



Lenoir Board of Adjustment

Agenda • July 24, 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 June 26, 2023 Minutes

REGULAR AGENDA

1. 308 Wilder St. NW

Applicant: Gracie Green (owner by will)

Owner: Ernest William Phillips (deceased)

Location: 308 Wilder St. NW

V# 1-23 A variance to Section 800, Table A in the R-6 zoning district for the minimum lot size of 6,000 sq. ft. and side yard setback of 10'.

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
June 26, 2023
5:30 PM

LOCATION:
City /County Meeting Room
905 West Avenue

MEMBERS PRESENT:
Sharon T. Bryant, Curtis Baker, Kyle Case, Leah Hamilton, Lucy McCarl, Tim Scobie

MEMBERS ABSENT:
James Bradshaw

STAFF PRESENT:
Hannah Williams, Lauren Hartley, Matt Duchan, Ed Evans

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

MINUTES:

Board Member Scobie moved approval of the meeting minutes of January 23, 2023. Board Member McCarl seconded the motion, which was voted upon and passed by unanimous vote.

NEW BUSINESS:

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 sq. ft. 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.

Hannah Williams, Greg Winkler and Lacey Reeves were placed under oath.

This item was presented by Hannah Williams using a PowerPoint presentation. The request is for 2110 & 2210-A Walt Arney Road SW. The applicant is asking for variances to the R-15 minimum lot size of 15000 sq. ft. and requesting to

move the property lines to fix encroachments and access issues that exist on the site.

Planning Director, Hannah Williams reviewed the staff findings on page 6 from the staff report and the 3 recommendations and conditions on page 7. A minor subdivision would be required and would be reviewed by the Planning staff. Also, the minor subdivision would require a cross access agreement for the shared driveway.

Greg Winkler at 902 Southside Court stated he owns property at the end of the street. He is concerned about the easement and what it means for the access. He stated he is also concerned about 911 services, they currently have a hard time finding the correct address. He suggested a new street name and addressing be changed.

Planning Director, Hannah Williams stated the cross access agreement with the variance will take care of the access concern across 2210-A Walt Arney Road. The Planning Department will contact him about the address concerns, which can be addressed by staff administratively.

Chairperson Bryant closed the public hearing.

Board Member McCarl made a motion to approve the variance request with the conditions and recommendations as presented in the staff report. Board Member Scobie 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 6:05 p.m.

Sharon T. Bryant, Chair

**Hannah Williams,
Planning Director**

LOCATION MAP/AERIAL PHOTOGRAPH



 Subject Property

308 Wilder Street NW

202 Todd Street NW

(Parcel addresses and owner information shown for all properties required to receive notice of these proceedings.)



SUMMARY

Owner
Ernest William Phillips (Deceased)
Applicant
Gracie P. Green (owner by will)
Location
308 Wilder Street NW 202 Todd Street NW (.16 AC)
NC PIN
2749982338
Project Planner
Matt Duchan
<i>Updated July 12, 2023</i>

Applicant's Request:

The applicant is requesting variances to the R-6 minimum lot size of 6,000 SF in Sec. 800, Table A of the Lenoir Zoning Code.

On Lot 1, the applicant is requesting a variance of 1,614 sq. ft. for a total lot size of 4,386 sq. ft. (.1 AC), as well as a variance of 18' to 22' to required 25' rear yard setback for a total rear yard setback of 3' to 7'.

On Lot 2, the applicant is requesting a variance of 3,524 sq. ft., for a total lot size of 2,476 sq. ft. (.057 AC), as well as a variance of 10' to 29' to the required 35' front yard setback for a total front yard setback of 6' to 25'.

There will also be a street frontage variance of 4.66', for a 20.34' frontage where 25' is

required.

The applicant proposes to split their property into two lots below required lot size, given the presence of two single-family homes on one lot. The findings presented in this report are related to characteristics of the lot itself.

Staff Recommendation:

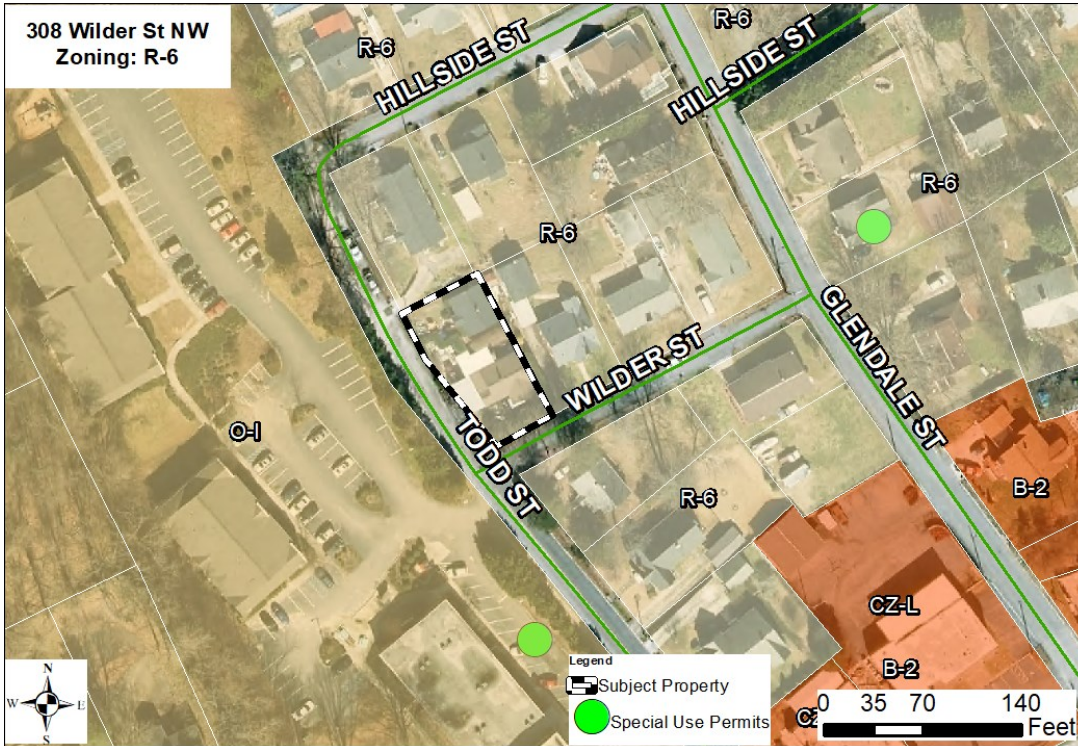
Approval of the requested variance. See draft findings, page 7.

Board of Adjustment Meeting: July 24, 2023.

Public Comment: Notices were mailed to adjacent property owners, and a sign was posted on the subject property advertising the evidentiary hearing on July 14, 2023.

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

ZONING MAP



Intent of the Zoning District

R - 6 Residential (Multi-family) District is intended to establish and preserve areas of land within the city for medium and high density residences, including single family, doublewide manufactured homes, duplexes, townhomes, multi-family developments, and other compatible uses at appropriate densities.

Higher density multi-family developments are allowed as special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

BACKGROUND

Subject and Surrounding Properties

The .16 AC (6,862 SF) subject property is located in the East Harper neighborhood and is zoned R-6 (Multi-family residential). It is located at the northeast corner of Wilder Street and Todd Street and is a corner lot. There are two single-family homes on the property. The lot is currently owned by Ernest W. Phillips Jr., who is recently deceased. The applicant, Gracie Green, is owner by will. The house on Lot 1 is 1,288 SF, front-facing to Wilder Street and features a carport abutting Todd Street and a concrete wall that separates the property from the street. Shrubs shape the lot line between the two homes. The home on Lot 2 is 701 SF and is separated by the concrete wall behind the home on Lot 1. The homes are essentially delineated by these fixtures into two distinct areas, despite not having the a dividing lot line.

All of the surrounding properties are in the same R-6 zone. There is a mix of single-family site-built homes and multi-family residences in the vicinity. The East Harper neighborhood is adjacent to Downtown Lenoir, and can be accessed from Harper Avenue. While multiple properties in the neighborhood feature apartments, duplexes, and accessory dwelling units (ADUs), none pose such a unique case as 308 Wilder Street. See page 9 for the original plat and deed references. To the direct east, all properties are zoned R-6, with a special use permit issued at 202 Glendale Street for a group home in 1987. To the west, a special use permit was issued for 506 Harper Avenue, approving apartments in a former school building in an O-I zone that otherwise disallows high-density dwellings. To the south beyond the R-6 zone is a B-2 Zone with special use permits that transitioned from conditional zoning pre-dating 160D statutes, which allowed for storage buildings with lesser than permitted setbacks.

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).

STAFF ANALYSIS

Relevant Ordinances

Section 800, Table A: Zoning District Regulations requires 6000 SF minimum lot size, 25 ft. of street frontage, 25 ft. rear yard setback and 35 ft. front yard setback for new development within the R-6 zoning district.

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)

Applicant's Request

The applicant is seeking to subdivide a lot with two single-family homes into two lots. The resulting subdivision would yield:

1. A variance of 1,614 SF on Lot 1 for a total lot size of 4,386 SF (or .1 AC), an 18' to 22' variance to the required 25' rear setback resulting in a 3'-7' rear yard setback.
2. A variance of 3,524 SF on Lot 2, for a total lot size of 2,476 SF (or .057 AC), as well as a variance of 10' to 29' to the required 35' front yard setback, resulting in a front yard setback from 6' to 25', and a 4.66' variance to the required 25' front setback resulting in a 20.34' front setback.

The applicant is unable to subdivide the lot due to setbacks and lot size on their property, therefore, they are unable to correct nonconformities of two homes on the same lot. The proposed interior lot line reduces the required rear setback on Lot 1 and front setback on Lot 2.

Taxed as Two Homes, Platted as One

Like the plat, the original development of this lot and the lots in the surrounding neighborhood occurred before Lenoir's zoning

STAFF ANALYSIS, CONT.

ordinance was adopted. The house on proposed Lot 1 was built in 1936, while the house on proposed Lot 2 was built in 1965. While neither of the homes is accessory to the other, the property currently has two single-family homes taxed individually. Both of the homes are distinct, with the functional front each facing the road despite being on a corner lot: one facing Todd Street, the other facing Wilder Street.

Fixtures on Property Lines

Given the variances needed to fulfill two single-family home lots on this property, the concrete wall, shrubbery, and carport next to the Wilder Drive house need to be considered. The shrubbery and concrete wall effectively act as right-of-way boundaries, while the “car awning” as labeled on the plat does not affect setbacks. The “car shed” on the northeast corner of Lot 2, however, is deemed an encroachment as shown below.

Existing Non-Conformities, Lot 1

Feature	Nonconforming Measurement	Requirement
Rear Setback	Nonexistent (due to encroachment)	25'
Street Side Setback (West)	0' (concrete wall abuts road)	25'
Side (East)	4.5'	10'
Front Setback (Wilder)	22'	35'
Multiple Structures	Two homes, one lot	One single-family dwelling per lot

Existing Non-Conformities, Lot 2

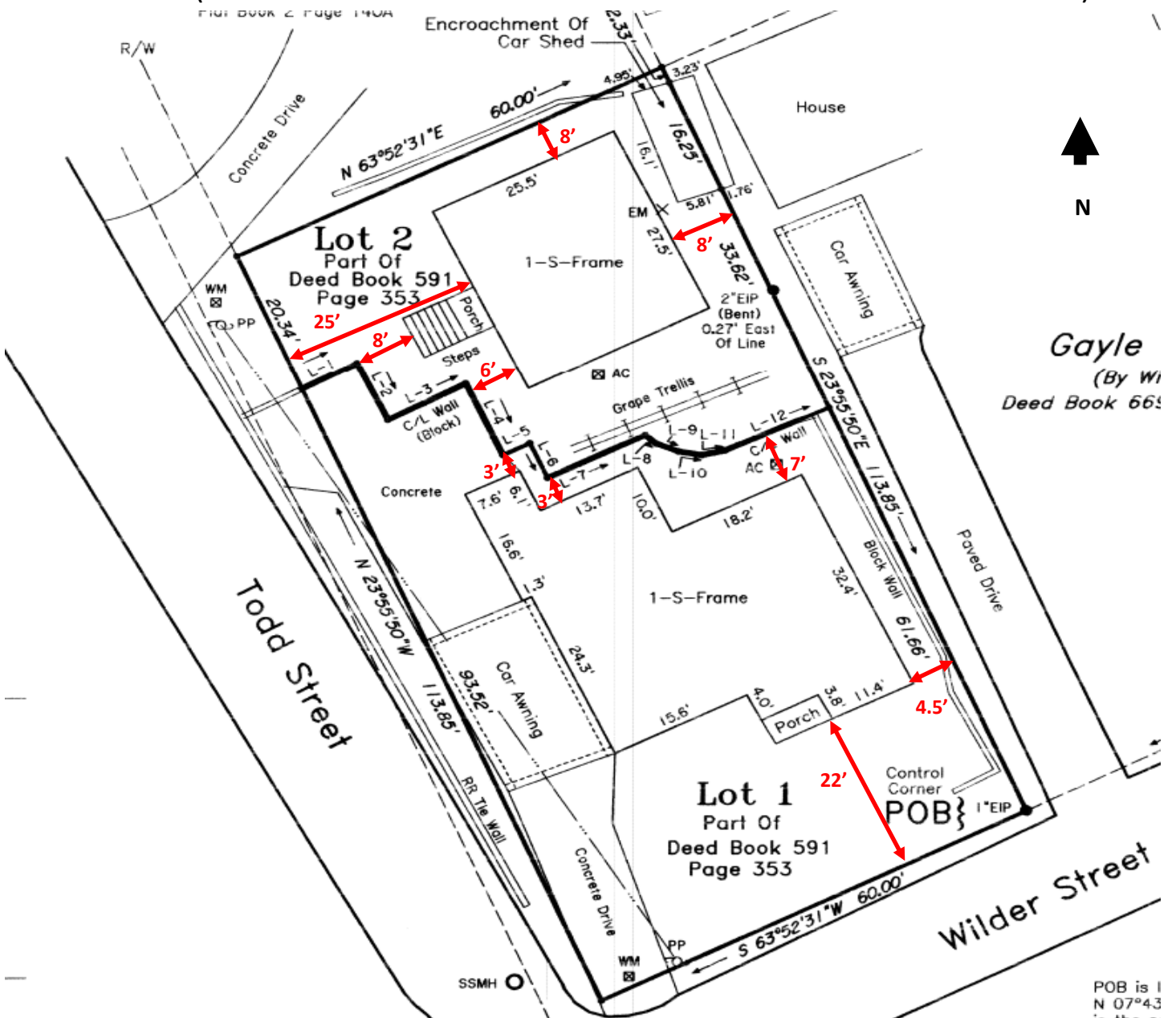
Feature	Nonconforming Measurement	Requirement
Rear Setback	8'	25'
Side (North)	8'	10'
Front Setback (Todd)	8'	35'
Car Shed	Encroachment	Non-encroachment with neighboring properties
Multiple Structures	Two homes, one lot	One single-family dwelling per lot

STAFF ANALYSIS, CONT.

New Non-conformities

The number of non-conformities on this property is not reduced by this variance request. The nonconforming setbacks and encroachments of the shed and carport would remain since there is no proposed change to the exterior lot lines. Approval of the variance would create a new lot line, splitting the property into two distinct lots. The variance would exchange one major non-conformity (two single family dwellings on one lot) for another (two distinct lots below minimum required size of 6,000 SF, as well as below minimum street frontage). At 6,862 SF, the current lot exceeds the minimum lot size standard of 6,000 SF, however, at 60' wide, this lot is quite narrow for a corner lot. Lenoir's zoning ordinance, like most zoning codes, prescribes rear and front yard setbacks. The main purpose of rear and front yard setbacks is to ensure there is ample space between one's own property and other properties, as well as right-of-way and the ability to provide greenery and ventilation for properties to function. Most modern subdivisions make corner lots larger than interior lots to accommodate for this additional setback, but this lot was created before zoning was adopted.

SITE PLAN (PROPERTY VIEW WITH NON-CONFORMING SETBACKS)



POB is 1
N 07°43'

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 entire lot is only 6,862 SF, but it contains two single family dwellings. The strict application of the ordinance prevents these two separate single family homes from being subdivided, since neither home will be able to sit on a 6,000 SF lot. Further, the ordinance requires that the house on Lot 1 have a 25' rear yard, and the house on Lot 2 have a 35' front yard. Due to the small lot size, the sloping topography, and as-built fixtures, these dimensions for setbacks are not feasible.

2. The unnecessary hardship is peculiar to the property.

Staff Response: The two separate single family homes on one lot is peculiar to the property. Neither one of these homes is accessory to the other - they are distinct houses and are taxed separately as single family houses. Nearby homes meet the minimum lot size, contain a single principal structure on each lot, and have far fewer nonconforming setbacks.

3. The hardship is not self-created.

Staff Response: The applicant inherited this property from deceased relatives. The house on Lot 1 was built in 1936 and the house on Lot 2 was built in 1965. There has been one deed since 1969. The applicant did not deed the houses together and therefore this hardship was not 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 Response: The minimum lot size required by Sec. 800, Table A is to present criteria for residential development standards, and to provide uniformity and predictability to neighborhoods. Minimum lot sizes generally preserve visibility for traffic and add open space to the built environment. But, in a historic neighborhood like East Harper, where many homes predate the zoning ordinance and very little new development is proposed, modifications to the lot size and setbacks are not likely to change the feel and form of the neighborhood.

Fixtures on the property already provide a distinction between the yard space on Lot 1 and Lot 2. However, public safety is secured by this variance because two separate residents in two separate houses can live with reasonable knowledge of where their actual property lines are. Varying the code to grant this new interior lot line will reduce encroachment issues and improve public safety overall.

By this variance, the property owner is able to have flexibility of ownership over two distinct homes, instead of treating two homes like a single property. Additionally, the intent of the zoning ordinance is not to preserve a nonconformity that encumbers rights inherent to ownership and usage. The nonconforming setbacks proposed by the new interior line impose less restrictions to the owner's usage of the property than having two separate single family homes on one lot. Currently, no subdivision is feasible and there is no easy fix to separating the two single family homes. Granting this variance will achieve substantial justice and provide the property owner with the rights to subdivide the lot into two distinct properties.

RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of the variance based on the findings on the previous page as well as the following condition(s):

1. An amended minor subdivision plat must reference the variance case number, once approved by the Board of Adjustment.
2. The state of the property must be brought up to code, including the removal of on-site and off-site trash and debris.
3. A shared maintenance agreement for the concrete wall along the new interior lot line shall be required, and must be recorded with the Register of Deeds prior to the minor subdivision final plat.

SITE PHOTOS



Above: View of Lot 2 from concrete drive north of property line, with house pictured (shrub separates Lot 1 from Lot 2)



Above: Photo showing west side of property, concrete wall and fence



Above: Photos showing fence on west side of property.

Below: View of Carport from front of Lot 1 on Wilder Street



Above: View of front of property on Wilder Street

Below: View of front of property with abutting neighbor driveway.



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.*

The strict application of the ordinance prevents me from subdividing the properties. Therefore I cannot sell lot one without affecting lot 2.

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.

I have two single family homes on one lot. There is not enough land to meet the minimum lot size required by city for each house.

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.

My parents bought the homes before 1960 and both homes were on the same lot.

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 continued use of the properties is to be used as two single homes. The separation will not cause any safety issues within the city.