

TOWN OF SMITHFIELD BOARD OF ADJUSTMENT AGENDA PACKET



Chairman: Stephen Upton
Vice-Chairman: Mark Lane

Sarah Edwards
Jeremy Pearce
Richard Upton
Monique Austin (Alt)
Thomas Bell (Alt)

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

Meeting Date: Thursday, April 27, 2023

Meeting Time: 6:00 P.M.

Meeting Place: Council Chambers, Smithfield Town Hall

**AGENDA
BOARD OF ADJUSTMENT
REGULAR MEETING
APRIL 27, 2023 MEETING
TIME: 6:00 PM TOWN
HALL**

Call to Order.

Approval of the minutes for February 27, 2023

Swearing in of new of board member Mr. Thomas Bell

Public Hearing.

BA-23-05 Georgetown Enterprises LLC: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinances, Article 10, Street Design Standards, Section 10.110.1.4.4.1, to allow for a division of land which will create a 6.6-acre parcel that will not front on a publicly dedicated and publicly maintained street. The property considered for a variance is located on the west side of Westerman Place, approximately 1300 feet north of its intersection with Short Journey Road. The property is further identified as Johnston County Tax ID# 15I07040.

Old Business.

New Business.

Adjournment.

**Draft
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, Three J's Inc., part of the Deacon Jones group with Kenneth Jones and Richie Brady present, is expanding its operations by adding three new rooms to add a Dodge Ram truck brand, with the additions being to the west of the current building as shown on the site plan attached to agenda at page 10-12 entitled "Deacon Jones Chrysler Dodge Jeep Plan " and being property 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. The property is zoned B-3 (Highway Entrance Business). The property is approximately 5.29 acres, and the existing use is automobile sales with this building expansion expanding into the current parking lot area, but more importantly triggering upgrades to the parking under our ordinance.

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

Mr. Wensman testified that when nonconforming sites are redeveloped, or when a new permit is required, certain code requirements come into play (see Section 10.2.1 immediately below) 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 becomes conforming over time, often incrementally.

The town's UDO sections cited above require 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.

Mr. Wensman testified that 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. When considering the reduction in the number of special use permits, the Council adopted new supplemental standards to address health, safety and welfare issues, particularly design issues for outdoor vehicle storage or parking lots visible from the street. 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 striped parking spaces or "stalls". Now automobile sales are a "permitted use" in particular districts, but only when they meet the supplemental standards. The applicant is seeking a variance from certain sections of Article 10, Part I.

The requirement for parking lot striping for car sales lots is set forth in Section 7.44 of the Town Code, section 10.2.5.2, and the Town's Standard Details and Specifications manual.

FIRST, SECTION 7.44 OUTDOOR VEHICLE STORAGE, SALES AND DISPLAY.

7.44.1. All vehicles stored outside for display, or sale shall be on a paved surface of bituminous, concrete or other approved comparable surface and in a ***striped*** (emphasis added) 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.

As to this first section, Mr. Wensman explained as follows. In 7.44 the Council approved a standard for outdoor vehicle storage, sales, and display to address the conditions they typically put on car dealerships when it was a conditional use. Again, it is reinforcing that paved striped parking is required.

SECOND. SECTION 10.2.5.2. *Markings.* Each **parking stall shall be marked off and maintained** (emphasis added) so as to be distinguishable.

As to this second and third sections, Mr. Wensman explained. 10.2.5.2 doesn't say how that striping is to be done; it just says marking is required. But we have an engineering standard that requires striping in accordance with MUTCD which is a DOT requirement--that's the reflective white paint or yellow paint—so that is where the actual type of striping is. The engineering standards and the UDO fit together.

THIRD. The Town's Standard Details and Specifications supplements the Town standard referenced in the preceding code sections. The specification is as follows.

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. (emphasis added)

As stated initially, erection of new buildings or expansions in the footprints trigger upgrades as stated in 10.2.1 of the code.

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.

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.

As to these sections, Mr. Wensman explained as follows. Article 10.2 states that when there's a new building permit and a zoning permit is being issued, the required parking is needed. This sets the minimum parking requirements. If there are 3 or more cars associated with the zoning permit, stripe parking is required.

Stephen Wensman testified that the applicant submitted a proposal for Findings of Fact and each board member was given a copy in their packet. The Board of Adjustment's job is to look at the applicant's proposed findings and staffs finding, then consider your decision. The Applicant's proposed findings are as follows with the Applicants statements in **bold**.

Statement of Justification - p. 2. We are requesting a variance which will allow us to maintain our present level of inventory and meet the changing requirements of our manufacturers. Deacon Jones purchased our current facility on Brightleaf Boulevard in the 1980's. Ever since, we have continuously been allowed to have stalls for over retail units on display and additional stalls for our customers and service vehicles. With the Town's proposed changes, we will have only 350 stalls total, including for customers and service vehicles. This will adversely restrict our inventory on hand for the customers, and thereby hurt our ability to compete with the internet sellers. All this is happening when our franchisors (Chrysler-Jeep-Dodge) have added a new brand (Ram) which requires us to show additional models/units on the same footprint. By this request, we are asking only to continue what we have been allowed to do for decades, and no more. Currently we have easily accommodated more than 500 vehicles during peak seasons.

4.10.2.2.1 -p. 3 Finding 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. Staff recommended a denial of this finding based on the following.

Unnecessary hardship will result from the strict application of the Ordinance because we will be forced to significantly reduce our inventory, at a time when our manufacturers have added a separate product line (Ram) which increases our need for inventory spaces. Onsite display of products where customers can see and sit in the vehicle is essential for Deacon Jones to compete with online sellers.

4.10.2.2.2 - p. 3 Finding 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

The hardship results from conditions that are peculiar to this property which recently has become the sales site of four separate manufacturers. Deacon Jones is the only dealer in Smithfield which sells vehicles from four different manufacturers on a single site, and to grant a variance here will not "open the floodgates" to other requests.

4.10.2.2.3 - p. 3 Finding 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

Again, until recently this location sold product for three manufacturers. The fourth (Ram) was the result of action taken by Chrysler Corporation when it created the separate Ram division. Deacon Jones had no part in bringing about this situation at the Brightleaf store

4.10.2.2.4 - p. 3 Finding 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.

Deacon Jones' request does not seek to increase the number vehicles on the site, only to maintain the current level. It does not invite other dealers to ask for a similar variance because it is the only dealer in Smithfield so affected by the Ordinance. The Deacon Jones site plan includes clearly identifying and outlining all driveways, entrances and exits. It also includes clear demarcation of handicap spaces, customer service areas and employee parking. The number of vehicles on site will be maintained, not increased. Public safety will continue to be secured. In these ways, the requested variance is consistent with the spirit, purpose and intent of the Ordinance, and substantial justice will be achieved.

STAFF responded to the Applicant's proposed findings on the variance in its Application with a recommendation of denial of the variance and with Staff responses to the variance as follows with some of the comments of staff and board members repeated from the presentation.

Fact No. 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 of the property can be made.”

In the absence of the variance, this applicant will still have use of the property. You'll still be able to sell cars. You'll still be able to display cars. So, the parking does not, therefore, meet standard number 1. You

can still reasonably use the property. There are other dealerships that have met this standard and they're still selling cars and are in business.

Fact No. 2

“The hardship results from the conditions that are particular to the property such as location, size and topography. Hardships resulting from personal circumstances as well as hardships resulting from conditions that are common to the neighborhood or general public may not be a basis for granting a variance.”

The type of parking lot markings has no relationship with the property such as location, size or topography. There's no hardship providing the Town's standard parking lot striping which is determined by the Town's standards and UDO.

Stephen Upton: Excuse me, that's what we're here for right there. Is that right? The Town's standard details and specifications in the UDO? That's what I'd like the Board to—

Steve Wensman: Yeah, and they've not really provided a physical location and size or topography reason as to why striping cannot happen in their findings. So, it is my response that there is no hardship.

Mark Lane: Repeat what you just said about their findings.

Steve Wensman: Their findings does not really express why it's a variance as far as number 2. They're saying hardships due to size, topography, and location would be acceptable but they've not provided a case that there is a size, location or topography reason as to why they can't stripe the parking lot.

Fact 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 striping of the parking lot has no relationship to the property such as location, size or topography, there's no hardship in providing the Town standard parking lot striping that is required by the UDO. The use of the patron parking versus the vehicle striping is irrelevant. The Code is requiring both to be striped.

Fact 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.”

Staff believes it is not consistent with the spirit, purpose, and intent of the Ordinance, the Town strives to apply its Ordinance consistently and the marking as they are proposing is inconsistent with the UDO requirements.

Stephen Wensman. With that, are there any questions?

I just want to say that our recommended motion is to deny. In this case, the denial can be for all the different sections that they are requesting a variance from because it's really related to one issue which is striping of parking.

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's proposed finding was it was not a hardship and called Mr. Dimsdale attention back to the findings stating: "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 findings 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.

He stated that the applicant did not want striping along the frontage on 301 because they thought it might limit the number of cars they could display there. This despite the appearance of the striping would actually set a pretty close line of cars as in any striped parking lot and probably maximize the number of cars at the front right of way with the highway. The spaces are 9 feet by 18 feet with cars generally 7.5 feet wide.

NOTE BRADY ADMITS HERE THAT THE STRIPES FOR PARKING SPACES WITH A 9 FOOT WIDTH FOR CARS PARKED PERPENDICULAR TO HIGHWAY 301 DOES NOT REDUCE THE VEHICLES DEACON CAN DISPLAY FROM 350 TO 500 AS THE APPLICANT ALLEGES IN THE FINDINGS PRESENTED IN THE APPLICATION BECAUSE CARS PARKED IN A STRIPED AREA PERPENDICULAR TO THE HIGHWAY ARE IN FACT ABOUT AS CLOSE AS CARS CAN BE PARKED SO THE STRIPING DOES

NOT REDUCE THE NUMBER OF CARS FOR DISPLAY. Striped spaces are 9 feet apart in width for cars generally known as at least 7.5 feet in width.

Sarah Edwards stated 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.

BRADY HERE STATES THAT STRIPING FOR CARS IN THE BACK OF THE LOT BEHIND THE CARS PARKED PERPENDICULAR TO HIGHWAY 301 IS NOT A PROBLEM FOR THE APPLICANT.

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 findings of fact. If you can tie your response to one of the four findings of fact that's different than staff's response then you can make an affirmative decision.

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.

The Board then voted on the four findings of fact to deny or allow the variance.

To approve a variance, the Board of Adjustments shall find all of the following provisions can be met (Staff's proposed findings for denial 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 the Applicant 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)

Ultimately, the Board found pursuant to GS 160D-705 (d) that whether or not there was a loss of a few spaces, the application and testimony did not show in the approved map prepared by their surveyor, page 10 of Agenda, or the map of the layout prior to construction page 12 of Agenda, a loss of spaces other than where the showroom had been expanded into the parking lot. Mr. Brady in his testimony stated that "hardship was hard to determine even with legal counsel" and admitted that striping did not cost spaces:

"the applicant did not want striping along the frontage on 301 because they thought it might limit the number of cars they could display there. This despite the appearance of the striping would actually set a pretty close line of cars as in any striped parking lot and probably maximize the number of cars at the front right of way with the highway.

Thus, though the Applicant tried to show some small hardship because it could not display vehicles in unrestricted patterns like it might prefer on a given day, there is material substantial and competent evidence that substantially outweighs any evidence of the Applicant and supports denial of the variance. Mr. Brady contradicted the contention of a small hardship in his own testimony as did the before-and-after site plan drawn by Applicant's surveyor and the aerial photo showing the current use of Applicant's parking lot as consistent with striped parking perpendicular to highway 301. All are included in the agenda and referenced in testimony. Agenda pages 10-11 and the Aerial Photo at page 17 of the Agenda. The totality of the competent evidence shows that striping would not reduce significantly, if at all, the number of cars for display or make that display less useful.

Both in the application itself and in the testimony of Mr. Brady, no unnecessary hardship would occur just because the strict letter of the zoning code might, in requiring striped parking spaces for outdoor display, put a 9-foot-wide space between vehicles generally known to be 7.5 feet wide generally. From all the evidence, the striping improves the appearance of the lots and allows for near maximum organized display of vehicles. In the agenda there is an overhead Aerial Photo of the Deacon Jones lot as it is now at page 17 and as Ms. Edwards referenced, it shows cars facing highway 301 in much the same way if the lot were striped. So, their use of the lot is not significantly affected. Therefore, the Board found.

- (1) No unnecessary hardship would result from the strict application of the regulation. The use of the property is not significantly restricted.
- (2) The hardship does not result from conditions that are peculiar to the property, such as location, size, or topography. The Applicant would just as easily make an objection to striping of outdoor parking lots on any such lot in town or possibly along marked parking on city streets.
- (3) The hardship, if one were to believe that the requirement of striping created any hardship, could be offset by actions of the Applicant in using the striping to maximize vehicles on the lot as shown in the aerial photo.
- (4) The requested variance is not consistent with the spirit, purpose, and intent of the regulation, such that the removal of the striping in the outdoor storage lots may not hinder public safety but substantial justice would not be achieved by allowing a variance for such an insignificant restriction on the placement of cars. Furthermore, if the town cannot require striping in outdoor storage parking lots, then with equal logic striping could be an undue hardship in public parking lots, or along the streets downtown. That is not justice. That would create disorder in parking it is not consistent with the spirit, purpose, and intent of the Ordinance The Town strives to apply its Ordinance consistently and the marking as they are proposing is inconsistent with the UDO requirements, which try to give outdoor storage lots an appearance of orderly arrangement of cars by the stripes for a better appearance of the community.

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

BA-23-03 Perfect Ride:

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.

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 variances at this time not a permit. Paul showed the new buildings being proposed including a new showroom and office, car detailing and prep and the back area with 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.

Mr. Embler testified that 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. 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.

Mr. Embler's site plan, included in the Agenda at page 27 after the Owner's Consent Form, 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' drive areas. Along Edgerton Street there is a 15' buffer.

The proposed site plan is Mr. Embler's configuration. The site plan could obviously allow for more upfront parking along the road if (1) the parking spaces were not at an angle; (2) if the entrance did not flare back at an angle to block spaces; (3) if the island facing and dividing the entrance were moved; or (4) set the building differently for more parking in front,

Nevertheless, 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).

VARIANCE #1. A 7.5-foot reduction of the 15-foot street yard along N. Brightleaf Blvd (UDO Section 10.13.1.8.1.)

The pertinent sections of the Code provide as follows.

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...

Mr. Embler contends that the ordinance requirement of a 15-foot depth would create an unnecessary hardship in that it would set back the display cars another 7 feet from the right of way. He contends people driving on Brightleaf Boulevard would not see the display cars as easily. Second, he also contended that the additional 7 feet would reduce the number of cars facing the highway from 14 to 9 shown on the Applicant's site plan. Third, he contended that the ordinance only requires seven feet of plantings so only seven feet should be required. Fourth he contends that it is possible that some owner of an adjacent lot may choose to rezone their property to a highway overlay district where you are allowed to go within ten feet of the right of way and then the fifteen-foot requirement might block the view the Applicant's cars facing the Boulevard.

The Competent evidence presented from the whole record contradicted and substantially outweighed all of Mr. Embler's contentions.

The board did not find the seven-and-a-half-foot added distance would affect visibility from the highway. It is a 35 miles per hour zone.

Furthermore, as Mr. Helmer, Senior Town Planner, testified, the lot actually increases in depth as you go back giving some more space for cars.

Furthermore, as Mr. Helmer stated, it is the design of the site plan that the applicant proposes that reduces the number of cars facing highway 301. The Applicant insists on an entrance from 301 when he could have the entrance close to the Boulevard but on Edgerton Street freeing the full frontage for display of far more cars than the current layout with two entrances on the Boulevard blocking spaces for display vehicles.

The Applicant slants the planting islands on either side of the entrance so that they slant away from the entrance so that the islands slant diagonally into the parking area rather than extend straight back. Slanting the islands into the parking area reduces parking.

The Applicant proposes striping the parking spaces at a slant rather than extending back perpendicular which reduces spacing more because of his slanting entrance islands.

The dimensions of the lot are not changed so board members found that the spaces along the boulevard did not have to change unless the Applicant so chose in his design.

Mr. Helmer, Senior Planner, said the full fifteen feet required by the ordinance does have a provision allowing 7 feet in width of planted area primarily where a sidewalk is to be placed within 5 feet of the 15 area. A sidewalk is planned here.

Speculatively as Mr. Embler contends, the Town Council could rezone a property adjacent to that of the Applicant into a highway business district but Mr. Helmer said the town council has never zoned a property into this overlay district so the concern is not a reasonable possibility. Originally the highway overlay district was intended to allow areas close to downtown to create a downtown look, but lots along the Boulevard want parking to be in front to show that they have customers and to make access easily visible.

VARIANCE 2: Eliminate the requirement for a landscape island every 15 feet (UDO Section 10.13.1.7.3).

Mr. Embler contends this requirement of the UDO eliminates **3 parking display spaces** in the entire lot, a **5% reduction in vehicles**. That he contends is a substantial hardship. He contends the Applicant will however replace any plants lost by the removal of the islands to areas “elsewhere on the site”.

Mr. Helmer, town Senior Planner, responded that “our Code speaks to landscape islands in 10.13.1.7.3 stating “landscape islands shall be installed each 15 consecutive parking spaces. Landscape islands shall contain at least 100 sq. feet of area and be at least 8 feet in width measured from back of curb to curb.” The purpose of 10.13.1.7.3 is to break up expansive pavement in the shade parking areas. This is a good design standard that we’ve had in place for many years now.’

VARIANCE 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).

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

The Code here clearly shows the preference of the Town Council in adopting the instructions of the UDO for striped parking as opposed to the tick marks the Applicant apparently prefers. It is the standards of the code that governs such an issue of legislative discretion.

Ironically, Mr. Embler on page 24 of the Mutcd 2009 Edition (see page 21 of Agenda) attached to the Application states clear reasoning for a town council establishing an order in parking.

Section 38 .19 Parking Space Markings

Marking of parking space boundaries encourages more orderly and efficient use of parking spaces where parking turnover is substantial. Parking space markings tend to prevent encroachment into fire hydrant zones, bus stops, loading zones, approaches to

intersections, curb ramps, and clearance spaces for islands and other zones where parking is restricted.

Note that the “tick marks” preferred by the Applicant to the choice of the Town Council in the UDO would still show 9 by 18-foot spaces but with dashes (tick marks) verse a line. Note the areas for employee parking would continue to have striped spacing, just the display area would be tick marks with the same 9 by 18-foot stalls. Mr Emblar states that the ticks verse the stripes are “just an aesthetic thing, maybe I’m hung up on aesthetics, but that’s the way I was brought up.”

Mr. Helmer the town planner testified that the stripes are also a means of controlling the number of cars on the lot and as an effort to create an appearance of order.

The relevant sections of the code are as follows and clearly ask for striping as the means whereby parking spaces are to be marked.

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 (emphasis added) 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.

SECTION 10.2.5.2. *Markings.* Each parking stall shall be marked off and maintained (emphasis added) so as to be distinguishable.

The Town’s Standard Details and Specifications supplements the Town standard referenced in the preceding code sections. The specification is as follows.

Parking Lots

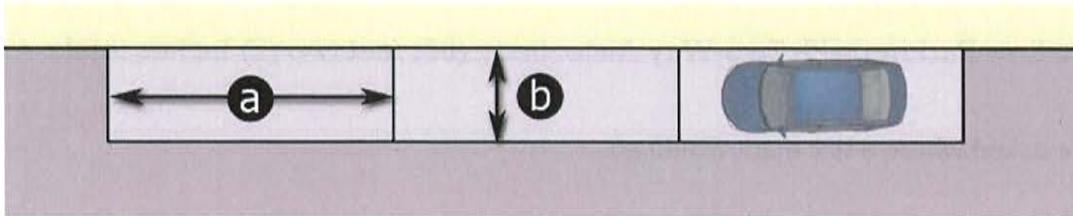
All minimum stall depths and module widths shall be measured to the face of curb when curb and gutter is used. All paved parking facilities shall be striped in accordance with the MUTCD with four (4) inch white lines. (emphasis added)

Code sections show striped spaces.

10.2.4. Parking Space Arrangements and Dimensions.

10.2.4. - Parking Space Arrangements and Dimensions.

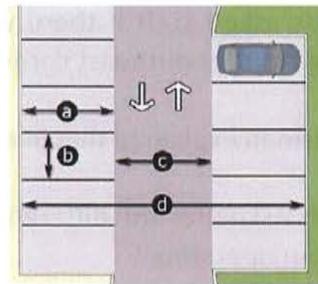
10.2.4.1. Parallel Parking. Parallel parking stalls for standard size automobiles shall have a minimum size of eight (8) feet by twenty-three (23) feet. All parallel parking stalls shall have a minimum of ten (10) feet for maneuvering space in one-way traffic and twenty (20) feet maneuvering space in two-way traffic.



10.2.4.2. Ninety-Degree Parking.

EXPAND

- (a) Length: Eighteen (18) feet
- (b) Width: Nine (9) feet
- (c) Aisle Width: Twenty-four (24) feet
- (d) Two Row Parking with Aisle: Sixty (60) feet total
- (e) Compact Cars: Length—Sixteen (16) feet
Width—Eight (8) feet

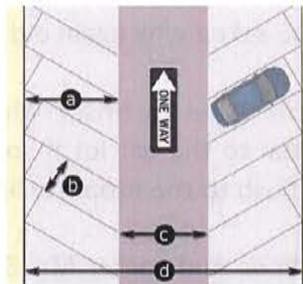


10.2.4.3. Sixty-Degree Parking.

- (a) Length: Twenty (20) feet one (1) inch
(measured from the end of striping

perpendicular to the curb)

- (b) Width: Nine (9) feet
- (c) One-Way Aisle: Sixteen (16) feet
Two-Way Aisle: Twenty (20) feet
- (d) Two Row Parking with One-Way Aisle: Fifty-six (56) feet two (2) inches total



Two Row Parking with Two-Way Aisle: Sixty (60) feet two (2) inches total

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 also 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 with suggested findings of staff in bold behind the question.

Variance # 1: A 7.5-foot reduction of the 15-foot street yard along N. Brightleaf Blvd (UDO Section 10.13.1.8.1.)

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: Eliminate the requirement for a landscape island every 15 feet (UDO Section 10.13.1.7.3).

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

The Board finds that the Competent evidence from the Whole Record as shown by the Site Plan proposed by the Applicant substantially outweighs any hardship here in that the effect of the landscape islands is minimal. Further, the 3 spaces could easily be made up, and more, if the building were moved further back on the lot or the storage area for employee vehicles were moved back nine feet from that shown on the Site Plan on page 27 of the Agenda. The applicant by his own Site Plan is creating the loss of those 3 spaces and more.

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 again 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. The Board finds ***without the variance, the applicant will have reasonable use of the property. The fact that fewer 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 purpose 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. 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 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.

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 variances are denied based on the application not receiving a 4/5 majority vote in the affirmative on all 4 Findings of Fact.

Old Business

None

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

Stephen Upton

 4-10-23

Board of Adjustment Chairman



Request for Board of Adjustment Action

Agenda BA-23-
Item: 05
Date: 4/27/23

Subject: 200 block of Westerman Place
Department: Planning
Presented by: Mark Helmer, Senior Planner
Presentation: Yes

Issue Statement

The applicant is requesting a variance from street design standards requirements of the Town of Smithfield Unified Development Ordinance (UDO) as it affects the following code sections:

- Section 2.19. - Public Access to Property
- Section 10.110.1.4.4. Every lot shall maintain required street frontage as required in Article 8 on one (1) of the following (Amended 4/3/2018):
- Section 10.110.1.4.4.1. A public street dedicated to and maintained by the Town of Smithfield or the North Carolina Department of Transportation.
- Section 10.110.1.4.4.2. A street constructed to the standards of the Town or Smithfield or the North Carolina Department of Transportation, with a written agreement concerning the future maintenance of the street.

Financial Impact

None.

Action Needed

To hold an evidentiary hearing and to review the variance request and to decide whether to approve, approve with conditions or deny.

Recommendation

Planning Staff recommends approval of variance BA-23-05 based on the finding of fact.

Approved: Town Manager Town Attorney

Attachments:

- Staff Report, Application, Area map



Staff Report

Agenda Item: BA-23-05
Date: 4/27/23

REQUEST:

The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinances, Section 2.19, Section 10.110.1.4.4, Section 10.110.1.4.4.1 and section 10.110.1.4.4.2 to allow for a division of land which will create two lots equaling 6.6-acres and 15.3-acres that will not front on a publicly dedicated and publicly maintained street.

PROJECT LOCATION:

The property considered for a variance is located on the west side of Westerman Place, approximately 1300 feet north of its intersection with Short Journey Road. The property is further identified as Johnston County Tax ID# 15107040.

CASE DATA:

Applicant: Georgetown Enterprises LLC
Property Owner: Dennis Russel
Tax Parcel #: 167500-74-2102
Town/ETJ: ETJ
Acreage: 21.9 acres
Present Zoning: R-20A (Residential-Agricultural)
Existing Use: woodland / pasture
Water Service: Private well
Sewer Service: Private septic system
Electrical Service: Duke Energy Progress

ADJACENT ZONING AND LAND USE:

	Zoning	Existing Use
North	R-20A	Residential / Agricultural
South:	R-20A	Residential / Agricultural
West:	R-20A	Residential / Agricultural
East:	R-20A	Residential / Agricultural

STAFF ANALYSIS:

The applicant is proposing to divide a 20.9-acre parcel into two lots equaling 6.77 acres and 15.3 acres. The existing parcel is served by a private driveway named Westerman Place located within a 50' private easement. The applicant is proposing to divide the property along this easement in such a way that both lots will continue to be served by the easement. There is no known maintenance agreement for this portion of the easement. However, Creeks Bend Subdivision, which is located on the most northern portion on the easement, has provisions within their homeowners' agreements that seemly allows them to maintain the easement all the way to the state-maintained roadway of Short Journey Road.

Existing development patterns are well established on Westerman Place and were originally approved by Johnston County prior to the Town of Smithfield extending its extra territorial jurisdiction to this area. There are currently 17 lots being served by the Westerman Place easement and 11 of these lots are less than 10 acres in size. The condition of the gravel road surface is generally good, making safe passage of emergency vehicles possible.

The Town of Smithfield Unified Development Ordinance (UDO) has established minimum standards for the dividing of land when newly created lots that are less than 10 acers in size. The UDO states that all such lots shall be subject to the following standard;

Sec. 2.19. - Public Access to Property.

Every building or structure hereafter erected shall be located on a lot and the lot shall abut a public street or have access to an approved private street, or the lot shall abut a common area properly restricted through deed restrictions and/or property owners' association at least partly owned by the owner of the building, structure, or portion thereof.

The UDO also requires that all newly created lots less than 10 acres provide street frontage on a publicly maintained street.

10.110.1. - Design Standards.

10.110.1.4.4. Every lot shall maintain required street frontage as required in Article 8 on one (1) of the following (Amended 4/3/2018):

10.110.1.4.4.1. A public street dedicated to and maintained by the Town of Smithfield or the North Carolina Department of Transportation.

10.110.1.4.4.2. A street constructed to the standards of the Town or Smithfield or the North Carolina Department of Transportation, with a written agreement concerning the future maintenance of the street.

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 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. *Strict application of the Ordinance will create a hardship to the land because without the variance, the subdivider would be required to create irregular lot shapes that will include one flag lot and one lot split by the existing easement.*
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. *The hardship is due to the shape of the lot and the location of the easement which creates a natural divide and is peculiar to this lot. No other lot along this easement suffer from this hardship.*
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 is not responsible for the placement of the easement through this property nor the setting of the boundary lines of the parcel and is therefore it is not a self-created hardship.*
4. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved. *The request is consistent with the spirit, purpose and intent of the Ordinance in that the creation of irregular lots will be avoided while preserving public safety through proper access.*

RECOMMENDATION:

Planning Staff recommends the Board of Adjustment approve the variance request, BA-23-05, based on the finding of fact.

RECOMMENDED MOTION:

“Move to approved variance BA-23-05, to allow for the subdivision of the 21.9-acre parcel into two lots, one of which will be less than 10 acres in size without road frontage on a publicly maintain road or a private road with a maintenance agreement.”



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 as will insure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

Variance applications must be accompanied by nine (9) sets of the complete application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fee.

SITE INFORMATION:

Name of Project: Georgetown/Dennis Russell Acreage of property: 6.77
 Parcel ID Number: _____ Tax ID: 15107040
 Deed Book: 6204 Deed Page(s): 828
 Address: 350 Westerman Place, Smithfield NC 27577
 Location: _____

Existing Use: agriculture Proposed Use: single family dwelling
 Existing Zoning District: R20A
 Requested Zoning District: _____

Is project within a Planned Development: Yes No
 Planned Development District (if applicable): _____

Variance Request (List Unified Development Code sections and paragraph numbers)
Requesting variance to create a lot that not on a
publicly maintained road

FOR OFFICE USE ONLY

File Number: _____ Date Received: _____ Amount Paid: _____

OWNER INFORMATION:

Name: Denris Russel / Georgetown Enterprises LLC
Mailing Address: 350 Westerman Pl. Smithfield NC 27577
Phone Number: 919-915-1781 Fax: _____
Email Address: _____

APPLICANT INFORMATION:

Applicant: _____
Mailing Address: _____
Phone Number: same Fax: _____
Contact Person: _____
Email Address: _____

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.

This is a part of a 21.9 acre tract that is split by Westerman Pl. (gravel road). This 6.9 acre tract is on one side of the street leaving the other approx 15 acres on the other side. It is in Smithfield ETJ and we have been told it has to be at least 10 acres to get a permit to build. There is no way to add additional acreage since the street splits it. We are requesting a variance so that we can be allowed for 1 home to possibly be built here.

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.

In order to meet current requirements we would have to include an additional 1/3 acres across the street which a new owner would find useless.

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.

This tract is a total of 21.9 acres & dividing this off from the total would make a more suitable piece of property across the street with acceptable road frontage for both pieces.

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.

No; It was like this when purchased

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.

Allowing the division of 7 acres off the entire tract would leave all of the remaining acreage on the same side of the street. I would like this 7 acre tract to be approved for 1 home only

OWNER'S CONSENT FORM

Name of Project: Dennis Russel / Georgetown Enterprises LLC Submittal Date: _____

OWNERS AUTHORIZATION

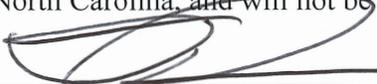
I hereby give CONSENT to _____ (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. 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.

 Dennis Russell 3-22-23
Signature of Owner/Applicant *Print Name* *Date*

FOR OFFICE USE ONLY

File Number: _____ Date submitted: _____ Date received: _____

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Smithfield to approve the subject Special Use Permit. 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.

David Quinn
Print Name

[Handwritten Signature]
Signature of Applicant

3-22-23
Date

Adjacent Property Owners

- 1- Applicant
- 2- ID# 15I07040H, Jay & Wendell L. Niatt III
285 Westernman Pl. Smithfield NC 27577
- 3- ID# 15I07040I, Mesopetown Enterprises LLC
350 Westernman Pl. Smithfield NC 27577
- 4- ID# 15I07040L, James H. Clark & Rosalie A. Satcher - Clark
416 Westernman Pl. Smithfield NC 27577
- 5- ID# 15I07040M, James H. Clark & Rosalie A. Satcher - Clark
416 Westernman Pl. Smithfield NC 27577
- 6- ID# 15I07041F, Glen Ford Jr
5266 Cornwallis Rd, Garner, NC 27529
- 7- ID# 15I07041E, Caitlin Michelle Zurfluh & Hannah Rose Zurfluh
3064 Valley Oaks Dr. Imperial, MD 63052
- 8- ID# 15I07036B, Susan Johnson Davis
304 Short Journey Rd. Smithfield NC 27577
- 9- ID# 15I07036 Mary Susan Johnson Davis
304 Short Journey Rd. Smithfield NC 27577

200 Block of Westerman Place (Private Easement)

Project Name:
Georgetown
Enterprises LLC

Request:
Lot on an easement

Location:
200 Block of
Westerman Place

File Number:
BA-23-05

Existing Zoning:
R-20A (Residential-
Agricultural)

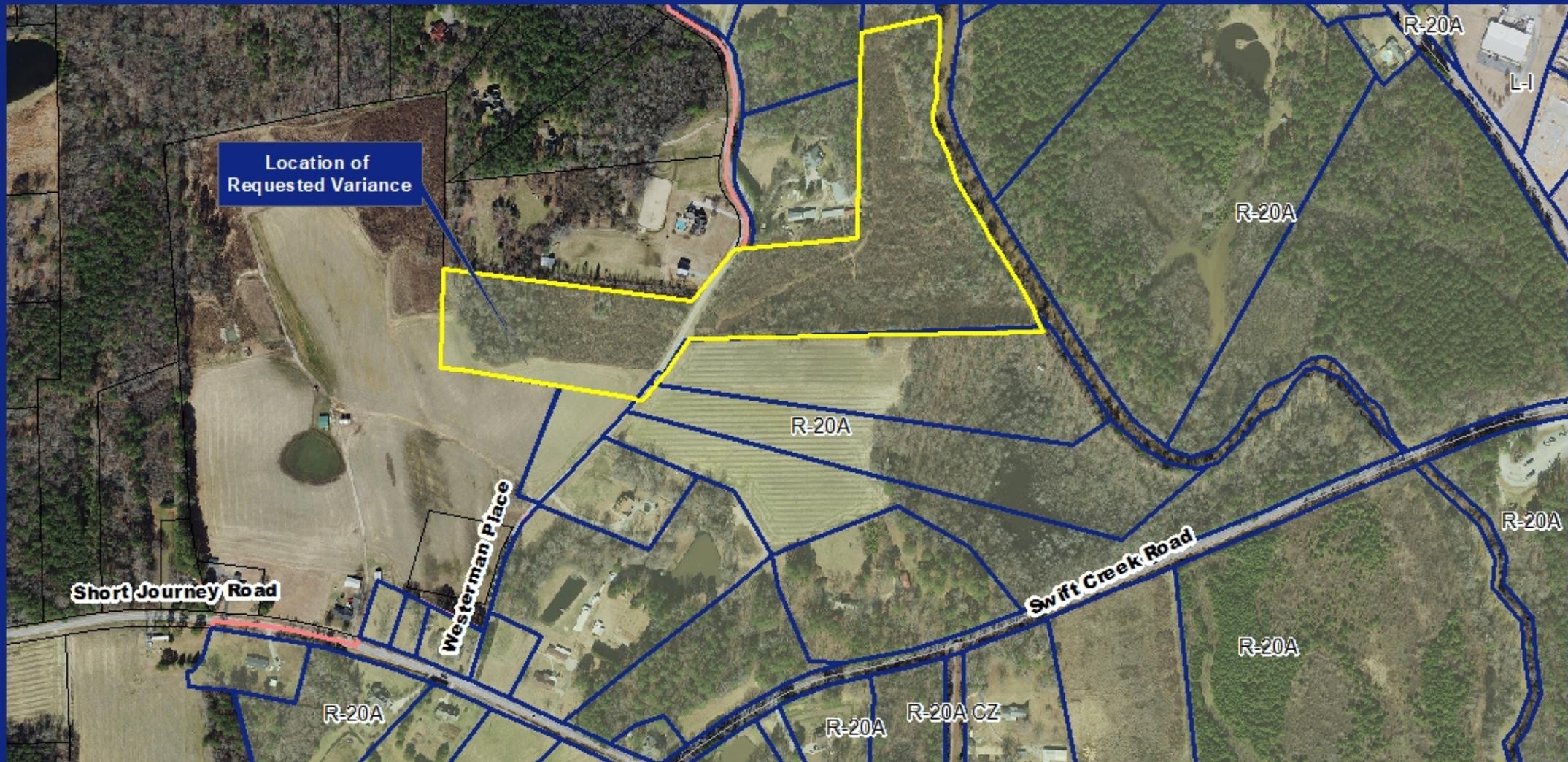
Property Owner:
Georgetown
Enterprises, LLC

Tax ID# 15107040



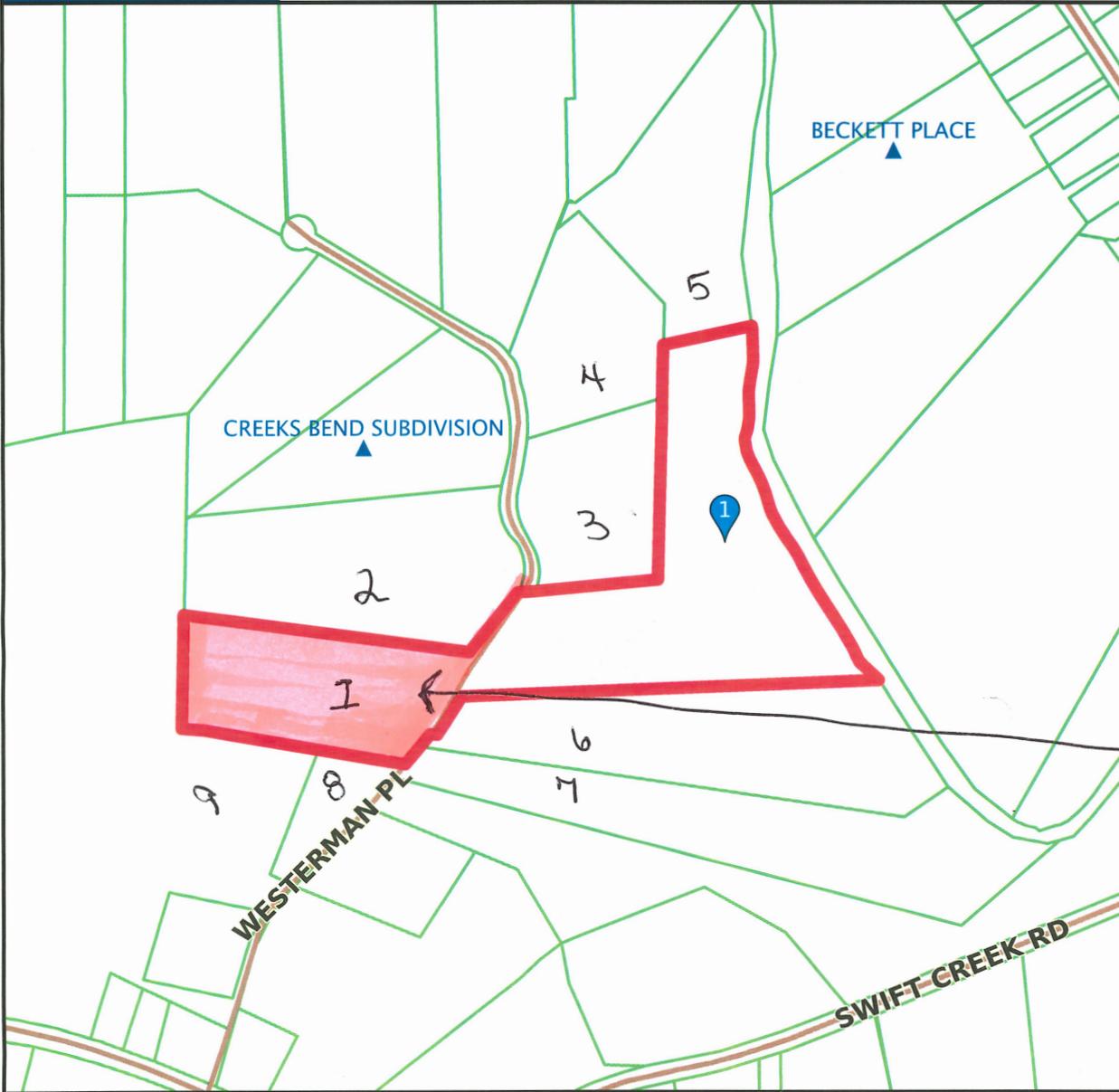
1 in = 500 ft

Map created by the Mark E. Helmer, AICP
Senior Planner, GIS Specialist on 4/11/2023



*** DISCLAIMER ***

Johnston County assumes no legal responsibility for the information represented here.



Result 1

id: 15107040
 Tag: 15107040
 NCPin: 167500-74-2102
 Mapsheet No: 1675
 Owner Name 1: GEORGETOWN ENTERPRISES, LLC
 Owner Name 2:
 Mail Address 1: 350 WESTERMAN PL
 Mail Address 2:
 Mail Address 3: SMITHFIELD, NC 27577-6910
 Site Address 1:
 Site Address 2:
 Book: 06204
 Page: 0828
 Market Value: 156010
 Assessed Acreage: 21.900
 Calc. Acreage: 21.900
 Sales Price: 300000
 Sale Date: 2022-03-09

Approx 6.91 acres

Leaves approx 15 acres on the other side of the street



Scale: 1:6501 - 1 in. = 541.76 feet

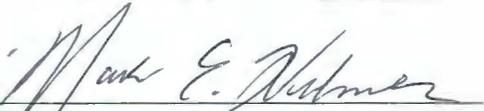
(The scale is only accurate when printed landscape on a 8 1/2 x 11 size sheet with no page scaling.)



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-23-05, were notified by First Class Mail on 4-10-23.


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

10th day of April, 2023


Notary Public Signature

Julianne Edmonds
Notary Public Name

My Commission expires on January 15th, 2028
(Seal)



Adjacent Property Owners of
BA-23-05

TAG	PIN	NAME	ADDRESS	CITY	STATE	ZIPCODE
15J08011O	167500-85-0593	BROWN, RONALD DAVID	567 ROCK PILLAR RD	CLAYTON	NC	27520-0000
15J08011L	167500-85-1171	STILL, JANEL K.	555 ROCK PILLAR RD	CLAYTON	NC	27520-6876
15J08011	167500-84-6633	LEE, PATRICK SEAN	3209 GOLDEN NUGGET DR	CLAYTON	NC	27520-8054
15I07041F	167500-73-6828	FORD LIVING TRUST	5266 CORNWALLIS RD	GARNER	NC	27529-8171
15I07040M	167500-75-4546	CLARK, JAMES H	416 WESTERMAN PLACE	SMITHFIELD	NC	27577-0000
15I07040L	167500-75-2123	CLARK, JAMES H	416 WESTERMAN PL	SMITHFIELD	NC	27577-0000
15I07040I	167500-74-1554	GEORGETOWN ENTERPRISES, LLC	350 WESTERMAN PL	SMITHFIELD	NC	27577-6910
15I07040	167500-74-2102	GEORGETOWN ENTERPRISES, LLC	350 WESTERMAN PL	SMITHFIELD	NC	27577-6910
15I07040H	167500-64-3383	HIATT, JOY	285 WESTERMAN PL	SMITHFIELD	NC	27577-6921
15I07040K	167500-64-4782	GALLEGOS, YURI J	399 WESTERMAN PL	SMITHFIELD	NC	27577-6922
15I07041D	167500-63-5488	HUDSON, TONY L	224 WESTERMAN PL	SMITHFIELD	NC	27577-6925
15I07036	167500-53-5981	DAVIS, MARY SUSAN JOHNSON	304 SHORT JOURNEY RD	SMITHFIELD	NC	27577-8255
15I07036B	167500-63-4741	DAVIS, SUSAN JOHNSON	304 SHORT JOURNEY RD	SMITHFIELD	NC	27577-8255
15I07041C	167500-73-9549	SZERELMEY, JASON	7930 BARBOUR STORE RD	WILLOW SPRING	NC	27592-9536
15I07041E	167500-73-7670	ZURFLUH, CAITLIN MICHELLE	3064 VALLEY OAKS DR	IMPERIAL	MO	63052-4363



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, April 27, 2023 at 6:00 p.m. in the Town Hall Council Chambers located at 350 East Market Street to consider the following request:

BA-23-05 Georgetown Enterprises LLC: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinances, Article 10, Street Design Standards, Section 10.110.1.4.4.1, to allow for a division of land which will create a 6.6-acre parcel that will not front on a publicly dedicated and publicly maintained street. The property considered for a variance is located on the west side of Westerman Place, approximately 1300 feet north of its intersection with Short Journey Road. The property is further identified as Johnston County Tax ID# 15I07040.

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.