

LINCOLNTON BOARD OF ADJUSTMENT

AGENDA

December 21, 2021

At 4:00 P.M. in City Council Chambers

1. Roll Call
2. Call to Order
3. Approval of minutes from the November 16, 2021 meeting
4. BOA-5-2021- Application from Mary Francis White of Ebony and White Funeral Services Inc. requesting an expansion of a nonconforming use in the R-8 district to construct a 1,200 square foot accessory garage for the funeral service use. The subject property is located on the north side of East Pine Street approximately 250 feet west of the intersection of East Pine Street and Dr. Martin Luther King Jr. Dr. (Parcel ID 15463).
5. BOA-6-2021- Application from Garry Potts of Professional Permits requesting a variance of section 153.070 of the Lincolnton Unified Development Ordinance (Canopies in NB District). The variance would allow a canopy to be constructed with a setback of 6.5 feet from the street right of way instead of the required 10 feet. The subject property is located at 1020 Reepsville Road (Parcel ID 53477).
6. Adjournment



**CITY OF LINCOLNTON
BOARD OF ADJUSTMENT**

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BOARD MEMBERS: Gene Poinsette, Chair, poinsetteg@charter.net; Rebecca Abernethy, Vice- Chair, rabernethy21@bellsouth.net; Jerry Hoffman, (ETJ), jlskhoffman@charter.net; Stephen Silva, (ETJ), soundcity1@ymail.com; Jamel Farley, afarley2351@gmail.com; Greg McBryde, first alternate, Gregory.McBryde@gmail.com; Trent Mason, second alternate, trentonmason@gmail.com; Joy Smith, third alternate, joysmithmsnrn@gmail.com

Tuesday, November 16, 2021 Meeting

Present: Gene Poinsette, Jamel Farley, Jerry Hoffman, Steve Silva and Rebecca Abernethy

Absent: Steve Silva and Rebecca Abernethy

Call to Order

Chairman Gene Poinsette called the meeting to order and recognized that Steve Silva and Rebecca Abernethy were absent and that Greg McBryde and Trent Mason would be serving as 1st and 2nd alternates for a quorum.

Approval of Minutes

Chairman Gene Poinsette asked the Board if there were any additions or corrections to the minutes of the September 21, 2021 meeting.

Motion: Jamel Farley made a motion to approve the minutes. Trent Mason seconded. Motion carried unanimously.

Chairman Gene Poinsette asked the Board if there was any other business to be addressed, to which there was none.

Adjournment

Motion: Jamel Farley made a motion to adjourn. Trent Mason seconded. Motion carried unanimously.

Jean Derby

MEMO TO: Lincolnnton Board of Adjustment
FROM: City of Lincolnnton Planning Department
DATE: December 21, 2021
SUBJECT: BOA-5-2021 – Mary Francis White, Ebony and White Funeral Services

Property Information

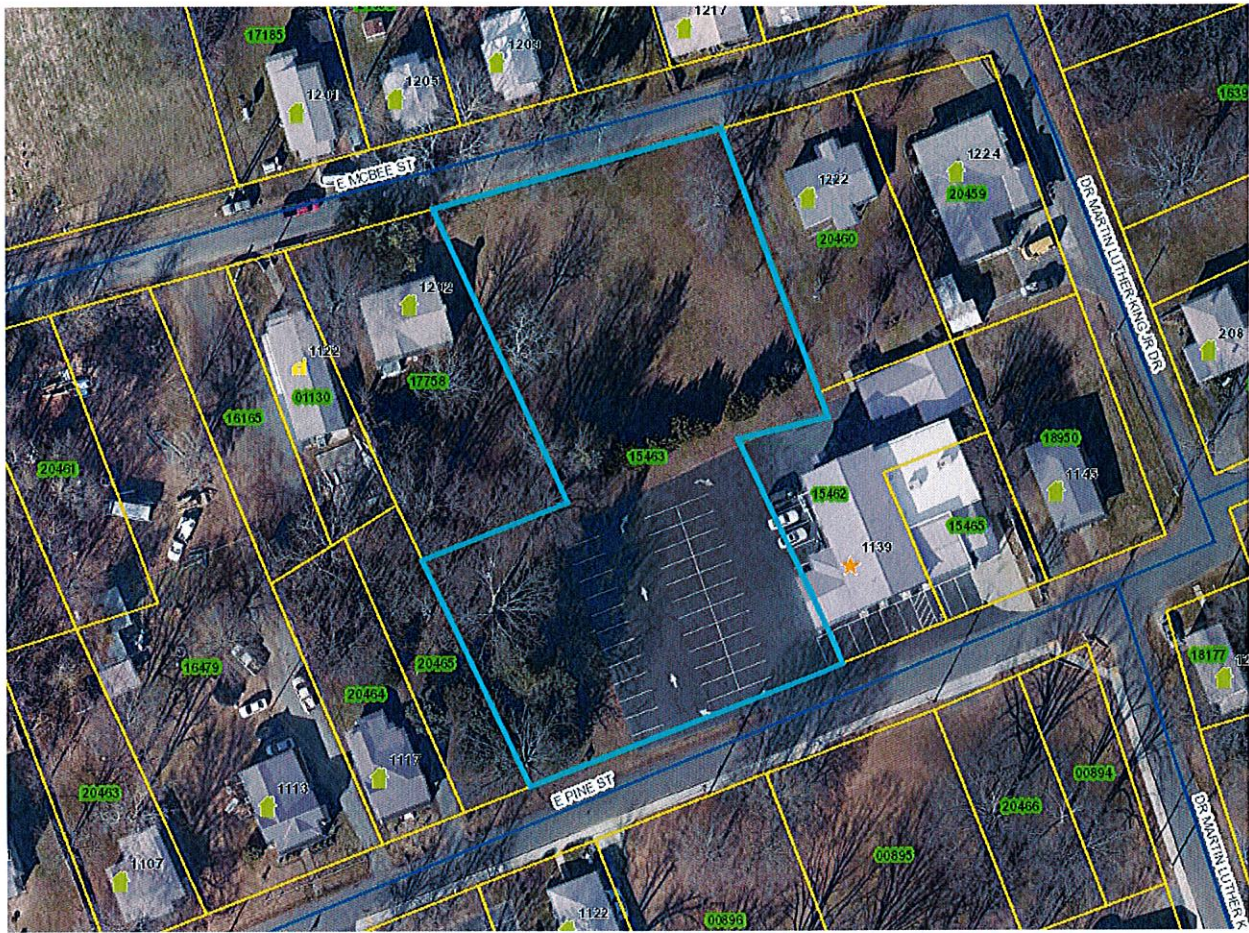
- Property Location – East Pine Street (PID 15463)
- Current Zoning – Residential-8 (R-8)
- Property Size - 1.043 acres
- Current Use of Property – Funeral Services and Parking Lot
- Adjacent Properties – Residential

Expansion of a Nonconforming use Request

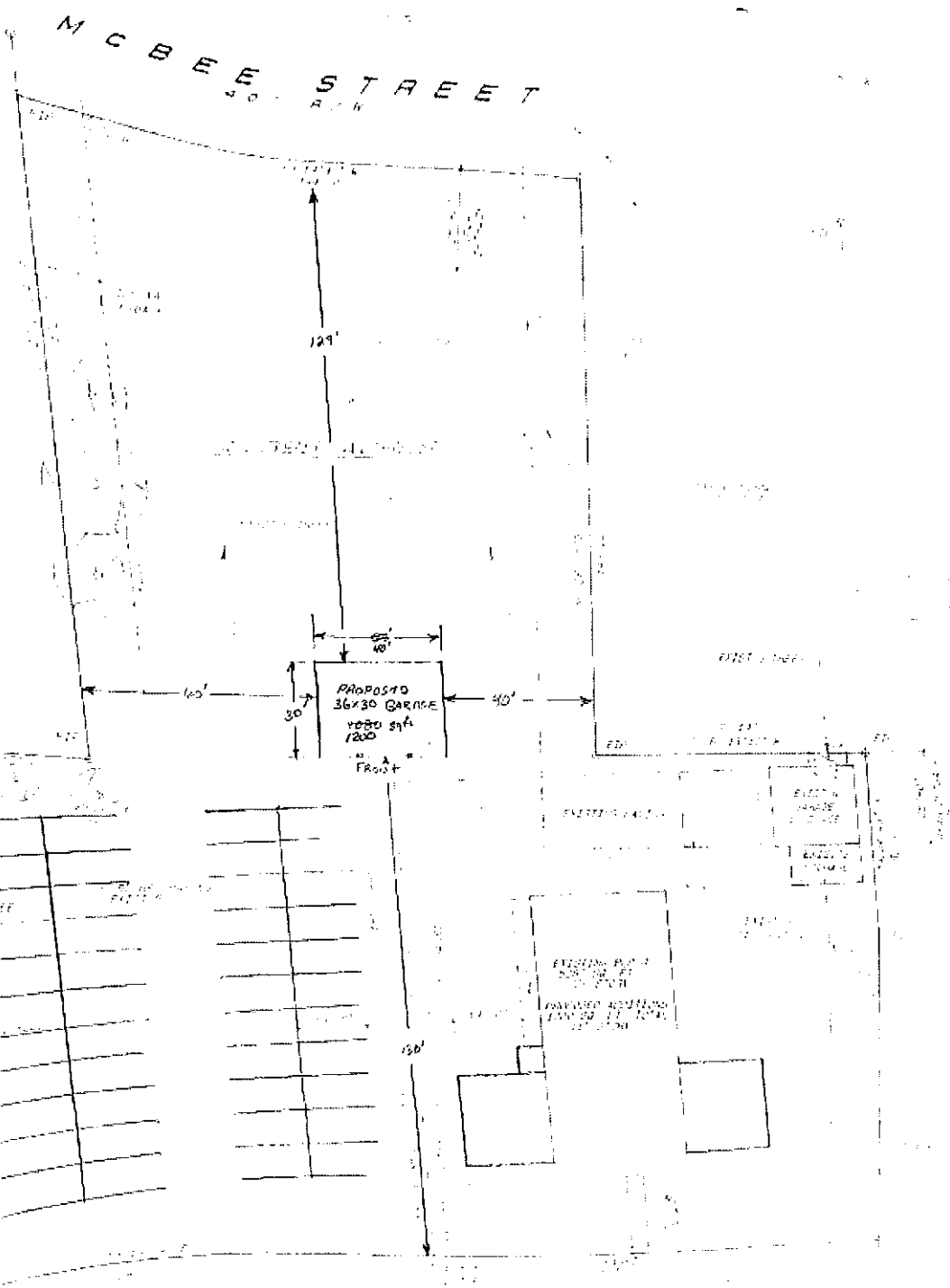
Application from Mary Francis White of Ebony and White Funeral Services Inc. requesting an expansion of a nonconforming use in the R-8 district to construct a 1,200 square foot accessory garage for the funeral service use. The subject property is located on the north side of East Pine Street approximately 250 feet west of the intersection of East Pine Street and Dr. Martin Luther King Jr. Dr. (Parcel ID 15463).

Background Information

The applicant is requesting to construct the 1200 square foot accessory garage for the purpose of the business and will be used for the shelter of the hearse, limo, and van. The new building will meet all setback requirements of the R-8 District.







Relevant UDO Requirement

The Board of Adjustment may grant a special exception for the expansion of a nonresidential nonconforming use or enlargement of a structure housing the nonconforming use only after having first held a public hearing and having determined each of the following in the affirmative:

(1) The nonconforming use will not occupy any additional lands beyond the boundaries of the lot on which the nonconforming use was located as of the date the use became nonconforming. The lot boundaries used to determine this were those existing at the time the use became nonconforming;

(2) The enlargement of any structure(s) or construction of additional structure(s) housing the nonconforming use will not result in a cumulative increase in total square footage of the building(s) greater than 50% of the total building square footage involved with the nonconforming use at the time of the first application for expansion pursuant to this section, or, a cumulative total increase of 1,000 square feet greater than that existing at the time of first application for the expansion, whichever is greater;

(3) If a change in use is involved, findings in the affirmative have been made pursuant to division (B) above of this chapter;

(4) The application does not involve any increase of size or height of any signage;

(5) There will be no odors, light emission (other than that equivalent to street lighting and/or lighting from any signage normally allowed in the N-B District), noises, vibrations or interference in radio or television detectable from the property boundary without instruments;

(6) In consort with the expansion, the entire nonconforming use will be screened on all sides in accordance with § [153.046](#)(C) of this chapter. Walls or fences will be permitted only as necessary to reach the required height or opacity and where the structures are used they shall be accompanied by as much planted materials as feasible. Where the nature of the nonconforming use requires substantial street exposure along a major street part or the Board of Adjustment may waive all of the screening along the street. If the screening is waived, four street trees per 100 linear feet of street frontage shall be provided in lieu of the screening;

(7) Adequate provision and arrangement has been made or will be made concerning the following, where applicable:

(a) Access roads or entrance or exit drives with respect to matters such as automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and other emergency;

(b) Off-street parking and loading areas where required and refuse and other service areas with respect to the impact upon the consideration in division (D)(7)(a) immediately above and

the economic, noise, glare, odor and other impacts on adjoining properties and properties in the general neighborhood; and

(c) Utilities, water, sewerage, schools, fire and police protection, and other necessary public and private services and facilities with respect to its location, availability and compatibility.

(8) The use has been and will remain to be maintained in a manner that does not create a nuisance to neighboring properties;

(9) The use will not materially endanger the public health or safety if allowed to expand as proposed and developed according to plan;

(10) The proposed expansion together with mitigation plans (such as screening) would be at least equally suitable and appropriate for the lot(s) on which it is located as the existing situation;

(11) The proposed expansion, together with the mitigating measures would have a no more harmful effect than the existing situation on the properties surrounding the lot(s) in questions;

(12) The use is not a nonconforming use subject to removal after a given period of time (i.e., amortization); and

(13) These uses include certain manufactured home parks, certain junkyards and certain signs.

(E) The Board of Adjustment, in granting an expansion pursuant to division (D) above may prescribe appropriate conditions and safeguards in conformity with this chapter in order to conform to division (D) above. Violation of the conditions and safeguards when made a part of the terms upon which the expansion was granted, shall be deemed a violation of this chapter and shall be punishable as prescribed in § [153.999](#) of this chapter.

Staff Comments

- The applicant's request should not affect the neighborhood negatively in any way. The request should be consistent with the spirit, purpose, and intent of the ordinance and meets the above requirements.
- The applicant will need to address, at the meeting, how the requirements listed above are met in order for the Board of Adjustment to grant the request.

MEMO TO: Lincolnnton Board of Adjustment
FROM: City of Lincolnnton Planning Department
DATE: December 21, 2021
SUBJECT: BOA-6-2021 – Professional Permits, Garry Potts

Property Information

- Property Location – 1020 Reepsville Road (PID 53477)
- Current Zoning – Neighborhood Business (NB)
- Property Size - 0.867 acres
- Current Use of Property – Convenience Store
- Adjacent Properties – Commercial and Residential

Variance Request

Application from Professional Permits requesting a variance of section 153.070 of the Lincolnnton Unified Development Ordinance (Canopies in NB District). The variance would allow a canopy to be constructed with a setback of 6.5 feet from the street right of way instead of the required 10 feet. The subject property is located at 1020 Reepsville Road (Parcel ID 53477).

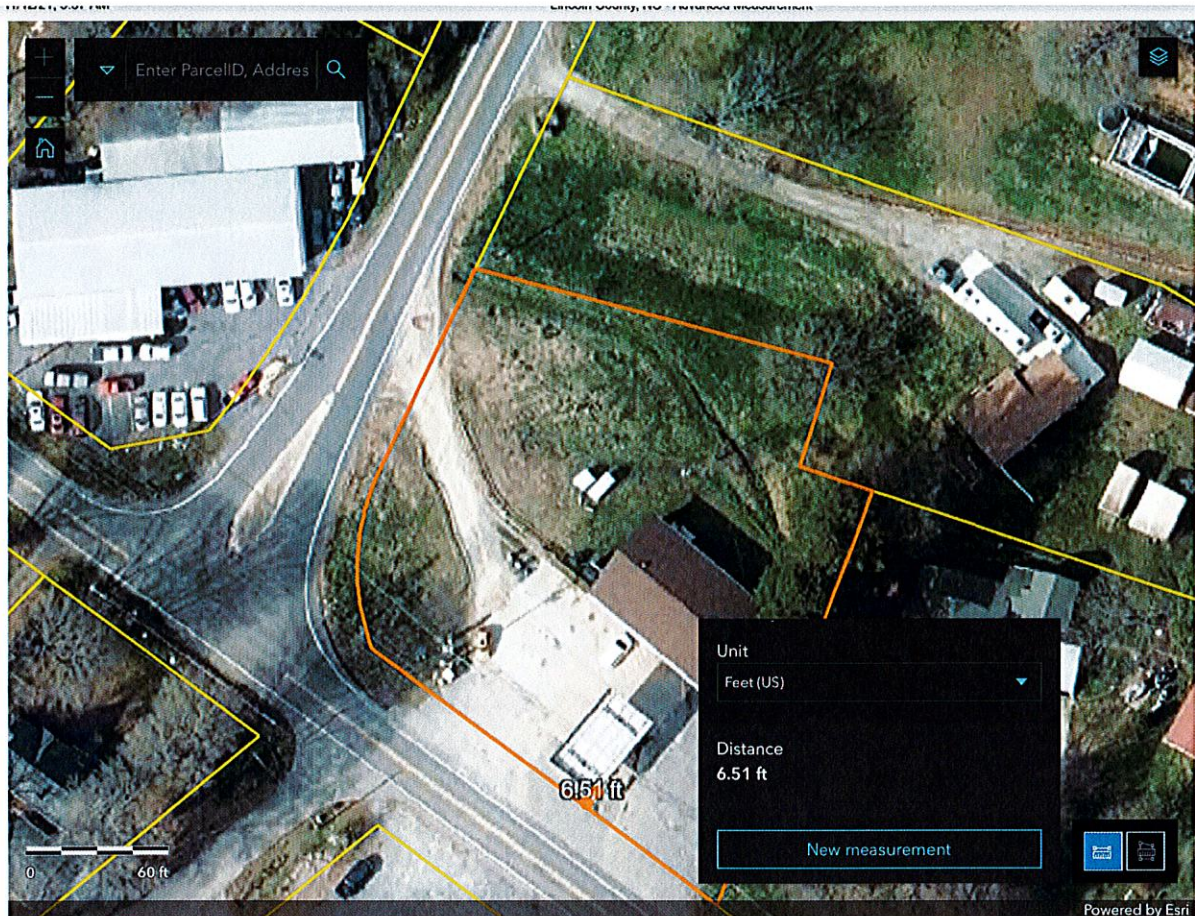
Relevant UDO Requirement

153.070 CANOPIES IN NB, GB, CC, HB, PB, GMC AND GI DISTRICTS.

On any lot where a canopy or canopies are used to shelter vehicles, such as lots containing convenience stores, service stations, express-fuel mini-marts and other similar uses requiring vehicular shelter, the edge of the canopy may extend to within ten feet of the front and rear property lines and five feet of the side yard property line. However, in no case, shall a canopy or canopies extend to within ten feet of a street right-of-way boundary.

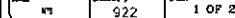
Background Information

The applicant is requesting a variance to replace the fuel canopy that was destroyed by a wind storm in the exact same location and dimension as the previously erected canopy. The canopy will require a variance because it fails to meet the required 10 foot setback from the property line. The canopy will be constructed 6.5 feet from the street right of way boundary.



Additional Applicant Statements (See Attached Application)

- The canopy will not provide sufficient coverage from the weather elements if we do not install it as it once was.
- The parcel is limited in size and is being utilized to its maximum efficiency. Re-orienting the canopy or shrinking the canopy would make the property in a less than optimal situation for use.
- The previous canopy pre-existed the ordinance and the setback requirements. The old canopy was taken down by a wind storm. The variance was not self created as the parcel was developed for full site functionality and ideal traffic flow.
- This is the minimum amount of relief necessary because we are simply trying to restore the full use of the property and provide adequate coverage to the consumer. Section 153.279 allows for board relief from the ordinance in situations such as these. The canopy will be installed at a height that will not affect visibility nor traffic.



Canopy Prior to Wind Damage 2020



Canopy after Wind Damage 2021



Findings of Fact

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
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 Comments

- The applicant's request should not affect the neighborhood negatively in any way. The variance request should be consistent with the spirit, purpose, and intent of the ordinance.
- The applicant will need to address, at the meeting, how the four findings of fact are met in order for the Board of Adjustment to grant the variance.