

Smithfield
Board of Adjustment Minutes
Thursday, February 23, 2023
6:00 P.M.,
Town Hall, Conference Room

Members Present:

Stephen Upton, Chairman
Mark Lane, Vice Chairman
Sarah Edwards
Richard Upton
Jeremy Pearce
Keith Dimsdale
Monique Austin

Members Absent:

Staff Present:

Stephen Wensman, Planning Director
Mark Helmer, Senior Planner
Julie Edmonds, Admin Support Specialist

Staff Absent:

CALL TO ORDER

Approval of minutes from January 26, 2023

Mark Lane made a motion, seconded by Jeremy Pearce to approve the minutes as written.
Unanimously approved

Approval of the 2023 meeting schedule

Jeremy Pearce made a motion, seconded by Mark Lane to approve the 2023 meeting schedule.
Unanimously approved

BA-23-02 Deacon Jones CDJR: The applicant is requesting variances to the Town of Smithfield Unified Development Ordinances, Section 10.2.1 Off-Street Parking Requirements, Section 10.2.2, Minimum Parking Requirements, Section 10.2.5.2, Markings and Section 7.44, Outdoor Vehicle Storage, Sales and Display. The property considered for variances is located on the northeast side of the intersection of North Brightleaf Boulevard and Canterbury Road. The property is further identified as Johnston County Tax ID# 15004022.

Stephen Wensman stated the applicant is requesting a variance from the parking lot striping requirements in the Smithfield Unified Development Ordinance (UDO) as it affects the following code sections:

- Section 10.2.1 (Off-Street Parking Requirements)
- Section 10.2.2 (Minimum Parking Requirements)
- Section 10.2.5.2 (Markings)
- Section 7.44 (Outdoor Vehicle Storage, Sales and Display)

The applicant is Deacon Jones, this property is zoned B-3 (Highway Entrance Business). The property is approximately 5.29 acres, and the existing use is automobile sales.

The applicant is expanding its operations and building footprint to add a new car brand. The building expansion is on the west side of the building affecting existing parking lot area. The town's UDO requires parking lot striping with a zoning permit for the project. The applicant is requesting a variance from the parking lot striping requirement. The applicant would like to park and display cars as it has for years without parking lot striping. When nonconforming sites are redeveloped, or when a new permit is required, certain code requirements come into play which can lessen the nonconforming nature of site. In some cases, the changes can trigger landscaping, parking, and dumpster storage requirements or in this case, the parking requirement. This is the way non-conforming site become conforming over time, often incrementally.

Several years ago, the Town Council made changes to the UDO to reduce the number of land uses requiring a special use permit. As a result, automobile sales no longer require a special use permit. In exchange for the reduction in the number of special use permits, the Council adopted new supplemental standards to address health, safety and welfare issues related to the uses. For automobile sales, the Council had often put conditions on sales lots to limit the number of cars on a lot. The typical condition placed on special use permits was to require the cars on display or for sale to be within a striped parking stall. In effect, automobile sales are a permitted use, but only when they meet the supplemental standards. The applicant is seeking a variance from certain sections of Article 10, Part I, however, any variance from the supplemental standards would be construed as a "use variance" which is illegal.

10.2.1. Off-Street Parking Requirements. There shall be provided at the time of the erection of any building, at the time an existing structure is demolished in order to permit new construction, or at the time any principal building is enlarged or increased in capacity by adding dwelling units, guest rooms, seats, or floor area; or before conversion from one type of use or occupancy to another, permanent off-street parking space in the amount specified by this Ordinance. Such parking space may be provided in a parking garage or properly graded open space. All parking areas shall be designed so that ingress to and egress from such area shall be established and maintained so that all vehicular traffic shall enter and leave the lot by forward motion of the vehicle. Except for multi-family and single-family uses, all off-street parking and loading in the Entry Corridor Overlay District shall be provided in the rear of the principal structure. No off-street parking or loading shall be permitted in a required yard or open space, except in the case of a single- or two-family dwelling. No required off-street parking shall be located on any public right-of-way or encroach by more than 50% on any required setback, or into any required street yard. Under no circumstances shall parking be located within five feet of a right-of-way line.

10.2.2. Minimum Parking Requirement. Each application for a zoning permit shall include information as to the location and dimensions of off-street parking and loading space and the means of ingress and egress to such space. Required off-street parking area for three or more automobiles shall have individual spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any public street,

walk, or alley, and so that any automobile may be parked and unparked without moving another. This information shall be in sufficient detail to enable the Building Inspector to determine whether or not the requirements of this Ordinance are met. No Certificate of Occupancy shall be issued until the parking requirements of this section are met.

10.2.5.2. Markings. Each parking stall shall be marked off and maintained so as to be distinguishable.

The UDO Section 10.2.5.2 by itself does not provide specificity as to how the marking should be provided. The Town's Standard Details and Specifications provides the Town standard:

Parking Lots

All minimum stall depths and module widths shall be measured to the face of curb when curb and gutter is used. All paved parking facilities shall be striped in accordance with the MUTCD with four (4) inch white lines.

The requirement for parking lot striping for car sales lots is further reinforced in Section 7.44:

SECTION 7.44 OUTDOOR VEHICLE STORAGE, SALES AND DISPLAY.

7.44.1. All vehicles for stored outside for display, or sale shall be on a paved surface of bituminous, concrete or other approved comparable surface and in a striped parking stall complying with Article 10, Part I, or stored within a paved storage yard screened from the public right-a-way by a durable opaque fence, opaque wall and/or a solid vegetative buffer with a minimum height of six (6) feet.

Stephen Wensman stated that the applicant submitted a Finding of Fact and each board member was given a copy in their packet. The Board of Adjustments job is to look at the applicants finding and staffs finding then consider your decision.

Planning Staff recommends the Board of Adjustment deny the variance request, BA-23- based on the finding of fact.

Stephen Upton asked what about other paved businesses other than this one that aren't striped?

Stephen Wensman said we have many nonconforming businesses in town but unless they trigger the code, we can't make them come into compliance with the code. Today, staff strives to be as consistent as we can to treat every business the same.

Mark Lane asked if any sales area had been added?

Stephen Wensman said they haven't changed anything to the physical lot other than they expanded the building space.

Mark Lane said the only reason this has become an issue is because they applied for a building permit?

Stephen Wensman said yes and that triggers the need to stripe.

Mark Helmer said they received a site plan approved zoning permit and a building permit.

Richard Upton said he assumed the applicant knew by pulling permits it would trigger this issue.

Stephen Wensman said we informed them of striping when they applied for a zoning permit.

Keith Dimsdale asked if their response about reduction in inventory was a hardship?

Stephen Wensman said it's not a finding for a variance when you look at the required finding of fact. The variance must address those four finding of facts and whether they meet them or don't meet them.

Keith Dimsdale said so their hardship about a reduced inventory to these four finding of fact are not relevant. Whether we agree with it or not the rule is not the question it's applying the rule to case that matters.

Mark Lane expressed that by not allowing the applicant to display his cars the way he wants to and keeping a certain number of cars on the lot is a hardship. If you're going to stripe 300 parking stalls and you have room for 350, that is a hardship.

Stephen Wensman asked if it was a hardship by the Finding of Fact? He said Finding of Fact number 1; In absence of the variance, the applicant will have reasonable use of the property.

Stephen Wensman asked if cars could be sold from that lot with striping?

Mark Lane said of course

Stephen Wensman asked, then where the hardship was?

Mark Lane said because you're going to ask him to reduce the number of cars on the lot. He wants to know if the applicant can sell the same number of cars on the lot striped as he can today.

Stephen Wensman said he doesn't feel that is relevant to the finding of fact to determine hardship.

Richie Brady of Princeton, NC came forward on behalf of Deacon Jones. He stated that a hardship was hard to determine even with legal counsel because their findings are their thoughts as to what a hardship is. If they are able to offer two products compared to one then they see a hardship. They never want to create issues for ingress or egress. They just ask that they be allowed to park the way they have for the last 40 years without restrictions.

Sarah Edwards stated in her mind striping creates lines for where vehicles are already being parked. To her it looks like the plan is close to what currently exists.

Richie Brady said if you understand where US 301 is located from where the property is there are two entrances. In those entrances they display cars for customers that enter the property. At the back of the lot, they need access for tractor-trailers delivering cars and parts. That's why the striping in the back meets code as the ordinance required. If the tractor trailer doesn't have enough room to turn, they will have to back out of the property and that creates another set of problems. They have tried to make every effort to meet the ordinance parking for customers, service, and detailing.

Mark Lane made a motion to close BA-23-02, seconded by Keith Dimsdale. Unanimously approved.

Mark Lane stated this business has operated as they have without the parking lot striped for 40 years. The only reason this is an issue is due to them pulling permits for their new addition. He feels it is creating a hardship because it limits the number of cars and the way those cars can be displayed. He would feel differently if they were a new business. He doesn't agree with penalizing the applicant when they are bringing tax base to the Town.

Richard Upton asked if the applicant stated they didn't want striping, therefore wouldn't add on to the building. He said code is code and should be followed by all. Our Town is trying to make uniformity from now and into the future. He asked how large a parking space was.

Stephen Wensman said a standard space is 9 ft. wide x 18 ft. deep.

Richard Upton said if that's the case they probably can't park as close together as they did prior. That would limit the number of cars but he thinks their biggest issue would be display. It may interrupt their business but will not close the dealership.

Keith Dimsdale feels the code should be changed.

Mark Lane asked what the duty of the board was.

Stephen Wensman said your duty is to review the variance and analyze it based on the four finding of fact. If you can tie your response to one of the four finding of fact that's different than staff's response then you can make an affirmative decision.

Sarah Edwards asked if a new tenant were to move into Deacon Jones would they be required to get approval.

Stephen Wensman said with a new tenant striping of the parking is required. With a new zoning permit if you have more than 4 cars the parking lot must be striped.

Keith Dimsdale said so the Town not allowing the applicant to hold the number of vehicles necessary to conduct business isn't a hardship?

Stephen Wensman said he didn't see it as a hardship when looking at the finding of fact.

Keith Dimsdale said if there isn't a point in that there is a mistake. We need to be a Town that welcomes business.

STAFF FINDING OF FACT FOR VARIANCE:

To approve a variance, the Board of Adjustments shall find all of the following provisions can be met (Staff's findings are in *bold/italic*):

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. *In absence of the variance, the applicant will have reasonable use of the property. The preference in the type of marking does not create a hardship. The Town's Standard Details and Specifications determine the type of marking within the Town of Smithfield.*

Mark Lane yes, Keith Dimsdale yes, Jeremy Pearce no, Monique Austin no, Richard Upton no, Sarah Edwards no, Stephen Upton no.

Mark Lane voted yes because the number of vehicles is being limited that can be sold on the lot, as well as the way he can display those vehicles. Keith Dimsdale voted yes and agreed to the same explanation.

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 type of parking lot marking has no relationship with the property, such as location, size or topography. There is no hardship in providing the Town's standard parking lot striping determined by the Town's Standard Details and Specifications.*

Sarah Edwards no, Mark Lane yes, Keith Dimsdale, yes, Richard Upton no, Monique Austin no, Jeremy Pearce no, Stephen Upton no.

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 type of parking lot marking has no relationship with the property, such as location, size or topography. There is no hardship in providing the Town's standard parking lot striping determined by the Town's Standard Details and Specifications. The use as patron parking vs. vehicle striping is irrelevant.*

Sarah Edwards no, Mark Lane yes, Richard Upton no, Monique Austin no, Jeremy Pearce no, Keith Dimsdale no and Stephen Upton no.

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 request is consistent with the spirit, purpose and intent of the Ordinance; however, the Town strives to apply its ordinances consistently and the marking is inconsistent with the UDO requirements.***

Sarah Edwards no, Keith Dimsdale yes, Richard Upton no, Monique Austin no, Jeremy Pearce no, Mark Lane yes and Stephen Upton no.

Sarah Edwards made a motion to deny variance to the parking lot striping requirements found in Section 10.2.1 (Off-Street Parking Requirements), Section 10.2.2 (Minimum Parking Requirements), Section 10.2.5.2 (Markings), and Section 7.44 (Outdoor Vehicle Storage, Sales and Display) based on the finding of fact, seconded by Jeremy Pearce. 5 approved (Stephen Upton, Sarah Edwards, Jeremy Pearce, Richard Upton and Monique Austin and 2 denied (Mark Lane and Keith Dimsdale)

Stephen Upton stated the variance is denied based on the application not receiving a 4/5 majority vote in the affirmative on all 4 Finding of Fact.

BA-23-03 Perfect Ride: The applicant is requesting variances to the Town of Smithfield Unified Development Ordinances, Section 10.13.1.8.1. Street Yards for Commercial Developments, Article 10.13.1.7.3, Parking lot Facility Requirements and Section 10.2.5.2, Parking Lot with More Than Four Spaces. The property considered for variances is located on the southwest side of the intersection of North Brightleaf Boulevard and East Edgerton Street and further identified as Johnston County Tax ID# 15006006.

Mark Helmer stated the applicant is requesting 3 variances from the Town of Smithfield Unified Development Ordinance:

- A 7.5-foot reduction of the 15-foot street yard along N. Brightleaf Blvd (UDO Section 10.13.1.8.1.).
- Eliminate the requirement for a landscape island every 15 feet (UDO Section 10.13.1.7.3).
- Allow the use of “tick-Marks” to delineate parking spaces in the parking lot display areas rather than parking lot striping (Section 10.2.5.2).

The property considered for a variance is located on the southwest corner of N Brightleaf Boulevard and E. Edgerton Street.

The applicant is planning to expand the Perfect Ride car sales lot into a more modern used car dealership. The update to the facility triggers compliance with current zoning standards including landscaping, dumpster screening, paving, curb and gutter and parking. The applicant is requesting 3 variances, and each should be considered by the Board of Adjustments separately.

VARIANCE #1.

The first variance request is for a 7.5-foot reduction of the 15-foot street yard along N. Brightleaf Blvd (UDO Section 10.13.1.8.1.):

10.13.1.8. Streets Yards.

10.13.1.8.1. Commercial Developments.

Street Yards shall be provided with a minimum depth of 50% of the required front or corner side yard setback as measured perpendicular to the street right of way, provided that no street yard in excess of 15 feet in depth shall be required. The width of the planting strip may vary, but the minimum width cannot be less than seven feet and the average width shall be at least ten feet. The planting area must be covered with living material, including trees, shrubs and/or ground cover, so that no soil is exposed at a rate of two canopy tree and 2 shrubs per every 100 linear feet of road frontage. Canopy trees can be replaced by understory trees if in conflict with overhead utilities. Required trees shall be placed in a planting strip on private property and not within the street right-of-way. No required street yard tree can be planted further than 15 feet from the edge of the right- of-way to meet this requirement. For this property, the required Street Yard is 15 feet.

Paul Embler with Terra Eden Landscape and Design is representing the applicant. He resides at 11 Kentwood Drive Smithfield, NC 27577. They are only applying for the variance at this time not a permit. He stated the spirit and intent of the ordinance is being met on all three variance requests. There are hardships established in order to construct the facility. Paul showed the new buildings being proposed. New showroom and office, car detailing and prep and the back area are a 3 bay maintenance facility. The showroom is a 75x75 with a 12x50 porch on it. The car detailing and prep area will be a 25x25 area and the maintenance bay is 50x75. What you see is the layout that meets the town's requirement as far as landscaping with the exception of the request for the variance on item # 2. The parking spaces are laid out according to the town's parking requirements. They all are 9x18 spaces with 24' drives. Along Edgerton Street there is a 15' buffer.

Used car lots differ from dealerships because dealerships have national advertising, television and the internet. If you shop for a vehicle at a dealership, you know what you want and your purchase is likely price driven. With a used car lot, it may be more of an impulse buy. Visibility is more important to a used car lot than a dealership lot. The frontage on the roadway is very important and the closer you can get to it the better you are. Inventory on a lot is the second most important thing on a used car lot. There's no issue with meeting the number of spaces based on the code provided by the town. Right now, they are able to get 14 cars on the Hwy 301 frontage; the current plan reduces it to 9. That's a 40% reduction by going to a 7.5 ft. landscape buffer. They are losing a lot of frontage and display space.

It would create an unnecessary hardship for the strict compliance of the ordinance. It causes the applicant to lose display area from what they currently have. They will go from 14 cars to 9 cars. The required landscape islands will cause them to lose 5% of the display area. All landscaping will be done so the intent and the spirit of the ordinance are being met.

Mr. Embler contends the proposed striping with tick marks does meet the ordinance.

Mark Helmer said although MUTCD was referenced, the standard for the stripe is in the ordinance in section 7.44.1

7.44.1. All vehicles for stored outside for display, or sale shall be on a paved surface of bituminous, concrete or other approved comparable surface and in a striped parking stall complying with Article 10, Part I, or stored within a paved storage yard screened from the public right-a-way by a durable opaque fence, opaque wall and/or a solid vegetative buffer with a minimum height of six (6) feet.

Jeremy Pearce asked where a tick mark would go.

Paul Embler showed an example by pointing it out on the overhead screen. He stated the MUTCD states they should be 4 inches wide and 1 foot long.

Richard Upton asked if they would be distanced the same width apart?

Paul Embler said they would be done to town standards.

Sarah Edwards asked staff if there were any requirements for striping parking where it says vehicle storage in the southeast corner of the lot.

Stephen Wensman explained that in a screened storage yard there is no requirement for striping.

Sarah Edwards asked for the difference between striping and tick marks. How does it prevent a dealership from operating?

Paul Embler demonstrated tick marks using cards.

Sarah Edwards asked how that prevents them from operating.

Paul Embler said it allows them to park the cars one way and the marks going another way.

Stephen Wensman said the striping requirement is a way for the town to regulate how many cars are parked on the lot.

Mark Lane asked why again did you want the variance for the street yard?

Paul Embler said to offset what someone might do on the adjacent property. It would be detrimental to the car lot if someone came up and built a building right up on the minimum setback, flush to the property line.

Mark Helmer said earlier Mr. Embler mentioned they would be losing parking from what they have now compared to what they will have once the site is developed. This will be new construction, so there is no longer the same parking and that right goes away. So, the new site

brings new standards. Mark feels the site could be redesigned in such a way that it can meet the 15 ft. setback and fit the same number of cars on the lot.

Sarah Edwards asked if there was a requirement for an entrance to be on Brightleaf Blvd onto the site.

Mark Helmer said there is no requirement.

Paul Embler said there are currently two entrances on to this property and one will be closed.

Paul Embler summarized by telling the board he appreciated their consideration and to keep in mind that the spirit and intent of the ordinance is still being met. We still have the landscape street buffer; they will supplement the plantings with the ones being eliminated in the two islands if that variance is given. They will appear somewhere else on the property. There is a hardship, forget what's on the site. If someone decides to develop next door it would greatly affect this business owner.

Sarah Edwards made a motion to close the public hearing, seconded by Jeremy Pearce. Unanimously approved.

Finding of Fact

Variance # 1

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 applicant will have reasonable use of the property. The fact that fewer vehicles can be accommodated does not create a hardship. The property is currently being used for car sales and without the variance it can still be used as a car sales lot.***

Jeremy Pearce no, Monique Austin no, Richard Upton no, Keith Dimsdale yes, Mark Lane yes, Sarah Edwards no and Stephen Upton no.

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 length of street frontage on Brightleaf Boulevard has not changed since the Perfect Ride car sales lot was permitted (SUP-00-08, June 6, 2000). Parcels along Brightleaf Boulevard vary in width, some with greater frontage and some with less. The minimum commercial lot frontage is 125' and Perfect Ride as approximately 160 feet. The frontage length has not prevented Perfect Ride from operating a car sales lot on the property.***

Jeremy Pearce no, Monique Austin no, Richard Upton no, Keith Dimsdale yes, Mark Lane yes, Sarah Edwards no and Stephen Upton no.

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. ***There has been no physical change to the property since the Perfect Ride purchased the property except for an expansion eastward to include the E. Edgerton frontage and the addition of some landscaping and gravel. The desire to upgrade the property to a lesser standard than required by the UDO does not create a hardship.***

Jeremy Pearce no, Monique Austin no, Richard Upton no, Stephen Upton no and Sarah Edwards no, Keith Dimsdale yes, Mark Lane yes.

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. he requested variance is inconsistent with the spirit, purpose and intent of the ordinance. ***NCDOT road with widening prior to the owner's purchasing of the property creating or increasing the non-conforming nature of it, does not create a hardship given the redevelopment creates the opportunity to remedy the lack of street yard. The UDO requirements do not create a hardship. The spirit and intent of the ordinance is for relatively consistent street yard widths along commercial frontages within each zoning district to be achieved as parcels are developed or redeveloped. The requested variance is inconsistent with the spirit, purpose and intent of the ordinance.***

Sarah Edwards no, Keith Dimsdale yes, Monique Austin no, Mark Lane yes, Richard Upton no, Jeremy Pearce no and Stephen Upton no.

Keith Dimsdale said the case laid out by Paul Emblar explains they are intending to do the things the code requires. They are asking for a variance and that's the purpose and spirit.

Mark Helmer stated that the variance is denied based on the application not receiving a 4/5 majority vote in the affirmative on all 4 finding of fact.

Variance #2

The second variance request is to eliminate the requirement for a landscape island every 15 feet (UDO Section 10.13.1.7.3):

10.13.1.7.3. Landscaped islands shall be installed at each block of 15 consecutive parking spaces and at the ends of all parking rows. Landscaped islands shall contain at least 100 square feet in area and be at least 8 feet in width, measured from back of curb to back of curb.

The purposed of Section 10.13.1.7.3 is to break up expanses of pavement and to shade parking areas.

STAFF FINDING OF FACT FOR VARIANCE #2:

To approve a variance, the Board of Adjustments shall find all of the following provisions can be met (Staff's finding are in ***bold/ italic***):

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 applicant will have reasonable use of the property. The fact that few er vehicles can be accommodated as a result of installing islands does not create a hardship. The property is currently being used for car sales and without the variance it can still be used as a car sales lot.***

Sarah Edwards no, Mark Lane yes, Keith Dimsdale yes, Richard Upton no, Monique Austin no, Jeremy Pearce yes and Stephen Upton no.

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 length of street frontage on Brightleaf Boulevard has not changed since the Perfect Ride car sales lot was permitted (SUP-00 - 08, June 6, 2000). Parcels along Brightleaf Boulevard vary in width, some with greater frontage and some with less. The minimum commercial lot frontage is 125' and Perfect Ride as approximately 160 feet. The frontage length has not prevented Perfect Ride from operating a car sales lot on the property. Considering the sketch plan, it is clear that it is physically possible to install the islands as required. The sketch plan shows hatched parking areas and to comply with the UDO requirement, these can feasibly become landscape islands.***

Sarah Edwards no, Jeremy Pearce yes, Monique Austin no, Keith Dimsdale yes, Mark Lane yes, Richard Upton no and Stephen Upton no.

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. ***There has been no significant physical change to the property since Perfect Ride purchased the property except for an expansion eastward to include the E. Edgerton frontage and the addition of some landscaping and gravel. The desire to upgrade the property to a lesser standard than required by the UDO does not create a hardship.***

Sarah Edwards no, Jeremy Pearce no, Keith Dimsdale no, Richard Upton no, Monique Austin no, Mark Lane no and Stephen Upton no.

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 inconsistent with the spirit, purpose, and intent of the Ordinance. The purposed of the ordinance is to break up expanses of pavement for parking with landscaping and the variance goes against this intent.***

Mark Lane yes, Sarah Edwards no, Keith Dimsdale yes, Jeremy Pearce yes, Monique Austin no, Richard Upton yes and Stephen Upton no.

Stephen Upton stated the variance is denied based on the application not receiving a 4/5 majority vote in the affirmative on all 4 Finding of Fact.

Variance #3

The applicant is requesting a variance from the Town's parking lot striping requirements to allow the use of "tick-marks" to delineate parking spaces in the parking lot display areas (Section 10.2.5.2):

10.2.5. Parking Lots with More than Four Spaces.

10.2.5.2. Markings. Each parking stall shall be marked off and maintained so as to be distinguishable.

The UDO Section 10.2.5.2 by itself does not provide specificity as to how the marking should be provided. The Town's Standard Details and Specifications provides the Town standard:

Parking Lots

All minimum stall depths and module widths shall be measured to the face of curb when curb and gutter is used. All paved parking facilities shall be striped in accordance with the MUTCD with four (4) inch white lines. The requirement for parking lot striping for car sales lots is further reinforced in Section 7.44:

SECTION 7.44 OUTDOOR VEHICLE STORAGE, SALES AND DISPLAY.

7.44.1. All vehicles for stored outside for display, or sale shall be on a paved surface of bituminous, concrete or other approved comparable surface and in a striped parking stall complying with Article 10, Part I, or stored within a paved storage yard screened from the public right-a-way by a durable opaque fence, opaque wall and/or a solid vegetative buffer with a minimum height of six (6) feet.

STAFF FINDING OF FACT FOR VARIANCE #3:

To approve a variance, the Board of Adjustments shall find all of the following provisions can be met (Staff's finding are in ***bold/italic***):

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. ***In absence of the variance, the applicant will have reasonable use of the property. The preference in the type of marking does not create a hardship. The Town's Standard Details and Specifications determines the type of marking within the Town of Smithfield.***

Sarah Edwards no, Stephen Upton no, Mark Lane yes, Keith Dimsdale yes, Richard Upton yes, Monique Austin no and Jeremy Pearce no.

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 type of parking lot marking has no relationship with the property, such as location, size or topography. There is no hardship in providing the Town's standard parking lot striping determined by the Town's Standard Details and Specifications.***

Sarah Edwards no, Keith Dimsdale yes, Jeremy Pearce no, Monique Austin no, Richard Upton no, Mark Lane yes, Stephen Upton no.

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 type of parking lot marking has no relationship with the property, such as location, size or topography. There is no hardship in providing the Town's standard parking lot striping determined by the Town's Standard Details and Specifications. The use as patron parking vs. vehicle striping is irrelevant.***

Sarah Edwards no, Mark Lane no, Stephen Upton no, Jeremy Pearce no, Keith Dimsdale no, Richard Upton no and Monique Austin no.

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 request is consistent with the spirit, purpose and intent of the Ordinance; however, the Town strives to apply its ordinances consistently and the marking is inconsistent with the UDO requirements.***

Sarah Edwards no, Keith Dimsdale yes, Mark Lane yes, Richard Upton yes, Jeremy Pearce no, Monique Austin no and Stephen Upton yes.

Stephen Upton stated the variance is denied based on the application not receiving a 4/5 majority vote in the affirmative on all 4 Finding of Fact.

Old Business

None

Jeremy Pearce made a motion to adjourn, seconded by Sarah Edwards. Unanimously Approved

Julie Edmonds



Administrative Support Specialist
Town of Smithfield Planning Department