

**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.

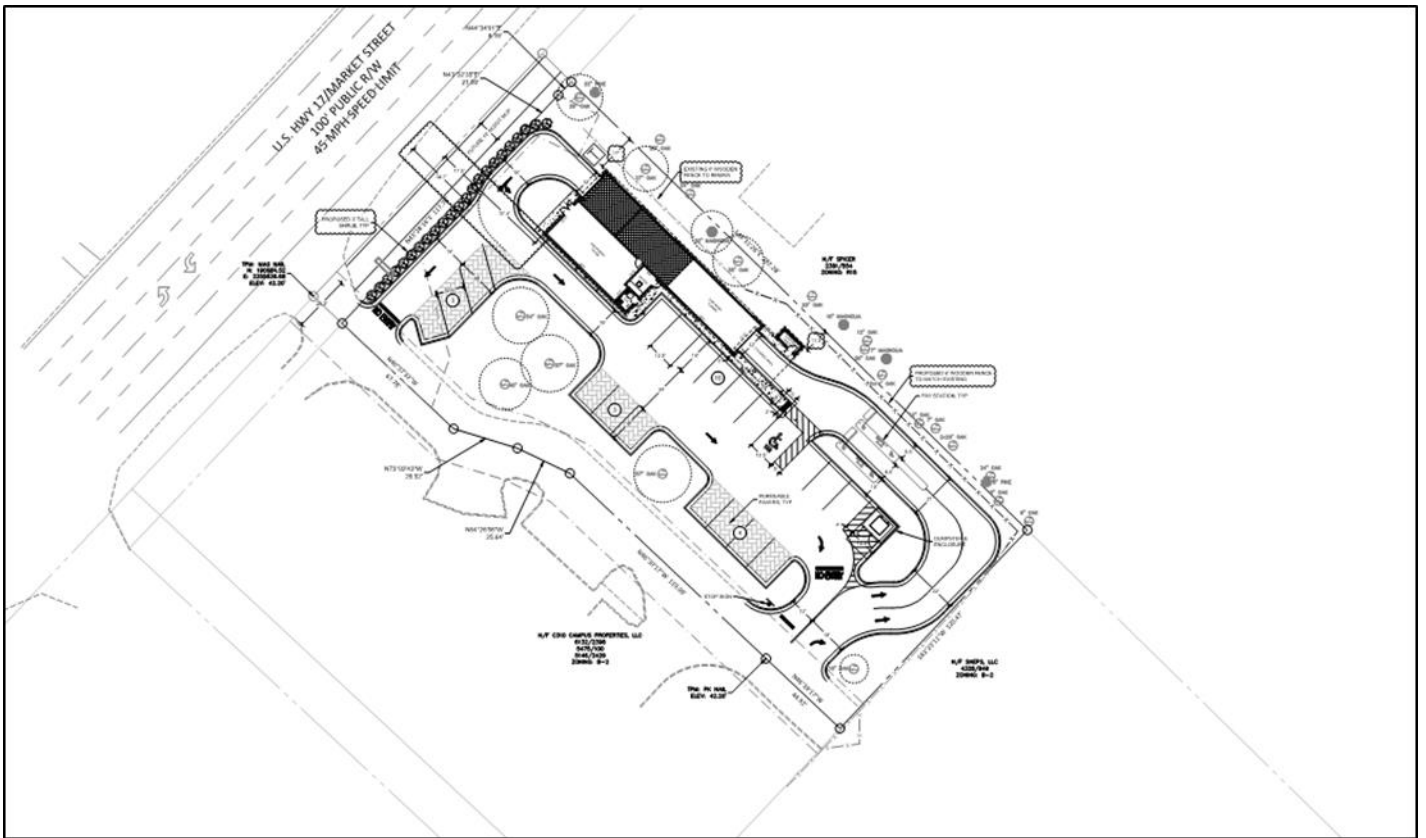


Figure 1: Proposed site plan which retains all significant trees on site.

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)*

<b>DISTRICT</b>	<b>SIDE YARD SETBACK FACTOR</b>	<b>MINIMUM SIDE YARD SETBACK, IN ALL CASES</b>	<b>REAR YARD SETBACK FACTOR</b>	<b>MINIMUM REAR YARD SETBACK, IN ALL CASES</b>
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. Buffer 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).

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

- (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 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.**