



Meeting Information

Location

City/County Meeting Room
905 West Avenue NW
Lenoir, NW 28645

Time

5:30 p.m.

Board Members

Sharon Bryant, Chairperson

Leah Hamilton, Vice-Chair

Lucy McCarl

James Bradshaw

Mac Martin

Tim Scobie

Richard Hedrick, Alternate

Jeff Church, Alternate

Lenoir Board of Adjustment

Agenda • March 25, 2019

Welcome!

We are glad you have joined us for tonight's meeting. The Lenoir Board of Adjustment is a quasi-judicial board comprised of citizen members appointed by the City Council in accordance with G.S. 160A-388. The Board of Adjustment is tasked with hearing variance requests and appeals of land development decisions by administrative officials.

In order to grant a requested variance, a 4/5 majority of the Board must find that the requested variance satisfies four related standards established by state statutes – competent, material, and substantial evidence in the record must support findings that:

1. The ordinance creates an unnecessary hardship
2. The hardship is peculiar to the property
3. The hardship is not self-created, and
4. The requested variance meets the intent of the ordinances, upholds public safety, and achieves substantial justice.

Each decision of the Board will be reduced to writing and be signed by the Chair, and shall become effective upon delivery of the signed decision to the applicant, property owner, and to any person who has submitted a written request for a copy.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the Clerk of Superior Court within 30 days of the effective date of the board's decision.

General Rules of Order

If you wish to appear before the Board, please fill out an Appearance Request Form and give it to the Recording Secretary. Anyone who wishes to appear before the Board must be sworn in prior to delivering testimony or entering other evidence into the record. When the Chairperson recognizes you, state your name and address and speak directly into the microphone. ROBERT'S RULES OF ORDER govern the conduct of the meeting.

OPENING SESSION

- Determination of a Quorum
- Call to Order

REGULAR AGENDA

1. BLUE RIDGE MEDICAL OFFICE BUILDING

Applicant: David E. Looper & Company

Owner: 1208 Hickory, LLC

Location: 1208 Hickory Blvd SW

V# 1-19 Variance to the Sec. 714.18 requirements for street yard landscaping adjacent to US 321 and McClean Drive, the Sec. 714.5 requirements for 60% ground floor windows on the western façade, and the Sec. 714.11 requirement that visible back facades meet the design standards of the article.

Recommended Action: Staff recommends approval of the variance request, subject to the conditions in the staff report.

Order of Proceedings:

- Swearing in of applicant, staff, and all others who wish to provide testimony.
- Staff summary of request, opportunity for cross examination
- Testimony by applicant, opportunity for cross examination
- Testimony by others, opportunity for cross examination
- Closing of the Public Hearing/Board deliberation (discussion of four standards)/entertainment of motions
- Call for a vote

OTHER BUSINESS

- Election of Officers

ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT MEETING
OCTOBER 22, 2018
6:00 PM
801 WEST AVENUE, 3RD FLOOR**

MEMBERS PRESENT:

Sharon Bryant, James Bradshaw, Mac Martin, Leah Hamilton, Lucy McCarl, Tim Scobie

MEMBERS ABSENT:

STAFF PRESENT:

Jenny Wheelock, Hannah Williams, Jackie Sigmon

A quorum was established and Chairperson Bryant called the meeting to order.

NEW

**BUSINESS: VARIANCE APPLICATION #V-1/18
515 WESTVIEW STREET**

Ms. Bryant requested that anyone wishing to provide testimony be placed under oath. Hannah Williams, Lynda Bonkemeyer and Thomas Thielemann were placed under oath.

Hannah Williams presented to the board the variance request for 515 Westview Street. Ms. Williams stated the applicants were requesting a variance from the Special Front Yard Requirements of Section 710 in the ordinance that requires a minimum front setback of 25 feet. Ms. Williams said the existing garage encroaches 8 feet into the required setback, which is legal, but considered nonconforming. The top of the garage is on the same level as the front door, so the top of the garage is used as a patio. Ms. Williams said the applicants have experienced water leaking into the basement garage from the top, creating standing water and puddles.

Ms. Williams explained that the applicants hired a contractor to build a roof structure over the patio to remedy the situation. The contractor went to Caldwell County building inspections to get a permit but building inspections did not check with Lenoir Planning to see if a zoning permit was needed and issued the contractor a permit without zoning approval.

When the inspector discovered the error, progress ceased on construction. The contractor came to the Lenoir Planning department to obtain a zoning permit but the project expanded on a nonconforming garage, and was not allowed without a variance.

Ms. Williams stated that staff recommended approval of the variance because it met the 4 statutory standards.

1. An unnecessary hardship is created by the strict application of the ordinance because the owners cannot make necessary repairs to prevent water from leaking in the garage.
2. The hardship is peculiar to the property because of the original grading and construction of the house causes water to leak into the garage. Building a roofed structure is a reasonable way to route water away from the garage.
3. The location of the garage is part of the original house, built in 1949. This is before the 25 ft. front setback applied to the property. It is reasonable to assume that the owners will need to make repairs over time. The limitations are out of the control of the property owner, and not self-created.
4. The requested variance meets the intent of the ordinance because it will allow the owners to fix an existing problem before it causes more damage to the house. It won't affect other properties and it is a well-designed and functional solution to an existing problem.

The applicants came forward but there were no questions from the board.

Chairperson Bryant closed the public hearing. A brief discussion ensued and **Board Member Hamilton made a motion to Approve based on the findings presented by staff. The motion was seconded by Board Member McCarl and the motion carried unanimously.**

OTHER BUSINESS: NOMINATION OF VICE-CHAIR

Board Member Martin nominated Leah Hamilton for the Vice-Chair position of the Board of Adjustment. Board Member Scobie seconded the motion and the motion carried unanimously.

ADJOURNMENT:

There being no further business to be brought before the board, Board Member McCarl made a motion to adjourn, seconded by Board Member Bradshaw.

Chairperson Bryant declared the meeting adjourned.

Sharon Bryant, Chair

Jenny Wheelock, Planning Director

LOCATION MAP/AERIAL PHOTOGRAPH



Subject Property

1208 Hickory Blvd SW



SUMMARY

Owner

1208 Hickory, LLC

Applicant

David Looper

Location

Located west of US 321, east of McClean Drive at 1208 Hickory Blvd SW (+/- 4.45 acres).

NC PIN

2759208804

Project Planner

Jenny Wheelock, AICP

Updated March 15, 2019

Applicant's Request:

The applicant is requesting a variance from the design standards of Section 714, specifically:

A variance from section 714.5 for the western (McClean Drive) façade

A variance from the street yard landscaping requirements of Section 714.18

A variance from 714.11 for the southern (back) façade.

The applicant is proposing a renovation to the existing building to change it from a big box grocery store into medical offices. The renovation is a "substantial improvement,"

which triggers the need to bring the site into compliance with the commercial design standards of Sec. 714.

Staff Recommendation:

Approval of the requested variances.

Public Comment: Notices were mailed to owners of property abutting the subject property on March 15, 2019. A sign was posted on the subject property advertising the public hearing.

*****This request is quasi-judicial. You should not discuss this case with decision makers outside of the scheduled public hearing*****

ZONING MAP



Subject Property

BACKGROUND AND ANALYSIS

Intent of Variances

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment must allow for a variance from the ordinance standards creating the hardship, when specific factors are found to be true (see findings for specific standards).

Subject and Surrounding Properties

The subject property is located in the B-2 zoning district, between US 321 and McLean Drive just south of the intersection of McLean Drive and US 321. The properties to the south, east, and north are also zoned B-2 (General Business). The properties immediately to the west of the subject property (across McLean Drive) are zoned R-15 (single family residential); however, the residential properties are through-lots with their primary frontage on Maehill Place and an existing mature landscape screen along most of their McLean Drive frontages.

The subject property was developed as a grocery store in the early 1990s, prior to the adoption of the commercial design standards. The property is a through lot, with frontage and access from both US 321 and McLean Drive. The subject property is undergoing a substantial improvement (renovations valued at more than 50% of the value of the building), to convert the building into medical office uses.

Intent of the Commercial Design Standards

Section 714.1, Introduction states:

The City of Lenoir, in a pro-active response to the potential for development of a variety of commercial, office, and institutional land uses, has sought to mitigate the negative impacts of these projects on local traffic patterns, property values, and aesthetics. These guidelines are a measure to limit the dissatisfaction with marketing strategies that dictate designs which are indifferent to local identity and community interests. The main goal is to encourage development that contributes to Lenoir as a unique place by reflecting its physical character and adding to it in appropriate ways.

Commercial developments depend on high visibility from major public streets. In turn, their design determines much of the character and attractiveness of major streetscapes in the City. Marketing strategies that place corporate branding over local character can be detrimental to community aspirations and sense of place. These strategies often result in massive developments that have little sense of human scale and the proliferation of stock cookie-cutter plans that neither contribute to nor integrate with the City in a positive manner. Harsh, uninviting developments also act as a centrifuge by encouraging residential growth to take place further away, thereby exacerbating traffic problems and adding to urban sprawl.

The purpose of these standards and guidelines is to codify specific criteria that will aid in the design of buildings and places and, ultimately, render developments that enhance their surroundings. The following standards and guidelines are intended to be used by designers in the preparation of site and building plans for non-residential developments. They should also be used as a tool by the City staff, Planning Board, and City Council in their review processes.

REQUESTED VARIANCES

The applicant is currently undergoing design review with the Lenoir Planning Department. They are proposing changes to the building including the addition of brick veneer, stucco, porticos, windows, awnings, and landscaping. They will pay into a sidewalk fund, in lieu of on-site sidewalk construction. All of these items are required in order to come into compliance with the design standards, and all of the applicable design standards are being met, or will be met prior to permitting, except for the following specific sub-sections of 714:

Variance A: Section 714.5 requires that *“Ground floor windows or window display boxes shall be provided along at least 60% of the building’s ground floor street-facing elevations.”* This standard is typically applied to buildings with their primary frontage facing the street, which on a typical commercial building would naturally contain a larger percentage of glass. However, with a medical office use, because of patient privacy and other interior space-planning considerations, large expanses of glass are not as common or as practical. Usually, additional glass can be provided in a waiting room area, in a front lobby, or within glass doors. In this case, the building orientation of the side facing the primary street creates a hardship for the applicant to achieve this standard, which is really intended to apply to the primary/front façade. (Note that this standard does *not* apply to the front of this building, as it faces a parking lot and not a street.) The applicant will meet all of the other standards for architectural features, materials, etc., and will be adding windows to this façade.

Variance B: Section 714.11 Back and Side Facades states that *“All building facades which are visible from adjoining properties and/or public street shall comply with the Design Standards of this article.”* Typically, rather than have to meet the design standards on the “back of house” façade, developments will use screening to ensure that the rear is not visible. The southern/back façade of the building will be improved as part of this project, with the closing of one loading dock, the screening of mechanical equipment, and the potential addition of windows to serve the interior build-out. However, the existing location of the loading docks, driveways, utilities, and the NCDOT right-of-way prevents this area from being fully screened from view.

Variance C: Section 714.18 requires that street yards of parking areas be *“(a) 6 ft. in width, (b) one tree is required every 100 ft. along the frontage, and (c) shrub beds (50 sq. ft. minimum and a minimum of ten shrubs per shrub bed) are required every 40 ft. along the frontage.”* The NCDOT right-of-way is at the back of the parking spaces on both of the property’s frontages, making this standard impossible to meet without the physical removal of the parking spaces immediately adjacent to the right-of-way, which is both an expensive proposition and impacts the availability of parking for the subject site (medical office often has a higher parking demand than other types of offices). The applicants have added landscaping where ever possible to the site, and the parking is separated from the travel lanes by a sizeable grassy area within the ROW on both sides.

FINDINGS: VARIANCE A TO SEC. 714.5(WESTERN FAÇADE ONLY)

No variance shall be approved unless a 4/5 majority of the Board of Adjustment finds that:

1. An unnecessary hardship is created from the strict application of the ordinance.

Staff Response: This standard was never intended to require a development to provide 60% glass along their side façade; however, because the existing orientation of the building doesn't face the street, the application of the ordinance in this instance creates a hardship by requiring an infeasible amount of glass along this secondary/non-primary façade.

2. The unnecessary hardship is peculiar to the property.

Staff Response: Because the property is a through lot and was developed prior to the adoption of the design standards, the primary frontage is not facing the street. This is a unique property within the City, with the particular configuration and street layout creating the unnecessary hardship. If the property's primary frontage was oriented towards Mclean Drive, the hardship would be greatly reduced if not eliminate. Therefore, the hardship is particular to this existing building.

3. The Hardship is not self-created.

Staff Response: The condition was created by the original site design in the early 1990s, and the subsequent adoption of the design standards, not by the current owners of the property, who purchased the property late in 2018. Knowledge of existing conditions before the purchase of the property is not considered a hardship, according the NCGS § 160A-388.d (3)

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's Response: This façade will not be windowless or featureless. While the applicant is still revising architectural drawings for this elevation, there will be windows and other architectural features and materials to meet the other design standards of 714. As typical to most "big box" stores, the highly visible side façade will be treated the same as the other visible facades. Overall, the development represents a positive change that meets the spirit, purpose, and intent of the ordinance to create attractive, human-scaled development that contributes positively to the unique character of Lenoir.

FINDINGS: VARIANCE B TO SEC. 714.11(SOUTHERN/BACK SIDE)

No variance shall be approved unless a 4/5 majority of the Board of Adjustment finds that:

1. An unnecessary hardship is created from the strict application of the ordinance.

Staff Response: The application of this standard creates a hardship to the renovation of the existing building, because no alternative exists for loading and other “back of house” activities. Full screening cannot be achieved while maintaining access and maneuvering areas for trucks.

2. The unnecessary hardship is peculiar to the property.

Staff Response: This standard typically ensures that back-of-house/loading areas are located so that they are not visible from surrounding properties or the public street. However, because this is an existing building with a unique layout (double frontage lot), the hardship is peculiar to the renovation of this property.

3. The Hardship is not self-created.

Staff Response: The condition was created by the original site design in the early 1990s, and the subsequent adoption of the design standards, not by the current owners of the property, who purchased the property late in 2018. Knowledge of existing conditions before the purchase of the property is not considered a hardship, according to the NCGS § 160A-388.d (3)

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's Response: The renovations will eliminate one of the loading docks, add screening for mechanical equipment, and will probably include some windows on the western portion of the façade. The proposed changes represent an overall improvement to the appearance of the area. Overall, the development represents a positive change that meets the spirit, purpose, and intent of the ordinance to create attractive, human-scaled development that contributes positively to the unique character of Lenoir.

FINDINGS: VARIANCE C TO SEC. 714.18 (STREET YARD ONLY)

No variance shall be approved unless a 4/5 majority of the Board of Adjustment finds that:

1. An unnecessary hardship is created from the strict application of the ordinance.

Staff Response: In order to meet this standard within the existing property lines, 38 parking spaces would have to be removed. Requiring removal of the spaces is cost prohibitive to the renovation project, and the loss of parking spaces would unduly impact the availability of necessary parking for the medical office use. The combination of the cost and the loss of parking is an unnecessary hardship directly resulting from the application of the street yard requirements.

2. The unnecessary hardship is peculiar to the property.

Staff Response: Even on non-conforming sites, parking areas are usually set back far enough from the right of way that space exists to provide the required landscaping. In this case, the property has frontages on NCDOT right-of-ways, and in both instances the right-of-way line runs along the back curb of the parking spaces. This is a very peculiar situation that a property would not have the physical space to provide the necessary landscaping.

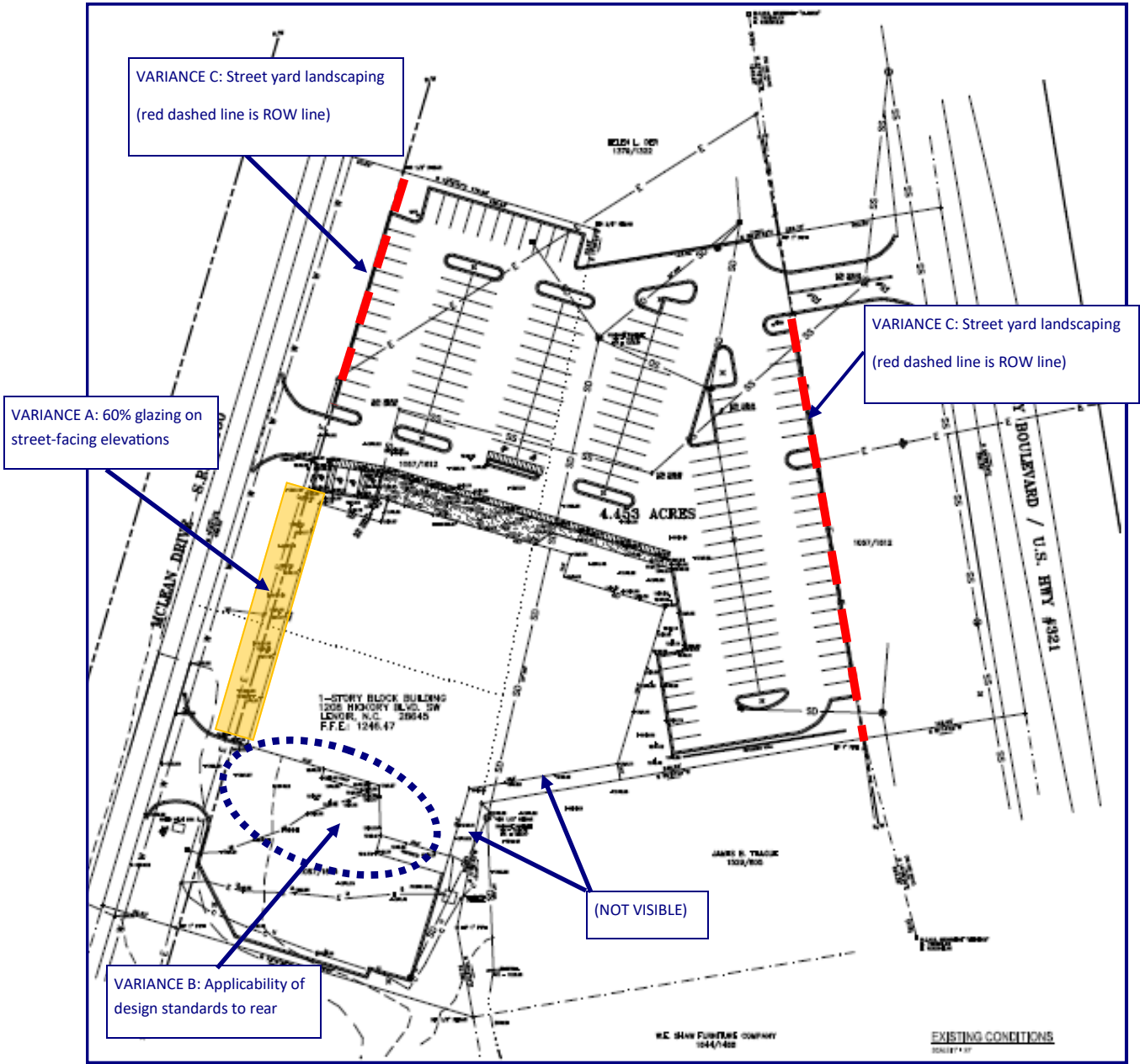
3. The Hardship is not self-created.

Staff Response: The condition was created by the original site design in the early 1990s, or potentially subsequent right-of-way acquisitions by the NCDOT, not by the current owners of the property, who purchased the property late in 2018.

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's Response: Landscaping is being proposed in all feasible locations within the parking lot, just not on the street yards. Both right-of-ways are still wide with large grassy shoulders, so the overall appearance is that of having a landscaped street yard — just not with the full treatment of shrubs and trees. Overall, the development represents a positive change that meets the spirit, purpose, and intent of the ordinance to create attractive, human-scaled development that contributes positively to the unique character of Lenoir.

SURVEY: EXISTING CONDITIONS (VARIANCE LOCATIONS NOTED)



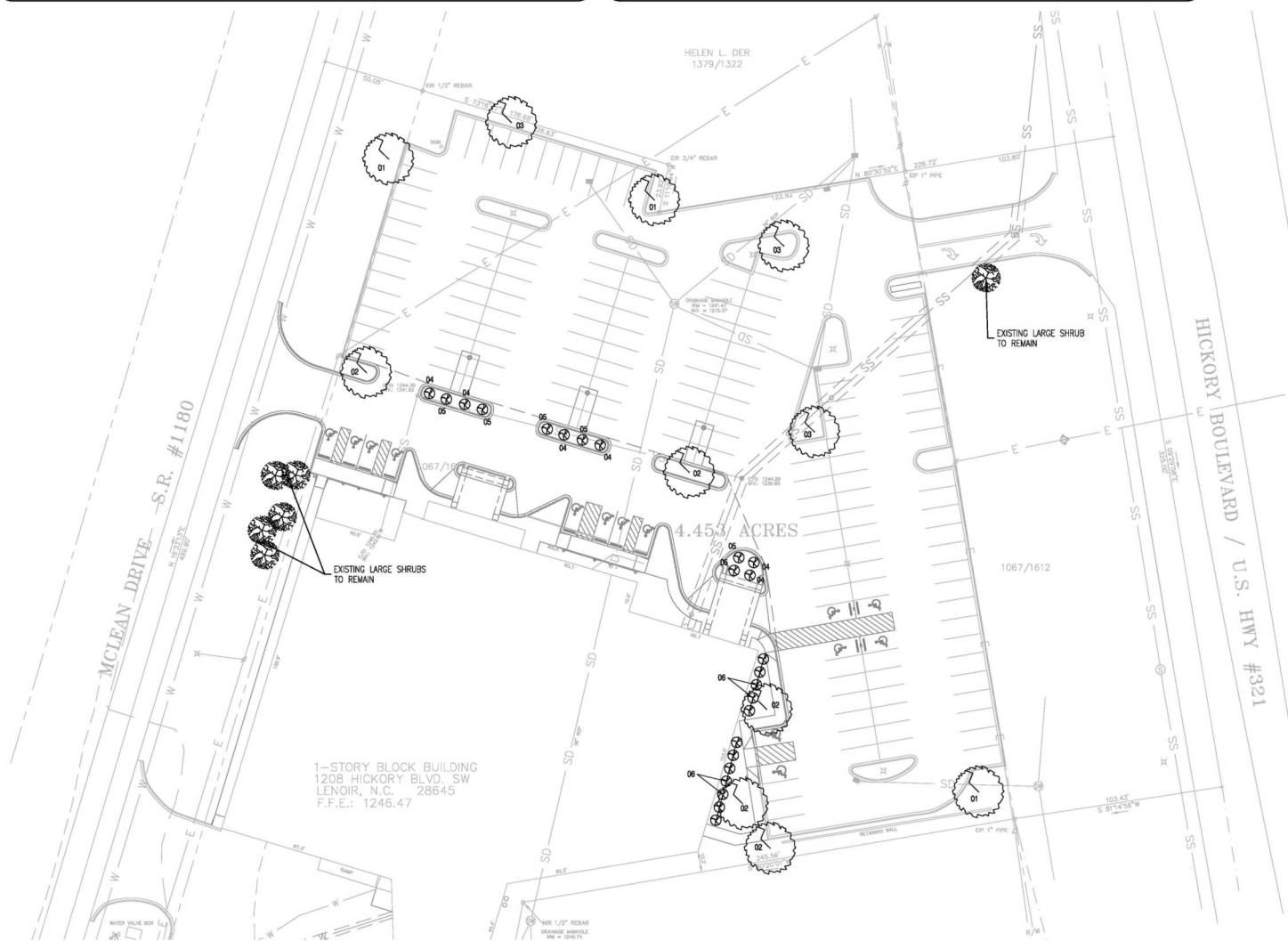
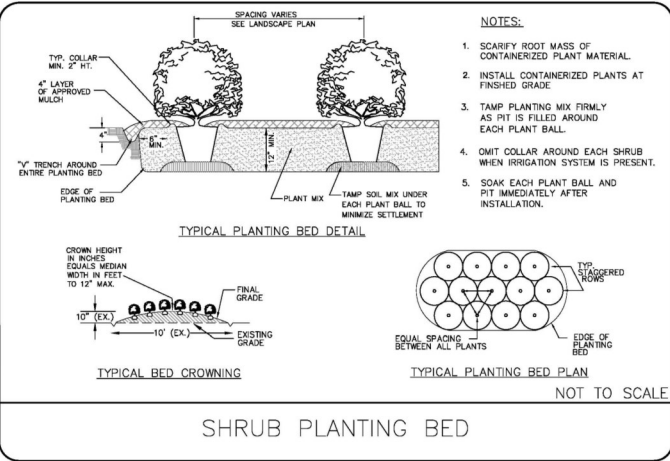
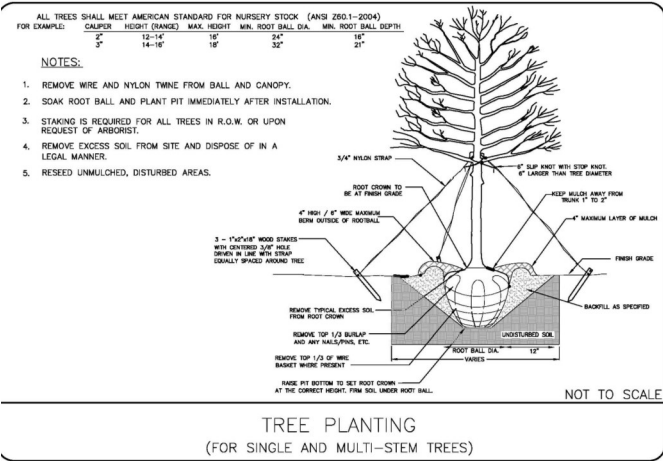
GOOGLE STREET VIEW MCLEAN DRIVE



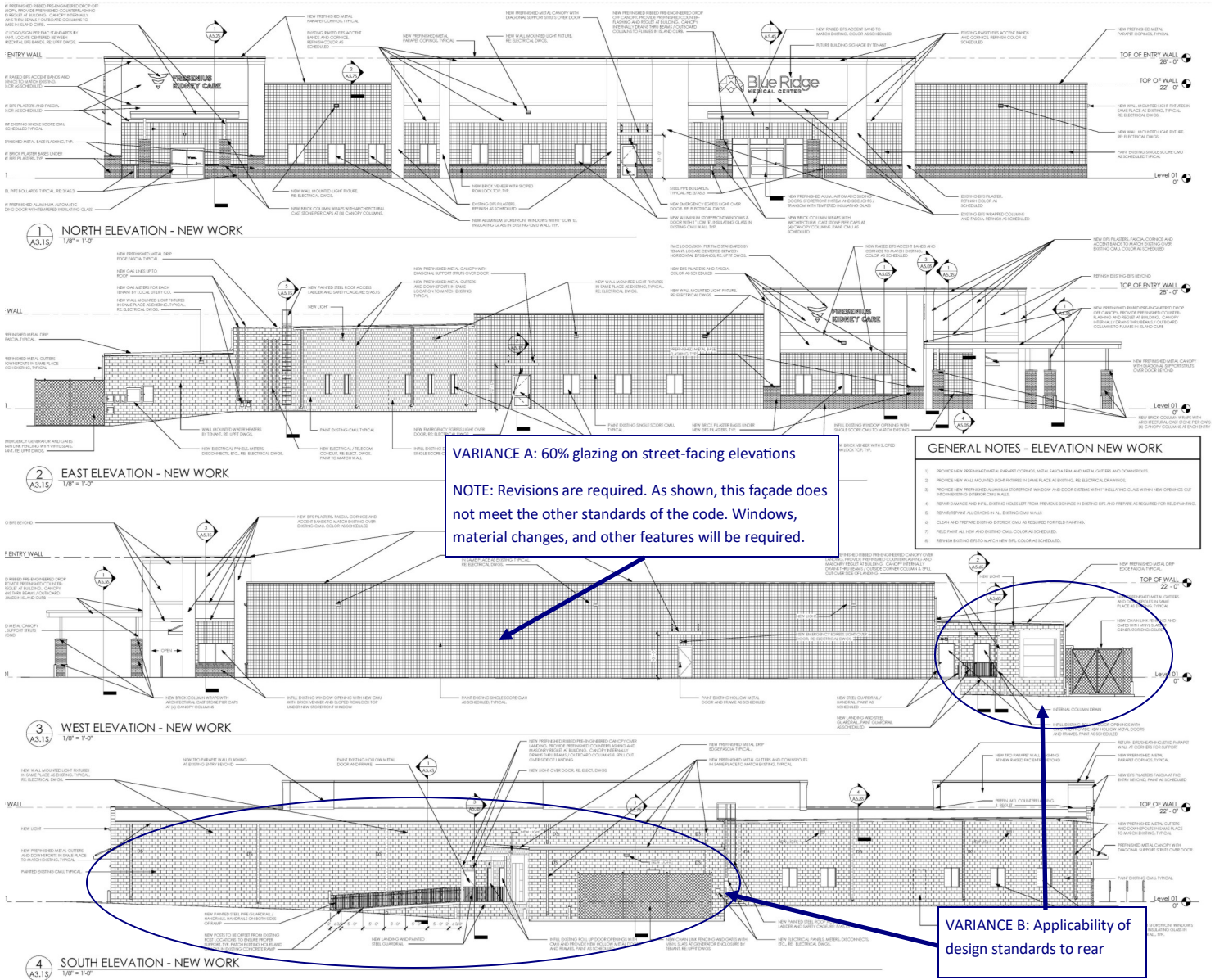
GOOGLE STREET VIEW HICKORY BLVD/US 321



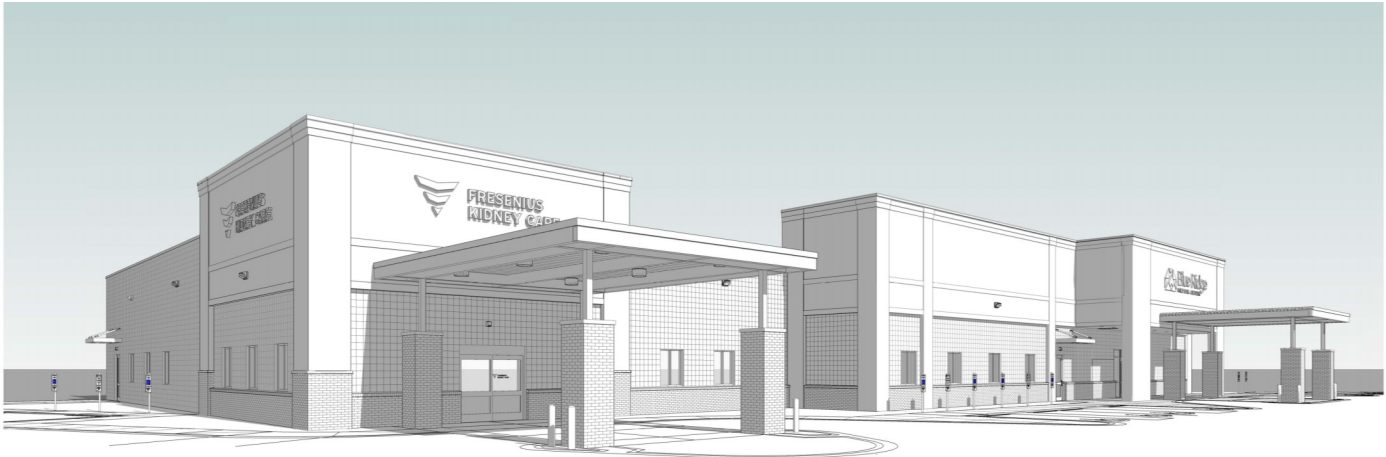
LANDSCAPE PLAN



ELEVATIONS



RENDERINGS



1 3D FRONT VIEW 1
A9.05



2 3D FRONT VIEW 2
A9.05



3 3D FRONT VIEW 3
A9.05

APPLICANT'S RESPONSE TO FINDINGS

Variance Justification

 **An unnecessary hardship is created from the strict application of the ordinance.** Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant must show *unnecessary* hardship, that is greater than a mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. The hardship must come from the application of the ordinance. *Note: Prior to 2013, the City of Lenoir held that a hardship did not meet this standard unless the applicant showed **no** reasonable use of the property without the variance. This strict standard is no longer allowed under state statutes.*

THIS PARTICULAR PROPERTY IS BORDERED ON BOTH EAST AND WEST SIDES BY NCDOT ROW. TO MEET THE PARKING LOT LANDSCAPE REQUIREMENTS WOULD REQUIRE THE DEMOLITION OF THE EXISTING PARKING LOT AND A TOTAL RECONFIGURATION, OR THE APPLICATION AND APPROVAL OF A NCDOT ROW ENCROACHMENT AGREEMENT. NCDOT VERY RARELY ALLOWS ENCROACHMENT AGREEMENTS FOR LANDSCAPING. AS A MEDICAL FACILITY, ALL OF THE CURRENT PARKING SPACES ARE NECESSARY. ANY REDUCTION OF SPACES WOULD HINDER THEIR OPERATIONS AND THE COST TO DO SO WOULD BE PROHIBITIVE OF THE PROJECT MOVING FORWARD.

 **The unnecessary hardship is peculiar to the property.** The hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from the location of the property, size or shape of the lot, or topography or water features on the site. Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances.

THE HARDSHIP IS PECULIAR TO THIS PROPERTY BASED ON THE NCDOT ROW LINES BORDERING THE PROPERTY. THESE ROW LINES ARE LITERALLY AT THE BACK OF CURB OF THE PARKING LOT.

 **The Hardship is not self-created.** The hardship must not result from actions taken by the applicant or property owner. Ignorance of the law is a self-created hardship — variances requested due to the owner's failure to obtain appropriate building and zoning permits prior to construction will not be approved. However, purchasing a property with knowledge that circumstances exist that may justify the granting of a variance is not considered a self-created hardship.

THE PARKING LOT, BUILDING, AND ROW LINES ARE EXSITING ENTITIES.

 **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.** Where an ordinance expresses a clear intent, the variance cannot subvert that intent. The variance cannot harm public safety, even if the request meets the "unnecessary hardship" test. And the Board must ensure that substantial justice is achieved in the issuance of each variance — the board will consider issues of fairness for the community, neighbors, and prior applicants in their decisions.

THE REQUESTED VARIANCE IS CONSISTANT WITH THE SPIRIT, PURPOSE, AND INTENT OF THE ORDINANCE, AND PUBLIC SAFETY IS NOT OF CONCERN FOR THIS VARIANCE. IT IS STRICTLY A REQUEST FOR VARIANCE REGARDING THE LANDSCAPING AND REMODELING OF THE EXISTING BOX STORE BUILDING.