

TOWN OF SMITHFIELD BOARD OF ADJUSTMENT AGENDA PACKET



Chairman: Paul Worley
Vice-Chairman: Stephen Upton

Sarah Edwards
Mark Lane
David Johnson
Doris Wallace

Stephen Wensman, AICP, RLA, Planning Director
Mark Helmer AICP, Senior Planner
Julie Edmonds, Administrative Assistant

Meeting Date: Thursday, January 31, 2019

Meeting Time: 6:00 p.m.

Meeting Place: Council Chambers, Smithfield Town Hall

**AGENDA
BOARD OF ADJUSTMENT
REGULAR MEETING
JANUARY 31, 2019
MEETING TIME: 6:00 PM
TOWN HALL**

Call to Order.

Approval of the minutes for July 26, 2018.

Swearing in of new members.

Approval of the 2019 meeting schedule.

Public Hearing

BA-19-01 First Missionary Baptist Church: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 8, Section 8.3.1 to allow for a reduction to the minimum lot size and a reduction to minimum building setback on property located within an R-8 (Residential) zoning district. The property considered for a variance is located on the east side of North Fourth Street approximately 157 feet north of its intersection with Caswell Street and further identified as Johnston County Tax ID# 15013053.

Old Business.

New Business.

Annual training

Adjournment.

DRAFT
Smithfield Board of Adjustment
Minutes
Thursday, July 26, 2018
6:00 P.M., Town Hall, Council Chambers

Members Present:

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

Members Absent:

Paul Worley, Chairman

Staff Present:

Stephen Wensman, Planning Director
Mark Helmer, Senior Planner
Julie Edmonds, Administrative Assistant

CALL TO ORDER

David Johnson was sworn in as a new BOA member.

APPROVAL OF MINUTES FROM April 27, 2017.

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

Public Hearings:

Sarah Edwards made a motion, seconded by Eddie Foy to open the public hearing. Unanimous

After all persons giving testimony were duly sworn, Vice Chairman Stephen Upton opened the public hearing.

David Johnson made a motion to open BA-18-01, seconded by Sarah Edwards. Unanimous

BA-18-01 Penn Compression:

Mr. Wensman stated that Penn Compression & Moulding is the applicant, located at 309 Components Drive and Daniel Leslie is the owner. The acreage of the parcel is over 8 acres, it's an industrial parcel. The applicant is requesting a 6 foot variance to the landscape yard, 100 foot wide area, 6 feet deep to allow parking to remain where it is currently in the landscape yard. Mr. Wensman pointed out the approved landscape plan submitted by the applicant. They are able to make it work with the parking numbers complying with our codes. This is the requested variance; you can see the new curb line and then the old edge of the pavement which is into the landscape yard. The parking lot was the legal nonconforming. This project originally was built many years ago; it was approved as it currently exists. When you replace a

building or a large expansion the project needs to come into compliance with the code. The applicant received site plan approval for a compliant project. At the time they were advocating for keeping the parking lot but we said no it has to come into code compliance. In order to approve a variance the Board of Adjustment should find all of the following provisions must be met.

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.**

There is adequate employee and visitor parking without the need for the variance. They have shown a compliant site plan.

- 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 applicant has a property that is larger than what is currently being used for the facility and associated parking and loading uses. A site plan was approved showing required parking conforming with the UDO requirements, so a variance is not required to meet those requirements.

- 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 applicant has submitted plans in conformance with the parking and landscape yard requirements, therefore, there is no hardship other than the location (on approved site plan) of the parking is not preferred.

- 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 intent of the ordinance is to bring nonconforming properties into conformity with the UDO when certain thresholds have been reached. The Penn Compression Moulding facility expansion triggered the need for conformance with the UDO and there are no physical hardships with the property in the ability to meet those requirements as shown on the approved site plans (SP-18-02).

Planning Staff recommends the Board of Adjustments deny variance BA-18-01 based on findings of fact for denial.

Mr. Upton asked if the applicant approved the site plan from the beginning.

Mr. Wensman said the applicant submitted a compliant site plan yes.

Mr. Upton asked if the applicant was happy with it.

Mr. Wensman said I don't think he was happy with it, but to get approval he had to comply. When he first approached us there was a lot of back and forth and he wanted to keep the parking like it was. Per the UDO, staff told the applicant that they needed to come into compliance. We informed the applicant that his current parking wasn't in compliance therefore he should remove some of it and put in the curb and cutter. He submitted a site plan that was in conformance with the code. It was approved that the applicant applied for a variance.

Mr. Foy asked if this hearing was one that would require notice of a public hearing to the public.

Mr. Wensman said the public was notified.

Mr. Foy asked if staff had received any comments or concerns about this hearing.

Mr. Wensman said no, he had not received any.

Mr. Lane stated he read the staff's answers to the finding of fact approval and it stated in several places the applicant doesn't necessarily need a variance. If that's the case, why are we even here?

Mr. Wensman said a variance is typically related to the peculiarities of a property. Essentially he is able to make it work on the existing property. He has a lot of property and he's shown a site plan that works with UDO so, therefore, in my findings of fact I believe that a variance is not warranted.

Mr. Lane said so what you're saying is he can make it work, but he wants to have it the way it was and that's why he needs a variance.

Mr. Wensman said that is why he wants the variance. Its needs versus wants.

Mr. David Johnson said and the needs are that we have additional landscaping. Is that correct?

Mr. Wensman said there is a required landscape yard and the UDO only allows 50% encroachment. The site is required to come into compliance with the expansion.

Mr. David Johnson said so basically we're talking about the landscaping then.

Mr. Wensman said yes, it is parking encroaching into the landscape yard.

Ms. Edwards said we're basically talking about the Town of Smithfield's development standards in a broader sense.

Mr. Foy said basically what's happened is a company has come here they complied with what we required at the time, now they want to expand and we have new requirements. We have to tell them they have to comply with the new stuff.

Mr. Wensman said yes, because they have expanded.

Dan Simmons of 125 Everett Lane came forward to speak. He said he was with McGill and Associates, formally Triangle Civil Works. We submitted this plan with parking in place; the Town came back to us and told us to change it. In an effort to speed this up and not have any delays because we needed to get this building under construction right away. We changed the plans to comply to get the permits so we could get started. Then we came back later and requested the variance. It wasn't asked for up front due to timing. He remembers when Penn Compression came to Smithfield; it was in 1978. This parking has been there for 40 years. We're not reducing the landscaping at all; we're putting in the same number of trees and bushes that is required by code. All we are doing is reducing the area it is put into. Initially when Mr. Leslie was looking into expanding was two years ago under the old code. There were many meetings with planning staff at that time; the preliminary budgets were put together under the old code which left that parking there. The code changed and we submitted plans at that time. We feel like it is a hardship, one placed on an industry that is growing and bringing jobs to Smithfield. It's a hardship on them for additional cost they'd have to add the 10 parking spaces back. They need the spaces up near the front for vendors, visitors and customers. You wouldn't want them parking in the back.

Mr. Upton stated he had visited the site and asked if there weren't enough parking on the side of the building.

Mr. Simmons said yes there is parking on the side but there are a lot of employees too. We have submitted a revised plan that increases the parking on the side but the employment will be increasing.

Mr. Upton asked if the new structure being built would have parking in front of it.

Mr. Simmons answered no.

Mr. Upton said earlier you mentioned the timing of this project. How much of a difference would it be to conform or not conform to the timing element?

Mr. Simmons said the timing element was to get this building under construction. We submitted a plan that had this parking in it but the planning staff came back and said no you have to remove it. We were looking at a delay to come before this board to ask to keep this parking but we needed a building permit to get started right away to meet the schedule that was required by Penn Compression.

Mr. Upton asked if there would be any changes to the existing street.

Mr. Simmons said no there would not be.

Mr. Lane asked if the site plan submitted is showing the parking without the variance.

Mr. Simmons said it shows the parking without the variance. We had to submit that plan in order to get a building permit.

Ms. Edwards said this doesn't look like parking but landscaping.

Mr. Simmons said correct, the site plan we submitted and received approval on by the Town showed landscaping.

Mr. Lane asked why the parking couldn't be in a different location.

Mr. Simmons said the very front door of the building to the office is where administration, vendors and customers would come in. You would want them to park at the front, most businesses would.

Mr. Upton asked how much more parking would this variance give you.

Mr. Simmons said 10 more spaces.

Mr. Foy asked if it would give you the spaces you presently have or would it be an additional 10 spaces?

Mr. Simmons said it will give us the spaces we presently have.

Mr. Lane asked if this was in compliance with the old UDO from 1980 something.

Mr. Helmer said it may have met the code I don't know I don't have one in front of me but the initial zoning ordinance was adopted in 1988 but I am not certain.

Mr. Foy said it didn't meet the code from two years ago.

Mr. Helmer said no, because you can't have parking within 15 feet of a public right away.

Mr. Foy said so you're saying the UDO has changed from the time they first built their plant.

Mr. Helmer said the UDO has always required full compliance with code when the thresholds are met.

Mr. Foy said so you think they got a variance back in 1978.

Mr. Helmer said it's unlikely; the zoning that was in place prior to the adoption of the UDO was in 1988. We probably had little to no standards.

Mr. David Johnson asked if there had been any incidents or safety hazards with parking over the last 40 years.

Mr. Helmer said no, there just isn't any landscaping.

Mr. Simmons said we're adding the landscaping.

Mr. David Johnson asked how far away the public right of way would be from this parking.

Mr. Simmons said it would be 9 feet, we're asking for a 6 foot variance.

Mr. Lane said other than the code there isn't a problem with parking like it is now.

Mr. Helmer said no.

Mr. Daniel Leslie, President of Penn Compression came forward. He stated we're manufacturers in the U.S. and in today's world and that means we have to watch every penny. We're investing in the largest expansion in the history of our company. As I understand it, the UDO that required the change happened in August 2017 and we didn't get financing until October 2017. We need a lot of parking, we work three shifts. We're a plastics manufacturing plant, the largest manufacture of fireman helmet shells in the country. When you work three shifts, you have double the parking need. We have additional land that is undeveloped, but it would be expensive for us to develop that for only 10 spaces. I just ask that you consider this for us. We've been there for 40 years and we have looked at other places to expand and grow but we wanted to do that here in Smithfield.

Mr. Foy asked how many employees Mr. Leslie currently has.

Mr. Leslie said 80 to 85 currently.

Mr. Foy asked if the expansion was going to add employees.

Mr. Leslie said yes by 40 to 65 people over time not right away.

Mr. Foy asked who the parking up front would be for.

Mr. Leslie said that would serve office staff and customers.

Ms. Edwards asked how many employees would be on a shift when at full capacity.

Mr. Leslie said on one shift we will have approximately 80 employees. The first shift is much larger than the other two shifts.

Ms. Edwards asked how many parking spaces we on the plan currently.

Mr. Leslie said 100 spaces.

Mr. Lane asked if the Planning staff agreed with all that has been said by the applicant and Mr. Simmons.

Mr. Wensman said yes, I don't believe there is anything contradictory.

Mr. Foy asked if it were appropriate for a member of the Board of Adjustment to make a statement before the finding of face.

Mr. Upton said sure.

Mr. Foy stated he came on this board in 2003 he believes it was and at that time he was trying to start a business called Power Mulch. He ran into some of these same issues and the reason he got on this board was because he was very unhappy with what he had to deal with in the Town. He wanted to be business friendly and he thinks if we don't give them this variance they are requesting, it would say bad things to a lot of businesses. This is 6 feet they are asking for and for their customers that come to this town to do business with them. This company has spent money, they have employees who live in this town and I think it is outrage if we deny them this slight variance. It isn't going to affect anything but our UDO. He wants to recommend that the board grant them this variance.

Mr. David Johnson said he wanted to echo those same statements just made by Mr. Foy.

Ms. Edwards stated she very much appreciated the applicant's investment in Smithfield. Her thought is coming from a very different perspective. She is currently serving on a committee that is tasked at looking at land use and transportation around town. It is no secret to anyone that does business or lives in Smithfield that in driving around town there are things that aren't in compliance. There are gravel lots where there should be paved lots, just all sorts of things. She thinks in some ways we've done a disservice to ourselves. In looking at those things it doesn't create a business friendly climate when you're coming into Smithfield. She knows of some businesses that would love to open and operate but to look at some businesses around town they're scared off. She thinks our development standards are necessary for a reason. Her intent is not to make anything harder on the applicant; she wants to encourage business growth. She does however think those standards are in place for a reason. When we let things go, we aren't looking into the future and creating situations that are non-compliant for the next 40 years or so.

Mr. Foy made a motion for moving into the finding of fact, seconded by Mark Lane. Unanimous

Based upon satisfactory compliance with the BA-18-01 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 recommend approval of the variance. The

motion was seconded by Mark Lane. The motion was approved by Michael Johnson, David Johnson, Mark Lane, Eddie Foy and Stephen Upton and denied by Sarah Edwards. Mr. Upton stated BA-18-01 request for a variance was granted.

Eddie Foy made a motion to close BA-18-01, seconded by Mark Lane. Unanimous.

Eddie Foy made a motion to open BA-18-02, seconded by Sarah Edwards.

BA-18-02 Wintergreen Hospitality: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Section 10.2.10 which requires lateral access to adjacent commercial properties. The property considered for a variance is located on Town Centre Place approximately 600 feet south of its intersection with East Market Street. The property is further identified as Johnston County Tax ID# 15L11001G.

Mr. Helmer came forward to present BA-18-02. The applicant is proposing to construct a 14,210 square foot-five story hotel on approximately 1.8 acres of land which is located within a B-3 (Entrance Highway Business) zoning district. The sketch plan indicates two driveway access points on Towne Centre Place. Although not indicated on the plan, the site contains delineated wetlands that will require permitting by the US Army Corps of Engineers. The project will also be seeking special use permit approval from the Smithfield Town Council due the proposed structural height that will exceed 40 feet.

In accordance with The Town of Smithfield Unified Development Ordinance, Article 10, Section 10.2.10 Lateral Access states that all new nonresidential development, specifically commercial development, shall provide lateral access to adjacent property which is either: (1) existing nonresidential, or (2) zoned nonresidential. In the site plan process review, lateral access shall be displayed and labeled clearly by showing the appropriate connections. All lateral access connections shall be a minimum of 20 feet in width and maximum of 24 feet in width. If this section is determined not to be feasible due to particularities of the parcel, the Board of Adjustment may modify the requirements herein.

The applicant is requesting to vary from Section 10.2.10 because constructing lateral access will create unnecessary hardship to land through additional land disturbing activities within delineated wetlands.

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 to the land will result from increased land disturbing activities within delineated wetland.**

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 property suffers from wet lands that can be found on various portions of the site. Land disturbing activities within delineated wetlands require permitting by the Army Corps of Engineers. Wetland permitting can be complicated, costly**

and difficult to obtain. The hardship that permitting and constructing lateral access will create will exceed the benefit that such access will provide.

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 property is adversely affected by environmentally sensitive wetlands found within the site. This hardship is the result of natural conditions and not the result from actions taken by the applicant.**

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 variance is in keeping with the spirit, purpose, and intent of the Ordinance. The variance will be sensitive to the natural environment and will eliminate the need to construct a third and fourth access point to the site which is located at the end of a cul-de-sac. The variance will not impact public safety, and it is in the best interests of the public at large.**

Planning Staff recommends the Board of Adjustments approve variance BA-18-02 based on the finding of fact.

Mr. Upton asked if the findings of variance approval are in compliance.

Mr. Helmer said staff is in agreement with the applicant. The ordinance states if for some reason a cross access is not needed or would be more trouble than it is worth then instead of staff saying we don't need to provide access at this point it states the BOA has authority not staff.

Mr. Foy asked given all the regulations on wetlands, could you even put an access on that property.

Mr. Helmer said if he remembers correctly some of the wetlands were permitted.

Ms. Edwards asked if because of the location on the cul-de-sac that's why you're not concerned about the access on the east side.

Mr. Helmer said he thinks there is little less concern, there will be less trips generated. At this location properties wouldn't benefit from cross access.

Charlie Yokley came forward on behalf of McAdams Company. There are wetlands found along the property line. They prefer not to disturb them due to environmental reasons. The parcel to the East of their parcel is a weird shaped lot. Other than not being necessary, cross access from their property to the proposed property would likely be detrimental to the future development of that parcel requiring the building would be pushed way back. You would then have some conflicting traffic movements.

Mr. Upton said so you're in agreement with the variances of approval by staff.

Mr. Yokley said yes we are.

Mark Lane stated that based upon satisfactory compliance with the BA-18-02 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 recommend approval of the variance.

The motion was seconded by Sarah Edwards. Unanimous

Mr. Upton stated BA-18-02 request for a variance was granted.

Eddie Foy made a motion to open BA-18-03, seconded by Mark Lane. Unanimous

BA-18-03 Landis Bullock: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance Article 8, Section 8.9 and 8.11 to allow for reduced building setbacks. The property considered for a variance is located on the southwest side of West Market Street approximately 180 feet southwest of its intersection with Whitley Drive. The property is further identified as Johnston County Tax ID# 15044023A

Mr. Helmer stated that the applicant is proposing to reconfigure property lines to create a single lot of record that will be approximately 1.443 acres in size and have approximately 135.35 feet of road frontage on West Market Street. This proposed lot will meet all minimum dimensional requirements of the Unified Development Ordinance. The remaining portion of the original lot will be recombined into the adjacent 15.34 acre tract of land. The property line to be moved is proposed to be within 12.55 feet of an existing metal building. This building is required to be setback a minimum of 25 feet from a side yard property line since it is located within a HI (Heavy Industrial) zoning district. Therefore, the applicant is requesting a 12.45' variance from the 25' side yard building setback for the existing metal building located on the northwest corner of the property. The variance is required in order to enable a proposed lot reconfiguration. The Smithfield Town Council, at its June 5, 2018 meeting, unanimously voted to approve a request to rezone the proposed 1.443 acre lot of record from the HI (Heavy Industrial) zoning district to B-3 (Business) zoning district.

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. **Without the variance, the recombination plat will create a nonconforming structure due to required building setbacks not being met. If substantial damages were to occur and the structure cannot be rebuilt on the existing building foundations due to its nonconforming status, increased reconstruction costs and insurance claims will be incurred.**

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 property suffers from its close proximity to an existing**

protected stream. This stream has created a natural barrier that's limits access from the south and east. This natural barrier contributes to the property current state which can be described as underdeveloped. Granting of the variance will allow for the creation of opportunities that cannot occur otherwise.

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 natural barriers posed by the adjacent stream is a natural phenomenon that occurs when its watershed reaches a significant size. The applicant has no control of this hydrologic process and has made no changes that would affect this process.**

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 variance is in keeping with the spirit, purpose, and intent of the Ordinance. The variance is being requested to bring additional opportunity and productivity to the US 70 Business Entry Corridor. The variance will not impact public safety, and in is in the best interests of the public at large.**

Planning Staff recommends the Board of Adjustments approve variance BA-18-03 based on findings of fact with the following conditions:

1. That the approved 12.45' variance from the 25' side yard building setback applies only to the existing enclosed metal building located on the northwest corner of the property.

Ms. Edwards asked if there currently was another metal building that was 19.69 feet away from the property line.

Mr. Helmer said not on the subject property that is receiving the variance.

Mr. Lane said this looks like it should have been done before the rezoning.

Mr. Helmer said it could have but the applicant had a right to rezone first.

Mr. Lane asked if they applicant knew they would need this first.

Mr. Helmer said well by rezoning first it would lessen the amount of variance needed which is exactly what we want.

Mr. Bullock came forward and stated they basically want this piece of property in question to join their existing pieces of property. Unfortunately they can't do it until they can get a free title on the original lot.

David Johnson made a motion based upon satisfactory compliance with the BA-18-03 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 recommend approval of the variance, seconded by Sarah Edwards. Unanimous

Mr. Upton stated BA-18-03 is approved.

Eddie Foy made a motion to close BA-18-03, seconded by Mark Lane. Unanimous

Eddie Foy made a motion to open BA-18-04, seconded by David Johnson. Unanimous

BA-18-04 Market Street Automotive: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 8, Section 8.8, Article 10, Section 10.2.1 and 10.2.8 for the expansion of an automotive repair facility. The property considered for a variance is located southwest side of the intersection of East Market Street and South Fifth Street and further identified as of Johnston County Tax ID# 15025063

Mr. Wensman stated the applicant, William Gainey owns Market Street Automotive which is an auto repair business in an old traditional service gas station on .24 acres, located at the corner of E. Market Street and 5th Street. He needs to expand the number of service bays in order to keep up with demand. He is proposing a 30 ft. x 50 ft. addition in the rear of the building. The addition is large enough to trigger the threshold for compliance with Article 10, Part 1 Off-street Parking & Off-street Loading Requirements and Article 10, Part 2 Landscape requirements of the UDO.

Mr. Gainey is requesting a variance from these as well as a 3.9' variance from the 15' rear yard setback. The property currently has two service doors for auto repair services and a lobby area. There are two service doors facing Market Street and two facing the alley behind the property. The entire property is impervious with bituminous and concrete paving up to the sidewalks in the public right-of-way and the alley in the rear of the property. An existing nonconforming metal carport canopy is located between the existing building and the Hopkins Carpet building. Removal of this carport will be a recommended condition of the variance. Current driveway access to the site is from one 45' curbcut on Market Street and a 30' and 10' curbcut on 5th Street and alley access the full width of the property (79.91'). With the variance, Staff has added the condition that the 30' 5th Street access close and the curbing and boulevard be replaced because of its close proximity to the intersection and for safety reasons.

Mr. Gainey is proposing 5 parking stalls for guests, one of which will be a handicap accessible stall. The existing overhead canopy will remain and two of the parking stalls will be located under the canopy. The applicant is proposing vehicle storage in association with the auto repair business which requires a special use permit. An application for special use permit has been made and the vehicle storage will be in a 19'.5 x 50' fenced and screened area between the new addition and the adjacent Hopkins Carpet building. In a screened enclosure, the cars can be parked in close to each other rather than in a standard striped parking stall, saving space on such a small property.

4.10.2.2.1. 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. **Without the variance, the proposed building addition would be restricted in size, rendering the project too small for the intended purpose. Due to the**

location of the existing building on the lot and the need for vehicular access, conformance with the standards of Article 10, Part 1 and Part 2 are not practical.

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 existing property is smaller than the minimum district size and the variance is somewhat proportional to the existing property size (.24 acres) to the B-2 district minimum lot size (12,000 sq. ft., or 275 acres). Also, the variance would allow the building to match the building setback of the adjacent property, Hopkins Carpet. Other older businesses in the B-2 district have similar encroachments into the landscape yards.**

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 applicant's business has grown beyond the small two stall garage of the existing building and the existing lot size and configuration has resulted in the need to seek a variance for a reasonable building addition.**

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 variance is in keeping with the spirit, purpose, and intent of the Ordinance, the variance is being requested to serve a growing business in a business district. The variance will not impact public safety, and in fact, public safety will be improved by the closure of a driveway and the removal of a nonconforming carport.**

Planning Staff recommend the Board of Adjustments approve variance BA-18-04 based on findings of fact with the following conditions:

- 1. That the driveways on 5th Street near the intersection close and the boulevard and curb restored.**
- 2. That the metal carport between the existing repair garage and the Hopkins Carpet building be removed**

Michael Johnson made a motion based upon satisfactory compliance with the BA-18-04 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 recommend approval of the variance, seconded by Eddie Foy. Unanimous

Mr. Upton stated BA-18-04 is approved.

Eddie Foy made a motion to close BA-18-04, seconded by Sarah Edwards. Unanimous

Sarah Edwards made a motion to close the public hearings, seconded by Eddie Foy. Unanimous

Old Business:

New Business:

Adjournment:

Sarah Edwards made a motion to adjourn, seconded by Eddie Foy.

Submitted this 31st day of July, 2018.

Julie Edmonds
Administrative Assistant
Town of Smithfield Planning Department

Due to lack of a quorum at the July 26, 2018 Board of Adjustment meeting, an additional meeting was scheduled with Chairman Paul Worley (who was unable to attend on 7/26) per direction of Town Attorney, Bob Spence. BOA Chairman, Paul Worley reviewed the audio minutes on Tuesday, July 31, 2018 at approximately 5:00 p.m. in the Town Hall Conference Room. Also present at the meetings were Planning Director Stephen Wensman and Administrative Support Specialist Julie Edmonds. After reviewing the audio version of the meeting, Chairman Worley voted in favor of granting the variance for case BA-18-01. The final voted from both meetings were 6 in favor and 1 against.

Mr. Worley stated if he had been at the meeting, he would have said the Town has an incentive grant with this industry. When you are giving an incentive grant like this, the plan the applicant provides for the incentive, is what we are going to approve. The applicant will give up the right to come back to us for an exception. I think that is the error. I would vote yes, because somewhere along the line there was an idea Penn Compression could come back and make changes. I think that is the main flaw in this situation. He would suggest staff look at this and learn a lesson from it. He apologized for missing the meeting.



2019
Board of Adjustments Meeting Schedule

Thursday, January 31, 2019

Thursday, February 28, 2019

Thursday, March 28, 2019

Thursday, April 25, 2019

Thursday, May 30, 2019

Thursday, June 27, 2019

Thursday, July 25, 2019

Thursday, August 29, 2019

Thursday, September 26, 2019

Thursday, October 31, 2019

Thursday, November 21, 2019

Thursday, December 19, 2019

****All meetings begin at 6pm and are held in the Town Council
Chambers****



Request for Board of Adjustment Action

Agenda
Item: BA-19-01
Date: 1/31/19

Subject: Variance
Department: Planning
Presented by: Stephen Wensman
Presentation: Yes

Issue Statement

First Missionary Baptist Church is requesting the following variances:

- 6' 9" variance from a 10' side yard setback.
- 5' 8" variance from a 10' side yard setback
- 1,888 square foot variance from the 8000 square foot minimum lot size

Financial Impact

None

Action Needed

To review the variance application to approve or deny.

Recommendation

Planning Staff recommends approval of variance BA-19-01.

Approved: Town Manager Town Attorney

Attachments:

- Staff Report BA-19-01
- Application



Staff Report

Agenda Item: BA-19-01
Date: 1/31/19

Application Number: BA-19-01
Applicant/Owner: First Missionary Baptist Church
Agents: none
TAX ID number: 15013053
Town Limits/ETJ: City

PROJECT LOCATION: 308 North Fourth Street

REQUEST:

The applicant, First Missionary Baptist Church is requesting the following variances:

- 6' 9" variance from the 10' side yard setback.
- 5' 8" variance from a 10' side yard setback
- 1,888 square foot variance from the 800 square foot minimum lot size

The variances are needed in order to subdivide the property and to transfer ownership from First Missionary Baptist Church to the Historic Smithfield Foundation.

SITE DATA:

Acreage: 6112 square feet
Present Zoning: R-8 (Residential)
Proposed Zoning: N/A
Existing Use: N/A
Water Service: Town of Smithfield
Sewer Service: Town of Smithfield
Electrical Service: Town of Smithfield

ADJACENT ZONING AND LAND USES:

| | Zoning | Existing Use |
|---------------|------------------|--------------------------------|
| North | R-8 Residential | Residential / Multifamily |
| South: | R-8 Residential | Residential / Place of Worship |
| West: | R-10 Residential | Residential |
| East: | R-8 Residential | Residential |

PETITION DESCRIPTION:

The applicant is seeking a variance necessary to subdivide the historic Freedman Schoolhouse from its parent parcel which contains one additional single family dwelling. The Historic Smithfield Foundation is proposing to purchase the historic Freedman Schoolhouse property but will require the historic structure be on its own lot of record.

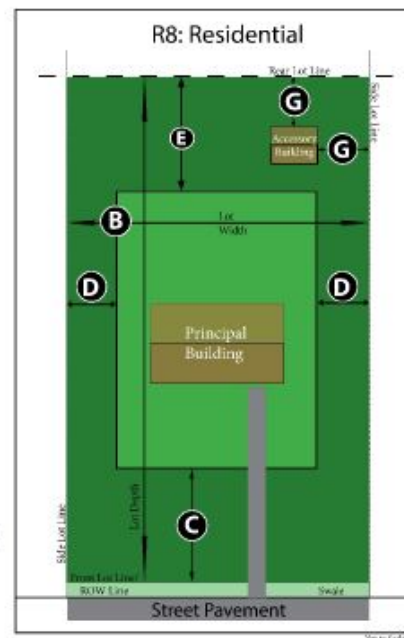
The subject property currently contains two single family dwellings, and is currently nonconforming because it does not conform to Article 2, Section 2.13 which states that..."in no case shall there be more than one principle building and its customary accessory buildings on the lot except in the case of a designed complex". This proposed division of land will lessen the nonconformity but in doing so will create the need for a variance to the required side yard setback and minimum lot size. The following Unified Development Ordinance section highlights the dimensional requirements for lots located within the R-8 (Residential) zoning district.

SECTION 8.3 R-8 SINGLE, TWO, AND MULTI-FAMILY RESIDENTIAL DISTRICT.

8.3.1. Dimensional Requirements.

| | |
|-----------------------------|-------------------------|
| (A) Minimum Lot Area | |
| • Single-family dwelling | 8,000 sq ft |
| • Two-family dwelling | 10,000 sq ft |
| • Multi-family dwelling* | 9,000 sq ft |
| • Other building | 10,000 sq ft |
| (B) Minimum Lot Frontage | 70 ft |
| (C) Front Yard Setback | 30 ft |
| (D) Side Yard Width | 10 ft |
| (E) Rear Yard Depth | 25 ft |
| (F) Maximum Building Height | 35 ft |
| (G) Accessory Buildings | 10 ft (see Note 8.13.2) |

*See Note 8.13.1 for additional multi-family dimensional requirements.



8.3.2. **Additional Requirements.** Refer to Section 8.13, Notes to Zoning District Design Standards.

8.3.3. **Signs.** Signs shall be permitted as provided in Article 10, Part III.

8.3.4. **Parking.** Off-street parking shall be provided as required in Article 10, Part I.

As part of a complete variance application, the applicant has submitted a surveyed subdivision plat documenting the location of all existing structures on the property considered for a variance. According to this plat, the applicant is requesting a five (5) foot eight (8) inch variance from the required ten (10) foot side yard width for tract labeled #1. The applicant is also requesting a six (6) foot nine (9) inch variance from the required ten (10) foot side yard width and a 1,888 square foot variance from the required 8,000 square foot minimum lot size for tract labeled #2. Both proposed lots can meet the minimum of two (2) off-street parking spaces. Any future non-residential land use of the property will likely need to secure alternate off-street parking accommodations.

FINDINGS OF VARIANCE APPROVAL:

In order to approval a variance, the Board of Adjustments shall find all of the following provisions must be met (Staff's findings are in ***bold/italic***):

4.10.2.2.1. 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 will occur, because without the variance, subdividing the land cannot occur. Multiple single family dwellings on a single lot will remain, making purchasing, financing, insuring one single family dwelling much more difficult.***

4.10.2.2.2. 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 existing property contains two single family dwellings on a single lot which is uncommon and normally not permitted with modern zoning regulations. The two existing single family dwellings were constructed unusually close together rendering each structure unable to meet current building setback standards. Granting the variance will allow for a division of land that will serve to create a more conforming situation by ensuring that the standard of one principle structure per lot is maintained.***

4.10.2.2.3. 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 was not created by the applicant since both single family dwellings were constructed prior to modern zoning regulations and current construction standards.***

4.10.2.2.4. 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 variance is in keeping with the spirit, purpose, and intent of the Ordinance. The variance will serve to protect and preserve the fabric and history of the district in which the dwellings are located.***

RECOMMENDATION:

- Planning Staff recommend the Board of Adjustments approve variance BA-19-01 to allow for a 6' 9" variance from the 10' side yard setback, a 5' 8" variance to the side yard setback and a 1,888 square foot variance to the minimum lot size

RECOMMENDED MOTION:

Planning Staff recommends the Planning Board approve the variance with the following motion:

“Move to approve variance BA-19-01 based on the findings of fact found in the Staff Report to allow for a 6' 9" variance from the 10' side yard setback, a 5' 8" variance to the side yard setback and a 1,888 square foot variance to the minimum lot size”.

**Town of Smithfield
Variance Application
Finding of Fact / Approval Criteria**

Application Number: BA-19-01 **Name:** First Missionary Baptist Church

Request: Applicant seeks a variance Article Article 8, Section 8.3.1 to allow for a reduction to the minimum lot size and a reduction to minimum building setback on property located within an R-8 (Residential) zoning district.

In accordance with **Article 4, Sections 4.10.2.2.1 - 4.10.2.2.4** of the Town of Smithfield Unified Development Ordinance (UDO), when unnecessary hardships would result from carrying out the strict letter of the UDO, the Board of Adjustment shall vary any of the provisions of the Ordinance upon a showing of having met all of Article 4, Sections 4.10.2.2.1 - 4.10.2.2.4. The Board of Adjustments may impose appropriate conditions and safeguards upon the approval as long as they are related to the variance. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Adjustments. The Board of Adjustments shall include in its comments a statement as to the application having met all of Article 4, Sections 4.10.2.2.1 - 4.10.2.2.4. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which the below requires.

The Board of Adjustment shall vary any of the provisions of the Ordinance as it pertains to this property upon a showing of having met all of Article 4, Sections 4.10.2.2.1 - 4.10.2.2.4 listed below through a quasi-judicial process:

4.10.2.2.1. 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.

4.10.2.2.2. 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.

4.10.2.2.3. 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.

4.10.2.2.4. 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

Once all findings have been decided one of the two following motions must be made:

Motion to Approve: *Based upon satisfactory compliance with the above 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 variance # **BA-19-01** with the following condition(s):*

Motion to Deny: *Based upon failure to meet all of the above stated findings and for reasons stated therein, I move to deny variance # **BA-19-01** for the following stated reason:*

Record of Decision:

Based on a motion and majority vote of the Town of Smithfield Board of Adjustments for the Variance Application Number BA-19-01 is hereby:

_____ **approved upon acceptance and conformity with the following conditions:**

_____ **denied for the noted reasons.**

Decision made this __ day of __, 2019 while in regular session.

Mr. Paul Worley
Chair of the Board of Adjustment

ATTEST:

Julie Edmonds, Administrative Support Specialist



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 4, 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 to ensure 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. One (1) digital copy in PDF format of all material must be provided on Compact Disc. **The application fee is \$300.00***

SITE INFORMATION:

Name of Project: Freedmen's Schoolhouse Acreage of property: .551
 Parcel ID Number: 15013053 Tax ID: 15013053
 Deed Book: 4850 Deed Page(s): 767
 Address: 308 N. Fourth St.
 Location: _____

Existing Use: Residence Proposed Use: Historic site/meeting space
 Existing Zoning District: R-8
 Requested Zoning District: O/I
 Is project within a Planned Development: Yes No
 Planned Development District (if applicable): N/A

Variance Request (List Unified Development Code sections and paragraph numbers)
8.6.1, variance on set back requirements for front yard and side yard (south side)

FOR OFFICE USE ONLY

| | | |
|------------------------------|--------------------------------|------------------------------|
| File Number: <u>BA-19-01</u> | Date Received: <u>12-14-18</u> | Amount Paid: <u>\$300.00</u> |
|------------------------------|--------------------------------|------------------------------|

OWNER INFORMATION:

Name: First Missionary Baptist Church
Mailing Address: P.O. Box 1422, Smithfield, NC 27577
Phone Number: 919-934-7007
Email Address: _____

APPLICANT INFORMATION:

Applicant: First Missionary Baptist Church
Mailing Address: P.O. Box 1422, Smithfield, NC 27577
Phone Number: 919-631-1893
Contact Person: Roy Dublin, Chairman, Board of Trustees
Email Address: roydublin1940@aol.com

REQUIRED PLANS AND SUPPLEMENTAL INFORMATION

The following items must accompany a variance application. This information is required to be present on all plans, except where otherwise noted:

- All required plans (please see the plan requirements checklist).
- Owner Consent form
- A Statement of Justification.
- Required Finding of Fact.
- Other Applicable Documentation: _____

STATEMENT OF JUSTIFICATION

Please provide detailed information concerning all requests. Attach additional sheets if necessary.

We are planning to transfer ownership of the former Freedmen's schoolhouse at 308 N. 4th Street to the Historic Smithfield Foundation for preservation and are subdividing the current lot. Since the two houses on the current lot are too close together and too close to the street to meet setback requirements, we are requesting a variance so that we can move forward with plans to convey the schoolhouse and subdivided lot to the Historic Smithfield Foundation.

REQUIRED FINDINGS OF FACT

Article 4, Section 4.10.2.2 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.

4.10.2.2.1 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.

This building has been located on this site since 1887 and should not be moved, since moving it would change or adversely affect its historic character or integrity.

4.10.2.2.2. 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.

Setback requirements were not in place at the time this structure and the adjacent building were constructed or originally located on this site.

4.10.2.2.3. 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 property was purchased in 2016 with the intent to remove the buildings at a later date and use the lot for parking or future expansion. Because of the historic nature of the schoolhouse, we have elected for it to remain on the site.

4.10.2.2.4. 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.

Persons visiting the historic schoolhouse will use existing parking space along the street and in the church parking lots when not in use by the church, so the limited lot size will not adversely affect the property in terms of use and enjoyment by its owners.

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.

Roy Dublin
Print Name

Roy Dublin
Signature of Applicant

12-14-2018
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: Freedmen's Schoolhouse Submittal Date: 12/14/18

OWNERS AUTHORIZATION

I hereby give CONSENT to _____ (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 *Print Name* *Date*

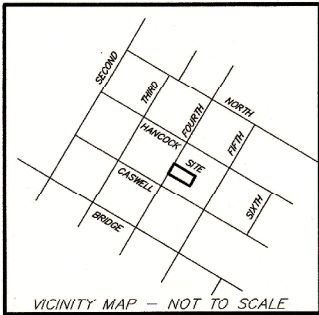
CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER

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.

Roy Dublin Roy Dublin 12-14-18
Signature of Owner/Applicant *Print Name* *Date*

FOR OFFICE USE ONLY

File Number: BA-19-01 Date Received: 12/14/18 Parcel ID Number: 15013053



- CC CONTROL CORNER (CMS UNLESS OTHERWISE NOTED)
- DASHED LINES LINES NOT SURVEYED
- MBSL MINIMUM BUILDING SETBACK LINE
- EIP EXISTING IRON PIPE (CONTROL CORNER)
- EIS EXISTING IRON STAKE (CONTROL CORNER)
- ECM EXISTING CONCRETE MONUMENT (CONTROL CORNER)
- PRIV NEW IRON PIPE
- NP NEW IRON PIPE
- NIS NEW IRON STAKE (REBAR)
- ELS EXISTING LIGHTWOOD STAKE
- TPW T - POST WITNESS
- N/F NOW OR FORMERLY
- PP POWER POLE
- OHPL OR E OVERHEAD POWER LINE
- NPS NO POINT SET
- R/W RIGHT-OF-WAY
- DB DEED BOOK
- E CENTERLINE
- CS COTTON SPRING

NORTH CAROLINA
JOHNSTON COUNTY

I, W. STANTON MASSENGILL, PROFESSIONAL LAND SURVEYOR, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION, DEED DESCRIPTION RECORDED IN BOOK 4880, PAGE 762, THAT THE RATIO OF PRECISION AS CALCULATED BY LATITUDE AND DEPARTURES IS 1:10,000. THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOKS REFERENCED, THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G. S. 47-30 AS AMENDED. WITNESS MY HAND AND SEAL THIS 3RD DAY OF NOVEMBER, A. D. 20 18

W. STANTON MASSENGILL, PROFESSIONAL LAND SURVEYOR, L-2472

I, W. STANTON MASSENGILL, PROFESSIONAL LAND SURVEYOR No. L-2472, CERTIFY THAT THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

W. STANTON MASSENGILL, PROFESSIONAL LAND SURVEYOR No. L-2472

NORTH CAROLINA
JOHNSTON COUNTY

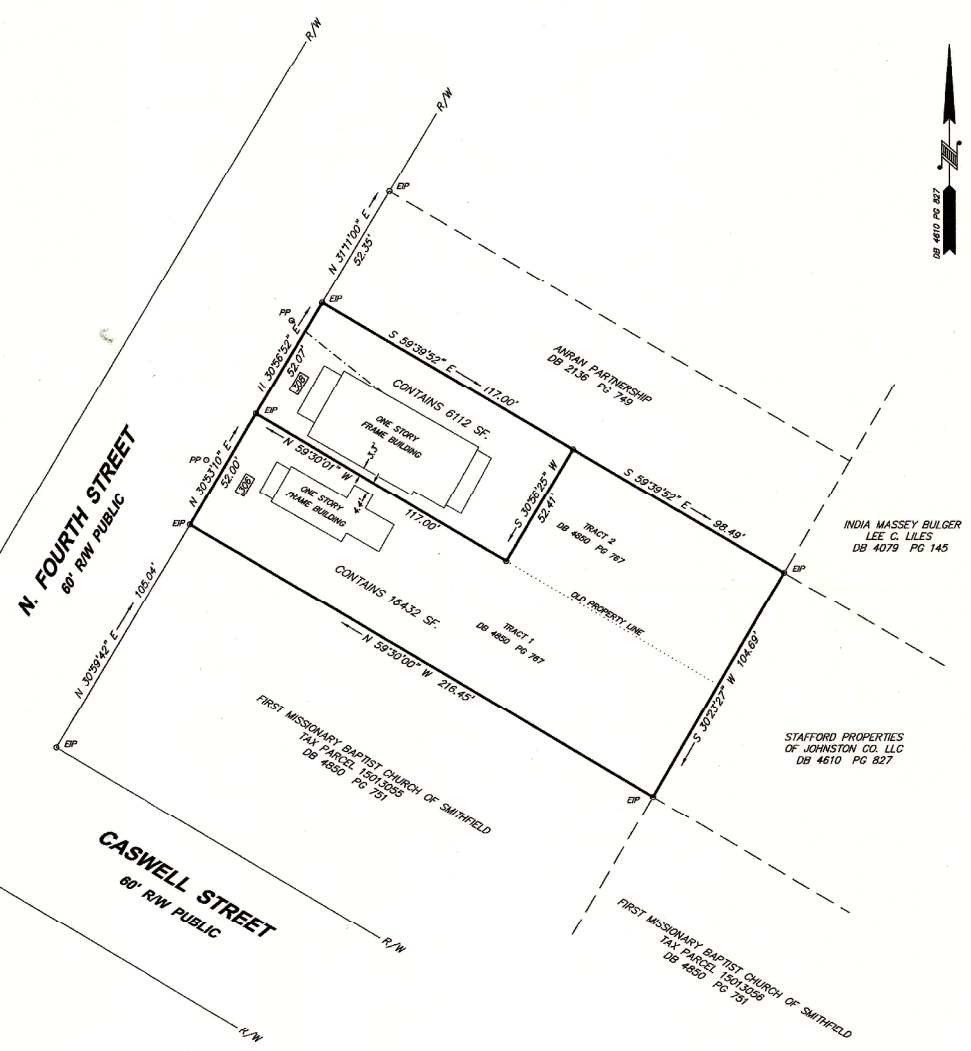
I, _____, REVIEW OFFICER OF JOHNSTON COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

DATE _____ REVIEW OFFICER _____

STATE OF NORTH CAROLINA _____ COUNTY _____
FILED FOR REGISTRATION AT _____ M. _____, IN THE _____

REGISTER OF DEEDS OFFICE:
RECORDED IN BOOK _____, PAGE _____
REGISTER OF DEEDS, BY _____

RECORDED IN BOOK OF MAPS _____, PG. _____



TAX PARCEL 15013053

PRELIMINARY MAP

| | | | | |
|--------------------------|--|------------------|--|-----------------------------|
| REVISIONS | PROPERTY OF | | W. STANTON MASSENGILL, PLS | |
| 12 - 13 - 2018 | FIRST MISSIONARY BAPTIST CHURCH OF SMITHFIELD | | 7193 STRICKLAND'S CROSSROADS ROAD | |
| | TOWNSHIP: SMITHFIELD | COUNTY: JOHNSTON | DATE: 11 - 03 - 2018 | SURVEYED BY: WSM |
| | STATE: NORTH CAROLINA | | SCALE: 1" = 30' | DRAWN BY: WSM |
| | ZONE: | TAX MAP: | PARCEL: | CHECKED & CLOSURE BY: WSM |
| GRAPHIC SCALE | | | FIELD BOOK 160 - 44 | DRAWING No. 18 - 113 - B |

300 Block of North Fourth Street



Project Name:
Freedman
Schoolhouse
Variance

Existing Use:
Single Family
Dwelling

File Number:
BA-19-01

Property Owner:
First Missionary
Baptist Church

Applicant:
First Missionary
Baptist Church

Location:
309 North
Fourth Street

Tax ID#
15013053

Zoning District:
R-8 (Residential)

Map created by the
Mark E. Helmer, AICP
Senior Planner,
GIS Specialist
on 1/9/2019



1 inch = 50 feet

Adjacent Property Owners of
BA-19-01

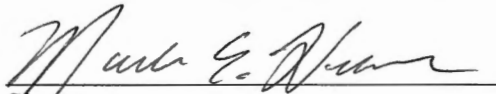
| TAG | PIN | NAME1 | ADDRESS1 | CITY | STATE | ZIPCODE |
|----------|----------------|--|--------------------|------------|-------|------------|
| 15013062 | 169419-52-8247 | BULGER, INDIA MASSEY | 5154 EDMONDSON AVE | BALTIMORE | MD | 21229-2338 |
| 15013061 | 169419-52-8201 | STAFFORD PROPERTIES OF JOHNSTON CO LLC | 8 COLONY RIDGE | CLAYTON | NC | 27520-9525 |
| 15013052 | 169419-52-6366 | ANRAN PARTNERSHIP | 484 WEST MARKET ST | SMITHFIELD | NC | 27577-0000 |
| 15013056 | 169419-52-6194 | FIRST MISSIONARY BAPTIST CHURCH OF SMITHFIELD | PO BOX 1422 | SMITHFIELD | NC | 27577-1422 |
| 15013053 | 169419-52-6320 | FIRST MISSIONARY BAPTIST CHURCH OF SMITHFIELD | PO BOX 1422 | SMITHFIELD | NC | 27577-1422 |
| 15013055 | 169419-52-5270 | FIRST MISSIONARY BAPTIST CHURCH OF SMITHFIELD | PO BOX 1422 | SMITHFIELD | NC | 27577-1422 |



PLANNING DEPARTMENT
Mark E. Helmer, AICP, Senior Planner

ADJOINING PROPERTY OWNERS CERTIFICATION

I, Mark E. Helmer, hereby certify that the property owner and adjacent property owners of the following petition, BA-19-01, were notified by First Class Mail on 1-8-19.


Signature

Johnston County, North Carolina

I, Julianne Edmonds, 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

8th day of January, 2019


Notary Public Signature

Julianne Edmonds
Notary Public Name

My Commission expires on 1-15-2023
(Seal)





PLANNING DEPARTMENT

Mark E. Helmer, AICP, Senior Planner

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, January 31, 2019 at 6:00 p.m. in the Town Hall Council Chambers located at 350 East Market Street to consider the following request:

BA-19-01 First Missionary Baptist Church: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 8, Section 8.3.1 to allow for a reduction to the minimum lot size and a reduction to minimum building setback on property located within an R-8 (Residential) zoning district. The property considered for a variance is located on the east side of North Fourth Street approximately 157 feet north of its intersection with Caswell Street and further identified as Johnston County Tax ID# 15013053.

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.



PLANNING DEPARTMENT

Mark E. Helmer, AICP, Senior Planner

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, January 31, 2019 at 6:00 p.m. in the Town Hall Council Chambers located at 350 East Market Street to consider the following request:

BA-19-01 First Missionary Baptist Church: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 8, Section 8.3.1 to allow for a reduction to the minimum lot size and a reduction to minimum building setback on property located within an R-8 (Residential) zoning district. The property considered for a variance is located on the east side of North Fourth Street approximately 157 feet north of its intersection with Caswell Street and further identified as Johnston County Tax ID# 15013053.

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.

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

By Adam Lovelady

Article: <https://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

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

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.

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)).



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
- canons.sog.unc.edu/?p=7155

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