

# TOWN OF SMITHFIELD BOARD OF ADJUSTMENT AGENDA PACKET



Chairman: Paul Worley  
Vice-Chairman: Stephen Upton

Sarah Edwards  
R. Edwin Foy, Jr.  
Mark Lane  
Michael Johnson

Mark Helmer AICP, Senior Planner  
Julie Edmonds, Administrative Assistant

**Meeting Date: Thursday, April 27, 2017**

**Meeting Time: 6:30 p.m.**

**Meeting Place: Council Chambers, Smithfield Town Hall**

**AGENDA**  
**BOARD OF ADJUSTMENT**  
**REGULAR MEETING**  
**April 27, 2017**  
**MEETING TIME: 6:30 PM**  
**TOWN HALL**

**Call to Order.**

**Approval of the minutes for October 27, 2016.**

**Public Hearing**

**BA-17-01 American Properties Holding, LLC:** The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 12, Table of Area, Yard, And Height Requirements, to allow for a structure to be built closer than 15 feet to side yard property line. The property considered for approval is located on the north side of North Brightleaf Boulevard approximately 200 feet northeast of its intersection with Booker Dairy Road and further identified as Johnston County Tax ID# 14074001.

**Old Business.**

**New Business.**

Annual training

**Adjournment.**

**DRAFT**  
**Smithfield Board of Adjustment**  
**Minutes**  
**Thursday, October 27, 2016**  
**6:30 P.M., Town Hall, Conference Room**

**Members Present:**

Paul Worley, Chairman  
Stephen Upton, Vice Chairman  
Eddie Foy  
Sarah Edwards  
Michael Johnson  
Mark Lane

**Members Absent:**

**Staff Present:**

Mark Helmer, Senior Planner

**CALL TO ORDER**

**APPROVAL OF MINUTES FROM August 25, 2016.**

Eddie Foy made a motion, seconded by Stephen Upton to approve the minutes as written. Unanimous.

Mr. Helmer stated that John Parrish has resigned from the Board of Adjustment and recommended that a vote for chairman and vice chairman be added to the agenda.

Mark Lane made a motion to nominate Paul Worley as chairman and Steve Upton as vice chairman. **Unanimous.**

**Public Hearings:**

After all persons giving testimony were duly sworn, Chairman Paul Worley opened the public hearing.

**BA-16-04 Home2 Suites by Hilton:**

Mr. Helmer stated that the applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 12, Table of Area, Yard, and Height Requirements, to allow for a structure to exceed the maximum 40 foot building height of the B-3 CUD (Business – Conditional Use) zoning district. The property considered for approval is located on the west side of South Equity Drive approximately 750 feet north of its intersection with Outlet Center Drive. The property is further identified as Johnston County Tax ID# 15008046C

Mr. Helmer stated the applicant is proposing to construct a 5 story hotel on property located within a B-3 CUD (Business – Conditional Use) zoning district. This facility will be a maximum of 76.1 feet in height measured from the top of the beacon to the adjacent ground elevation. The applicant has submitted building elevation drawings for the Board of Adjustment review that clearly documents the need for the requested variance.

Mr. Helmer stated the Town of Smithfield Unified Development Ordinance, Article 12, Table of Area, Yard, and Height Requirements, sets the maximum building height at 40 feet within the B-3 CUD zoning district. Since the applicant has requested to construct a 76.1 foot tall structure, a 36.1 foot variance to the maximum building height must be secured by the applicant prior to receiving site plan approval with zoning permits from planning staff.

It appears that no environmental issues, such as designated wetlands or flood prone soils exist on the site that would prohibit staff from approving the plan once a Board of Adjustment issued variance is secured by the applicant.

Mr. Helmer requested the Town of Smithfield Board of Adjustment to review the variance petition and make a decision on the request to allow for an increase to the maximum building 40 foot building height to construct a 76.1 foot tall hotel within a B-3 CUD zoning district.

Paul Worley asked for questions or comments from the Board.

Paul Worley asked if there was any opposition to the proposed variance.

Mr. Helmer stated there was none he was aware of.

Mark Lane asked why the maximum building height is limited to 40 feet.

Mr. Helmer said that the 40 foot maximum height has been in effect since the town adopted its first zoning ordinance. At that time, the town did not have fire apparatus that could reach over 40 feet.

Mr. Helmer said it is unlikely that any new hotel will be built that is less than 40 feet in height and recommends that maximum height be amended to allow for a 60 foot or higher structures as major site plan review subject to Planning Board recommendation and Town Council approval.

After all testimony was received, Chairman Paul Worley closed the public hearing.

Stephen Upton made a motion, seconded by Eddie Foy to move to the Findings of Fact for a Variance. **Unanimous.**

Article 5, Section 5-2 of the Town of Smithfield Unified Development Ordinance requires applications for a variance to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of application.

- 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.**

Unnecessary hardship would result from the strict application of the ordinance because without the requested variance to the maximum building height, the applicant could not achieve the needed intensity of use proposed. *All members stated true.*

- 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.**

The hardship results from conditions that are peculiar to the property, such as location, size, or topography. The Outlet Center Drive and surrounding area is close to being built out. This site is one of the last properties to be developed on Equity Drive. As property values in the area continue to rise, it is reasonable to expect intensity of uses and building height to follow. *All members stated true.*

- 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 hardship did not result from actions taken by the applicant or the property owner. The applicant's need of a variance to the maximum building height is being driven by, what time has shown to be, lots that are too small for hotels. *All members stated true.*

- 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 requested variance is consistent with the spirit, purpose, and intent of the ordinance which attempts to be fair in its administration of the site development regulations. Granting this variance will achieve justice and allow for improvements to the property until such time that adjustments to the Town of Smithfield development regulations can be made to reflect current development trends. *All members stated true.*

Based upon satisfactory compliance with the above four stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative.

Stephen Upton made a motion, seconded by Michael Johnson to recommend approval of the 36.1 foot variance to 40 foot maximum building height for the construction of a 5 story hotel. **Unanimous.**

**Old Business:**

**New Business:**

**Adjournment:**

Being nothing further, Stephen Upton made a motion, seconded by Sarah Edwards to adjourn.

Submitted this 27th day of October, 2016.

Mark E. Helmer, AICP, CZO  
Senior Planner  
Town of Smithfield Planning Department

**TOWN OF SMITHFIELD**  
**Board of Adjustment**  
**Action Form**

**BA-17-01 American Properties Holdings, LLC:** The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 12, Table of Area, Yard, And Height Requirements, to allow for a structure to be built closer than 15 feet to side yard property line. The property considered for approval is located on the north side of North Brightleaf Boulevard approximately 200 feet northeast of its intersection with Booker Dairy Road and further identified as Johnston County Tax ID# 14074001.

**Date of Meeting:** April 27, 2017

**Date Prepared:** April 20, 2017

**Staff Work By:** Mark Helmer

**Presentation By:** Mark Helmer

**Petition Description:**

The applicant received administrative site plan approval on February 9, 2015 for the construction of a new tunnel car wash on the existing American Pride Car Wash site located on the 1200 block of North Brightleaf Boulevard. The approved site plan shows the self-vacuum area being constructed to minimum parking standards to include 9 foot by 19 foot parking spaces and 24 foot drive isle. The applicant submitted a revised plan showing 12 foot by 18 foot parking stalls and 30 foot drive aisle. The proposed increase in dimension of the parking and drive aisle caused the tunnel to be shifted to the southwest approximately 3 feet. The Town of Smithfield Board of Adjustment, on May 26, 2016, granted a 3 foot variance to the 15 foot side yard setback. On April 7, 2017, the applicant submitted a revised site plan showing a larger building and a need for an additional 3 feet of encroachment into the side yard building setback. This shift represents a total of 6 feet of encroachment into the required 15 foot side yard setback. The remaining 9 feet of open space adjacent to the property line will adequate to meet the required 8 foot landscape transition yard.

The property is currently zoned B-3 (Highway Entrance Business). In accordance with Town of Smithfield Unified Development Ordinance, Article 12, Table of Area, Yard and Height Requirements, Developments within the B-3(Highway Entrance Business) zoning district must provide a 15 side yard setback. The size increase and shift in the tunnel location has triggered the need for a 6 foot variance to the required 15 foot side yard setback.

**Action Requested:** The Town of Smithfield Board of Adjustment is requested to review the petition and make a decision on the variance request to allow for an additional 3 foot reduction and a total of a 6 foot reduction to the 15 foot side yard setback for the construction of an automated tunnel car wash facility.

## REQUIRED FINDING OF FACT

*Article 5, Section 5-2 of the Town of Smithfield Unified Development Ordinance requires applications for a variance to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of the application. Please attach additional pages if necessary.*

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

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.

**For:** Unnecessary hardship would result from the strict application of the ordinance because without the requested variance, the parking area for the self-serve vacuum will need to meet the very minimum parking standards and will not serve the proposed use in a safe manor.

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**Against:** Unnecessary hardship will NOT result from the strict application of the ordinance because a total redesign of the site could produce a product that meets the minimum development standards of the Town of Smithfield Unified Development ordinance without the need for a variance.

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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.

**For:** The hardship results from conditions that are peculiar to the property, such as location, size, or topography. The property lacks the necessary depth to allow for the proposed tunnel car wash facility as an enlargement to the existing structure.

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**Against:** The hardship is NOT a result from conditions that are peculiar to the property, such as location, size, or topography because there are other properties in the Town of Smithfield Planning and Zoning Jurisdiction that are similar in size but not enjoy additional privileges above and beyond what the Unified Development Regulations allow for.



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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.

**For:** The hardship did not result from actions taken by the applicant or the property owner. The applicant's need of a variance to the side yard setbacks is being driven by the shallow lot size and not by an error in manufacturing or installation of the proposed structure.

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**Against:** The hardship is the result of actions taken by the applicant or the property owner because the need for the reduction in the required side yard setback is due to poor site planning.

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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.**

**For:** The requested variance is consistent with the spirit, purpose, and intent of the ordinance which attempts to be fair in its administration of the site development regulations. Granting this variance will achieve justice and allow for improvements to the property while enhancing safety through parking lot design that exceeds minimum standards.

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**Against:** The requested variance is NOT consistent with the spirit, purpose, and intent of the ordinance which attempts to be fair in its administration of the sign regulations. Granting a variance to this applicant while not allowing it to others may be considered arbitrary.

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**Motion to Approve:** *Based upon satisfactory compliance with the above four stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative I move to approve the Variance Request Application # BA-17-01.*

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**Motion to Deny:** *Based upon failure to meet all of the above four stated findings and for reasons stated therein, I move to deny Variance Request Application # BA-17-01 for the following stated reason:*

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**Record of Decision:**

**Based on a motion and majority vote of the Town of Smithfield Board of Adjustment Variance Application Number BA-17-01 is hereby:**

\_\_\_\_\_ **Approved based on; or,**

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\_\_\_\_\_ **Denied for the noted reasons.**

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**Decision made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ while in regular session.**

\_\_\_\_\_  
**Paul Worley, Board of Adjustment Chairman**

**ATTEST:**

\_\_\_\_\_  
**Mark E. Helmer, AICP, CZO**  
**Senior Planner**



Certified Professional  
Car Washes

April 6, 2017

Mr. Mark Helmer  
Town of Smithfield  
Planning Department  
350 E. Market St  
Smithfield, NC 27577

RE: American Pride Xpress Tunnel  
Variance Request

Dear Mark:

I would like to thank the Planning Department and Board of Adjustment for working with us on the development of the American Pride Xpress Tunnel. When we originally proposed the Xpress Tunnel we were working with the current architectural design. After the design phase, the equipment package was changed by Sonny's, Inc. We had to make a decision to proceed with the current design and equipment layout or to pause and reconsider the new technology.

The Town of Smithfield is very important to us, because it will be the first "ground up" Xpress Tunnel for American Pride. We made the decision to redesign the project. We feel that the Town of Smithfield deserves the latest architecture and technology, which will also have a profound impact on American Pride. Therefore, we chose the most expensive approach. The new Xpress Tunnel incorporates the new equipment package, reception area, office and handicap bathroom. This effort would not have been possible without the efforts of your department. Thank you for your guidance.

Sincerely,

Christopher C. Stallings  
Chief Operating Officer

CCS/jms

Enclosures: 9 copies of the revised variance application

919.847.7700

919.847.7999 fax

P. O. Box 20909

Raleigh, NC 27619

[www.americanprideus.com](http://www.americanprideus.com)



"Conserve Water, Life Depends on it"  
**Use American Pride!**

TM

11048

AMERICAN PROPERTIES HOLDINGS, L.L.C.

PO BOX 20909  
RALEIGH, NC 27619-0909  
919.847.7700

**BB&T**  
BRANCH BANKING AND TRUST COMPANY  
NORTH CAROLINA

66-112/531

EZShield<sup>SM</sup> Check Fraud  
Protection for Business

4/7/2017

PAY TO THE ORDER OF TOWN OF SMITHFIELD

\$\*\*300.00

Three Hundred and 00/100\*\*\*\*\*

DOLLARS

TOWN OF SMITHFIELD  
P.O. BOX 761  
SMITHFIELD, NC 27577



*[Handwritten Signature]*

AUTHORIZED SIGNATURE

MEMO

⑈000 1 1048⑈ ⑆053 10 1 1 2 1⑆0005 20 13 278 16⑈

AMERICAN PROPERTIES HOLDINGS, L.L.C.

11048

TOWN OF SMITHFIELD

4/7/2017

300.00

Cash/BB&T

300.00

Security features. Details on back



Town of Smithfield  
Planning Department  
350 E. Market St Smithfield, NC 27577  
P.O. Box 761, Smithfield, NC 27577  
Phone: 919-934-2116  
Fax: 919-934-1134

## VARIANCE APPLICATION

*Pursuant to Article 5, of the Town of Smithfield Unified Development Ordinance, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Board of Adjustment for relief from a requirement of the Unified Development Ordinance and to permit construction in a manner otherwise prohibited by this Ordinance where specific enforcement would result in unnecessary hardship.*

*In granting variances, the Board of Adjustment may impose such reasonable conditions as will insure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.*

*Variance applications must be accompanied by nine (9) sets of the complete application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fee. The application fee is \$300.00. All fees are due when the application is submitted.*

### SITE INFORMATION

Name of Project: \_\_\_\_\_ Acreage of Property: \_\_\_\_\_

Parcel ID Number: \_\_\_\_\_ Tax ID: \_\_\_\_\_

Deed Book: \_\_\_\_\_ Deed Page(s): \_\_\_\_\_

Address: \_\_\_\_\_

Location: \_\_\_\_\_

Existing Use: \_\_\_\_\_ Proposed Use: \_\_\_\_\_

Existing Zoning District: \_\_\_\_\_

Requested Zoning District: \_\_\_\_\_

Is project within a Planned Development:                      Yes              No

Planned Development District (if applicable):                      Yes              No

Variance Request (List Unified Development Code section and paragraph number)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### FOR OFFICE USE ONLY

File Number: \_\_\_\_\_ Date Received: \_\_\_\_\_ Amount Paid: \_\_\_\_\_



**REQUIRED FINDINGS OF FACT**

*Article 5, Section 5-2 of the Town of Smithfield Unified Development Ordinance requires applications for a variance to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of the application. Please attach additional pages if necessary.*

- 1. If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property;

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- 2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;

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- 3. The hardship relates to the applicant’s land, rather than personal circumstances;

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- 4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties;

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- 5. The hardship is not the result of the applicant’s own actions; and

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- 6. The variance will neither result in the extension of a nonconforming situation in violation of Article 8 nor authorize the initiation of a nonconforming use of land.

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**APPLICANT AFFIDAVIT**

*I/We, the undersigned, do hereby make application and petition to the Board of Adjustment of the Town of Smithfield to approve the subject Variance request. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.*

**Chris C. Stallings**

*Print Name*



*Signature of Applicant*

4/6/17

*Date*





Town of Smithfield  
 Planning Department  
 350 E. Market St Smithfield, NC 27577  
 P.O. Box 761, Smithfield, NC 27577  
 Phone: 919-934-2116  
 Fax: 919-934-1134

**OWNER'S CONSENT FORM**

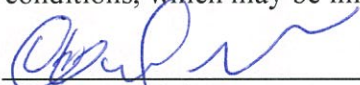
Name of Project: American Pride Car Wash

Submittal Date: 4/6/17

**OWNERS AUTHORIZATION**

I hereby give CONSENT to American Properties Holdings, L.L.C. (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

  
 \_\_\_\_\_  
*Signature of Owner*

Charles T. Bell  
 \_\_\_\_\_  
*Print Name*

4/6/17  
 \_\_\_\_\_  
*Date*

**CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER**

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.

  
 \_\_\_\_\_  
*Signature of Owner/Applicant*

Chris C. Stallings  
 \_\_\_\_\_  
*Print Name*

4/6/17  
 \_\_\_\_\_  
*Date*

**FOR OFFICE USE ONLY**

File Number:	Date Received:	Parcel ID Number:
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## ARTICLE 12. TABLE OF AREA, YARD, AND HEIGHT REQUIREMENTS

DISTRICT	MINIMUM LOT SIZE		MINIMUM YARD REQUIREMENTS			Maximum Height in Feet
	Minimum Lot (Site) Area in Square Feet (Net)	Minimum Lot Width in Feet	Front	Each Side	Rear	
<b>B-1 Central Business</b>						
Multi-family dwelling	N/A	20 ft	0	**	0	40
Loft or studio apartment	see Section 13-18	20 ft	0	**	0	40
Other building or use	N/A	20 ft	0	**	0	40
<b>B-2 General Business</b>						
Single-family dwelling	6,000	60 ft	25	8	15	40
Two-family dwelling	9,000	60 ft	25	8	15	40
Multi-family dwellings/townhouses/condominiums*						
Loft or studio apartment	see Section 13-18	60 ft	0	0	0	40
Major shopping center	12,000	200 ft	100/50***	50	50	40
Minor shopping center	12,000	125 ft	50/35****	15**	25	40
Other building or use	12,000	125 ft	20	8**	15	40
<b>B-3 Highway Entranceway</b>						
Major shopping center	12,000	200 ft	100/50***	50	50	40
Minor shopping center	12,000	125 ft	50/35****	15**	25	40
Other building or use	12,000	125 ft	50/35****	15**	25	40
LI Light Industrial	20,000	150 ft	50	25	40	40
HI Heavy Industrial	20,000	150 ft	50	25	40	40
AD Airport District	5 acres	400 ft	50	25	40	40 ft

\*For provisions dealing with multi-family/townhouse/condominium development, see Section 13-18.

\*\*None required, provided however, that if a side yard is provided, it shall be at least eight feet wide.

\*\*\*100 feet whenever front or corner side yard frontage is on an arterial or collector street; 50 feet when frontage is on a lower street classification.

\*\*\*\*Fifty feet whenever front or corner side yard frontage is on an arterial or collector street; 35 feet when frontage is on a lower street classification.

**NOTES:**

- (1) On residentially zoned corner lots, the street-side side yard may be reduced.
- (2) It is the intention/objective of the Town of Smithfield that additional R-6 zoned areas occur following the date of adoption of this UDO.
- (3) Building height may be increased above 40 feet up to a maximum of 100 feet through the issuance of a conditional use permit.

## ARTICLE 17. LANDSCAPING AND BUFFER STRIPS

- (c) Each planting area provided in accordance with this Section may be counted as one parking space when computing the number of spaces required by this Ordinance, provided that the number of parking spaces required by this Ordinance shall not be reduced in excess of 10%.
  - (d) Additional or expanded vehicular surface areas shall meet 100% of the requirement of this Section.
  - (e) With the exception of subsection (a), the provisions of this Section shall not apply to vehicular surface areas used for authorized commercial vehicular display, provided all other requirements of this Section are met or exceeded.
- (8) Transition Yards.
- (a) A transition yard is required with a depth of 50% of the required side or rear yard setback to a minimum of eight feet as measured perpendicular to the side or rear lot line.
  - (b) Planting requirements: One canopy tree per every 50 linear feet or one understory tree per every 25 linear feet; 20 shrubs per 100 linear feet.
  - (c) Plantings shall be interspersed throughout the transition yard in a manner consistent with good site design and horticultural principles.
  - (d) Whenever a buffer strip is required under Section 17-3 of this Ordinance, the requirement for the buffer strip shall be utilized in lieu of transition yard requirements.
  - (e) Parking, driveway, and drive aisle improvements associated with a planned center development may encroach into required transition yards that separate two lots within a planned center, when it can be demonstrated that such an encroachment is necessary for the orderly flow of traffic and parking of vehicles within such a development. Developments shall provide all landscaping as required by transition yards to the greatest extent possible.
- (9) Loading/Utility/Open Storage Areas.
- (a) All loading, utility, and open storage areas shall be screened from public right-of-way and adjacent properties by suitable fencing or hedge which shall maintain an opacity of at least 75% year round.

SPECIAL CONTRACTOR NOTE

CONTRACTOR SHALL COORDINATE SITE GRADING & DRAINAGE PLAN, BUILDING PLUMBING PLAN) AND ARCHITECTURAL PLANS FOR UTILITY CONNECTIONS TO THE BUILDING, THE LOCATION OF VAULTS, BACKFLOW PROTECTION ON FIRELINES, PIPE SPECIFICATIONS OF FIRELINES AND OTHER ANCILLARY UTILITY SERVICES TO THE BUILDING.

NEW PAVEMENT TO BE INSTALLED SHALL BE PER OWNER SPECIFICATIONS

GENERAL CONSTRUCTION NOTES:

1. ALL CONSTRUCTION SHALL CONFORM TO THE CURRENT CITY OF SMITHFIELD AND NCDOT STANDARD DETAILS AND SPECIFICATIONS.
2. ALL CURB AND GUTTER SHOWN ON SITE IS STANDARD 24" CURB AND GUTTER. ALL GUTTER SHOWN WITHIN RIGHT-OF-WAY SHALL BE STANDARD 30" CURB AND GUTTER.
3. A COMPLETE COORDINATE LISTING AND AUTOCAD DRAWING FILE IS AVAILABLE UPON REQUEST FROM THIS FIRM.
4. THE CONTRACTOR SHALL LOCATE ALL UTILITIES PRIOR TO COMMENCEMENT OF GRADING ACTIVITIES. CONTACT ULOCO AT 1-800-632-4949 FOR FIELD LOCATION OF UNDERGROUND UTILITIES.
5. ALL DIMENSIONS SHOWN ARE TO BACK OF CURB, UNLESS OTHERWISE STATED ON PLANS.
6. ALL PAVEMENT ON SITE SHALL BE IN ACCORDANCE WITH SECTION DETAILS ON THIS SHEET.
7. THE SLOPE OF HANDICAP PARKING SPACES SHALL NOT EXCEED 1/4" PER FOOT. THE LATERAL SLOPE OF SIDEWALK SHALL NOT EXCEED 2%.
8. UNLESS OTHERWISE NOTED ALL PROPOSED SPOT ELEVATIONS ARE TOP OF ASPHALT OR FINISHED SURFACE.
9. SEED ALL AREAS DISTURBED BY CONSTRUCTION, AND NOT INDICATED TO BE PAVED OR PLANTED, UPON COMPLETION OF GRADING ACTIVITIES. USE REBEL 3 FESCUE IN ACCORDANCE WITH SEEDING SCHEDULE ON DETAIL SHEETS.
10. SEE ARCHITECTURAL PLANS FOR BUILDING DIMENSIONS AND FEATURES.
11. SEE PLUMBING PLAN FOR LOCATION OF VAULTS, BACKFLOW PROTECTION ON FIRELINES AND PIPE SPECIFICATIONS OF FIRELINES.
12. THE TOPOGRAPHY SHOWN WAS FIELD LOCATED BY THIS FIRM.
13. ALL SANITARY SEWER SLOPES AND PIPE LENGTHS ARE COMPUTED FROM CENTER OF MANHOLE TO CENTER OF MANHOLE.
14. CONSTRUCT ALL SANITARY SEWER MANHOLES FLUSH TO FINAL PAVEMENT GRADE OR AS SHOWN IN NON-PAVED AREAS.
15. SEWER LATERALS TO BE PLACED AT A MINIMUM SLOPE OF 1% ON 4" LINES AND 0.5% ON 6" LINES. CLEANOUTS SHALL BE PLACED AT 50' INTERVALS FOR 4" LINES AND 75' FOR 6" LINES AND AT BEND POINTS. ALL CLEANOUTS IN PAVED AREAS SHALL BE APPROVED LOAD BEARING TYPE.
16. WATER MAINS SHALL HAVE A MINIMUM 3' OF COVER. WATER SERVICE LINES SHALL HAVE A MINIMUM 18" OF COVER.
17. CONSTRUCT ALL FIRE HYDRANTS WITH BASE FLANGE SIX INCHES ABOVE FINAL GRADE.
18. THE CONTRACTOR IS RESPONSIBLE FOR INSURING POSITIVE DRAINAGE TO ALL STORM STRUCTURES.

BOOKER DAIRY ROAD  
NCSR # 1923

WATER RECLAMATION MANHOLES

- MH-1 - INVERT - 141.30
- MH-2 - INVERT - 141.30
- MH-3 - INVERT - 141.30
- MH-4 - INVERT - 140.80
- MH-5 - INVERT - 140.80

OPTIMETRIC PROPERTIES, LLC  
D.B. 2606 PG. 87  
PIN # 260414-34-6531

ECM  
NC GRID COORDINATES  
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E = 2,204,001.594  
ELEV. = 150.263

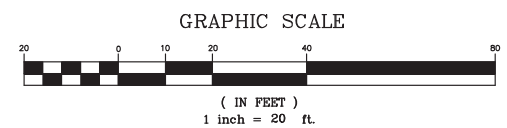
McDONALD'S CORPORATION  
D.B. 2164 PG. 681  
PIN # 260414-44-0645

EQUITY ONE REALTY  
D.B. 1746 PG. 59  
PLAT BK. 34 PG. 197  
PIN # 260410-35-8222

NC GRID NAD 83(2011)



*Harold A. Yelle*  
04-06-17



U.S. HIGHWAY 301  
BRIGHT LEAF BOULEVARD  
90' PUBLIC R/W

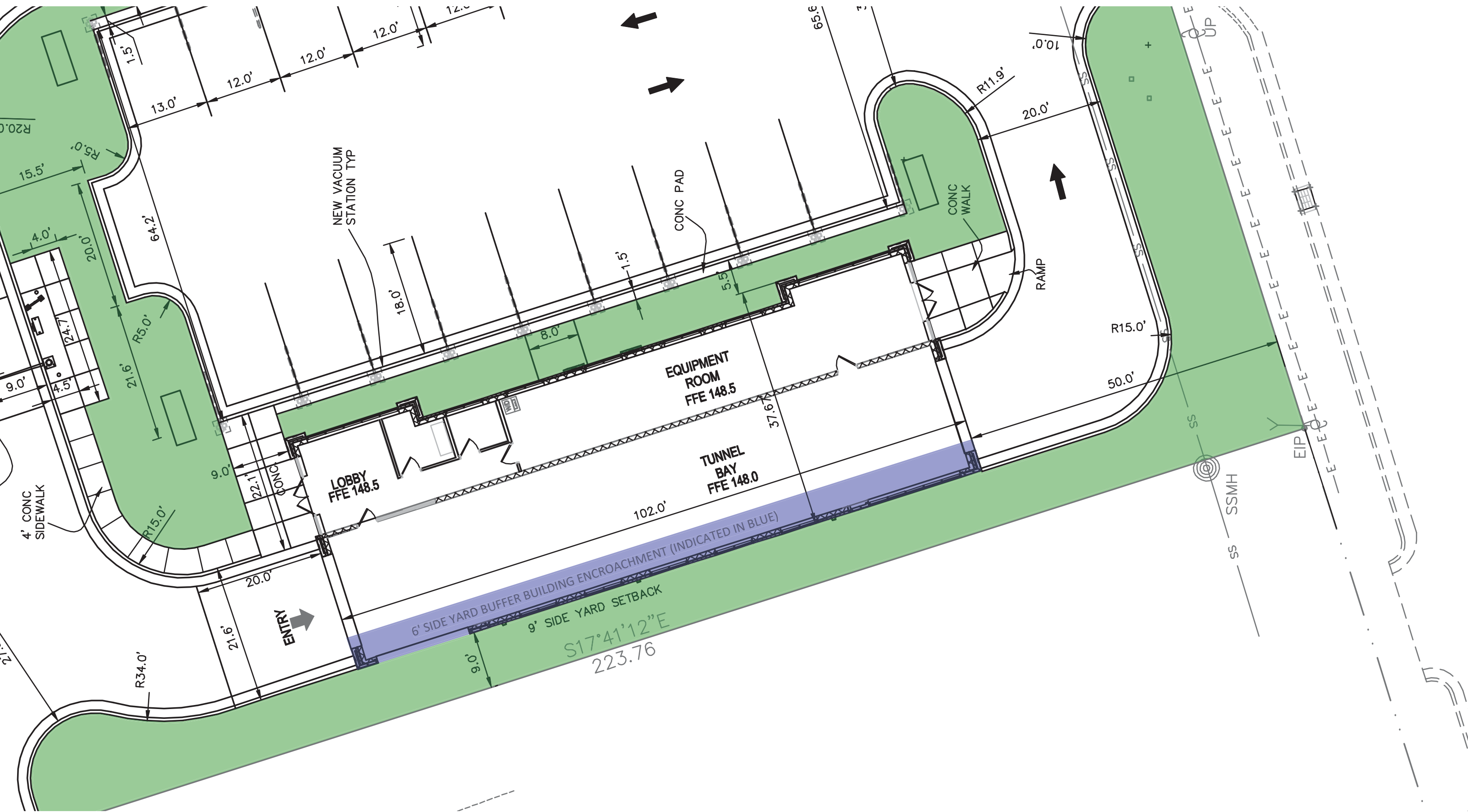
Aiken & Yelle Associates, PA  
Professional Engineers & Land Surveyors  
8765 Benson Drive  
Smithfield, North Carolina 27589  
Phone: 919-877-0992 Fax: 919-877-0979  
email: ayes@raleigh-hvbc.com  
Corporate License No. C-1024



DRAWN BY: HAY	CHECKED BY:
SCALE: 1"=20'	DATE: 02-04-17
REVISIONS:	

SITE LAYOUT PLAN

XPRESS-CARWASH  
TOWN OF SMITHFIELD, NORTH CAROLINA





5 3D View 1



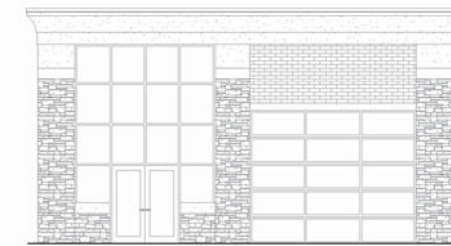
6 3D View 2



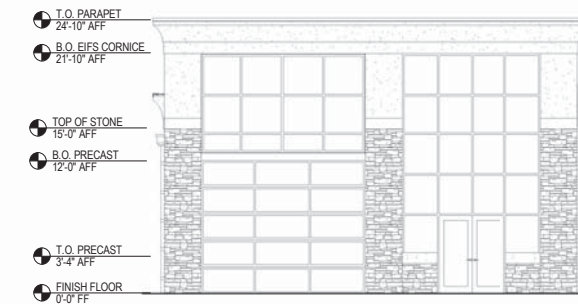
4 3D View 4



1 FRONT (EAST) ELEVATION  
1/8" = 1'-0"



3 RIGHT (NORTH) ELEVATION  
1/8" = 1'-0"



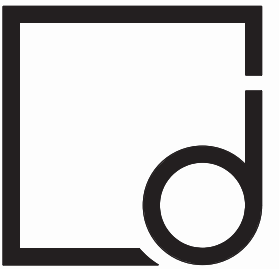
2 LEFT (SOUTH) ELEVATION  
1/8" = 1'-0"



8 REAR (WEST) ELEVATION  
1/8" = 1'-0"



7 3D View 3



**REVIEW SET  
NOT FOR  
CONSTRUCTION**

THE DRAWINGS AND DESIGN SHOWN ARE THE PROPERTY OF DESIGN DEVELOPMENT. THE REPRODUCTION OR USE OF THIS PROPERTY WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT IS PROHIBITED AND ANY INFRINGEMENT OF THESE RIGHTS IS SUBJECT TO LEGAL ACTION.

**DesignDevelopment**  
ARCHITECTS

800 Salem Woods  
Drive  
Suite 102  
Raleigh, NC 27615  
919.848.4474

**AMERICAN PRIDE  
XPRESS  
CARWASH**

1203 NORTH  
BRIGHTLEAF  
BOULEVARD  
SMITHFIELD, NC

No.	Description	Date
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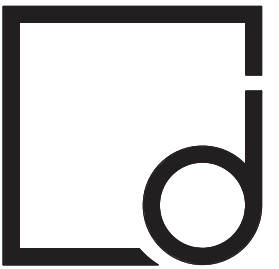
PROJECT #: 140061

DATE: 2017-04-05 9:22:28 AM

BUILDING ELEVATIONS

**A2.1**

DIGITAL PRINT DATE: 2017-04-05 9:22:28 AM



**REVIEW SET  
NOT FOR  
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**Designdevelopment**  
ARCHITECTS

800 Salem Woods  
Drive  
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Raleigh, NC 27615  
919.848.4474

**AMERICAN PRIDE  
XPRESS  
CARWASH**

1203 NORTH  
BRIGHTLEAF  
BOULEVARD  
SMITHFIELD, NC

No.	Description	Date
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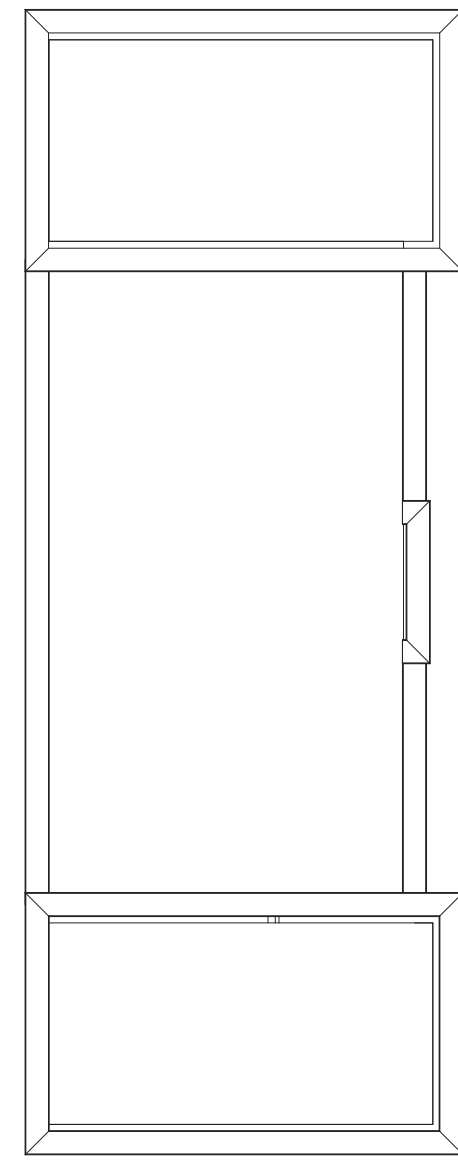
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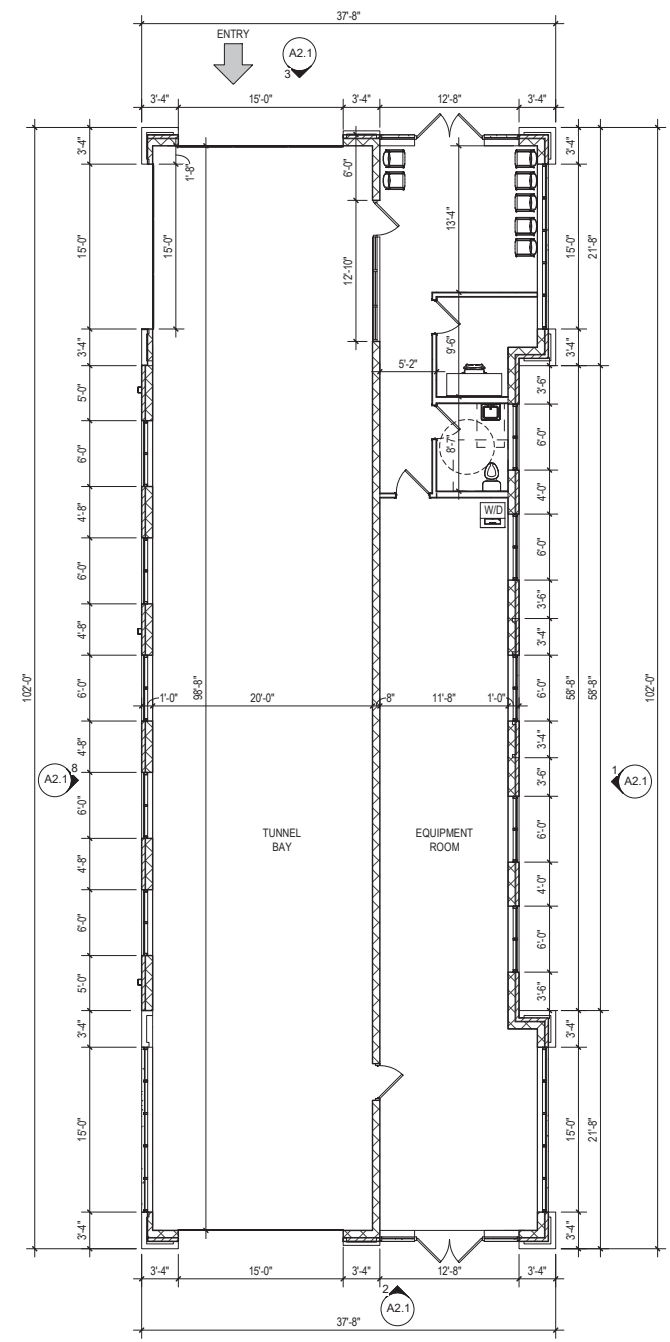
FLOOR PLAN

**A1.1**

DIGITAL PRINT DATE: 2017-04-05 9:29:07 AM



**2 ROOF PLAN**  
1/8" = 1'-0"



**1 FLOOR PLAN**  
1/8" = 1'-0"

# 1200 Block of North Brightleaf Boulevard



Project Name:  
American  
Properties LLC

Proposed Use:  
Tunnel Car Wash

File Number:  
BA-17-01

Property Owner:  
American  
Properties LLC

Applicant:  
American Properties  
Holdings LLC

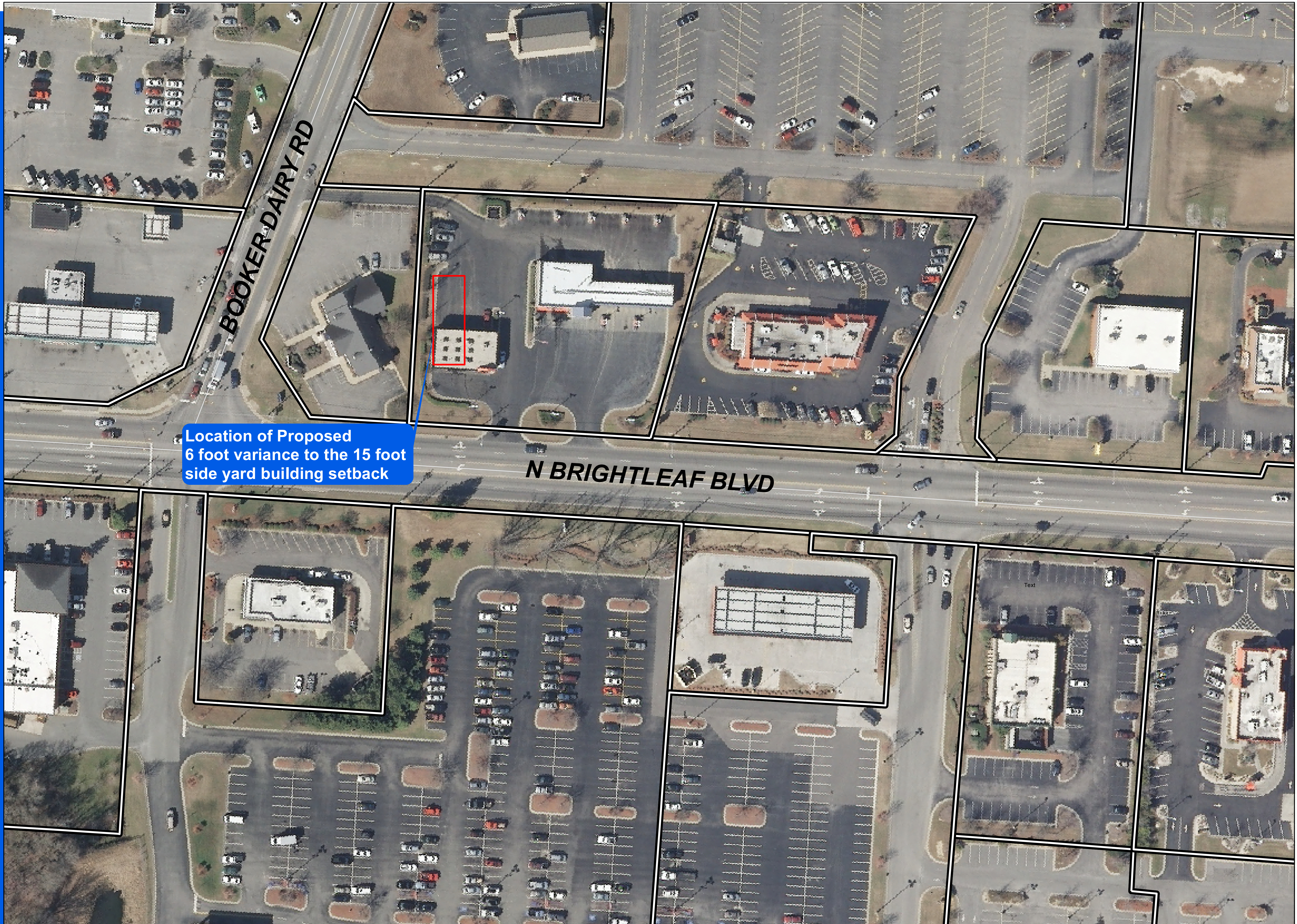
Location:  
1200 Block of  
N. Brightleaf Blvd

Tax ID#  
14074001

Zoning District:  
B-3

Map created by the  
Mark E. Helmer, AICP  
Senior Planner,  
GIS Specialist  
on 4/19/2017

1 inch = 40 feet or  
0 20 40 80 120 Feet



Location of Proposed  
6 foot variance to the 15 foot  
side yard building setback

N BRIGHTLEAF BLVD

BOOKER DAIRY RD





**PLANNING DEPARTMENT**

Paul C. Embler, Jr., Director

**ADJOINING PROPERTY OWNERS CERTIFICATION**

I, Mark E. Helmer, hereby certify that the property owner and adjacent property owners of the following petition, BA-17-01, were notified by First Class Mail on 4-12-17.

Mark E. Helmer  
Signature

Johnston County, North Carolina

I, Shannan L. Williams a Notary Public for Johnston County and State of North Carolina do hereby certify that Mark E. Helmer personally appeared before me on this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the

12<sup>th</sup> day of April, 2017

Shannan L. Williams  
Notary Public Signature

Shannan L. Williams  
Notary Public Name

My Commission expires on 5-20-2017



Adjacent Property Owners of  
BA-17-01

TAG	PIN	NAME1	ADDRESS1	CITY	STATE	ZIPCODE
14074002B	260410-35-8222	IRT CAROLINA LLC	410 PARK AVE STE 1220	NEW YORK	NY	10022
14074001C	260414-44-0645	MCDONALD'S CORPORATION	412 S POLLOCK ST	SELMA	NC	27576-3028
14074002A	260414-34-6860	F & S PARTNERSHIP	1699 EAST BOOKER DAIRY RD	SMITHFIELD	NC	27577-0000
14074013E	260414-34-6284	SHOPS AT SMITHFIELD LLC	700 EXPOSITION PL STE 131	RALEIGH	NC	27615-1561
14074001	260414-34-8508	AMERICAN PROPERTIES, LLC	PO BOX 20909	RALEIGH	NC	27619-0909
14074199C	260414-34-6531	OPTOMETRIC PROPERTIES LLC	2325 SUNSET AVE	ROCKY MOUNT	NC	27804-0000
14074013F	260414-33-8819	LOWE'S HOME CENTERS, INC	P O BOX 1000	MOORESVILLE	NC	28115-0000
14074013L	260414-44-2407	MURPHY OIL USA INC	PO BOX 7300	EL DORADO	AR	71731-7300



## PLANNING DEPARTMENT

Paul C. Embler, Jr., Director

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### **Notice Of Public Hearing**

Notice is hereby given that a public hearing will be held before the Board of Adjustment of the Town of Smithfield, N.C., on Thursday, April 27, 2017 at 6:30 p.m. in the Town Hall Council Chambers located at 350 East Market Street to consider the following request:

**BA-17-01 American Properties Holding, LLC:** The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 12, Table of Area, Yard, And Height Requirements, to allow for a structure to be built closer than 15 feet to side yard property line. The property considered for approval is located on the north side of North Brightleaf Boulevard approximately 200 feet northeast of its intersection with Booker Dairy Road and further identified as Johnston County Tax ID# 14074001.

All interested persons will be given an opportunity to be heard on this request. To accommodate disabilities and to comply with ADA regulations, please contact the town office if you need assistance. Further inquiry regarding this matter may be directed to the Smithfield Planning Department at 919-934-2116 or online at [www.smithfield-nc.com](http://www.smithfield-nc.com).

**Run Legal "ad" in the Smithfield Herald on 4/12/17 and 4/19/17**



## PLANNING DEPARTMENT

Paul C. Embler, Jr., Director

---

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You have been identified as a property owner in the area specified above and are being advised of this meeting as you may have interest in this matter. You are welcome to attend; however, you are not required to in order for the Board to act on this request. Additional information may be obtained by contacting the Town of Smithfield Planning Department at 919-934-2116.

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**Coates' Canons Blog: Variance Standards: What is hardship? And when is it unnecessary?**

By Adam Lovelady

Article: <http://canons.sog.unc.edu/variance-standards-what-is-hardship-and-when-is-it-unnecessary/>

This entry was posted on May 27, 2014 and is filed under Land Use & Code Enforcement, Quasi-Judicial Decisions, Zoning

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Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the owner. The general statutes authorize the local board of adjustment to grant a variance from the rules in those limited circumstances. But what is an unnecessary hardship? Recent amendments to the state statute clarify what can (and what can't) qualify as unnecessary hardship. This blog explores those new standards.

General Statute section [160A-388\(d\)](#) sets forth the standards for granting a zoning variance (The standards also may be applied to subdivision and other development regulation). These mandatory standards apply to zoning variances for all counties and municipalities in the state, and the new standards override any contrary ordinance provisions that may have been in place prior to 2013. For a summary of the other changes to the board of adjustment statute, see this [blog](#) from my colleague David Owens.

Under the new statute a board of adjustment *shall* vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the following:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are peculiar to the property
- The hardship is not a self-created hardship

Additionally, the applicant must show that the variance will

- Be consistent with the intent of the ordinance
- Secure public safety
- Achieve substantial justice

Finally, the statute prohibits any use variance.

To be sure, a variance is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient.

Let's consider each of the standards in more detail.

**Unnecessary Hardship from Strict Application**

Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant for a variance must show *unnecessary* hardship. What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others



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subject to the same restriction.

Under the old statutes, many jurisdictions applied a standard that the applicant must show that there is no reasonable use of the property without a variance. Under current statutes, that stringent standard is no longer allowed. A property owner can prove unnecessary hardship, even if the owner has some reasonable use of the property without the variance.

#### **Peculiar to the Property**

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App 479, 548 S.E. 2d 793 (2001))

#### **Not Self-Created Hardship**

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel. The owner may not seek a variance for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? Our North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)).

An important statutory provision applies here: "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." For example, if the original owner had a legitimate case for a variance, someone buying the lot from that owner would have the same legal position as the original owner. They could seek a variance. This rule aligns with the broader zoning concept that land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner. Is this a loophole for an unscrupulous owner to overcome the limit on variances for self-created hardship by selling the property to a spouse or sham LLC? Maybe, but the requirement for substantial justice (discussed below) probably protects from someone gaming the system.



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Restrictive covenants and other legal limitations *may* be a factor in determining hardship. Consider a property that has limited development ability due to a privately-imposed covenant for a street setback and a publicly-imposed stream setback. Can the owner seek a variance from the public stream setback? The NC Court of Appeals—interpreting a specific local ordinance—found that the board should consider physical *and* legal conditions of the property, including restrictive covenants (*Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill*, 362 N.C. 649, 669 S.E.2d 286 (2008)).

Let me emphasize that covenants and other legal limitations *may* be a factor. In that case, the decision was based on the local ordinance, and the decision pre-dated the statutory variance standards. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, could be viewed as a self-imposed hardship so that no variance should be granted.

#### **Ordinance Purpose, Public Safety, and Substantial Justice**

In addition to those standards for “unnecessary hardship,” the statutory standard for granting a variance requires the applicant to show that “[t]he requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.”

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But, alternatively, a variance may help to give effect to the ordinance intent. In one North Carolina case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.” The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)).

The applicant also must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the statute requires the applicant to show that through the variance “substantial justice is achieved.” The concept of substantial justice raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant.

#### **No Use Variance**

North Carolina courts long ago established that use variances are not permitted, and that rule is now part of the statutory standards. If a land use is not permitted on the property, a variance cannot be used to, in effect, amend the ordinance and allow the use. If only single family residences are permitted in a district, a variance cannot permit a duplex (*Sherrill v. Town of Wrightsville Beach*, 76 N.C. App. 646, 334 S.E.2d 103 (1985)).

If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible. So, for example, if a sign is permitted for a commercial property, a variance to permit an additional sign is allowable. It is an area variance, not a use variance. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 713 S.E.2d 511 (2011)).



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### Conclusion

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Rarely are there clear answers for these questions. Seeking those answers is the hard task of the board of adjustment. The applicant must present competent, material, and substantial evidence that they meet all of the standards. And the board must consider the issues on a case-by-case basis; they must weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

### Links

- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388)