



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 • December 16, 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
- Consideration of March 25, 2019 Minutes

REGULAR AGENDA

1. Aspen Dental

Applicant: Retail Partners Lenoir, LLC

Owner: Interstate Holdings LLC

Location: 140 Blowing Rock Blvd

V# 2-19 Variance to the Sec. 714.12 which requires that no more than 50% of the off-street parking area shall be located between the front facade of the principal building and abutting streets.

Recommended Action: Staff recommends denial of the variance request.

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 Evidentiary Hearing/Board deliberation (discussion of four standards)/entertainment of motions
- Call for a vote

OTHER BUSINESS

ADJOURNMENT

MINUTES
BOARD OF ADJUSTMENT MEETING
March 25, 2019
5:30 PM
905 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, Lauren McKinney

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

MINUTES:

The meeting minutes from the October 22, 2018 meeting were considered. Leah Hamilton made a motion to approve and Tim Scobie seconded the motion. The motion passed unanimously.

NEW BUSINESS: VARIANCE APPLICATION #V-1/19
1208 Hickory Boulevard

Chairperson Bryant requested that anyone wishing to provide testimony be placed under oath. Jenny Wheelock, Clark Rowe, and Randall Williams were placed under oath.

Jenny Wheelock, Planning Director presented to the Board the three variance requests for 1208 Hickory Boulevard. Ms. Wheelock stated under the current code to comply with the design standards for substantial improvements the value of the improvements must exceed 50% of the value of the building. Ms. Wheelock presented the following three requests from the staff report and answered questions from the Board.

- **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.”*
- **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.”*

- **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.”*

Clark Rowe at 320 15th Street SE, Hickory explained to the Board about the hardship of minimizing the number of windows for this project, parking issues, and bringing the front facade up to standard.

Randall Williams at 304 15th Street SE, Hickory clarified about the issues regarding the right of way and answered questions from the Board.

Chairperson Bryant closed the public hearing.

Board Member Martin made a motion to approve variance 714.5 as recommended by the staff. The motion was seconded by Board Member Hamilton and the motion carried unanimously.

Board Member McCarl made a motion to approve variance 714.11 as recommended by the staff. The motion was seconded by Board Member Bradshaw and the motion carried unanimously.

Board Member McCarl made a motion to approve variance 714.18 as recommended by the staff. The motion was seconded by Board Member Scobie and the motion carried unanimously.

OTHER BUSINESS: Election of Officers

Board Member McCarl nominated Sharon Bryant for the Chair position of the Board of Adjustment. Board Member Martin seconded the motion and the motion carried unanimously.

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

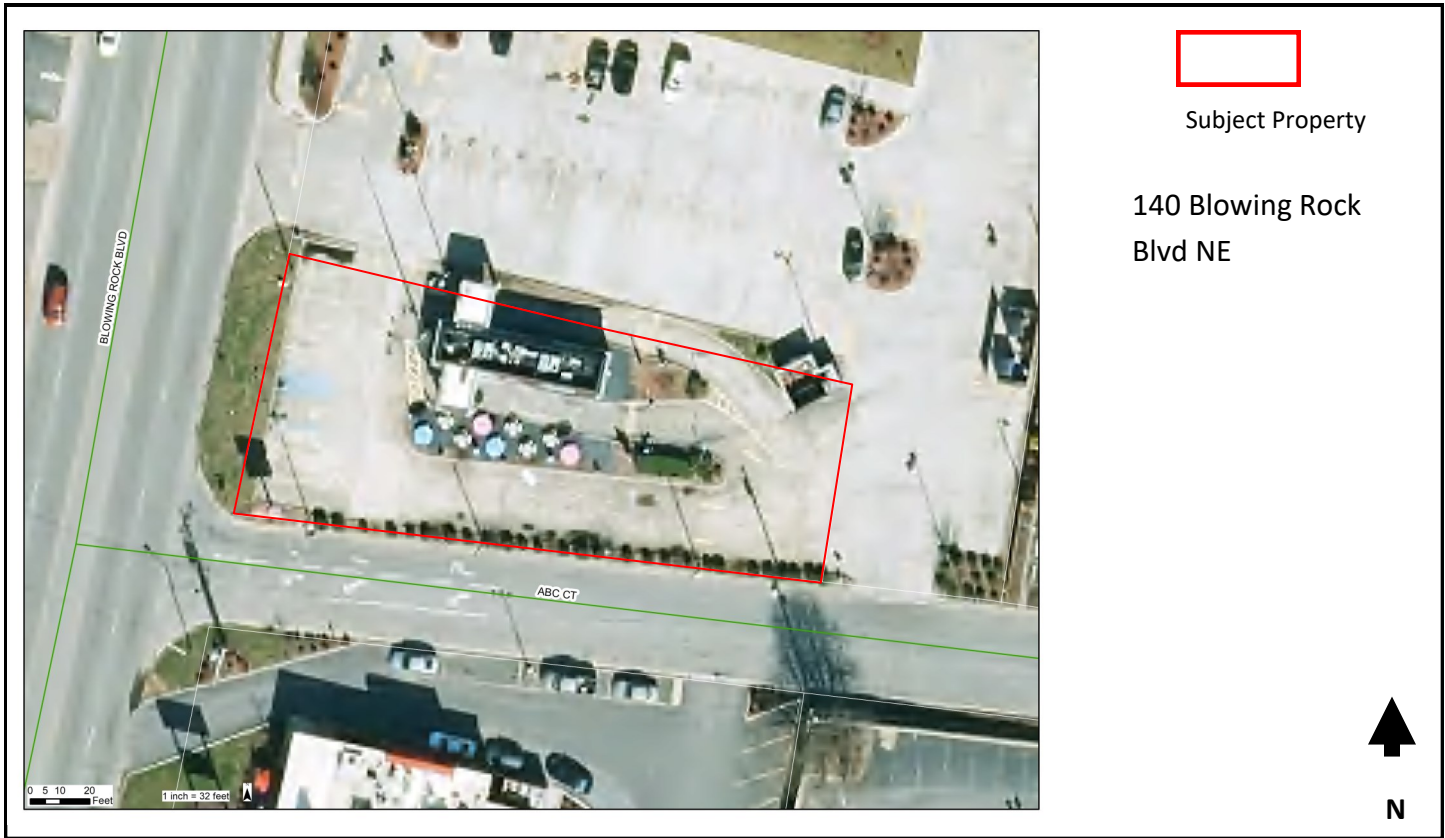
ADJOURNMENT:

There being no further business to be brought before the Board, Chairperson Bryant declared the meeting adjourned.

Sharon Bryant, Chair

Jenny Wheelock, Planning Director

LOCATION MAP/AERIAL PHOTOGRAPH



SUMMARY

Owner

INTERSTATE HOLDINGS LLC

Applicant

Mark Banks, Retail Partners Development LLC

Location

140 Blowing Rock Blvd, at the corner with ABC Ct—current site of Pelican's Snoballs

NC PIN

2759276750

Project Planner

Hannah Williams, CZO

Updated December 6, 2019

Applicant's Request:

The applicant is requesting a variance from Sec 714.12 of the zoning ordinance, which describes the parking lot orientation.

The applicant is proposing a demolition of the current restaurant building and new construction of a medical office. New development requires compliance with all the commercial design standards of Sec. 714, including 714.12 which requires that no more than 50% of the off-street parking area shall be located between the front facade of the principal building and abutting streets. The applicant proposes a site layout where 60% of the parking is located in front of the building.

Staff Recommendation:

Denial of the requested variance.

Public Comment: Notices were mailed to owners of property abutting the subject property on December 6, 2019. A sign was posted on the subject property advertising the hearing on December 5, 2019.

*****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 on page 4).

Subject and Surrounding Properties

The 0.35 acre subject property is located in the B-2 zoning district, at 140 Blowing Rock Blvd (US-321), just north of the Smith Crossroads intersection. All of the surrounding properties are also zoned B-2 (General Business) and developed with similar restaurant and retail uses. The subject property was developed as a fast food drive through restaurant several decades ago, prior to the adoption of the commercial design standards. The property is a small corner lot. Although it has frontage on US-321 and ABC Court, the property does not have direct driveway access from either of these roads. There are two existing easements from the Taco Bell property from ABC Court and US-321 that allow for driveway use and several parking spaces to be used by the subject property (see site plan on page 5). The applicant has proposed to construct a medical office building, sized 3,520 ft² to be used by Aspen Dental Management, Inc.

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 in-

stitutional 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 VARIANCE & RELEVANT CODE CITATIONS

The applicant is currently undergoing zoning review with the Lenoir Planning Department. Compliance with all design standards is required to obtain a zoning permit, including architectural features, material requirements, landscaping, and sidewalk construction. All of the applicable standards must be met prior to permitting. The applicant is requesting a variance from the following code citation:

Article VII—General Provisions

Section 714.12: *“For new construction, no more than 50 percent of the off-street parking area for building or multi-building project shall be located between the front facade of the principal building and abutting streets.”*

The applicant’s site plan proposes 20 on-site parking spaces, with additional 6 spaces located off-site and leased from Taco Bell, for total of 26 spaces. Sixteen spaces are proposed to be located in between the building and US-321 (see site plan on page 5), meaning that 80% of the on-site parking spaces would be located in front of the building. Staff has made an interpretation that the off-site spaces could be included in the overall calculation to satisfy the requirement of 714.12. If the off-site spaces are included, the proposed site plan still has 60% of the parking located in front of the building.

Article X—Off-Street Parking and Loading Requirements

Doctors and Dentists Offices	3 spaces per 1,000 square feet gross floor area
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Section 1000—Table of Minimum Parking Requirements

The proposed 3,520 sq. ft. office building is only required to provide 11 spaces to comply with the parking code. These spaces can be provided on-site or off-site within close proximity. The current site plan proposes 15 spaces more than the minimum requirement.

Alternative Site Plan

Upon receipt of staff's initial comments related to revisions necessary on the first plan set, the applicant revised the site plan to show a new parking configuration (see page 6). The revised site plan meets the standard that no more than 50% of the parking is located in front of the building, although it does require that additional easements be obtained from the property owner to the north (Taco Bell) in order to develop 6 of the proposed spaces. Even if this easement was not obtained, the revised site plan would still be providing 20 spaces (9 more than is required under the parking code) with only 9 spaces (45%) located in front of the building.

DRAFT FINDINGS: VARIANCE TO SEC. 714.12

The applicant has provided responses to these four standards, see page 8. Below are staff's responses to the standards for Variance approval. 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 applicant has demonstrated, through the submission of a revised site plan, that it is possible to develop the subject property with a 3,520 sq. ft. office building and enough parking to meet the Code, while conforming to the requirements of Sec. 714.12. Therefore, a hardship has not been created through the application of the ordinance.

2. The unnecessary hardship is peculiar to the property.

Staff Response: While the property is smaller than many properties in the B-2 zoning district at 0.35 acres, and does not have direct driveway connections for ingress and egress, the applicant has demonstrated that it is possible to develop the property with the required amount of parking spaces in the correct configuration.

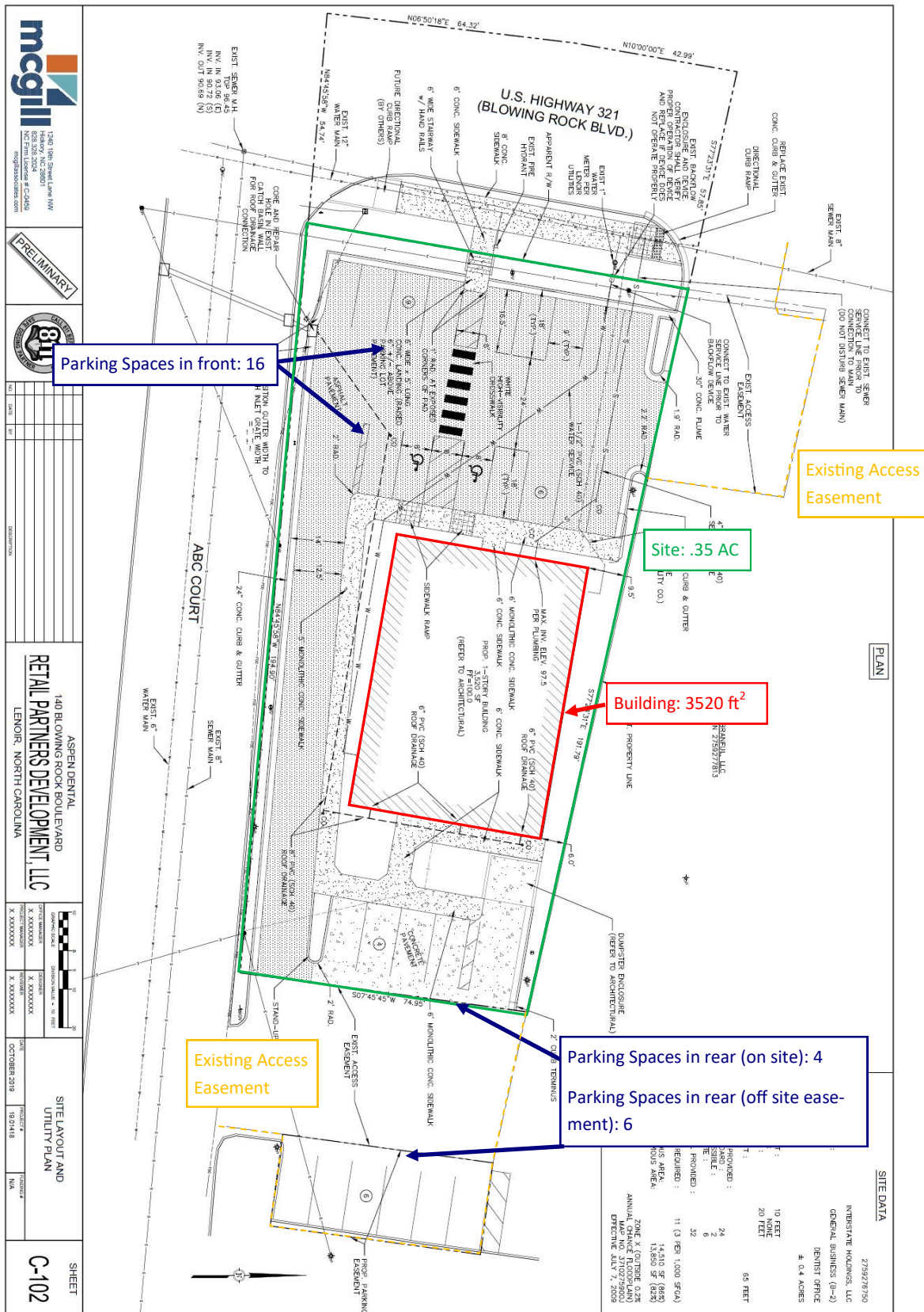
3. The Hardship is not self-created.

Staff Response: The hardship is related to the desire of the developer to provide 26 spaces, 15 more spaces than is required under the code. Therefore, the hardship is self-created.

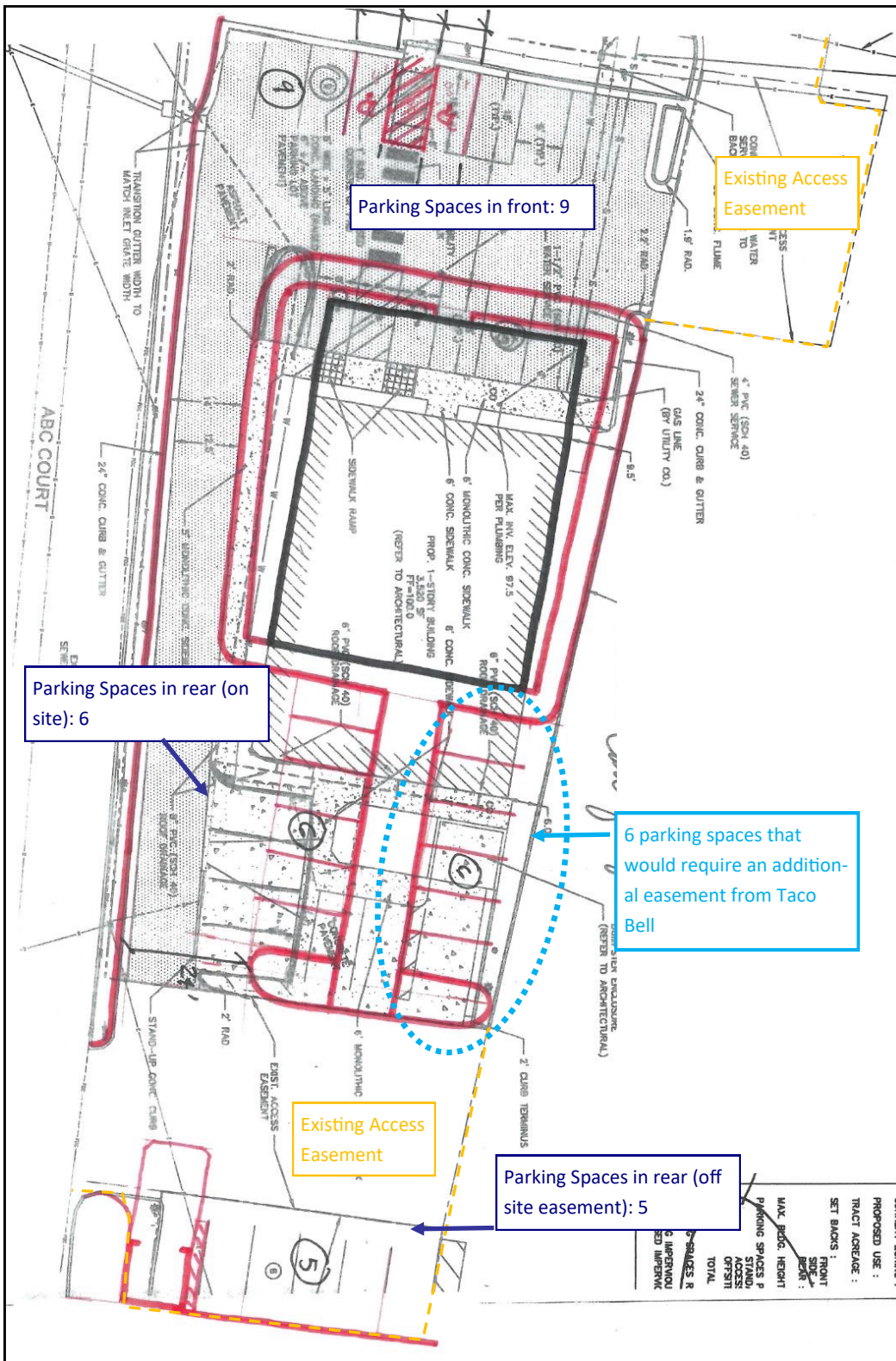
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff's Response: The intent of the ordinance is to create attractive, human-scaled developments that contribute positively to the unique character of Lenoir. Limiting parking in the front of a building promotes an attractive streetscape and an enjoyable sense of place. The applicant's proposed parking arrangement does not meet these intents of the zoning ordinance's commercial design standards.

Below is the site plan which displays the parking configuration with more than 50% of the parking between the building's front façade and the road.



APPLICANT'S SITE PLAN, VERSION 2



The applicant has proposed an alternative site plan that places the building closer to the road. This site plan proposes 9 spaces in the front, 12 on-site spaces in the rear, and 5 off-site spaces in the rear. Six of the on-site spaces in the rear of the building can only be developed if additional access easements are granted by the property owner to the north (the access would be along an existing parking lot drive aisle for the Taco Bell). However, even if the 6 spaces are not feasible, this site plan meets the requirements of Sec. 714.12, with 9 spaces in front of the building and 11 spaces (6 on-site and 5 off-site) are located to the rear. This plan, even without the access from Taco Bell, would exceed the minimum parking requirement by 9 spaces.

GOOGLE STREET VIEW



View from US-321, May 2019



View from ABC Ct, May 2018



View from ABC Ct, May 2018

Applicant's Response to Findings

VARIANCE REQUEST APPLICATION—PAGE 2

The Board of Adjustment (BOA) does not have unlimited discretion in deciding whether to grant a variance. NC General Statutes (NCGS 160A-388) require the applicant to show all of the following justifications before the BOA grants a variance. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the BOA that the variance is justified. Provide additional sheets as necessary. A super-majority (5/6) of the BOA must answer **YES** to **ALL** of the below statements for the variance to be granted.

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.*

The property has limited numbers of users that can make this work due typical parking requirements and need for circulation, but we are currently benefiting from 2 access easements to all ingress/egress into the property. Without those permanently in place, the parcel is landlocked with no legal access.

☒ **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.

Due to the size (0.38 acres) and shape (tapering towards the rear), there is very limited flexibility and options on building and parking placement.

We have been able to secure a parking easement in the rear (negotiating the document now) to allow for employee parks.

With the 26 Spaces shown on the plan (including the parking easement), the City would allow a maximum of 13 spaces in the front.

We are proposing 16 up front, so we asking for a variance of 3 spaces. Our hope is that the Board be reasonable based on these constraints.

☒ **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.

We are not in the business of treating any rule or ordinance lightly and appreciate the attention the Board gives Lenoir. We are simply looking for a little relief as we hope the additional jobs created and additional tax dollars will be viewed in a positive light.

☒ **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.

We have incorporated pedestrian access from the front of building to a proposed sidewalk in the Right of Way.

We are on standby with the NCDOT ROW Encroachment Application and ready to submit upon site plan review and approval.
