



# Lenoir Board of Adjustment

## Agenda • April 22, 2024

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### Meeting Information

#### *Location*

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

#### *Time*

5:30 p.m.

#### *Board Members*

Sharon Bryant, Chairperson

Curtis Baker (alternate)

James Bradshaw

Michael Careccia (alternate)

Kyle Case

Leah Hamilton, Vice-Chair

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 July 24, 2023 Minutes

## REGULAR AGENDA

### 1. 340 Finley Ave NW

Applicant: Equity Trust Co.

Owner: Equity Trust Co.

Location: 340 Finley Ave NW

**V# 1-24 A** variance to Section 800, Table A in the R-6 zoning district for requesting a 32-foot variance to the front setback, a 7-foot variance to the side setback, and a 22-foot variance to allow development.

*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**  
**July 24, 2023**  
**5:30 PM**

**LOCATION:**  
City/County Meeting Room  
905 West Avenue

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

**MEMBERS ABSENT:**  
Kyle Case

**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 June 26, 2023. Board Member McCarl seconded the motion, which was voted upon and passed by unanimous vote.

**NEW BUSINESS:**

**1. 308 Wilder St. NW / 202 Todd St. NW**

Applicant: Gracie Green (owner by will)  
Owner: Ernest William Phillips (deceased)  
Location: 308 Wilder St. NW / 202 Todd St. NW

**V# 2-23** 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.

Matt Duchan and Gracie Green were placed under oath.

This item was presented by City Planner Matt Duchan using a PowerPoint presentation. The request is for 308 Wilder Street NW. The applicant is requesting a variance to the R-6 minimum lot size of 6,000 sq. ft. The applicant is proposing to split their property into two lots below the required size. Currently, there are two single-family homes on one lot. Mr. Duchan read the draft findings

and conditions to the board.

Gracie Green, owner of 308 Wilder Street NW stated this was her parent's property, who are now deceased. They are in the process of clearing out the trash that was left by a previous renter. She does not want to sell the property as is and displace the long-term renter at 202 Todd Street, she has lived there for 23 years.

Chairperson Bryant closed the public hearing.

**Board Member Hamilton 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 6:00 p.m.

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**Sharon T. Bryant, Chair**

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**Hannah Williams  
Planning Director**

LOCATION MAP/AERIAL PHOTOGRAPH



 Subject Property

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

**SUMMARY**

**Owner**  
Equity Trust Co.

**Applicant**  
Equity Trust Co.

**Location**  
340 Finley Av. NW, at the corner of Rankin St. NW

**NC PIN**  
2840906722

**Project Planner**  
Hannah Williams, AICP, CZO  
Matt Duchan  
*Updated April 15, 2024*

**Applicant's Request:**

The applicant is requesting a 32-foot variance to the front setback, a 7-foot variance to the side setback, and a 22-foot variance to the rear setback to allow development 3' from all property lines where 20' is required for the front yard, 7' is required for the side yard, and 25' is required for the rear yard, as established in Sec. 819 North Main Street Overlay District, of the Lenoir Zoning Ordinance.

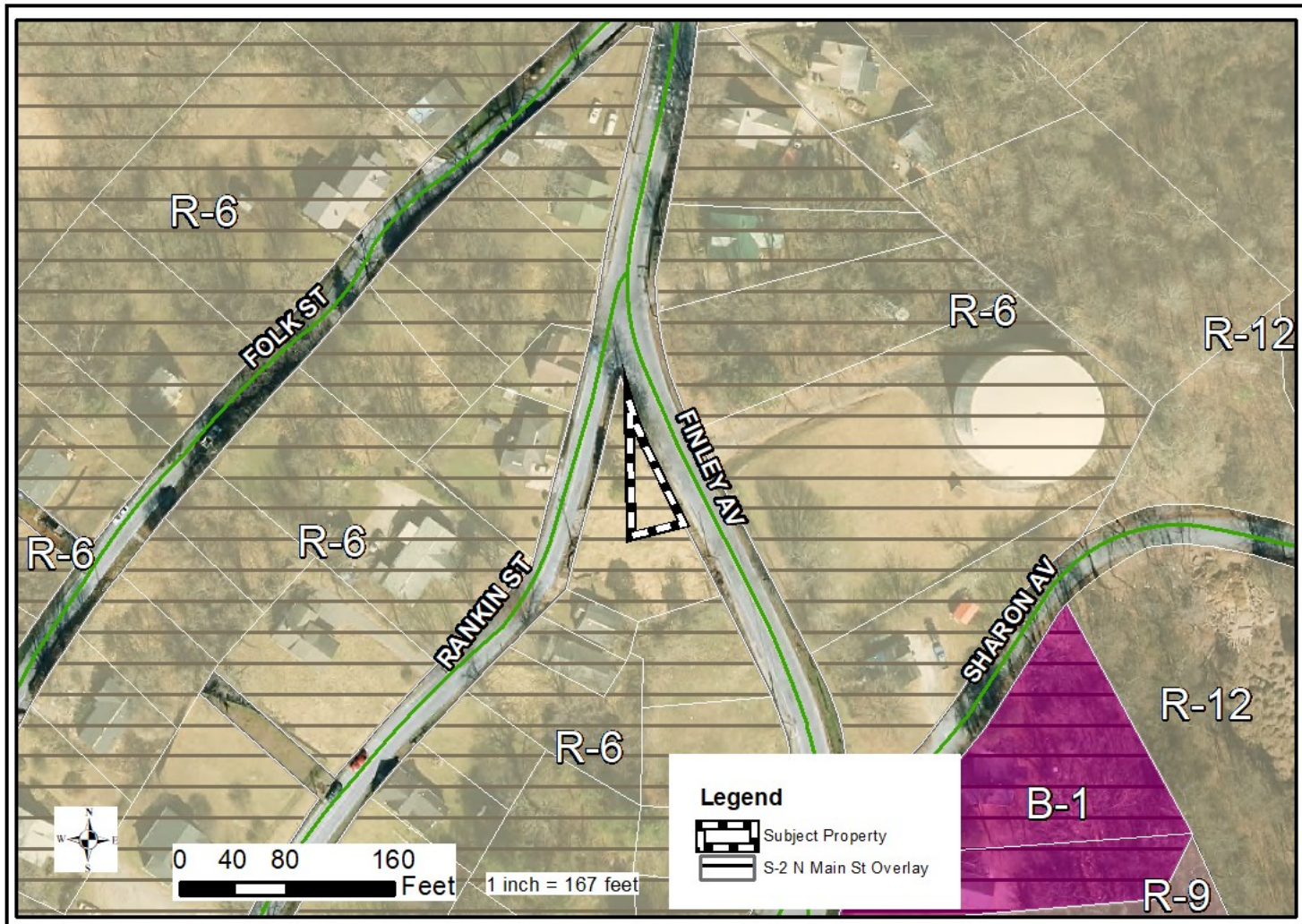
**Staff Recommendation:**

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

**Public Comment:** Notices were mailed to adjacent property owners on April 12, 2024. A sign was posted on the subject property advertising the evidentiary hearing on April 12, 2024.

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

# ZONING MAP



### 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 .04 AC (1,880 SF) subject property is located in the Freedman neighborhood and is zoned R-6 (Multi-family residential) and S-2 (North Main Street Overlay District). It is located at the northeast corner of Rankin, intersecting with Finley. The property is located just south of the corner on the east side of the corner lot.

All of the surrounding properties are in the same R-6/S-2 zone. There is predominantly single-family homes and a few churches in the vicinity. The Freedman neighborhood is adjacent to Downtown Lenoir, and can also be accessed from Sharon Avenue. The MLK Center is a major city landmark in the Freedman neighborhood. The City of Lenoir Water Tower is across the street on 1.13 acres, and the property is flanked by several churches as well as Best Cuts Barber & Beauty on the corner of Sharon & Finley.

### 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.

## STAFF ANALYSIS

### Relevant Ordinances

*Section 819, S-2 North Main Street Special Overlay District* requires a 20 ft. front yard setback, a 7 ft. side yard and street side yard setback for new development within the S-2 zoning district.

#### 819.5 Area Regulation

819.51 Minimum Lot Area: None

819.52 Minimum Lot Width:

Single Family Residential: 40 feet; All other uses: 50 feet

#### 819.53 Minimum Front Yard

- a. 20 feet from right-of-way or the average of structures on adjoining lots if less than 20 feet
- b. Front Porch: An open front porch on any residential building may encroach into the required front yard a maximum of 6 feet.
- c. Non-residential uses that abut N. Main Street or Finley Avenue must be setback a minimum of 10 feet from the back-of-curb in order to provide adequate space for streetscape improvements. No other front setback is required.

#### 819.54 Minimum Side Yard

- a. Residential: 7 feet; Non-residential: 0 feet, except where a larger buffer yard is required adjoining a residential use.

819.55 Minimum Rear Yard: Underlying zoning district standards apply.

819.56 Maximum Building Height: 40 feet or the height limit of the underlying zoning district, whichever is greater.

### Applicant's Request

The applicant is seeking to develop a single-family home on the property. Given that this property is in the S-2 North Main Street Overlay District, the front yard setback requirement is 20 feet, while side yard setbacks are reduced to a 7' requirement. The rear yard is required to be 25', as this section of the code references the underlying district (R-6). The lot is as wide as 42.5' but terminates at a corner at the north end. With these setbacks, the buildable area is essentially non-existent for any reasonably sized dwelling.

### Setbacks and Lot Size

At 1,880 SF, the lot is far below the minimum required area of 6,000 square feet. The lot is very narrow at 42 feet wide, and narrows to a corner at the north end. Lenoir's zoning ordinance, like most zoning codes, prescribes both interior side yard setbacks and street side yard setbacks, as well as front and rear. Street side yard setbacks usually range from the full depth of the required front yard setback to about half the depth. This extra space adjacent to side streets helps preserve sight lines around intersections, gives consistency to the block face where there are reverse-corner or key-hole lots, and ensures space for sidewalks, buried utilities, or future ROW expansions. 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. As such, there is little to no room to support development on this parcel

### Single-family Homes Pre-Zoning

Like the lot owned by the applicant, many properties in the area demonstrate the inability to meet setbacks, or, at the very least are currently non-conforming with respect to present zoning standards. As shown on the applicant's submittal on page 10, many houses along Rankin Street and Folk Street do not meet front setback requirements. Depending on the size of the lot, it can be especially challenging to meet all setback requirements let alone one, whether it be front, side, or rear.

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## STAFF ANALYSIS, CONT.

### **Foreclosed Properties**

In December 2017, a house was demolished on the property after issuance of a notice of violation in September 2017 for accumulating overgrown shrubs, debris, and no longer meeting minimum housing standards therefore becoming a safety hazard. The subject property was purchased by the applicant after tax foreclosure and offered at public sale at the Caldwell County Courthouse in June 2021. Finding no buyer, the City held the property rights until the applicant matched the bid. As a result, the applicant has acquired the property and seeks to develop the vacant lot. The abutting property also went through a similar foreclosure process in July of 2023, whereby the City of Lenoir was once again the highest bidder by default.

### **Purchasing Property is not a Self-Created Hardship and Why That Matters**

According to NCGS 160D-705 *Quasi-judicial zoning decisions*, "The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship." That is, an applicant may purchase a property knowing it is non-conforming and the creation of that hardship does not fall on them. In this case, the applicant was aware that the property is only 1880 square feet, almost 4200 square feet below the conforming lot size minimum with a peculiar lot shape which further complicates structure placement. There are also several homes, including many shown in applicant's provided address sheet that are non-conforming to setback standards. This is all the more important for foreclosed and/or vacant non-conforming properties, because this outright prevents non-conforming properties for sitting vacant and undeveloped in perpetuity. Therefore, there is a lot of untapped potential for many properties in Lenoir should prospective buyers decide to invest.

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## 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 strict application of R-6 renders the 340 Finley lot essentially unbuildable. The 20' front setback would require a home to be placed in the southwest corner of the lot, where the applicant would otherwise be unable to build a sufficiently-sized home.

**2. The unnecessary hardship is peculiar to the property.**

**Staff Response:** This lot is well below minimum lot size standards (4,200 square feet below required) and cannot accommodate the front, rear, and side setbacks. A non-conforming home that pre-dates zoning restrictions was demolished and the property was put up for sale in 2021 after foreclosure.

**3. The hardship is not self-created.**

**Staff Response:** The owner/applicant did not create the non-conforming lot, or demolish the old home. Purchasing a property with the knowledge that it is non-conforming does not constitute a self-created hardship. Without an approved variance, it would be impermissible to redevelop the lot.

**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 the redevelopment of a property that currently has limited viable use. The proposed project would resume residential use on this property, which would not cause immediate disturbance as the use conforms with the surrounding area, and a house previously stood on this lot.

By granting the variance, substantial justice is achieved by allowing viable infill in Freedman, a neighborhood dealing with a significant number of vacant homes in disrepair. Reducing the required setback allows infill to match the existing development patterns with small homes located close to the street.

Staff recommends approval of the variance based on the findings above.

## 340 FINLEY AVENUE

Deed Reference—Book 2084, Page 123

### TRACT 1:

Beginning at a stake, the northeast corner of Ernest Horton lot, runs South 75° West 42½ feet to a stake, Ernest Horton's northwest corner; then north 100 feet to a stake in East Finley Avenue; thence a southeastwardly course with said East Finley Avenue 96½ feet to the beginning, lying in Lower Creek Township, in Freedman Section of the City of Lenoir.

Also being identified as Parcel ID# 09 27 3 1, Caldwell County Tax Office.  
Address: 340 Finley Avenue, Lenoir, NC

### TRACT 2:

BEGINNING at a stake in Jesse Rankin's old line, and Bill Sudderth's old corner, and runs with said Sudderth line South 55° East 4 poles to a stake, Ed Hayes corner; thence with his line North 35° East 10½ poles to John Hayes and Lee Corpening's old corners; thence with the Lee Corpening old line North 24° East 4 ¾ poles to a stake, corner of the Lou Witherspoon lot; thence with line of said lot North 55° West 6 poles to a stake, corner of said lot in the old J. Rankin line; thence with said line South 24° West 15 poles to the beginning, containing 3/8 of an acre, more or less.

Being the same land conveyed by Katherine Jones and husband, Laurence H. Jones, to B. F. Williams, by Deed Dated January 6, 1955.

Subject to easements, restrictions and rights of way of record, and matters of survey.

Also being identified as Parcel ID# 09 27 3 21, Caldwell County Tax Office.  
Address: 431 Rankin St. NW, Lenoir, NC

## SURROUNDING AREA & SITE PHOTOS



Above: East side of property facing south along Finley Av

Below: View of property from corner facing southwest towards Rankin St



## SURROUNDING AREA & SITE PHOTOS



Above: Rankin St facing east, property adjoins with city-owned land, and is across the street from water tower.  
Below: North side of property facing southwest towards City property and property along Rankin.



## APPLICANT'S RESPONSE TO VARIANCE STANDARDS

**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 lot is in Lenoir's R-6 Residential (Multi-family) District is intended for medium and high density residences. Due to Section 800 Table A - Principal Building Setbacks of 35ft front and 25ft rear which equal 60ft width and cover the entire lot, there are zero places where a structure can be built on this residential lot. Without a structure, none of the uses listed in Section 600 Table A: Chart of Permitted and Conditional RESIDENTIAL Uses or TABLE B: Chart of Permitted and Conditional NON-RESIDENTIAL Uses are allowed; there is no reasonable use of the property without the variance

**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.

This triangular lot of record has been in existence for over 70 years. It has 96.5 feet of frontage on Finley Av NW, is 42.5 ft deep on the left (south) side and 100ft along the back property line. Caldwell County GIS calculates the acreage as 0.043163 Aerial photos show a home existed on this lot until 2017. It is believed that this home was constructed before the adoption of zoning regulations. The City of Lenoir filed demolition ordinance (DB1932 Pg1434) and demolished the home. It is physically possible to build a home here if the zoning setbacks are reduced, especially on the left side of the 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.

This hardship was created by the City of Lenoir's demolition of the house which eliminated the possibility of it being renovated, and from the City of Lenoir's zoning ordinance which now prevents the home from being replaced. Since acquiring this lot of record, the applicant has done nothing to impair their ability to build a home on this property.

**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.

Setbacks are said to ensure uniform neighborhood appearance and prevent crowding of houses. We are seeking 3ft setbacks on all property lines to allow re-construction of a home similar to the 25ft deep x 32ft wide home originally on this property. Many other homes on the small, narrow and odd-shaped lots in this historical Freedman area have setbacks significantly narrower than current R-6 standards. In aerial photos, we measure 0-3ft wide side setbacks at 407, 409, 415, 439 & 450 Rankin Dr, 428, & 507 Finley Av, 408 Folk St., 516 Patterson St. We measure 0-3ft front setbacks at 336 Rankin Dr, 507 Finley Av, 438 Folk St, and 515, 517 & 519 Hartley Pl. If this variance is approved, setbacks on vacant lot at 342 Finley will space homes at 13 ft minimum (CONT.)

# ADDENDUM SUBMITTED BY APPLICANT

Properties referenced in application (standard #4).



336 Finley Av NW



439 Rankin St NW



428 Finley Ave NW



407 & 409 Rankin St NW



408 Folk St NW



336 Rankin St NW



415 Rankin St NW



507 Finley Ave NW



515 Patterson St NW



515, 517 & 519 Hartley Pl NW



438 Folk St NW