



Lenoir Board of Adjustment

Agenda • June 26, 2023

Meeting Information

Location

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

Time

5:30 p.m.

Board Members

Sharon Bryant, Chairperson

Curtis Baker (alternate)

Kyle Case

Leah Hamilton, Vice-Chair

James Bradshaw

Lucy McCarl

Tim Scobie

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. 160D-1402. 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 January 23, 2023 Minutes

REGULAR AGENDA

1. 2110 & 2110-A Walt Arney Rd SW

Applicant: Ryan Davis (LLC Manager), Lacey Reeves (Agent)

Owner: D4 Investments LLC

Location: 2110 Walt Arney Rd SW

V# 1-23 A variance to Section 800, Table A requirement for the 15,000 ft² minimum lot size in the R-15 zoning district.

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

ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT MEETING
January 23, 2023
5:30 PM**

LOCATION:
City /County Meeting Room
905 West Avenue

MEMBERS PRESENT:
Sharon T. Bryant, James Bradshaw, Leah Hamilton, Lucy McCarl, Tim Scobie

STAFF PRESENT:
Hannah Williams, Lauren Hartley

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

MINUTES:

Board Member McCarl moved approval of the meeting minutes of April 25, 2022. Board Member Scobie seconded the motion, which was voted upon and passed by unanimous vote.

NEW BUSINESS:

1. 701 Stage Street NW

Applicant: James Goines
Owner: James Goines
Location: 701 Stage St NW
V# 2-22 A variance requesting 15 ft. to allow a 10 ft. street side yard setback, where 25 ft. is required (R-6 standards, sec. 800, table A).

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

Hannah Williams and James Goines were placed under oath.

This item was presented by Hannah Williams using a PowerPoint presentation. The variance request is for 701 Stage Street NW, located in the West End neighborhood. Ms. Williams stated for the record, a correction on page 1 of the staff report should read, *A sign was posted on the subject property advertising the evidentiary hearing on January 23, 2023.*

The applicant has requested a 15 ft. variance from the street side yard setback of 25 ft. to allow for a 10 ft. setback. The current 25 ft. setback gives very little room for any kind of construction. It is shown in the staff report where the Duke Power lines run across the property and the right of way. Staff was unable to find any recorded right of way from Duke Power. Staff is recommending approval of the variance. Hannah Williams read the staff findings and conditions for the record.

General discussion from the Board ensued.

The applicant, James Goines of 418 Realty Street approached the podium. He addressed the concerns regarding the Duke Power right of way and stated he is in contact with a Duke Power engineer. Mr. Goines stated he is aware no structure can be within 25' from a pole. He would like to possibly have three structures on the property.

Chairperson Bryant closed the public hearing.

Board Member McCarl made a motion to approve the variance request with the four conditions as presented in the staff report. Board Member Hamilton seconded the motion, which was voted upon and passed unanimously.

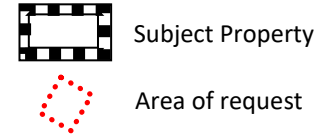
ADJOURNMENT:

There being no further business to be brought before the Board, Chairperson Bryant adjourned the meeting at 6:00 p.m.

Sharon T. Bryant, Chair

**Hannah Williams,
Planning Director**

LOCATION MAP/AERIAL PHOTOGRAPH



2110 & 2110A Walt Arney Rd



SUMMARY

Owner
D4 Investments LLC

Applicants
Ryan Davis, Manager
Lacey Reeves, Agent

Location
2110 Walt Arney Road
2110-A Walt Arney Road

NC PIN
2758200724, 2758109705

Project Planner
Hannah Williams, AICP
Updated June 16, 2023

Applicant’s Request:

The applicant is requesting variances to the R-15 minimum lot size of 15,000 SF in Sec. 800, Table A of the Lenoir Zoning Code, specifically:

- (1) A variance of 3,500 SF on Lot 1, for a total Lot size of 11,500 SF (or .26 AC).
- (2) A variance of 1,650 SF on Lot 2, for a total lot size of 13,350 (or .31 AC).

Several fixtures and a shed belonging to 2110-A Walt Arney Rd encroach on 2110 Walt Arney Rd. This request would allow a minor subdivision to resolve these encroachment issues.

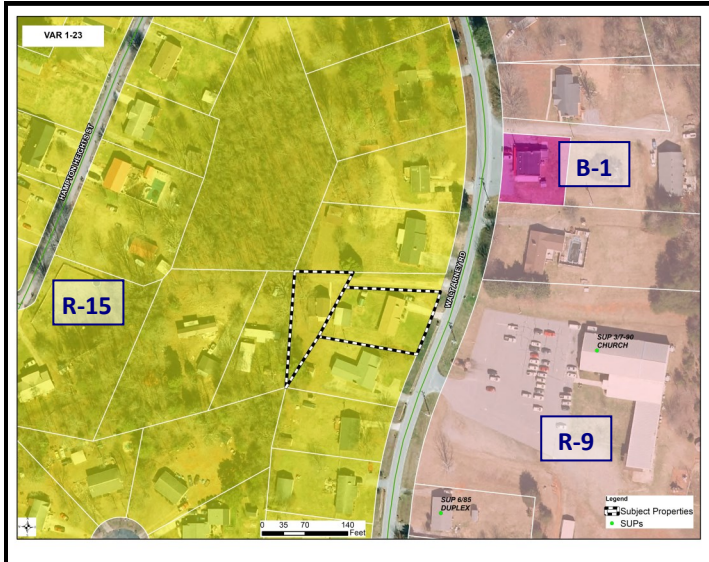
Staff Recommendation:

Approval of the requested variance. See draft findings, page 5.

BOA Meeting: Scheduled for June 26, 2023. Notices were mailed to adjacent property owners and a sign was posted on the subject property advertising the evidentiary hearing on June 16, 2023.

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

ZONING MAP



Walt Arney Road. Lot 2 is accessed by a shared driveway, which is also used by two properties behind it. Each lot is developed with a single family home, which are under renovation by the owner. There is one large outbuilding currently on Lot 1. Two smaller sheds are visible in the aerial image (from February 2022), but currently there is only one shed, of which the owner plans to remove.

Both Lots 1 and 2 were created in 1979, and were not in the Lenoir City Limits at the time (see Annexation January 22, 1979 on page 12). Lot 1 was created by the Southside Terrace subdivision as shown in Plat Book 10, page 57—labeled Lot 12. The house on Lot 1 was built in 1980. Lot 2 was created by Deed Book 724, page 778, and the house was built in 1966. It is not known when the large outbuilding on Lot 1 was built, and appears in historic aerial imagery from 2004 (oldest available by Caldwell County Land Records). See page 11 for recorded documents referenced here.

All of the abutting properties on the west side of Walt Arney Road are zoned R-15. The two properties off the shared driveway to the rear of the subject properties are developed with singlewide manufactured homes. These two lots are legally nonconforming to the use of manufactured homes in R-15, and to the minimum street frontage standard of 25'. The Hampton Heights and Southside Court subdivisions surround the subject properties to the north and south. The east side of Walt Arney Road is zoned R-9. This side is developed with a church, a superette, and a range of housing types, including single family homes, two mobile home parks, and an apartment complex.

STAFF ANALYSIS

Applicant's Request

The applicant and owner, Ryan Davis is requesting to move the property line between Lots 1 and 2 to fix encroachment and access issues that exist on the site. Lot 1 meets the R-15 required lot size of 15,000 SF. Lot 2 is only 9,535 SF, which is lower than the required lot size—and considered legally nonconforming, since this lot was created in the 1970s. Moving this interior lot line will result in both Lots 1 and 2 being nonconforming to the R-15 minimum lot size. The applicant's variance request is to allow for two smaller lots that still meet principal and accessory setbacks, specifically:

1. A variance of 3,500 SF on Lot 1, for a total Lot size of 11,500 SF (or .26 AC).*
2. A variance of 1,650 SF on Lot 2, for a total lot size of 13,350 (or .31 AC).*

*See page 4 for notes lot size accuracy and page 6 for a survey requirement as a condition of approval.

BACKGROUND

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 Sec 1332 in the Lenoir Zoning Ordinance for specific standards).

Subject and Surrounding Properties

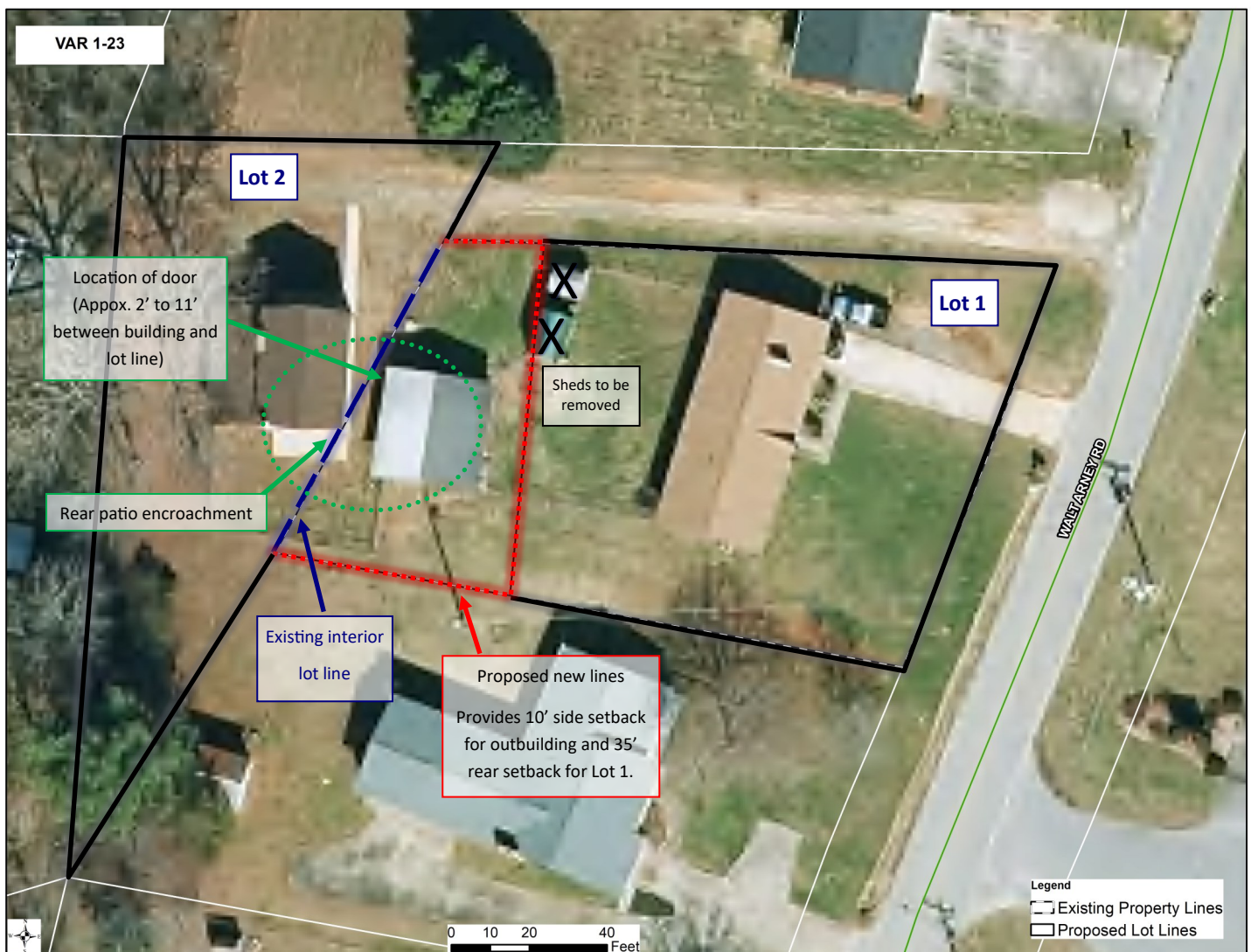
The subject properties are off Walt Arney Road, south of Southwest Blvd in Lenoir, about 1/4 mile north of the City Limits. They are zoned R-15, as is the surrounding neighborhood on the west side of Walt Arney Road. Lot 1, addressed as 2110 Walt Arney Rd, is 15,400 SF, and Lot 2, addressed as 2110-A Walt Arney Rd, is 9,535 SF. Lot 1 is accessed by a private driveway off of

STAFF ANALYSIS CONTINUED

Davis plans to renovate both homes on the subject properties, and the home on Lot 2 is currently under construction. He is requesting to move the interior lot line for several reasons. The interior lot line intersects with the rear patio of the house on Lot 2, and appears to touch the side of the house. This interior lot line does not meet the required 15' setback for the house.

Davis is also requesting to move this lot line to add the large outbuilding on Lot 1 to Lot 2. This outbuilding appears to belong to the house on Lot 2 because of its nearness to the house (as opposed to the house on Lot 1), and the positions of the garage door and the interior door. The outbuilding sits less than 10' from the house on Lot 2. The garage door faces the shared driveway used to access Lot 2, while Lot 1 is accessed from its own driveway. The interior door on the outbuilding faces the house on Lot 2, and swings out of the building towards the house. This is a difficult entry to access from Lot 1 without entering Lot 2 (see site plan below). Additionally, to accommodate R-15 accessory structure (10') and principal structure rear (35') setbacks, moving the interior lot line around the large outbuilding is the "path of least resistance," or requires fewer variances, easements, or encroachments.

PROPOSED SITE PLAN



The existing interior lot line does not meet side setbacks for the house on Lot 2, and encroaches onto property fixtures (roof eaves, rear concrete patio). Proposed lot lines (in dashed red) provide for 10' accessory structure setbacks and a 35 ft rear yard setback for the house on Lot 1. Proposed lot lines result in both lots with lower square footage than required in R-15. R-15 requires 15,000 SF lot sizes.

STAFF ANALYSIS CONTINUED

Surveyor's Accuracy

The variance application and this report were prepared without the benefit of a survey, so all lot size and setback references, existing and proposed, are based on Caldwell County Land Records and GIS, which “are not of land survey quality and are not suitable for such use.” While the applicant’s and staff’s best approximation were used to assume lot and setback dimensions, this variance will be conditioned on the accuracy afforded by a surveyor. A recombination survey shall provide a new interior lot line between Lots 1 and 2 that maintains the 10’ accessory structure setback to the east of the large outbuilding and a 35’ rear setback to the house on Lot 1. The new interior lot line must reasonably follow the lines proposed in the scaled site plan on Page 7 of this report. The proposed lot sizes for Lots 1 and 2 may not be the exact numbers in the applicant’s request on Page 1 and 2, but will follow the required aforementioned setbacks and the general guidelines in the site plan.

Intent of the Zoning District

R - 15 Residential (Single-family) District is intended to accommodate low density single-family residences and compatible land uses. R-15 is normally serviced by public water and sewer facilities. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

Section 800, Table A: Zoning District Regulations requires lots to be a minimum of 15,000 SF in the R-15 zoning district. Lot sizes are intended to provide pleasing homogeneity among lots in neighborhoods. Lot sizes can control for adequate light and air on properties, provide space for development, and controls for density.

Standards	Residential Districts					
	R-R Rural Residential	R-20 Low Density Single Family	R-15 Single Family	R-12 Single Family	R-9 Mixed Density Residential	R-6 High Density Residential
Minimum Lot Area (in sq. ft.):						
Residential Uses (1-family)	(1)	(1)	15,000	12,000	9,000	6,000
Residential Uses (2+ family)	(1)	(1)			15,000	9,000
Non-Residential Uses	20,000	20,000	20,000	18,000		9,000
Minimum Lot Width (measured at building line)		60 ft.	60 ft.	60 ft.	50 ft. (1-family) 60 ft. (all other uses)	40 ft. (1-family) 50 ft. (all other uses)
Minimum Street Frontage (2)	25 ft. (8)	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.
Principal Building Setback(11):						
Front yard	40ft	40ft	40ft	40ft	35ft	35ft
Side yard (3)	15ft (4)	15ft (4)	15ft (4)	12ft (4)	12ft (4)	10ft (4)
Street side yard	25ft	25ft	25ft	25ft	25ft	25ft
Rear yard (3)	35ft	35ft	35ft	30ft	25ft (4)	25ft (4)

SITE PHOTOS



Above: View of 2110 Walt Arney Rd (Lot 1) from the road. See shared driveway to the right, and house on Lot 2 to the rear.



Above: View of 2110-A Walt Arney Rd (Lot 2) from shared driveway



Above: View of 2110-A Walt Arney Rd (Lot 2) from rear yard. Note locations of the concrete patio and the interior door to the outbuilding.



Above: Yard between proposed Lot 1 and Lot 2. New lot lines will need to accommodate a 10' setback around outbuilding, and 35' rear yard for house on Lot 1.

DRAFT FINDINGS

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 interior lot line between Lot 1 and Lot 2 encroaches on Lot 2's property fixtures, but the line cannot be moved unless the lot increases in size to 15,000 SF. There is no way to increase Lot 2 to 15,000 SF without decreasing Lot 1 below 15,000 SF. The strict application of the R-15 15,000 SF minimum lot size creates an unnecessary hardship to fixing the encroachment issues.

2. The unnecessary hardship is peculiar to the property.

Staff Response: These properties were outside of the city limits when they were developed and were created prior to being subject to Lenoir Zoning. Therefore, not all properties meet minimum size requirements nor setbacks required by the Lenoir Zoning Ordinance. Lot 2, at 9,535 SF does not meet the minimum lot size requirements, and the interior lot line encroaches on the house and side setbacks. That, and the position of the outbuilding's ingress and egress, make the hardship peculiar to these properties.

3. The hardship is not self-created.

Staff Response: This lot was recorded prior to being subject to the Lenoir Zoning Code. The large outbuilding on Lot 1 was built very close to the house on Lot 2 prior to 2004, with access points oriented toward Lot 2. The applicant did not create these issues because they were existing when he acquired the properties this year.

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 Response: The requested variance would allow for fixing existing encroachment and access issues for a properties under redevelopment. The applicant is updating and modernizing two modest single family homes. Given that the applicant currently has ownership and control over both Lot 1 and Lot 2, he can also fix these long standing encroachment and access issues by moving the interior lot line. The variance still allows for a the standard 10' side setbacks for accessory structures, and for the standard 35' setback for the principal house on Lot 1.

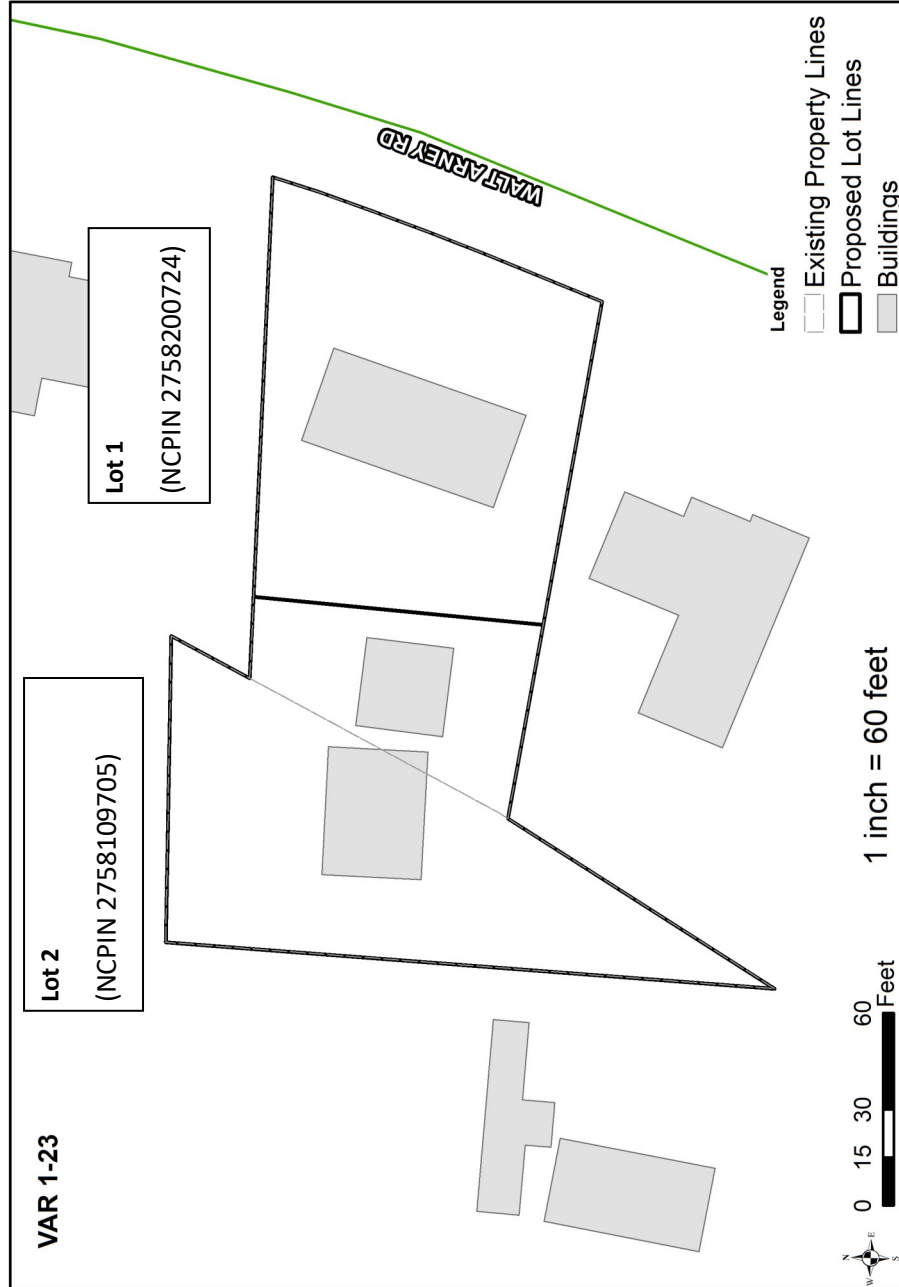
Adding the large outbuilding to Lot 2, and correcting the interior lot line's encroachment onto the house on Lot 2 secures any potential access and trespassing issues that could occur if both properties are sold to separate owners in the future. Since these properties are developed with housing, resuming residential uses on this property would not cause immediate disturbance.

Reducing the required minimum lot size to accommodate Lots 1 and 2 allows for redevelopment that conforms to nearby properties. By granting the variance, substantial justice is achieved by improving access to Lot 2, and ultimately improvement to two units in Lenoir's housing stock.

RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of the variance based on the findings on Page 5, as well as the following conditions:

1. Minor Subdivision: In order to move the interior lot line, the applicant/owner must follow minor subdivision procedures found in Chapter 19 "Subdivisions" of the Lenoir City Code.
2. Allowance for Surveyor's Accuracy: A recombination survey shall provide a new interior lot line between Lot 1 (NCPIN 2758200724) and Lot 2 (NCPIN 2758109705) that maintains the 10' accessory structure setback to the east of the large outbuilding and a 35' rear setback to the house on Lot 1. The new interior lot line must reasonably follow the lines proposed in the site plan on Page 8 of the VAR 1-23 staff report, also recorded with the variance order.
3. Cross Access Agreement: A new access easement will be recorded and referenced on the minor subdivision for the shared driveway on Lot 2 (NCPIN 2758109705), which will enable access through the lot to the two properties behind it known as 2110-B Walt Arney Road (2758108720) and 2110-C Walt Arney Road (NCPIN 2758106699).



APPLICANT'S RESPONSE TO VARIANCE STANDARDS

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.*

Encroachment to 2110 from a concrete pad located at 2110a will cause issue since this encroachment was never cleared. Fees from attorney to write and file easement will incur. Out building currently on 2110 matches the aesthetics of 2110a that will need to be changed if this is not corrected. Fence on 2110a encroches

- 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.

With current angle of lot lines, 5.73 ft of concrete pad that belongs with 2110a encroches 2110. Granting a variance for this small change will allow both lots a similar lot size. *Currently there is a Man Door that would open up to 2110a and required easement or person to ONLY walk to rear of building to avoid trespassing.

- 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.

Encroachments from 2110a to 2110 are: Concrete pad, back porch, chain link fence. Encroachments from 2110 to 2110a Distance from building to 2110a residence and pathway from building man door to -exit. These encroachments were already existing when purchased

- 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.

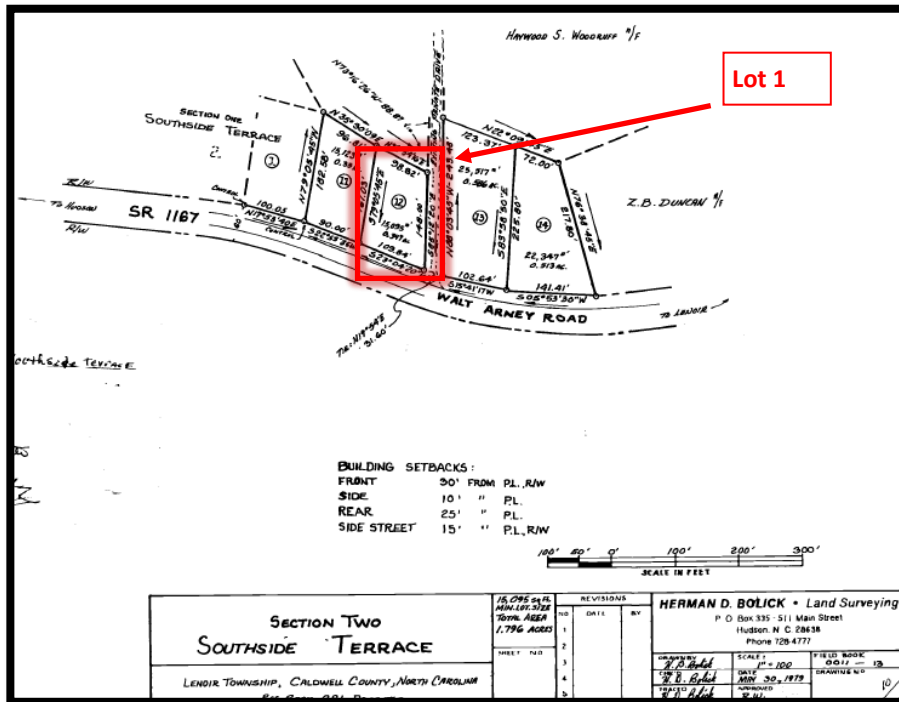
This variance will not harm any public safety in fact will improve safety with a building that is so close, belong to that residence. Variance will fix set back ~~issues~~ issues (all) However will not reach lot minimums. Fix trespassing issues. While fixing the issues and variance, we will also be fixing right of way issues of other homes down road.

NOTICING REQUIREMENT



SOUTHSIDE TERRACE AND BARNES DEVELOPMENT

Plat Reference—Book 10, page 57

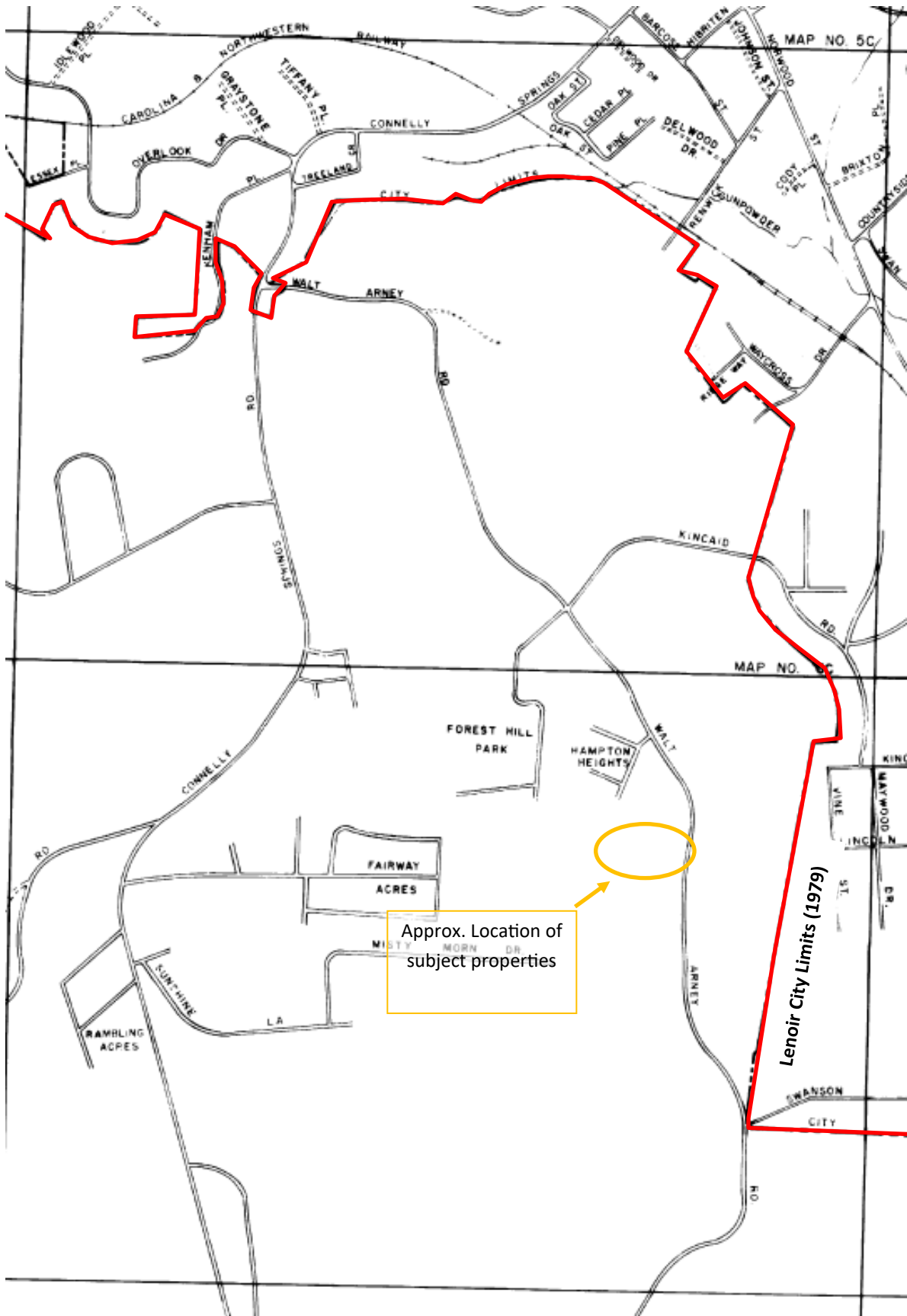


Deed Reference—Book 724, page 778

BEGINNING on a point in the center of the Walt Arney Road, Z. B. Duncan's corner (see deed recorded in Book 532, at Page 25), and runs with the center of said road for eleven (11) calls as follows: South 1° West 100 feet; South 5° West 75 feet; South 21° 30' West 320 feet; South 19° 53' 40" West 97.97 feet; South 9° 57' West 97.47 feet; South 8° 05' 20" West 99.41 feet; South 7° 42' 40" West 99.82 feet; South 7° 23' 40" West 359.60 feet; South 6° 10' 40" West 98.71 feet; South 2° 28' West 96.98 feet; and South 5° 20' East 78.81 feet to a point in the center of said road, Howard Cloer's corner; thence with Cloer's line South 75° West 260 feet to a point in the center of a creek; thence with the meanders of a creek, general bearing North 52° West 750 feet to a point; thence with Mrs. Wade Livingston's line North 26° East 615 feet to a point, C. W. Avett's corner(see deed recorded in Book 670, at Page 752); thence with his line North 28° East 78 feet to a point in his line; thence still with Avett's line (see deed recorded in Book 670, at Page 640) South 77° East 156.75 feet to a point, C. G. Stallings' corner; thence with said Stallings' line North 75° East 181.70 feet to a point; thence still with Stallings' line North 23° East 238.50 feet to a point in the center of a dirt road and in Haywood S. Woodruff's line; thence with Woodruff's line North 88° 30' East 50 feet to a point; thence still with Woodruff's line North 21° East 206 feet, more or less, to an iron stake, Z. B. Duncan's corner; thence with Duncan's line North 74° 45' East 248.8 feet to the BEGINNING, as platted by Herman D. Bolick, R.L.S. from deeds on April 10, 1979.

EXCEPTING, HOWEVER, from the foregoing is the following described property:
 BEGINNING on an iron stake, Mary Lee Stallings' and Ulysses Grant Setzer's corner, and runs a new line South 12° 20' West 99.26 feet to an iron stake, a new corner; thence still a new line South 79° 06' 17" East 172.80 feet to an iron stake in the right-of-way of the Walt Arney Road; thence with the right-of-way of the Walt Arney Road North 17° 53' 40" East 100.05 feet to an iron; thence North 79° 18' 11" West 182.45 feet to the BEGINNING. containing 17,656 SQUARE FEET, more or less.

ANNEXATION MAP FROM JANUARY 1979



Approx. Location of subject properties

Lenoir City Limits (1979)