACREAGE: 0.79 acres

PETITIONER'S REQUEST:

Caliber Car Wash Wilmington, LLC, applicant and property owner, is requesting variances from multiple Zoning Ordinance provisions related to landscaping and setback requirements in order to preserve several mature live oak trees that exist on the site into the design for a self-service car wash:

- (A) A variance of 13' from the 50' minimum front yard setback required per Section 52.2-4(2) of the ordinance. The applicant is proposing to locate the building 37' from the front property line, which is approximately 4' further from Market Street than the existing building.
- (B) A variance of 47.83' from the 59.13' minimum side yard setback required per Section 52.2-4(3) of the ordinance. The closest point of the building to the side yard on the northeastern property boundary is 11.3', due to a component of the wash facility which extends slightly further than the majority of the building, which is proposed at 17' from the northeastern property line.
- (C) A average variance of approximately 17.37' from the 29.57' minimum required landscape buffer width required on the northeastern boundary per Section 62.1-4(2) of the ordinance. The applicant intends to retain the existing vegetation on this side, which contains 3 significant oak trees and one 22" magnolia tree. The proposed buffer will average approximately 12.2' and will be supplemented by a 6' tall privacy fence.
- (D) A variance of 1.5' from the 5' minimum parking area screening requirements per Section 62.1-5(2)(D) of the ordinance.
- (E) A variance to remove the minimum street yard planting requirements per Section 62.1-10 of the ordinance. The applicant is proposing the installation of one row of 3' tall shrubbery in order to provide landscaping in the front of the site adjacent to Market Street.

The applicant contends that the variances are necessary in order to preserve several mature live oak trees which exist on the site, as depicted on the submitted site plan.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The subject property consists of 0.79 acres located on the eastern side of Market Street and is zoned B-2, Highway Business. Currently, there is an existing 3,289 sq. ft. restaurant located on the property. The applicant intends to redevelop the site for use as a self-service car wash, and multiple variances are requested in order to address design parameters that, if applied, would require the removal of several significant live oak trees on the site in order to accommodate essential site improvements.

The county's tree retention standards highly encourage the retention of old-growth native species into development proposals. Certain trees are defined as being "significant" trees, and as such, are required to be mitigated either by re-planting on site or by payment into a tree fund should they need to be removed in order to accommodate essential site improvements. Significant trees are defined as any hardwood or coniferous tree with a diameter at breast height of at least 24", or any dogwood, American Holly, or other flowering tree with a diameter at breast height of at least 8".

When the applicable setbacks and buffer widths are applied to this site, the developable area is required to be moved to the southern boundary of the site, which contains four significant live oak trees sized at 40", 54", and two measuring 57". In addition, there are three significant live oak trees sized at 27", 28", and 38" on the northern boundary of the site along with a 22" magnolia tree. The applicant has designed a site plan that retains all of the significant trees on site in accordance with the intent of the county's tree retention standards, but variances from multiple design parameters are necessary in order to do so.

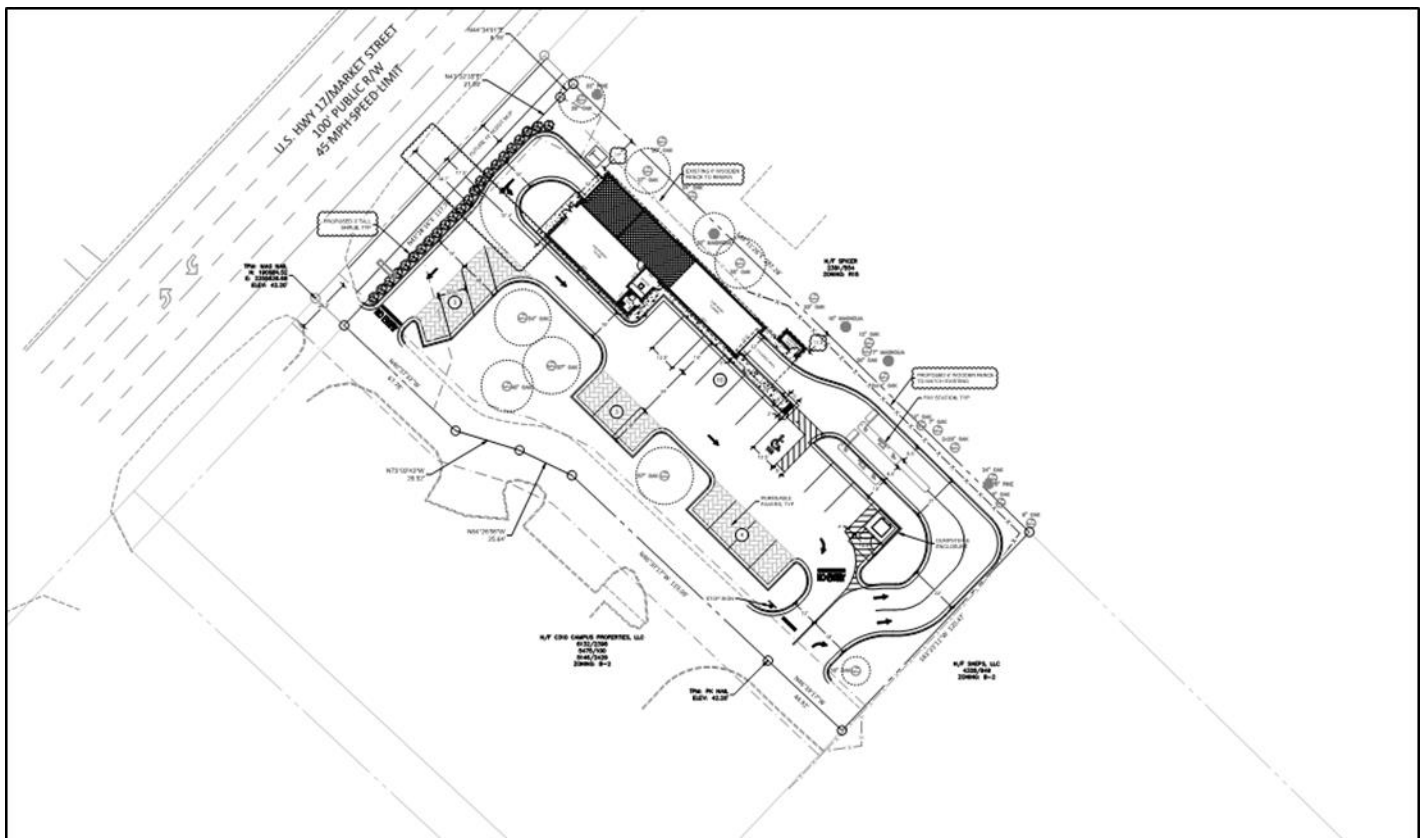


Figure 1: Proposed site plan which retains all significant trees on site.

The front yard setback in the B-2 district is determined by the respective road frontage of the site. The applicable language in the Zoning Ordinance in Section 52.2-4(2) requires a minimum 50' front yard setback at this location as Market Street is a US numbered highway:

52.2-4: Dimensional Requirements

- (2) *Minimum Front Yard - Fifty (50) feet along US and NC numbered highways and major thoroughfares as designated by the Wilmington Area Thoroughfare Plan. Thirty-five (35) feet along all other public highways or streets.*

The current building lies approximately 33' from the property line as a result of additional right-of-way recently acquired by the NC Department of Transportation. The existing structure is considered legal non-conforming and did meet the 50' setback requirement at the time it was constructed. The proposed building will be set 37' from the existing property line. Although a variance is requested from the 50' minimum setback, the proposed building will be 4' feet further from Market Street than the existing structure.

Section 52.2-4(2) of the ordinance, which contains the dimensional requirements in the B-2 district, makes reference to Section 60.3 to determine the applicable setback distances for side and rear yards:

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)*

DISTRICT	SIDE YARD SETBACK FACTOR	MINIMUM SIDE YARD SETBACK, IN ALL CASES	REAR YARD SETBACK FACTOR	MINIMUM REAR YARD SETBACK, IN ALL CASES
B-1	2.75	25'	3.73	30'
B-2	2.75	30'	3.73	35'
O&I	2.75	25'	3.73	30'
I-1	3.08	35'	4.33	40'
I-2	3.49	40'	5.14	45'
A-1	3.08	35'	4.33	40'

As the property to the northeast is zoned R-15, a side yard setback is required from this property line. Using the proposed average building height of 21.5' and the applicable side yard setback factor of 2.75 in the B-2 district, the required setback from the northeastern property line is 59.13'. The applicant has proposed to shift the building, drive aisles, and parking areas toward the northeastern side of the building in order to preserve the live oak trees which lie further toward the center and southwestern boundary of the property.

In addition to the required side yard setback, applicable language from Section 62.1(4)(2) of the Zoning Ordinance requires that a buffer strip of 50% of the setback be provided:

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.*

The applicant is proposing a minimum average buffer width of 13' in order to shift the developed footprint of the lot toward the northeastern boundary to preserve the live oak trees on site. In order to meet the intent of the ordinance and provide a landscaped buffer, the applicant is able to retain the existing vegetation on this side of the property, which consists of three significant oak trees sized at 27", 28", and 38" and one 22" magnolia tree, which is just below the diameter at breast height to be considered significant. In addition, several large oak, magnolia, and pine trees exist on the property to the northeast of the subject site. An existing 6' privacy fence will remain on the western half of this boundary, while it will be repositioned and reconstructed on the eastern half.

The ordinance contains landscaping requirements for different features within a site's parking lot, such as interior landscaping, perimeter landscaping, and adjacent to street rights-of-way. Section 62.1-5(D)(2) requires a 5' wide screening area in instances where a planted buffer would not otherwise be required:

62.1-5: Additional Landscaping Requirements for Parking Lots

Landscaping is required for parking lots for the purposes of reducing aesthetic impacts of paving or removing the natural vegetation from large areas; to reduce the noise, heat and dust associated with parking lots; and other purposes as listed in Section 62.1-1.

- (D) Parking Area Screening - *When a parking facility is within fifty ft. of a right-of-way, if the bufferyard provisions of this ordinance do not call for a planted buffer, a low buffer shall be incorporated into the streetyard to provide protection from vehicle headlights within the parking lot. The buffer shall consist of shrubbery, a grade change or planted berm or any combination thereof that serves to shield traffic on the right-of-way from headlights within the parking lot. The buffer shall be a minimum of three ft. in height and five ft. in width and may be continuous and incorporated into a streetyard, provided the streetyard is fifteen ft. or more in width. Depressions and curb cuts shall be allowed for water quality protection.*

In this instance, a planted buffer is required per Section 62.1-10 of the Zoning Ordinance in the form of street yard landscaping. However, the applicant is requesting a variance to the street yard landscaping standards due to the minimal distance between the drive aisle exiting the wash facility and the property line, as well as the need to relocate the building to retain the stand of significant trees. Should the variance to the street yard landscaping standards be approved, the ordinance would then require parking area screening per this section. The applicant is able to provide a 3.5' wide screen with 36" tall shrubbery, but not the minimum 5' width specified in this section.

As the applicant is only proposing a 3.5' wide screening area adjacent to Market Street, a variance request to the street yard landscaping standards has been requested:

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-I	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 B-2 Zoning District, the base street yard area 2,945 square feet:

$$117.78 \text{ Linear Feet of Frontage} \times 25 = 2,945 \text{ sq. ft.}$$

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 5 canopy trees or 15 understory trees and 30 shrubs, all of which must be planted in a width ranging from 12.5' to 37.5' along the street frontage. Due to the limited area between the property line and front drive aisle, the applicant is proposing one row of 36" tall shrubs in lieu of the required number of plantings in order to provide an area of landscaping adjacent to Market Street.

In summary, the applicant is requesting variances from the minimum front yard setback requirement per Section 52.2-4(2), minimum side yard setback per Section 52.2-4(3), buffer strip width requirements per Section 62.1-4(2), parking area screening requirements per Section 62.1-5(2)(D), and street yard landscaping requirements per Section 62.1-10 of the New Hanover County Zoning Ordinance.

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-941

Zoning Map

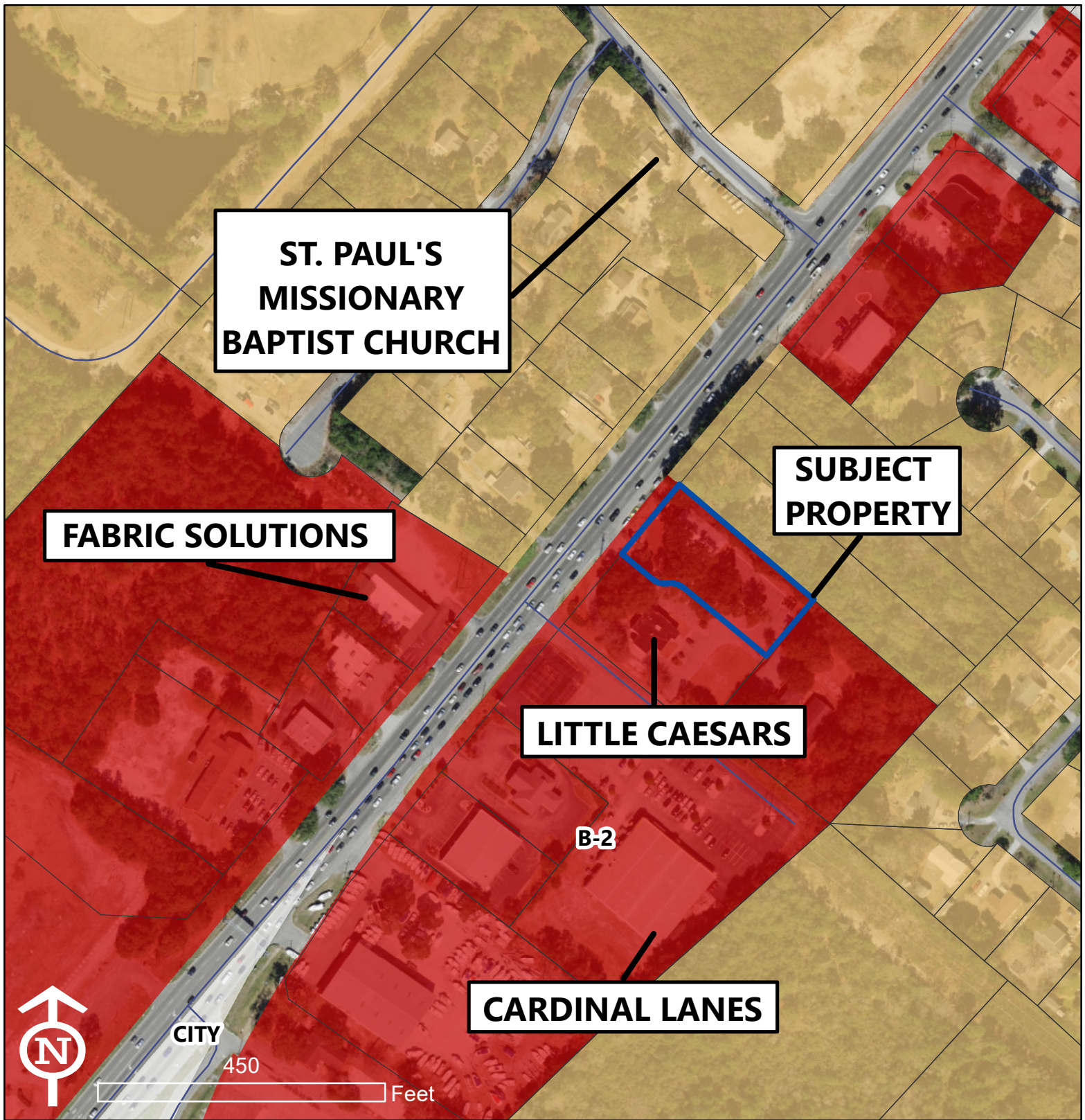
Address: 7032 Market Street

Variance request: Variances from the minimum front yard setback, minimum side yard setback, buffer strip width requirements, parking area screening requirements, and street yard landscaping

Applicant and Owner: Caliber Car Wash Wilmington, LLC, r.

New Hanover County Zoning Board of Adjustment

September 24, 2019



Case: ZBA-941

Zoning Map

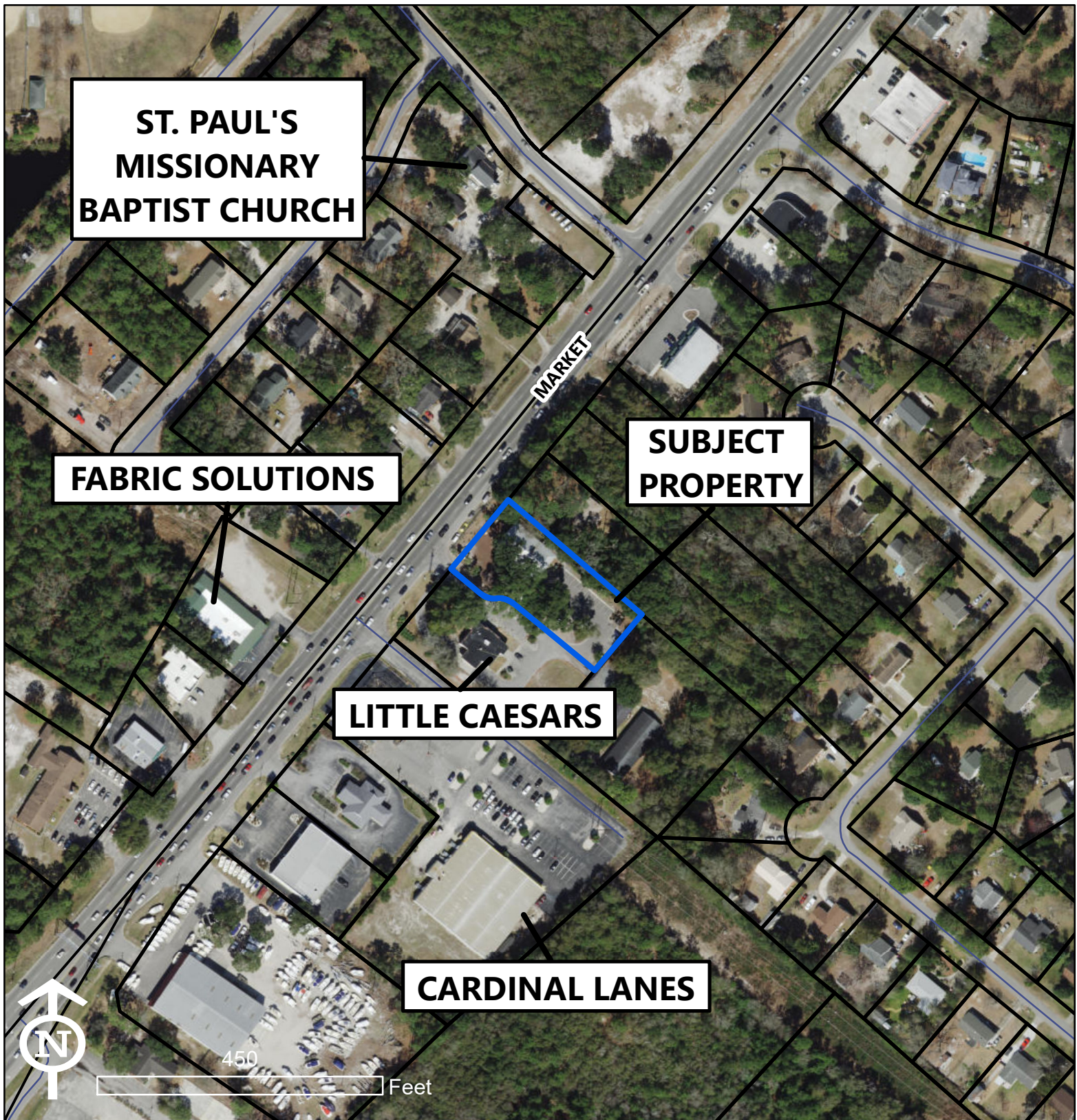
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New Hanover County Zoning Board of Adjustment

September 24, 2019



Case: ZBA-941

Zoning Map

Address: 7032 Market Street

Variance request: Variances from the minimum front yard setback, minimum side yard setback, buffer strip width requirements, parking area screening requirements, and street yard landscaping

Applicant and Owner: Caliber Car Wash Wilmington, LLC, r.

New Hanover County Zoning Board of Adjustment

September 24, 2019



NEW HANOVER COUNTY

ZONING BOARD OF ADJUSTMENT

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Raymond Bray, Chair | **Henry "Hank" Adams**, Vice-Chair

Joe Miller | **Cameron Moore** | **Mark Nabell**

Board Alternates

Kristen Freeman | **Brett Keeler** | **Richard Kern**

Wayne Clark, Director of Planning & Land Use | **Sharon Huffman**, Deputy County Attorney

ORDER TO GRANT/DENY A VARIANCE – Case ZBA-941

The Zoning Board of Adjustment for New Hanover County, having held a public hearing on September 24, 2019 to consider application number ZBA-941, submitted by Caliber Car Wash Wilmington, LLC, applicant and property owner, a request for a variance to use the property located at 7032 Market Street in a manner not permissible under the literal terms of the ordinance regarding:

- (A) A variance of 13' from the 50' minimum front yard setback required per Section 52.2-4(2) of the ordinance;
- (B) A variance of 47.83' from the 59.13' minimum side yard setback required per Section 52.2-4(3) of the ordinance;
- (C) A average variance of approximately 17.37' from the 29.57' minimum required landscape buffer width required on the northeastern boundary per Section 62.1-4(2) of the ordinance;
- (D) A variance of 1.5' from the 5' minimum parking area screening requirements per Section 62.1-5(2)(D) of the ordinance;
- (E) A variance to remove the minimum street yard planting requirements per Section 62.1-10 of the ordinance.

Having heard all the evidence and arguments presented at the hearing, the Board 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 minimum front yard setback requirement per Section 52.2-4(2), minimum side yard setback per Section 52.2-4(3), buffer strip width requirements per Section 62.1-4(2), parking area screening requirements per Section 62.1-5(2)(D), and street yard landscaping requirements per Section 62.1-10 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 variances from the minimum front yard setback requirement per Section 52.2-4(2), minimum side yard setback per Section 52.2-4(3), buffer strip width requirements per Section 62.1-4(2), parking area screening requirements per Section 62.1-5(2)(D), and street yard landscaping requirements per Section 62.1-10 of the New Hanover County Zoning Ordinance be GRANTED/DENIED, subject to the following conditions, if any:

ORDERED this 24th day of September, 2019.

Raymond Bray, Chairman

Attest:

Kenneth Vafier, Executive Secretary to the Board

NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE

230 Government Center Drive, Suite 110

Wilmington, North Carolina

Telephone (910) 798-7165

FAX (910) 798-7053

planningdevelopment.nhcgov.com

RECEIVED

SEP - 3 2019



NEW HANOVER COUNTY
PLANNING & ZONING

VARIANCE Application

Applicant/Agent Information		Property Owner(s) If different than Applicant/Agent
Name	Owner Name	
Danny York		
Company	Owner Name 2	
Caliber Car Wash Wilmington, LLC		
Address	Address	
PO Box 19154		
City, State, Zip	City, State, Zip	
Atlanta, GA 31126		
Phone	Phone	
(770) 765-6711		
Email	Email	
dyork@caliber-capital.com		
Subject Property Information		
Address/Location		
7032 Market St, Wilmington, NC 28411		
Parcel Identification Number(s)		
R04409-003-027-000		
Total Parcel(s) Acreage		
+/- 0.84 Ac		
Existing Zoning and Use(s)		
B-2		
Application Tracking Information (Staff Only)		
Case Number	Date/Time received:	Received by:
ZBA-941	8/30/19 4:00 pm	KV

PROPOSED VARIANCE NARRATIVE

Subject Zoning Regulation, Chapter and Section: See Attachment (EV)

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

See attached proposed variance narrative.

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.**

Following the strict application of the ordinance would create a hardship by removing five (5) significant oak trees on site which contradicts the intent of the ordinance and is undesirable to the community. The proposed site plan was designed to preserve every significant tree on site, including four (4) two hundred (200+) plus year old oak trees.

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 existing property contains eight (8) significant oak trees and one (1) significant magnolia tree creating a hardship peculiar to the property. The adjacent property is currently zoned residential, requiring a buffer strip; in addition to the building setbacks, the ordinance creates a limited area to develop which would require the removal of the significant oak trees to comply with code.

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 North Carolina Department of Transportation recently acquired additional right-of-way to construct a multi-use path, reducing depth to the front yard and street yard creating a hardship to meet the requirements of the ordinance.

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.**

According to Section 62.2-1, "New Hanover County enthusiastically supports new development that protects and preserves the natural assets which make our area so desirable as a place to live, work and recreate. Old growth native species trees are an important natural asset. The County recognizes the value and benefit of mature trees in protecting, preserving and enhancing quality of life for present and future citizens.

Some of the many benefits of tree preservation include:

- Conservation of energy by shading buildings and paved surfaces
- Filtering of airborne pollutants
- Removal of atmospheric carbon dioxide
- Reduction of stormwater runoff
- Slowing of flood waters
- Recharging of groundwater
- Protecting the cultural and historic character of the area
- Increasing the value of homes and businesses"

The variance requests would allow the proposed development to protect and preserve all significant trees currently on site consistent with the spirit, purpose and intent of the ordinance.

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.

Required Information		Applicant Initial	Staff Initial
1	Complete Variance application	<i>[Signature]</i>	KV
2	Application fee – \$400	<i>[Signature]</i>	KV
3	Site plan or sketch illustrating requested variance	<i>[Signature]</i>	KV
4	1 hard copy of ALL documents	<i>[Signature]</i>	KV

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 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]

Signature of Property Owner(s)

Daniel York

Print Name(s)

Signature of Applicant/Agent

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

52.2-4 (2): Minimum Front Yard - Fifty (50) feet along US and NC numbered highways and major thoroughfares as designated by the Wilmington Area Thoroughfare Plan. Thirty-five (35) feet along all other public highways or streets.

A variance to reduce the minimum front yard setback of fifty (50) is requested. The existing building is currently set back approximately thirty-three (33) feet from the front property line. The proposed building is set back approximately thirty-seven (37) feet from the front property line, so although a variance is requested, the developer is improving the existing condition.

62.1-10: Street Yard Landscaping

A variance to remove the required street yard landscaping is requested. The proposed site plan is designed to allow a car wash development to properly function while eliminating the need to remove any significant trees. However, the positioning of the proposed building does not provide a street yard meeting the requirements described in the ordinance. The North Carolina Department of Transportation recently acquired additional right-of-way, moving the front property line back approximately seventeen and a half (17.5) feet. There is approximately thirty-four (34) feet of landscaped area between the back of curb of the development and the edge of pavement of Market Street (minus the future ten (10) foot multi-use path which is allowed in the street yard per code). Furthermore, we will add aesthetically appealing shrubs to the strip of land between our curb and the property line.

62.1-5 (2) D: Parking Area Screening - When a parking facility is within fifty ft. of a right-of-way, if the bufferyard provisions of this ordinance do not call for a planted buffer, a low buffer shall be incorporated into the streetyard to provide protection from vehicle headlights within the parking lot. The buffer shall consist of shrubbery, a grade change or planted berm or any combination thereof that serves to shield traffic on the right-of-way from headlights within the parking lot. The buffer shall be a minimum of three ft. in height and five ft. in width and may be continuous and incorporated into a streetyard, provided the streetyard is fifteen ft. or more in width. Depressions and curb cuts shall be allowed for water quality protection.

A variance to reduce the required parking area screening abutting a right-of-way is requested. The proposed site plan does not provide a five (5) foot wide buffer. Instead, the proposed site plan provides an average buffer width of three and a half (3.5) feet. The proposed buffer will contain shrubbery three feet in height to shield traffic on the right-of-way from headlights within the development.

52.2-4 (3): Minimum side and rear yards for property abutting residential districts:

(A) The required minimum setbacks for structures shall be calculated in accordance with Section 60.3.

(B) Buffering and landscaping shall meet the requirements of Section 62.1-4 (3/9/88).

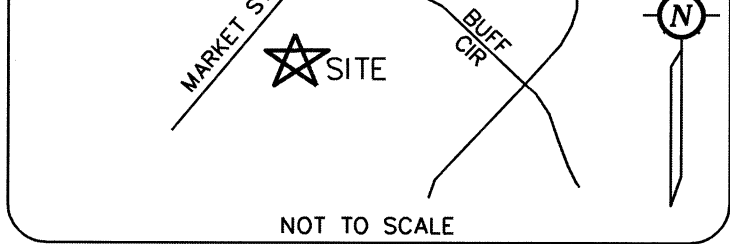
A variance to reduce the requirements of the side yard setback and buffer abutting residential districts is requested. The existing building is currently set back approximately eleven (11) feet at its closest point and averages thirteen and a half (13.5) feet from the adjacent residential property. The proposed building is set back approximately eleven (11) feet at its closest point and averages seventeen (17) feet from the adjacent residential property, so this development will improve existing conditions by moving the building further away from the buffer.

The existing buffer between the subject and residential properties is currently densely vegetated with trees, shrubs and vines. No changes are proposed to the existing buffer plantings. Furthermore, the existing six (6) foot tall privacy fence will remain and the developer will add a new six (6) foot tall privacy fence extending to the rear of the property, which will provide even more of a buffer.

The adjacent residential property is one (1) of three (3) residentially zoned properties on the southern side of Market Street for a span of approximately six and a half (6.5) miles. The future land use map shows a proposed zoning use the same as the subject property. Chances are that the adjacent property will be sold and rezoned in the very near future for a commercial use.

Noise generated from the proposed development will be contained within the building or on the opposite side of the development from the residential property and will be dampened by existing natural vegetation and fencing. The proposed development does not intend to increase the amount of heat or dust to the residential property due to the existing tree canopy. Lights from the proposed development will be directed away from the residential property. A six (6) foot wooden fence will be located between the proposed development and the residential property to reduce the threats to privacy to the residential property. The proposed development will not produce an aesthetic impact to the residential property due to the natural vegetation that currently exists between the two properties.





- NOTES:
1. SOLID LINES ARE LINES SURVEYED. DASHED LINES ARE LINES NOT SURVEYED, RECORDED DATA ONLY.
 2. NO GRID MONUMENT FOUND WITHIN 2000' OF SITE. COORDINATES ESTABLISHED USING NC VRS REFERENCING NAD83, NC SPC 3200.
 3. THE ERROR OF CLOSURE CALCULATED BY LATITUDES AND DEPARTURES IS 1/10,000+. THE ENCLOSURE IS DISTRIBUTED BY THE CRANDALL METHOD AND THE AREA, IF SHOWN, IS CALCULATED BY COORDINATE METHOD.
 4. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP, TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
 5. ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES.
 6. ALL ELEVATIONS SHOWN REFERENCE NAVD88.
 7. BASIS OF BEARINGS SHOWN REFERENCE MAP BOOK 33, PAGE 221.

REFERENCES:
D.B. 5960, PG. 2008
D.B. 4923, PG. 2630
M.B. 33, PG. 221

AREA
0.84 +/- ACRES

PROPERTY ZONED: B-2
HIGHWAY BUSINESS DISTRICT
*REQUIRED MINIMUM SETBACKS FOR
STRUCTURES SHALL BE CALCULATED IN
ACCORDANCE WITH SECTION 60.3 OF THE
NEW HANOVER COUNTY ZONING ORDINANCE.
MAXIMUM BUILDING HEIGHT: 40.0'

LEGEND

- EIP - EXISTING IRON PIPE
EIR - EXISTING IRON ROD
MAG - EXISTING MAG NAIL
PK - EXISTING PK NAIL
DOT - EXISTING D.O.T. MONUMENT
CP - COMPUTED POINT
E - ELECTRIC PEDESTAL
B - BACKFLOW VALVE
S - SEWER MANHOLE
G - GREASE TRAP
GUY - GUY WIRE
U - UTILITY POLE
L - LIGHT POLE
OH - OVERHEAD WIRE
SC - SEWER CLEANOUT
T - TREE SIZE AND TYPE
W - WATER METER
B - BACKFLOW PUMP
S - SIGN
D - DRAIN INLET
T - TELEPHONE MANHOLE
F - FIBER OPTIC
G - GAS VALVE
U - UTILITY STUB

THIS PARCEL OF LAND LIES WITHIN FLOOD
ZONE X WHICH IS NOT A SPECIAL FLOOD
HAZARD AREA AS PER F.I.R.M. PANEL
NUMBER: 3720315900J
EFFECTIVE DATE: 04/03/2006

"I, JASON M. FAILLA, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY
SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION
AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:

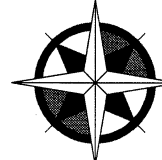
- (1) CLASS OF SURVEY: A
- (2) POSITIONAL ACCURACY: 0.05
- (3) TYPE OF GPS FIELD PROCEDURE: RTK/NCVRS
- (4) DATES OF SURVEY: 05/03/2018
- (5) DATUM/EPOCH: NAD83(2011)/EPOCH 2010.0000
- (6) PUBLISHED/FIXED-CONTROL USE: NCVRS
- (7) GEOID MODEL: 12B
- (8) COMBINED GRID FACTOR(S): 1.0000232
- (9) UNITS: US SURVEY FEET



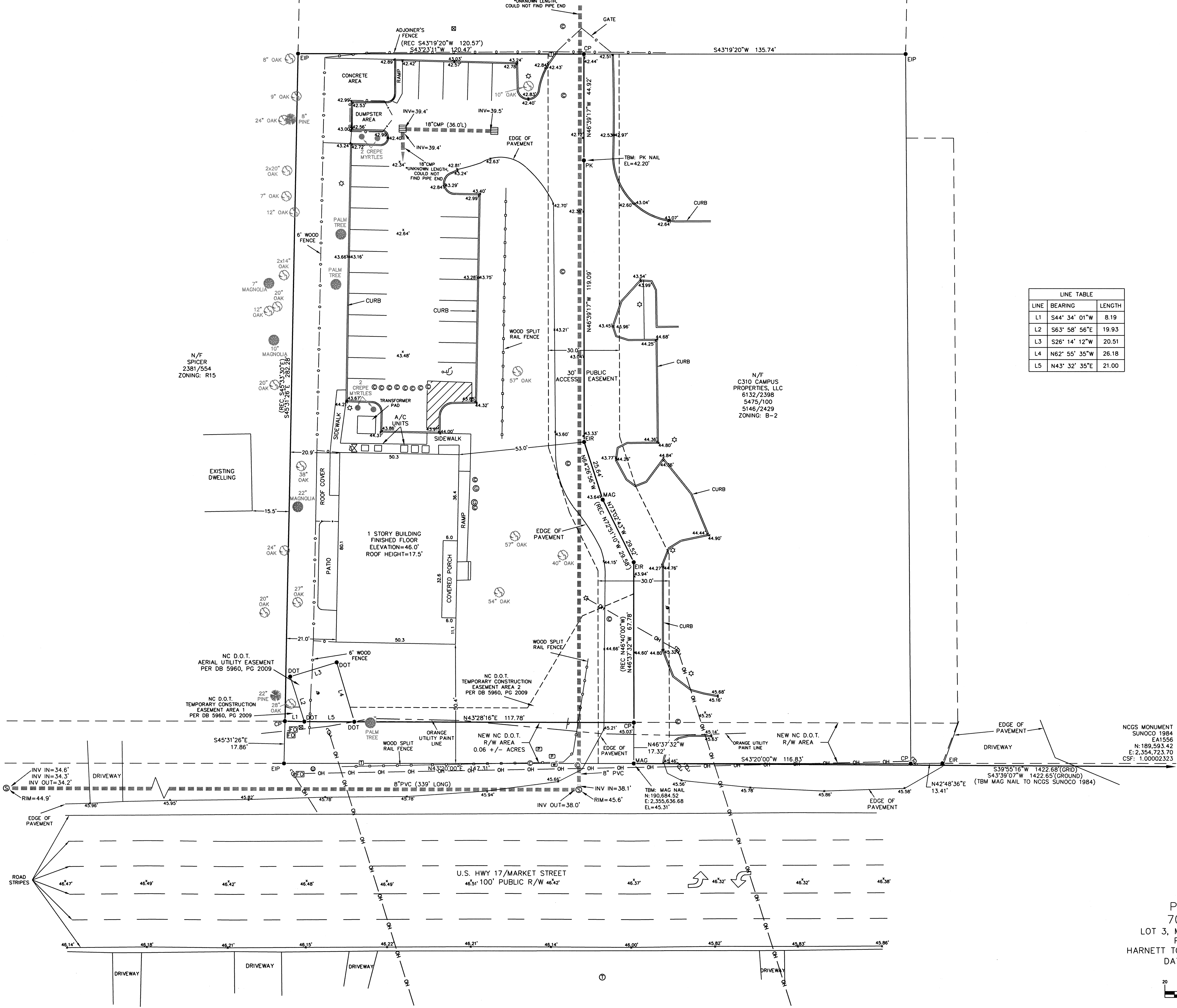
I CERTIFY THAT THIS MAP WAS DRAWN UNDER MY
SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY
SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK AS
SHOWN, PAGE AS SHOWN OR OTHER REFERENCE SOURCE AS
SHOWN); THAT THE BOUNDARIES NOT SURVEYED ARE
INDICATED AS DRAWN FROM INFORMATION IN BOOK AS
SHOWN, PAGE AS SHOWN OR OTHER REFERENCE SOURCE AS
SHOWN; THAT THE RATIO OF PRECISION OR POSITIONAL
ACCURACY IS 1:10,000+, AND THAT THIS MAP MEETS THE
REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND
SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600). THIS
16 DAY OF MAY, 2018

JASON M. FAILLA, PLS L-4955

UNLESS SIGNED, SEALED AND DATED, THIS IS A PRELIMINARY
PLAY NOT FOR RECORDING, SALES OR CONVEYANCES.



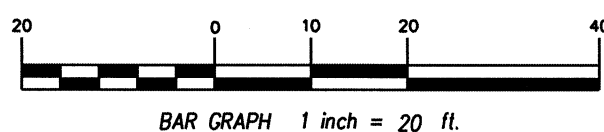
PORT CITY GEOMATICS, LTD.
PROFESSIONAL LAND SURVEYING
4701 WRIGHTSVILLE AVE. (910) 791-1212
BUILDING 3, UNIT 101 WILMINGTON, NC 28403 (910) 279-7824
FIRM# C-3844 E-MAIL: jasonfailla@yahoo.com



LINE TABLE		
LINE	BEARING	LENGTH
L1	S44° 34' 01"W	8.19
L2	S63° 58' 56"E	19.93
L3	S26° 14' 12"W	20.51
L4	N62° 55' 35"W	26.18
L5	N43° 32' 35"E	21.00

NCGS MONUMENT
SUNOCO 1984
EA1556
N: 189,593.42
E: 2,354,723.70
CSF: 1.00002323

PHYSICAL SURVEY OF
7032 MARKET STREET
LOT 3, MEDICO URGENT CARE SUBDIVISION
PIN: R04409-003-027-000
HARNETT TOWNSHIP; NEW HANOVER COUNTY, NC
DATE OF SURVEY: MAY 3, 2018
SCALE: 1"=20'



**VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
September 24, 2019**

CASE: ZBA-942

PETITIONER: Mihaly Land Design, PLLC, applicant, on behalf of Chase & Dylan Mihaly, LLC, property owner.

REQUEST: Variances from the side yard setback requirements per Section 60.3 and the buffer strip width requirements per Section 62.1-4(2) of the New Hanover County Zoning Ordinance.

LOCATION: 7031 Market Street
PID: R04400-002-015-000

ZONING: R-15, Residential District

ACREAGE: 0.32 Acres

PETITIONER'S REQUEST:

Mihaly Land Design, PLLC, applicant, on behalf of Chase & Dylan Mihaly, LLC, property owner, is requesting two variances related to setback and buffer width requirements in order to construct an office building on the site, contingent upon the successful rezoning of the property to a Conditional B-2, Highway Business District. Currently, the property is zoned R-15, Residential District. The applicant intends to file a rezoning application in conjunction with this request in order to rezone the property in a conditional B-2 Highway Business, which would allow the office building to be permitted. The applicant is proposing variances from two separate sections of the Zoning Ordinance which would apply to the site should it be zoned (CZD) B-2:

- (A) A 14.59' variance from the 63.25' minimum side yard setback required on the northeastern property boundary per Section 60.3 of the ordinance.
- (B) A 18.43' variance from the 31.60' minimum required landscape buffer per Section 62.1-4(2) of the ordinance to allow parking and drive areas within the buffer. At the narrowest point, the applicant is proposing a 13.17' wide buffer consisting of 2 rows of wax myrtles in addition to a 6' artificial fence to provide a buffer to the adjacent property, with 6 parking spaces and a portion of the driveway encroaching into the required buffer.

The applicant contends that the variance is necessary due to several factors, including: limited buildable area to develop the site with a commercial use, the intent to preserve several mature live oak trees on site, and the presence of a utility easement which traverses the southwestern portion of the parcel.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The subject property consists of 0.32 acres located on the western side of Market Street and is currently zoned R-15 Residential District. The applicant intends to apply for a rezoning of the property to a conditional B-2, Highway Business District, which would allow development of an office building on-site. The applicant is proposing a 2,000 square foot, 2-story office building on the site, which is currently undeveloped.

Should the property be rezoned and developed as a commercial site, the required setbacks for commercial uses which about residential uses or districts are addressed in Section 60.3 of the Zoning Ordinance:

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) $(\text{Building Height}) \times (\text{Factor from Column B, Table 60.3})$
- (3) Rear yard Required setback
- (4) $(\text{Building Height}) \times (\text{Factor from Column D, Table 60.3})$
- (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)*

DISTRICT	SIDE YARD SETBACK FACTOR	MINIMUM SIDE YARD SETBACK, IN ALL CASES	REAR YARD SETBACK FACTOR	MINIMUM REAR YARD SETBACK, IN ALL CASES
B-1	2.75	25'	3.73	30'
B-2	2.75	30'	3.73	35'
O&I	2.75	25'	3.73	30'
I-1	3.08	35'	4.33	40'
I-2	3.49	40'	5.14	45'
A-1	3.08	35'	4.33	40'

With a rezoning of the property to (CZD) B-2, setbacks would be required on the northeast and northwest boundaries of the property, adjacent to residential districts or uses. Using the proposed building height of 23' and the applicable setback factor of 2.75 in the B-2 district, the required side yard setback from the northeastern property line would be 63.25'. The applicant has proposed a site plan that locates the proposed building 48.66' from this property line, but it cannot be moved any further due to the acreage of the lot and the presence of a Duke Energy easement on the southwestern portion of the site. Thus, the applicant is requesting a variance of 14.59' feet from the required side yard setback on the northwest side.

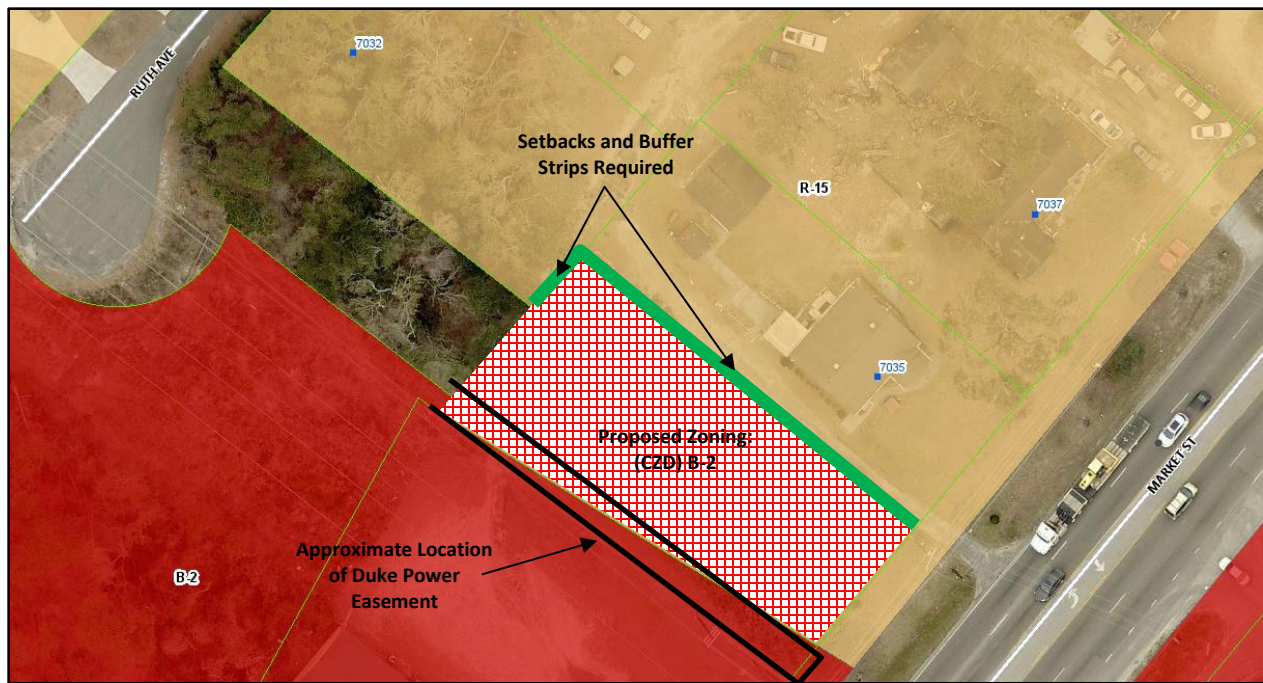


Figure 1: With a proposed (CZD) B-2 district on the subject site, setbacks and buffers are required on boundaries adjacent to residential districts or uses.

Additionally, applicable language from Section 62.1(4)(2) of the Zoning Ordinance requires that a buffer strip of 50% of the setback be provided:

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.

When applying the ordinance language from this section, the minimum buffer width on the northeastern boundary would 31.63'. The proposed site plan shows this area largely reserved from development with the exception of 6 parking spaces and a portion of the entry drive which encroach into the buffer. The applicant is providing 2 rows of wax myrtles in addition to a 6' artificial fence to meet the intent of the buffer requirements.

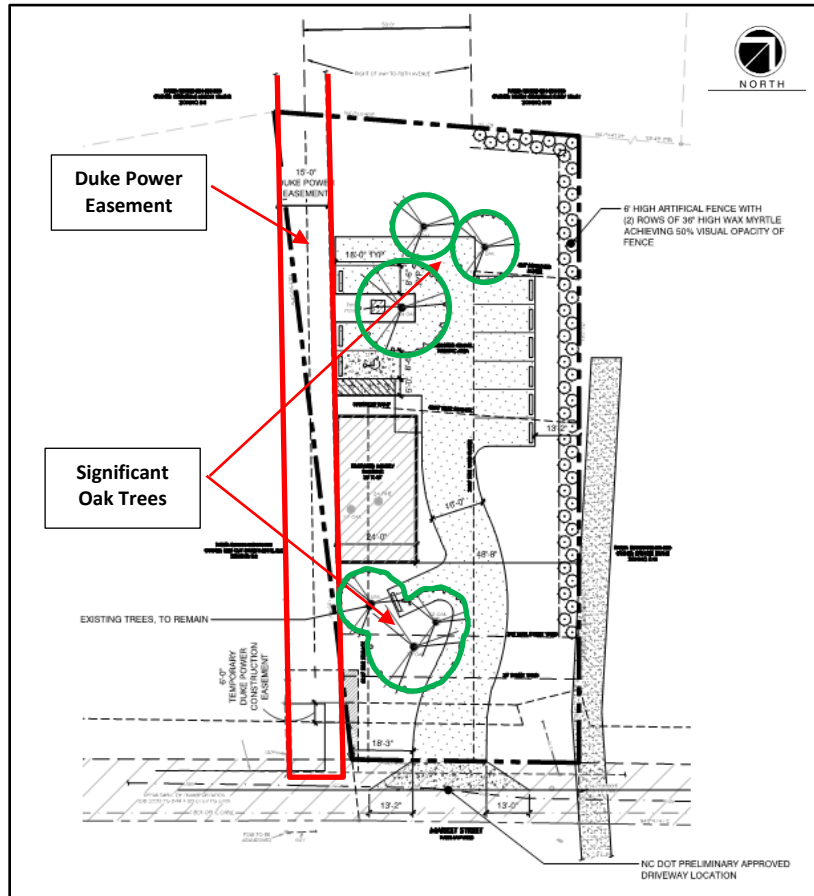


Figure 2: Proposed site plan.

If rezoned to a (CZD) B-2 district, the applicant contends that difficulties arise in designing a commercial development on the site due to the setbacks required from residential uses or districts, and that the current zoning of this lot is no longer the most appropriate district at this location. The required setback and buffer width on the northeast side of the property results in a limited buildable envelope, which is exacerbated by the presence of the Duke Energy easement on the southwestern side. The applicant also contends that the variances are necessary to incorporate the existing 24", 30", and 34" oak trees on the northern side of the property as well as the two 32" and 38" oak trees on the southern corner of the property into the site design.

In summary, the applicant is requesting variances 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).

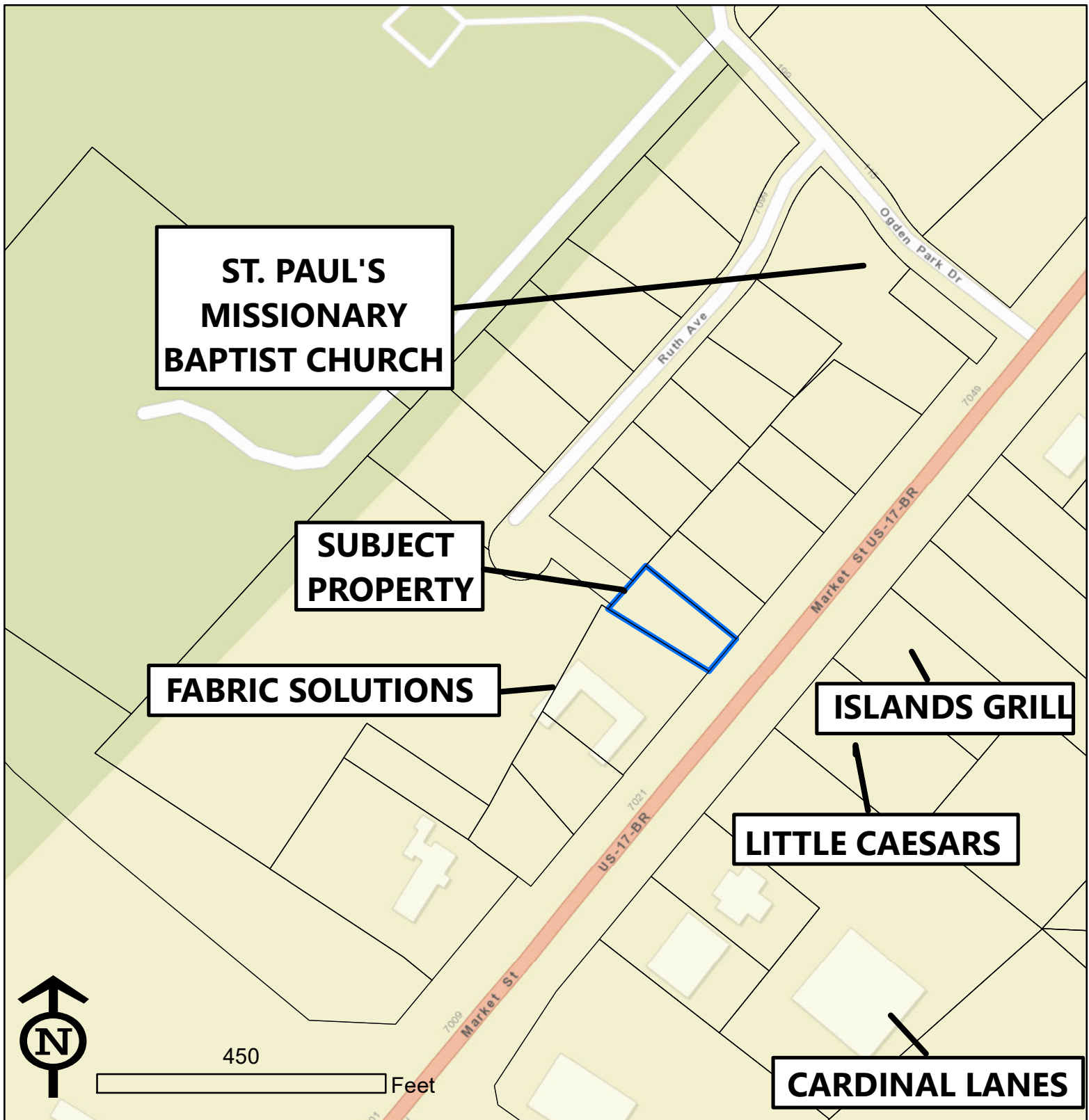
BOARD OF ADJUSTMENT POWER AND DUTY:

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.**



Case: ZBA-942

Address: 7031 Market Street

Variance request: Variances from the side yard setback and buffer strip width requirements

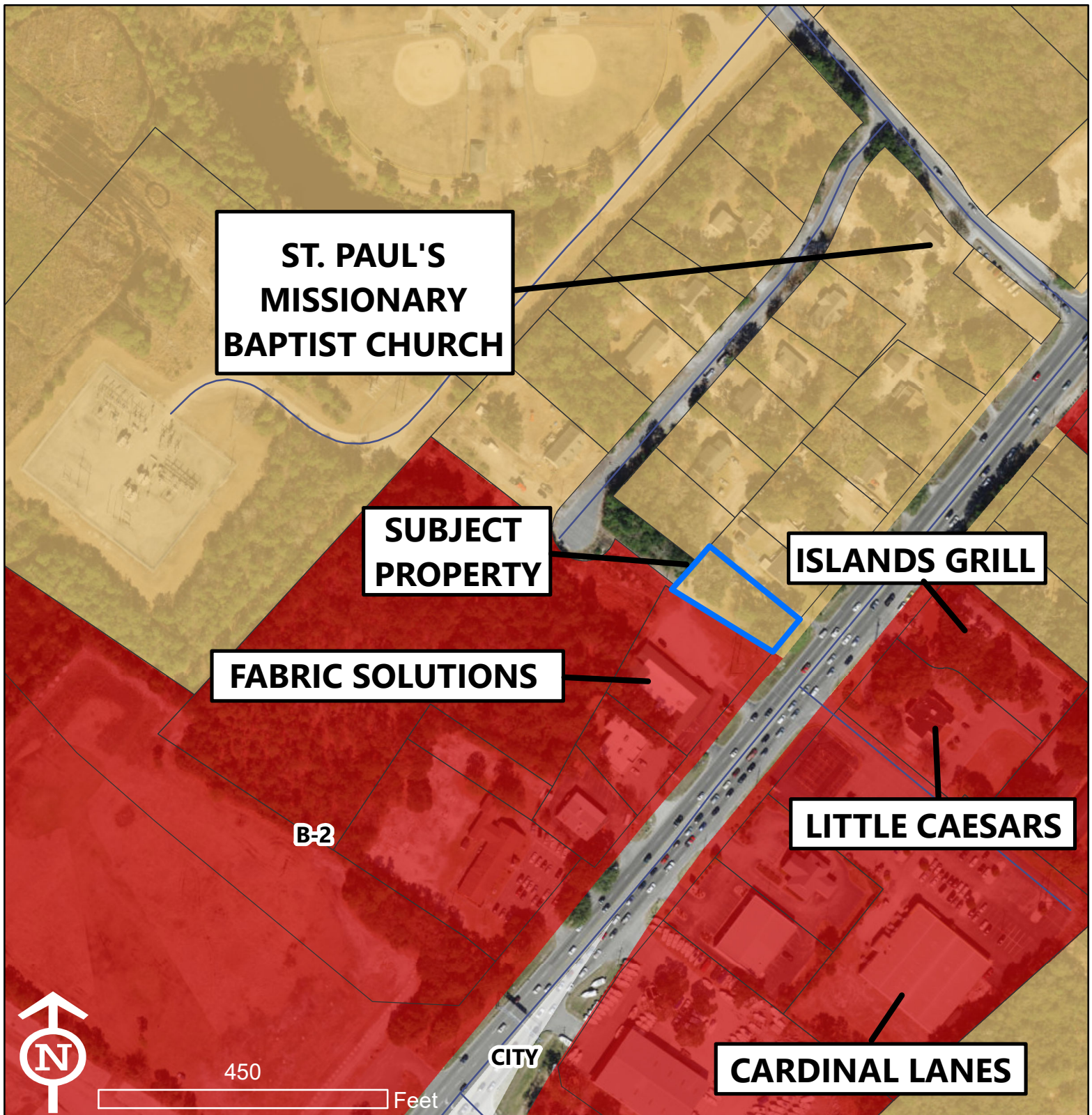
Applicant: Mihaly Land Design, PLLC.

Owner: Chase & Dylan Mihaly, LLC

New Hanover County Zoning Board of Adjustment

Vicinity Map

September 24, 2019



Case: ZBA-942

Zoning Map

Address: 7031 Market Street

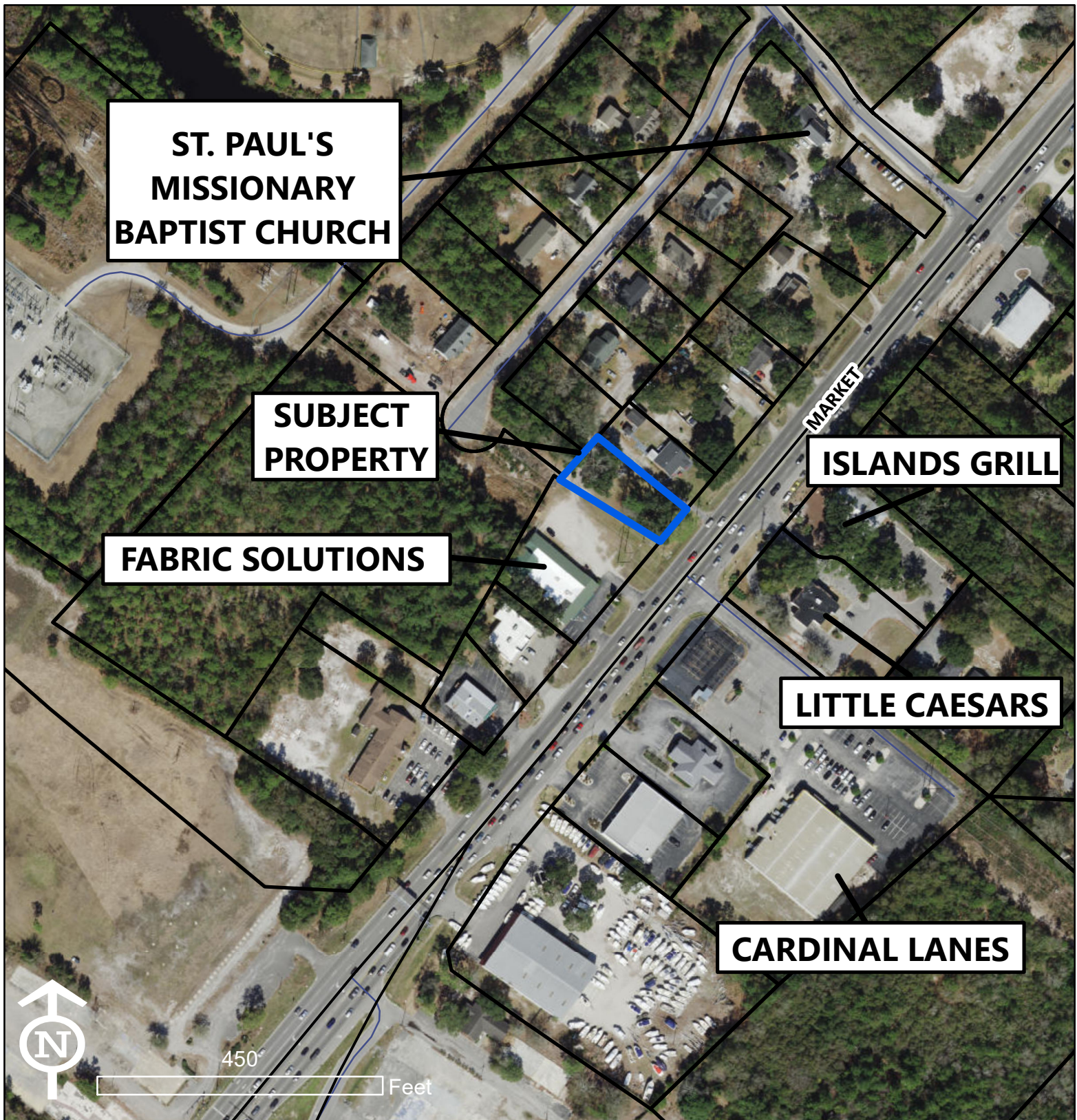
Variance request: Variances from the side yard setback and buffer strip width requirements

Applicant: Mihaly Land Design, PLLC.

Owner: Chase & Dylan Mihaly, LLC

New Hanover County Zoning Board of Adjustment

September 24, 2019



Case: ZBA-942

Aerial Map

Address: 7031 Market Street

Variance request: Variances from the side yard setback and buffer strip width requirements

Applicant: Mihaly Land Design, PLLC.

Owner: Chase & Dylan Mihaly, LLC

New Hanover County Zoning Board of Adjustment

September 24, 2019



NEW HANOVER COUNTY

ZONING BOARD OF ADJUSTMENT

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Raymond Bray, Chair | **Henry "Hank" Adams**, Vice-Chair

Joe Miller | **Cameron Moore** | **Mark Nabell**

Board Alternates

Kristen Freeman | **Brett Keeler** | **Richard Kern**

Wayne Clark, Director of Planning & Land Use | **Sharon Huffman**, Deputy County Attorney

ORDER TO GRANT/DENY A VARIANCE – Case ZBA-942

The Zoning Board of Adjustment for New Hanover County, having held a public hearing on September 24, 2019 to consider application number ZBA-942, submitted by Mihaly Land Design, PLLC, applicant, on behalf of Chase & Dylan Mihaly, LLC, property owner, a request for a variance to use the property located at 7031 Market Street in a manner not permissible under the literal terms of the ordinance regarding:

- (A) A 14.59' variance from the 63.25' minimum side yard setback required on the northeastern property boundary per Section 60.3 of the ordinance;
- (B) A 18.43' variance from the 31.60' minimum required landscape buffer per Section 62.1-4(2) of the ordinance to allow parking and drive areas within the buffer.

Having heard all the evidence and arguments presented at the hearing, the Board 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 side yard setback requirements per Section 60.3 and the buffer strip width requirements per Section 62.1-4(2) 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 variances from the side yard setback requirements per Section 60.3 and the buffer strip width requirements per Section 62.1-4(2) of the New Hanover County Zoning Ordinance be GRANTED/DENIED, subject to the following conditions, if any:

ORDERED this 24th day of September, 2019.

Raymond Bray, Chairman

Attest:

Kenneth Vafier, Executive Secretary to the Board

NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE

230 Government Center Drive, Suite 110

Wilmington, North Carolina

Telephone (910) 798-7165

FAX (910) 798-7053

planningdevelopment.nhcgov.com

RECEIVED

SEP - 3 2019

**NEW HANOVER COUNTY
PLANNING & ZONING**



VARIANCE Application

Applicant/Agent Information		Property Owner(s) <i>If different than Applicant/Agent</i>
Name Joshua Mihaly	Owner Name Chase & Dylan Mihaly LLC	
Company Mihaly Land Design PLLC	Owner Name 2	
Address 330 Military Cutoff, Suite A-3	Address 7500 Anaca Point Road	
City, State, Zip Wilmington, NC 28411	City, State, Zip Wilmington, NC	
Phone 910-392-4355	Phone 910-392-4355	
Email Josh@mihalyland.net	Email josh@mihalyland.net	
Subject Property Information		
Address/Location 7031 Market Street, Wilmington, NC		
Parcel Identification Number(s) R-04400-02-015-000		
Total Parcel(s) Acreage .34 Acres, 14,810 sf		
Existing Zoning and Use(s) R-15, Vacant		
Application Tracking Information (Staff Only)		
Case Number 28A-942	Date/Time received: 9/3/19 11:43 am	Received by: KV

PROPOSED VARIANCE NARRATIVE

Subject Zoning Regulation, Chapter and Section: 60.3, 62.1-4 (K)

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

The subject property is located at 7031 Market Street. The property is currently vacant and is R-15 as shown in the most recent zoning map for New Hanover County. The property is bound by B2 Commercial zoning and use to the south of the property and a R-15 Residential use to the North of the property. To the south side of the property is a Duke power line easement which extends approximately 15' over the side property line as shown on the recent survey. There are several large Live Oak Trees that range from 24" DBH - 38" DBH. These trees are in well over 100-years old. My intentions for the property is to construct a 2000 sf, 2-story office building on the property. The overall height of the proposed building will be 23' high measured to the mean roof-line. In order to prepare a properly executed site plan and petition to the county planning board and commissioners I am requesting a side setback variance as well as a buffer variance from the Board of Adjustments. I have no intentions of harming any of the trees on the site an in order to do this a variance is required. I feel like I can still meet the intent of the setback and the buffer to the adjacent property to the north with the dimensions requested by implementing a planted buffer and 6' fence.

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).

- 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 ordinance requires a side setback multiplier of 2.75 X the roof height. If the building is 23' high then the side setback on the north property line would be 63.25' and the corresponding buffer would be 31.6'. The strict application of the ordinance would create a situation that would make the lot unusable as a commercial use without impacting the existing trees. The existing zoning of this lot and the adjacent property is outdated compared to the future land use plans and longer term projections of the portion of Market Street Corridor.

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 location of the Duke power easement on the south side of the property combined with the Large Live Oak trees create a design hardship for the property. The existing trees are over 150 years old and I have no intentions of impacting the trees on the property. I acquired the property because of the trees and my ability to develop a site plan that saves them appropriately.

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 Duke easement is an existing easement that will remain for many years to come. The trees have been on the site for over 150 years. I feel that there is a great opportunity to create a site plan for a small office that is consistent with the land use plan, fits into the neighborhood and preserves the unique character of the lot by saving all the live oak trees.

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 subject property has been deemed as Urban Mixed Mixed Use in the County Land Use Plan. The county identifies these types of properties along Market Street as areas of transition from residential to commercial. One could assume the adjacent properties to the north will one-day also become a commercial use. The proposed variances will not effect the safety of the adjacent property in any way. I am proposing a 6' high fence and associated buffer planting that will screen the adjacent property to the north. The building height is only 23' high. The lower building height combined with the proposed fencing and buffer plantings will achieve the spirit and purpose of the ordinance.

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.

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

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 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)

Joshua Mihaly

Print Name(s)


Signature of Applicant/Agent

Joshua Mihaly

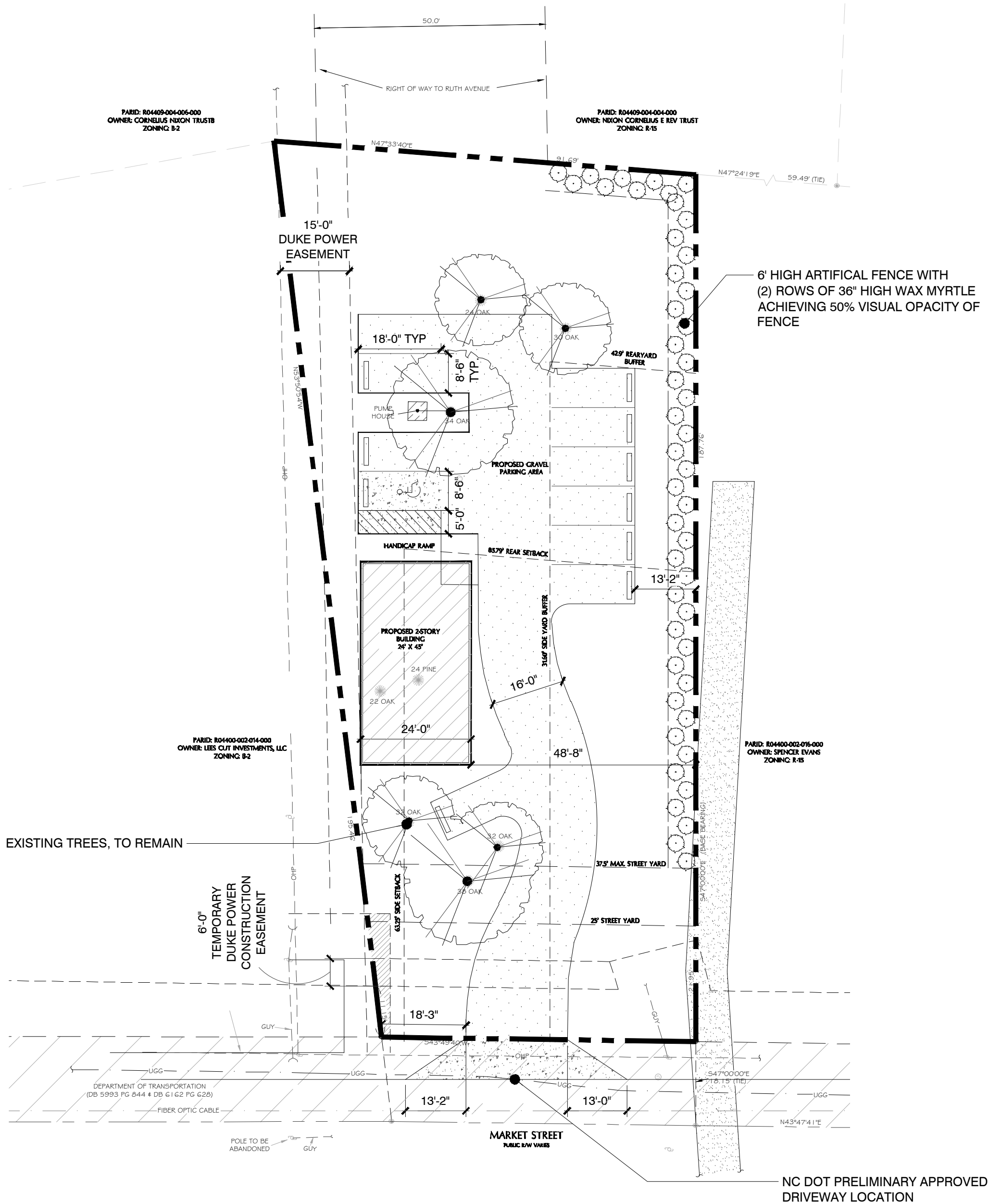
Print Name(s)

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



SITE DATA		
ADDRESS	7031 MARKET STREET	
PARCEL ID:	R04400-002-015-000	
PROPOSED USE:	OFFICE	
PROPOSED ZONING:	B2	
EXISTING ZONING:	R-15	
EXISTING LAND USE:	VACANT LOT	
PARCEL AREA:	.34 ACRES (14,810 SF)	
CAMA:	URBAN MIXED USE	
OWNER:	CHASE & DYLAN MIHALY LLC	
NUMBER OF BUILDINGS:	1	
HEIGHT OF BUILDING:	23'-0"	

BULK REQUIREMENTS	REQUIRED	PROVIDED
MAX. FAR	40%	7%
MIN. FRONT SETBACK	50'	59'
MIN. REAR SETBACK	85.79'	89'
MIN. INTERIOR SIDE SETBACK		
NORTH SIDE SETBACK (23' x 2.75)	63.25'	48.67' *
SOUTH SIDE SETBACK (0' x 2.75)	0'	0'
MAX. BUILDING HEIGHT	40'	23'
SIDEYARD BUFFER		
NORTH SIDEYARD BUFFER (23' x 2.75) / 2	31.6'	13.17'*
REARYARD BUFFER (23' x 3.73) / 2	42.9'	42.9'

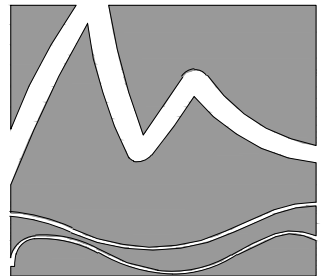
(*) = VARIANCE REQUESTED

OFF-STREET PARKING REQUIREMENTS	REQUIRED	PROVIDED
OFFICE:		
MIN: 1/400 SF GFA (2,160 SF/400)	6	9
HANDICAP PARKING (1/25 SPOTS):	1	1
TOTAL:	7	10

SYMBOL LEGEND	
	PROPOSED GRAVEL PARKING AREA
	PROPOSED CONCRETE PAVING
	PROPOSED 6' HIGH FENCE
	EXISTING OVERHEAD POWER LINES
	EXISTING POWER POLES

NORTH

SCALE: 1" = 20'



MIHALY
LAND DESIGN
PLANNING + LANDSCAPE ARCHITECTURE
333 MILITARY CUTOFF RD., Suite A3
Wilmington, NC 28405 910.392.4355



Revisions

PROJECT
7031 MARKET STREET
7031 MARKET STREET
WILMINGTON, NC

CONSTRUCTION
DOCUMENT
REVIEW SET

Date: 2019-08-30
Phase:
Job Number: 101-510

Designed by: MLD
Drawn by: ALM
Checked by: JWM

Sheet Title:
SITE PLAN/
VARIANCE
APPLICATION

Sheet Number:
L1.0
of 1 sheets