



# Lenoir Board of Adjustment

## Agenda • January 27, 2020

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### 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

#### *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 December 17, 2019 Minutes

## REGULAR AGENDA

### 1. Aspen Dental

Applicant: Retail Partners Development, 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**  
**December 17, 2019**  
**5:30 PM**  
**905 WEST AVENUE, 3<sup>RD</sup> FLOOR**

**MEMBERS PRESENT:**

Sharon Bryant, Jeff Church, Mac Martin, Leah Hamilton, Lucy McCarl, Tim Scobie

**MEMBERS ABSENT:** James Bradshaw

**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 March 25, 2019 meeting were considered. Lucy McCarl made a motion to approve and Leah Hamilton seconded the motion. The motion passed unanimously.

**NEW BUSINESS: VARIANCE APPLICATION V#2-19**  
**140 Blowing Rock Blvd**

City Attorney, TJ Rohr introduced the case and opened up the quasi-judicial evidentiary hearing for V# 2-19 140 Blowing Rock Blvd and explained the rules and procedures.

City Attorney, TJ Rohr requested that anyone wishing to provide testimony be placed under oath. Mark Banks and Jenny Wheelock were placed under oath.

Planning Director, Jenny Wheelock presented the staff report and the applicant's initial and modified site plan. Ms. Wheelock stated the properties current use is Pelican's Snoballs, the applicant has proposed to redevelop this site with Aspen Dental, which will be a demolition and reconstruction. The variance being requested is for section 714.12 parking lot orientation which states "for new construction to have 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".

Ms. Wheelock explained the initial site plan shows 60% of parking located in the front of the building with a total of 26 spaces. When zoning comments were provided to the applicant from Planning staff; a revised site plan was submitted

which would meet the parking code, but would require additional easements from the Taco Bell property owner. Staff is recommending the revised site plan as meeting code, which could be permitted without a variance.

The applicant, Mark Banks asked the board to consider the initial site plan, which would need three additional spaces above what the code allows. The applicant stated Aspen Dental has a minimum of 26 parking spaces. Mr. Banks stated the revised site plan would need an easement from the property owner of Taco Bell, which is not guaranteed. The applicant addressed to the board the four standards/conditions for the variance justification.

Board member Martin suggested tabling the case to see if the easement is granted; if so the site plan would meet code and would not need to be approved by this board. Board member McCarl asked if the easement is granted what the cost differential would be.

Chairperson Bryant closed the public hearing.

**Board Member Martin made a motion to table variance V#2-19 until January 27, 2020 so applicant could provide additional evidence. The motion was seconded by Board Member McCarl and the motion carried unanimously.**

**ADJOURNMENT:**

There being no further business to be brought before the Board, Chairperson Bryant adjourned the meeting at 6:30 p.m.

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**Sharon Bryant, Chair**

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**Jenny Wheelock, Planning Director**

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 currently benefits from 2 legal and deeded access easements in place to access the property across the Taco Bell property. The property would be virtually unmarketable and unusable without those as there are no curb cuts into the property and would likely not be considered a legal lot. The small size and irregular shape of the parcel will require any future owner and/or user to take additional measures to enjoy the use of the lot. While we have tried several different iterations of the site plan to eliminate the need for a variance, we hope that the allowing of 3 additional spaces in the front yard is a minor accomodation.

 **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.

During my testimony at the meeting in December, I tried to illustrate that due to the irregular shape and size of the parcel, we are not able to accomodate the 3 spaces for which we are requesting relief in the rear. In addition, we have been able to secure a parking easement from Taco Bell for 6 spaces in the rear in a sincere attempt to meet the parking ratio. We will ask our tenant to require employees to park in these spaces to keep the spaces in the front free for customers. I hope the Board will recognize we have exhausted all options available to us as we feel this is our best path forward.

 **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.

As stated above, we have tried several iterations of the site plan to meet the ordinance for parking. We do not treat ordinances lightly and always strive to adhere to them on every project we do. Periodically, we face challenges with sites and attempt to make them comply with the underlying zoning regulations. Our hope is that a happy medium can be reached for a simple trade-off of the 3 spaces in exchange for additional property taxes, sales tax and additional jobs created. As you can see, this hardship is not self created, but just reiterating that the irregular shape and small size is the issue here.

 **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.

It is my understanding, we are in compliance or making the appropriate revisions to the plan to ensure that public safety is not compromised, but rather enhanced with the following measures: 1)Construction of a new sidewalk in the Right of Way 2) Dedicated and striped Pedestrian Connectivity from the front door to the proposed sidewalk which DOES NOT exist now.

Lastly, this forum has met the strict adherence of substantial justice as this process is held in a public, open and fair manner whereby any and all parties have had the opportunity to question, answer and debate the merits of this application.