

**MINUTES – REGULAR MEETING
BOONE BOARD OF ADJUSTMENT
April 1, 2021**

CALL TO ORDER

Board Members Present: Rich Crepeau-Chair, David Welsh-Vice Chair, Pam Williamson, Andy Brooks, and Dalton George

Town Staff Present: Jane Shook-Director of Planning & Inspections, Christy Turner-Planner, Justin Stines-Facilities Maintenance Superintendent, and Brenda Henson-Board Secretary

Others Participating or Present: Allison Meade-Town Attorney, Chelsea Garrett, Will Thompson, Jason Gaston, William Mills, Stephen Knudsen, and Roger Wright

Chair Crepeau called the Boone Board of Adjustment meeting, held via WebEx, to order at 5:34 p.m. and provided a brief synopsis of the Board of Adjustment, its makeup and function.

APPROVAL OF MEETING MINUTES: 3-5-20, 10-1-20, AND 1-7-21

There was some discussion and confusion about whether or not the January 13, 2020 meeting minutes had been approved and, if not, they would need to be placed on the next meeting agenda.

Board Member Williamson stated she had some changes to the March 5, 2020 meeting minutes and listed those changes as follows:

Page 10, 2nd paragraph, 7th line should read *Board Member Williamson noted that the general public would not necessarily be subject to some of these issues.*

Page 10, last paragraph, last sentence should read *Dr. Krenn stated that no one was denying the fact that the unit continued to exist, water and electricity may have been provided, or that the unit had not been destroyed or rendered uninhabitable.*

Page 19, 5th paragraph, 6th line should read *Dr. Krenn asked if it was correct that the Town had specific ordinances with specific rules.*

Page 21, 1st full paragraph, 5th line should read *Ms. Shook replied that the goal would be not to have indefinite continuance on nonconforming uses.*

Page 22, 2nd paragraph, 10th line should read *Mr. Eggers asked Ms. Shook when she inspected the property in July or August if she could see that there were tenants in the downstairs property.*

MOTION

Vice Chair Welsh made a motion to approve the March 5, 2020 meeting minutes as amended and the October 1, 2020 and January 7, 2021 meeting minutes as written. The motion was seconded by Board Member Williamson.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	David Welsh, Vice Chair
SECONDER:	Pam Williamson, Board Member
AYES:	Welsh, Crepeau, Brooks, Williamson, George

CASE Z04415-121720, Z04579-031721, AND Z04580-031721 BOONE TIRE - VARIANCES

Durbin Development, LLC has requested the following three variances from the Town of Boone Unified Development Ordinance (UDO) in order to construct a Take Five Oil Change business at 1100 Blowing Rock Road:

1. Variance to UDO Subsection 14.08.04(A) to install a second driveway access on Blowing Rock Road in addition to the one allowed on Winklers Creek Road.
2. Variance to UDO Subsection 14.08.04(C) to allow a driveway access within 150' of the centerline of an intersecting street.
3. Variance to UDO Subsection 14.08.04(D) to allow any two (2) drives to be within 150' on the protected thoroughfare.

Vice Chair Welsh stated he owned the building next to Modern Toyota that contained an oil change business. He noted that he did not own the business. Ms. Meade asked Vice Chair Welsh to clarify where the property was located. Vice Chair Welsh replied that the property was located at 1505 East King Street, at least a half-mile away. Ms. Meade stated she did not view this as a conflict of any kind. Chair Crepeau asked Chelsea Garrett if her client had any objection to Vice Chair Welsh participating in this case. Ms. Garrett replied that there was no objection.

Ms. Garrett asked that all of her witnesses be sworn in together. Will Thompson, Stephen Knudsen, Jason Gaston, and William Mills were sworn in by Chair Crepeau.

Ms. Garrett introduced Steven Knudsen with Durbin Development as the applicant. She explained that Durbin Development was working with the hopeful property owner and Take 5 Carolinas franchisee. She introduced Jason Gaston with Valor Engineering, William Mills with Take 5 Carolinas, and Will Thompson with J.M. Teague Engineering.

Ms. Garrett stated that the applicant was requesting a variance to allow a right-in only and right-out only driveway on Blowing Rock Road. She noted that UDO Section A currently stated that the site was permitted only one driveway access and that if there were any streets or roads other than the thoroughfare protected by the Ordinance that were available for access to a site, access must be taken by those alternate streets. Ms. Garrett stated that the alternate street would be Winkers Creek Road and the thoroughfare would be Blowing Rock Road. She pointed out that the last sentence of that section stated if the alternate street was not adequate to serve the parcel, a single access point to the regulated thoroughfare may be allowed. Variances from Sections C and D related to the distance that the entry on Blowing Rock Road could be from an intersection and also the distance between any two driveways. Ms. Garrett stated that the required distance between driveways was 150' and the proposed driveways would be 100' apart.

Christy Turner was sworn in by Chair Crepeau.

Ms. Garrett asked if the 150' driveway spacing requirement was for any two driveways whether they were on the same property or an adjacent property. Ms. Turner stated that was correct. She noted that staff measured from the site's proposed driveway to the driveway at the next business over where Carolina West was located.

Ms. Garrett stated that the proposed site would be a vast improvement from a traffic and safety standpoint as well as aesthetically. She then called Stephen Knudsen to testify.

Mr. Knudsen stated that his company was working with the potential franchisee, Take 5 Carolinas, to develop the site for the proposed oil change use. He explained that Durbin Development did the initial due diligence on the project and put together the conceptual layout that Jason Gaston with Valor Engineering used to create the site plan that was shown in the Board packet. Mr. Knudsen explained that the challenge with the site was to meet the operations and needs of the business within the constraints of the property. He noted this was a stay-in-your-car oil change facility and vehicle circulation was key to that design. Mr. Knudsen stated that, with the property being as tight as it was, they had to deviate from their typical, standard 3 bay building and design a 2 bay building, which allowed them to get the interior circulation with a one-way drive that would go beside the building. Mr. Knudsen stated the next challenge they had was access to and from the site due to the triangular shape of the property, and in order to get the circulation that the business needed for its operations they created the right-in, right-out limited

access drive on Blowing Rock Road. He felt that having this driveway alleviated potential traffic impacts on Winklers Creek Road by allowing an alternative means of access for the customers.

Ms. Garrett asked Mr. Knudsen how many Take 5 businesses he had been involved in designing sites for or assisting with site plans. He replied that he had personally been involved with roughly 10 other Take 5's in their initial layouts. Ms. Garrett asked Mr. Knudsen to speak about the change from a 3 bay building to a 2 bay building. Mr. Knudsen replied that they typically had 3 bays, but 3 bays would have pushed further into the island and pinch the access closer to the corner and would negate or remove the loading area. Ms. Garrett stated the site currently operated as a tire service shop and asked if there were any environmental issues that would have to be addressed. Mr. Knudsen stated they had been working through some potential environmental quality testing that had to be done with any construction loan process. He noted there were some tanks that were removed. Ms. Garrett asked if they had any issues complying with any environmental requirements necessary to bring the site up to code and Mr. Knudsen replied that they had no problem with meeting environmental requirements.

Ms. Garrett called Jason Gaston to testify. She asked Mr. Gaston if he assisted in preparing the site plan for this project and he replied that he did. Ms. Garrett asked Mr. Gaston to describe what aspects of the existing conditions he took into account in terms of the design. Mr. Gaston stated there were currently essentially 4 full access entrances/exits on the property and, after coordination with DOT, they proposed to close 2 of the 4 accesses essentially. Ms. Garrett asked if DOT had any concerns or objections to the proposed plan. Mr. Gaston replied that they did not and stated he thought evidence of that had been provided via an email from Carson Fisher with NCDOT who reviewed the plan.

Ms. Garrett noted the concrete area in the corner of the property at the intersection and asked if that would become a planted or natural area. Mr. Gaston replied that the concrete area was actually inside DOT's right-of-way and having parking or any kind of operation like that was no longer allowed. He explained that for them to redevelop the property they had to pull all development outside the right-of-way and any of the area between the existing concrete island and the property line would be green space. Mr. Gaston stated it would be grass because DOT did not want to maintain landscaping and plants. He stated that on the property itself there would be traditional landscape buffering for the site. Mr. Gaston noted there would be a reduction in overall impervious asphalt and concrete.

Ms. Garrett stated she had a couple of photos that would not be introduced as evidence but would be used for illustrative purposes. She shared several photos of the property as it currently exists as well as a photo of the Starbucks property that has a similar right-in, right-out access to what was proposed.

Ms. Garrett asked Mr. Gaston if he knew the distance from the intersection to the new proposed access on Blowing Rock Road. Mr. Gaston replied that from the corner to the existing entrance it was about 32' and from the corner to the new proposed entrance would be about 65' to the radius return, not to the center.

Ms. Garrett asked if the triangle median separating the right-in and right-out would be designed to discourage and make it difficult for people coming out of the Take 5 to turn left on Blowing Rock Road. Mr. Gaston replied that was correct. Ms. Garrett asked Mr. Gaston if the end of the triangle would flare out or curve more so that if you were leaving Take 5 it would be even more difficult to take a left. Mr. Gaston stated that was correct. Ms. Garrett asked Mr. Gaston about the directional arrows on the site. Mr. Gaston explained that there would be directional arrows as well as do not enter signs on the site.

Ms. Garrett asked if there would be any place to park to the right around the building. Mr. Gaston replied that there would be no parking to the right of the building so the concern about stacking would be mostly eliminated. He stated that a vehicle would turn in from Blowing Rock Road and follow the one way signs to get to the back of the building where the entrance would be located for the drive through oil change. Mr. Gaston noted that the only parking would be behind the building. Ms. Garrett asked if was correct that there would be two one-way lanes for the two bays. Mr. Gaston replied that was correct.

Ms. Garrett asked about the arrow in front of the loading area that pointed towards the Winklers Creek Road exit. Mr. Gaston explained that it was designed that way to facilitate two-way traffic for dumpster trucks, emergency

traffic, and employees. He noted, however, that the intent was, once you got behind the building, it was one-way through the building itself. Ms. Garrett asked about the location of the dumpster and the hour of pickup. Mr. Gaston replied that the location was chosen because it provided the most reasonable access point for the truck with the least disturbance to operations. Mr. Gaston noted that most trash pickups usually happened between 8 a.m. and 12 p.m. Ms. Garrett asked if any kind of traffic issue would be created by the trash pickup. Mr. Gaston replied that he did not feel there would be any issues because the trash would probably be picked up once a week given that the amount of waste generated by this facility was not traditional trash and most of the waste would be stored and taken off by different vehicles that were not nearly as large as the trash truck.

Ms. Garrett asked how far the existing access point on Winklers Creek Road was to the intersection. Mr. Gaston replied that there were currently two existing access points on Winklers Creek Road. He stated that the first access was about 42' from the intersection and the proposed access would be about 70' to the intersection. Ms. Garrett asked if the existing two access points would be consolidated into one. Mr. Gaston stated that was correct. Ms. Garrett asked if the fact that Bojangles had an entry and exit across from the Winklers Creek Road access had been considered. Mr. Gaston replied that it was a consideration. He explained that it was best to try to limit the amount of space in between offsets of center lines of driveways so that if somebody was turning right and somebody else was turning left you could limit the number of weaves trying to get around somebody else headed the opposite direction.

Ms. Garrett asked if the proposed driveway onto Winklers Creek Road would be approximately in the same location as the existing second driveway. Mr. Gaston stated that was correct. He noted that the existing driveway was about 32' wide and the proposed driveway would be narrowed down to about 24' wide.

Ms. Garrett asked Mr. Gaston if there was any other feature of the site with regard to the entry and exits that he would like to highlight for the Board. Mr. Gaston stated he felt the biggest concern was the location and proximity to the corner and the fact that they had never met any kind of standard but were just the result of bygone years' past development. He stated what was proposed would certainly be an improvement and reiterated that DOT was comfortable with what they had proposed. Ms. Garrett asked if it was correct that the existing site conditions did not comply with the UDO. Mr. Gaston replied that he ran into the same situation with driveway spacing specifically relative to intersections and other driveways with the Waffle House project but thought the Ordinance had been modified since then, or at least, in the Waffle House case, the interpretation of the spirit or intent of the Ordinance had been met. He stated that when a site could not, by its nature, comply with Ordinance requirements, they were still allowed to have access points that did not meet the requirements if they met the spirit or intent of the Ordinance.

Ms. Garrett noted that the site had been operated since the 1980's and the Ordinance did not exist at that time. She asked Mr. Gaston if the site would be brought into compliance with the current Ordinance as much as possible when it was redeveloped and he replied that it would.

Ms. Garrett asked Mr. Gaston if it was possible for any business that might develop the property to comply with the current driveway distance requirements. Mr. Gaston replied that it would not be possible because the site did not have enough frontage. Ms. Garrett asked Mr. Gaston if he believed that the proposed site plan would be an improvement in terms of increasing driveway distances and he replied that he did. Ms. Garrett asked Mr. Gaston if he believed it would be helpful to have the customers of the Take 5 using the exit on Blowing Rock Road to only be able to take a right and he replied that he did.

Ms. Garrett called Will Thompson, who prepared the traffic impact analysis, to testify. Ms. Garrett asked Mr. Thompson how long he had been an engineer. Mr. Thompson replied that he had been in the engineering field for about 35 years with about 30 years of that being focused on traffic and transportation engineering. Ms. Garrett asked Mr. Thompson how many traffic impact analyses he had prepared. Mr. Thompson estimated he had done about 45 TIA's. Ms. Garrett asked Mr. Thompson where his engineering firm was located and he replied that it was in Waynesville, North Carolina. Ms. Garrett asked Mr. Thompson if he had done any traffic studies in the high country area before. Mr. Thompson replied that he had done TIA's in Waynesville which was definitely in the mountains. Ms. Garrett asked Mr. Thompson if he was familiar with or had studied traffic patterns in our community. Mr. Thompson stated he had not. Ms. Garrett asked Mr. Thompson if he relied on the manual that provided standards when performing an analysis. Mr. Thompson replied that the North Carolina DLP Congestion

Management Section had pretty clearly defined procedures for conducting traffic impact analysis as well as the Institute of Transportation Engineers Trip Generation Manual and that both were used. Ms. Garrett asked Mr. Thompson if he had ever testified in a hearing before a town or in court and been qualified as an expert and he replied that he had.

Ms. Garrett stated she would like to tender Mr. Thompson as an expert in transportation engineering. Chair Crepeau accepted Mr. Thompson as one with expertise in traffic impact analyses.

Ms. Garrett asked Mr. Thompson when he performed the analysis and on what days. Mr. Thompson stated they did their data collection of the traffic counts at the intersection of Winklers Creek and Blowing Rock Road as well as the access drives on February 4, 2021, to comply with a stipulation by the Town staff that the study be done when the University was back in session and schools were operating. Mr. Thompson noted the report was completed on February 16, 2021. Ms. Garrett asked if the type of use dictated the standards or specifications used to conduct the analysis. Mr. Thompson replied that it did, noting that different land uses had unique characteristics, but generally a study was based on a.m. and p.m. peak hours. Ms. Garrett asked if the current use on the site was very different from the proposed use in terms of the traffic analysis. Mr. Thompson stated that from the actual traffic of the trip generation perspective, it was very similar. He stated that they counted the access drives and when compared with the traffic from the trip generation rates for the proposed use, they got slightly lower volumes for the a.m. peak hour and 3 additional trips in the p.m. peak hour.

Ms. Garrett asked Mr. Thompson if he took into account the driveway access points to any neighboring properties or surrounding businesses, such as the Bojangles driveway. Mr. Thompson replied that they did not count the Bojangles driveway although it did seem to have quite an influence on Winklers Creek Road.

Ms. Garrett asked Mr. Thompson if he believed the additional right entry only and right exit only on Blowing Rock Road would be a benefit from a traffic flow pattern given the high traffic to Bojangles. Mr. Thompson believed that it would be beneficial. He noted that traffic leaving the Bojangles site taking a left onto Winklers Creek Road to go up to Blowing Rock Road would make it difficult to access the Take 5 site.

Ms. Garrett asked Mr. Thompson if analyzing the traffic impact and trip generation impact of a proposed site took into account how safety would be impacted. Mr. Thompson replied that safety was taken into account in terms of overall flows and speeds. He noted that there was only 100' from Blowing Rock Road to the access drives so it was a very short segment for maneuvers to be occurring. Ms. Garrett asked Mr. Thompson if he believed that pulling both the entrance and exits further from the intersection would have a positive impact on safety. Mr. Thompson replied that it almost certainly would.

Ms. Garrett asked if the sightlines on the property would be improved by having no cars parked on the corner and the addition of some landscaping. Mr. Thompson stated that sightlines would not be obstructed by parked vehicles so it would be an improvement.

Ms. Garrett asked if the analysis resulted in any recommendations for how the proposed site plan could be changed to mitigate impacts. Mr. Thompson replied that no recommendations for changes were made. He stated they were very favorable towards having the second access on Blowing Rock Road with the right-in and right-out access with the raised concrete turn limiter. Ms. Garrett asked Mr. Thompson if the analysis took into account site conditions such as the raised concrete turn limiter or signage. Mr. Thompson explained that the Synchro software they use allowed them to input specific parameters such as the turn limiter and signage. Ms. Garrett asked if factoring in these types of conditions could play a role in whether an analysis was favorable or not and Mr. Thompson replied that they could.

Ms. Garrett asked Mr. Thompson if he felt it would be better or worse from a traffic standpoint to have an entrance or exit on Blowing Rock Road. Mr. Thompson replied that it would be better, especially when it was limited to a right-in, right-out.

Ms. Garrett called William Mills to testify. She asked Mr. Mills how many other Take 5 sites he operated. Mr. Mills replied that he currently operated 7 sites. Ms. Garrett asked if the operational model at those sites was essentially the same. Mr. Mills stated that they follow a consistent operational model where all of their customers stay in their car for a drive-through, quick service oil change. He stated they did not have a waiting room and typical service times were around 10 minutes. Mr. Mills explained that they stick with just an oil change, and they provide a few ancillary products like wiper blades and filters. He noted that they did not park any cars, store any tires, or do anything overnight. Mr. Mills stated that all of the waste products were pumped into above ground tanks so it was cleaner from an environmental standpoint.

Ms. Garrett asked Mr. Mills if there had been any traffic issues with the entry or exit due to the fact that customers do stay in their car and he replied that they had not had any issues.

Ms. Garrett asked for the hours of operation anticipated for this site. Mr. Mills stated that normal hours of operation were 7 a.m. to 8 p.m. Monday through Friday, 7 a.m. to 7 p.m. on Saturday, and 9 a.m. to 5 p.m. on Sunday. Ms. Garrett asked what would be considered an average or good day in terms of customer visits. Mr. Mills replied that it would be about 45 to 50 customer trips a day. Ms. Garrett asked if there was a peak time for their business. Mr. Mills stated that his businesses generally had more customers in the middle of the day, between 11 a.m. and 3 p.m.

Ms. Garrett asked Mr. Mills if he would be agreeable to suggestions by the Board regarding other possible options for directing traffic on-site, entering, or exiting. Mr. Mills stated he would be happy to entertain suggestions.

Vice Chair Welsh noted that Mr. Thompson had mentioned the number of daily trips were similar between the tire business and the new business and asked how he arrived at that assessment. Mr. Thompson responded that the information came from the ITE manual.

Vice Chair Welsh asked how many employees were expected for the Take 5 business. Mr. Mills replied that their employee count, especially with a two bay store, would be 4-5 employees and they would likely never have more than six employees working at a time.

Vice Chair Welsh asked how many parking spaces were proposed. Mr. Gaston replied that there would be five regular parking spaces and one handicap space for a total of 6 parking spaces.

Board Member George asked Mr. Mills if, because this site was kind of small and atypical, he felt there could be more traffic backup than his other sites. Mr. Mills felt it was hard to predict completely but, based on how the site was designed, he felt like there was adequate space for what their typical stacking would be. He stated that his other 2 bay shop was on a smaller site similar to this one, and while it was of his busiest shops, they did not have any issues at all with cars coming off the site.

Board Member George asked Mr. Gaston if the concrete median would still allow accessibility for pedestrians on the sidewalk. Mr. Gaston replied that there would be a sidewalk crossing behind the wedge.

Board Member Williamson stated she appreciated the good report and the folks who came here tonight to request a variance to what she believed was a very important part of the Town's Ordinance in terms of required setbacks for major intersections. She asked for the size of the parcel, noting she understood it to be slightly under half an acre. Mr. Knudsen replied that the property was .315 acres. Board Member Williamson asked if it was correct that the driveways would only serve this one parcel and no other parcels on Winklers Creek Road or Blowing Rock Road. Mr. Knudsen stated that was correct. She then asked if there was any property available adjacent to this property that was owned or leased by the applicant that any part of their operation could move to. Mr. Mills replied that there was not.

Board Member Williamson asked Mr. Gaston if it was correct that the driveway on Winklers Creek Road was actually going to be smaller than the driveway that currently existed. Mr. Gaston replied that was correct and added that the driveway closest to the intersection would be closed and the driveway located furthest from the intersection would be narrowed down. Board Member Williamson asked if the driveway on Blowing Rock Road that would be

amended or upgraded would be larger or smaller than the existing driveway. Mr. Gaston state it would be considered larger because of the way that the right-in and right-out only access flared. He noted that the existing access facilitated turn movements in and out in all directions.

Board Member Williamson stated she had been out to view this property. She felt that striping would be pretty important here and noted she had concerns about cars leaving the second bay and trying to take a left to get out and then running into cars that were taking a right from Blowing Rock Road. Board Member Williamson asked if the applicant was committed to making sure that effective striping would be included. Mr. Gaston replied that they were committed to placing effective striping. Ms. Garrett agreed that there would be no issue with that, noting that Mr. Mills was receptive to suggestion on directional signage.

Board Member Williamson asked about proof of a hardship as it related to having the one entrance on Winklers Creek Road and not the one on Blowing Rock Road.

Board Member Williamson noted that she did read the traffic engineers report and asked if it was correct that the expectation was there would either be a decrease or a modest increase in overall traffic. Mr. Thompson replied that there would be less traffic in the morning peak and a few more trips in the p.m. peak.

Board Member Williamson asked again about proof of hardship. She asked why they would need access on Winklers Creek Road if they had the in and out access on Blowing Rock Road. Ms. Garrett asked Board Member Williamson if she actually meant why did they need access on Blowing Rock Road when there was access on Winklers Creek Road. Board Member Williamson stated that was correct.

Mr. Thompson stated there was the site access convenience factor given the proximity of the Bojangles driveways. He felt access to the site on Blowing Rock Road with the right-in, right-out would be more convenient and safer.

Board Member Williamson stated she did read TIA's and tried to understand them and noted that Statewide models were typically used. She asked Mr. Thompson if he did anything differently when calculating counts or turns or plugged in anything different than what he would have done if the project had been in Beaufort, North Carolina, for example. Mr. Thompson replied that he followed the Statewide models and they were pretty stringent on their parameters and procedures. He noted that the report had been reviewed by DOT and they had no comments as far as how the study was conducted, the processes they used, the traffic count data, or the analysis itself. Board Member Williamson noted that with some of the other traffic reports that had come before the Board they were told that they were able to consider some local factors. Mr. Thomson replied that if they had data available from local studies they could use that.

Board Member Williamson noted that Mr. Mills had indicated the highest amount of traffic at his other Take 5 store happened in the middle of the day but the traffic counts were done during a.m. and p.m. peak hours. Mr. Thompson replied that they analyzed the operations on the roadway during peak hours when traffic conditions were likely to be the worst and midday traffic was typically a bit lighter.

Vice Chair Welsh asked for clarity on the lot size, noting he had heard testimony that the parcel was .315 acres but the parcel information listed in the staff report indicated the parcel was .48 acres. Mr. Knudsen replied that sometimes the tax parcel numbers varied because they were based off of previous surveys or sales. He stated that the .315 acres came from the survey that we had done on the property in September, 2020.

Jane Shook was sworn in by Chair Crepeau.

Board Member Williamson asked Ms. Shook if she would refer to the driveways as new construction instead of an enhancement or modification. Ms. Shook responded that Board Member Williamson would need to direct that question to Christy Turner because she was the one who prepared the staff report.

Board Member Williamson stated she could not find the words enlarge or expand defined in the Ordinance and asked Ms. Shook if she had missed the definitions somewhere. Ms. Shook replied that those words were not defined

in the UDO. Board Member Williamson asked if the Board was considering the enlargement or expansion of a non-conforming situation were they to refer to the ordinary dictionary definition of the words enlarge and expand. Ms. Shook responded that if a word was not defined in the UDO then the general dictionary definition should be used. Ms. Meade stated that she did not understand this to be an enlargement of a nonconformity but was instead being treated as new construction so that all UDO requirements had to be met.

Ms. Shook referred to UDO Section 7.01.06 that read: Where a variance or an insignificant deviation has been granted for a development standard or feature that does not otherwise conform to the requirements of this Ordinance, that development standard or feature shall be deemed conforming.

Ms. Meade referred to UDO Section 14.08.04, which basically indicated that the subject lot would only be permitted the one access from Winklers Creek Road unless it obtained a variance. She then referred the last sentence that stated if the alternate street access was not adequate to serve the parcel, tract, or development, a single access point to the regulated thoroughfare may be allowed. Ms. Meade noted that if the applicant could have presented a totally black and white showing, the staff itself might have found, under this sentence, that the second access could be allowed. She asked if it was correct that staff was not comfortable making that decision under this sentence and that was why the issue had to come forward as a variance. Ms. Turner replied that was correct.

Ms. Meade asked Ms. Turner whether it was correct that this was a lot of record as of quite some time ago and despite the fact that it could not comply with the 150' to the corner driveway requirement, this lot was entitled as a matter of right to the Winklers Creek Road access. Ms. Turner stated that was correct under UDO Section 14.08.04. Ms. Meade asked why there were three variances requested rather than just two. Ms. Turner replied that there was a variance needed from the requirement to have a driveway access be 150' from the corner, a variance needed to allow the extra access way, and a variance from the requirement that the driveway be 150' from any other driveway.

In closing, Ms. Garrett stated that the hardship that existed was not caused by the applicant, noting the size and configuration of the lot. She noted that this was a site where any use would require a variance. Ms. Garrett stated that she believed staff could approve the entrance on Blowing Rock Road but understood why they felt it would be appropriate for the matter to be brought before the Board. Ms. Garrett explained that the reason the access point on Winklers Creek Road alone would cause a hardship was because of the existing access and exit on Winklers Creek Road for Bojangles. She stated if the only access point was on Winklers Creek Road, there could be traffic safety concerns especially considering the proximity of the driveway to the existing access points at Bojangles. Ms. Garrett noted the testimony of Mr. Thompson that it would be helpful and potentially more safe to allow Take 5 customers to exit onto Blowing Rock Road and take a right only. Ms. Garrett felt the project would be an improvement aesthetically, simply because they were not going to have a bunch of cars stacked up and parked on the property. She noted the addition of landscaping would be an improvement over what was currently there and would create a decrease in impervious surface.

Chair Crepeau asked if there were any members of the public that had wished to provide comments. Ms. Shook replied that she had not been contacted by anyone wanting to provide comments but noted there was someone participating in the meeting that might wish to speak.

Roger Wright stated he was speaking on behalf of the owner who had been trying to get on the meeting but had been unsuccessful. Chair Crepeau asked Mr. Wright if he would like to provide a comment and he replied that he only wanted to make it known that the owner had made an effort to attend the meeting.

Board Member Brooks asked if the Town wished to make any statements or offer any evidence and if they needed to enter the Board packet into evidence. Chair Crepeau asked if there were any objections to the information contained in the packet. Ms. Garrett replied that there was no objection from the applicant. Chair Crepeau entered the meeting packet into evidence.

Ms. Turner stated that the Town had nothing to add at this time.

VOTE 1

Board Member Williamson made a motion that that unnecessary hardship would result from the strict application of the ordinance because the applicant has produced substantial, competent and credible evidence to show that a hardship exists not as an inconvenience or preference, but rather because he or she has no feasible opportunity allowing him or her to make the 150' setback requirement for a major corridor, no feasible opportunity to meet the 150' required setback from an intersecting street, and because the lot cannot adequately be served by a single access at Winklers Creek Road. Therefore, the proposal meets the requirements of UDO Section 23.03.02. The motion was seconded by Board Member Brooks.

Board Member Williamson stated she thought this was a good project and felt good about the things that were presented. However, while the project would be good for safety and aesthetics, Board Member Williamson stated she was not accepting of the traffic counts in the TIA. She stated that she understood Mr. Thompson's arguments related to that and thought he made a really good presentation but the statewide modeling did not change from one community to another. Board Member Williamson noted that the applicant indicated their busiest hours were in the middle of the day and the traffic counts were from a.m. and p.m. hours. She stated she would like to encourage traffic engineers to look more individually at a community and to look at what the developments busiest hours were, regardless of what the state model says.

Ms. Meade suggested hearing from the traffic engineer but stated her understanding was that the traffic engineer was going to look at the periods of time, not when there was the most traffic to the particular development, but when there was clearly the most traffic on the roads. Ms. Meade stated that traffic in that area around rush hour was much higher, at least in her experience, then traffic at midday. She explained that if a traffic analysis was performed based upon the low traffic time of those roads, but what happened to be the highest time of persons using this facility, the numbers using the facility may go up by a couple, but the numbers on the roads were going to be much, much less.

Mr. Thompson stated that Ms. Meade was correct. He noted that they customarily looked at those peak hours when traffic was highest. Mr. Thompson stated that for this type of land use the number of trips could be doubled in the off peak hours and it would not make a significant difference.

Board Member Williamson stated she appreciated and respected what Ms. Meade and Mr. Thompson said, but noted that this Board had requested lunchtime counts before because there were areas in this town that were heavier at lunchtime. She stated that was when she saw the most traffic. Board Member Williamson stated she was just trying to encourage, going forward, that when people submit TIA's they consider local factors.

Ms. Shook asked if Board Member Williamson's motion was for all three variances or just one. Board Member Williamson stated the motion could be for all three variances.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Pam Williamson, Board Member
SECONDER:	Andrew Brooks, Board Member
AYES:	Welsh, Crepeau, Brooks, Williamson, George

VOTE 2

Board Member Brooks made a motion that the hardship results from conditions that are peculiar to the property, such as size, location, or typography, specifically with the regards to the first variance, because the size of the lot is such that it is not adequately served by the access solely on a Winklers Creek Road so it needs that second access point onto Blowing Rock Road. With regards to the second variance, because of the size of the lot it is not possible for them to have driveways that meet the requirements of the UDO. With regards to the third variance, the size of a lot is not large enough for the two driveways to be 150' apart. The motion was seconded by Vice Chair Welsh.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Andrew Brooks, Board Member
SECONDER:	David Welsh, Vice Chair
AYES:	Welsh, Crepeau, Brooks, Williamson, George

VOTE 3

Board Member Brooks made a motion that the hardship did not result from actions taken by the applicant or the property owner because of the lot size. The lot size and location cannot really be made to comply with the requirements of the UDO, given that it is there on the corner. The motion was seconded by Board Member Williamson who wished to amend the motion to add that the hardship is the result of a property that has limited development and traffic flow options. Board Member Brooks accepted the amendment.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Andrew Brooks, Board Member
SECONDER:	Pam Williamson, Board Member
AYES:	Welsh, Crepeau, Brooks, Williamson, George

VOTE 4

Board Member Brooks made a motion that the requested variances are consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved specifically because this, as evidenced by the expert witness's testimony and traffic report, will increase the safety of both of these intersections, both on Winklers Creek Road and on Blowing Rock Road. The driveways as proposed on Blowing Rock Road are really the minimal amount of intrusion onto that roadway that they could be seeing as it is just one direction both ways. The motion was seconded by Vice Chair Welsh.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Andrew Brooks, Board Member
SECONDER:	David Welsh, Vice Chair
AYES:	Welsh, Crepeau, Brooks, Williamson, George

MOTION

Board Member Brooks made a motion that the three conditions that were requested by staff in the packet be applied to the variances as follows:

1. Where there is a conflict between the application information and the plans (site plan received December 17, 2020), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed development made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. The applicant shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and any other applicable codes for review and approval necessary to issue Zoning and Building Permits.

The motion was seconded by Board Member Williamson.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Andrew Brooks, Board Member
SECONDER:	Pam Williamson, Board Member
AYES:	Welsh, Crepeau, Brooks, Williamson, George

BOARD OF ADJUSTMENT RULES OF PROCEDURE REVISION

Ms. Meade noted that Board Member Brooks had made some comments about the Rules of Procedure that everyone should have received by email. She asked if anyone else had any suggestions they would like to make. She stated she would make additional revisions based on tonight's discussion and return with those revisions at next month's BOA meeting. Ms. Shook noted there were two pending cases that could be coming to the next meeting. Ms. Shook asked if the public hearing was officially closed.

Chair Crepeau closed the public portion of the hearing at 7:58 p.m.

Ms. Meade referred to the Rules of Procedure located in the Board packet and noted the suggested revisions. She stated they addressed two primary issues. One was to get rid of the long versus short agenda item structure, and the other was to clarify an error with regard to subpoenas where the language suggested that it was appropriate for Board members to have subpoenas issued when it would not be appropriate.

Ms. Meade asked Board Member Brooks to outline the suggested changes he had. Board Member Brooks suggested the following changes to the Rules of Procedure:

- Section 25: Add a statement that referenced the North Carolina Rule of Civil Procedure 45, which was the rule that governed subpoenas, the service of subpoenas, and the ability for someone who was subpoenaed to move for a protective order. Also add language that would allow the Board to hear those motions or protective orders.
- Section 27: Add a statement that would allow the Board a little bit more discretion on controlling the timing the meetings.
- Section 59 (E): The paragraph ends in the middle of a sentence.
- Section 79: Revise the findings of fact procedure to more accurately reflect current practices.

Board Member Williamson stated she liked Board Member Brooks' suggestions. She referred to Section 25, noting the language that the Chair could refuse to subpoena someone because it was not appropriate. She stated she had been schooled repeatedly to leave things vague but wondered if that was a good place to leave things vague. Board Member Williamson asked if the Chair could be overruled by a majority of the Board. Ms. Meade replied that there needed to be a great deal of berth there. She noted there were any number of scenarios to the point of craziness where a subpoena should be rejected. Ms. Meade stated she could consider whether there was any better language but there needed to be a catch all because of all the possibilities. Ms. Meade noted that, if it was not in the Rules, she would add a provision, because it was supposed to be the case, that the Chair was not the final decision maker and that a refusal to allow a subpoena could be issued to the Board.

Ms. Meade stated she would bring the revisions back to the Board next month. Once the Board approved the revisions they would need to go to Council for final approval. Ms. Meade noted, with respect to control of the time of meetings, despite the default rule, the board had always had control of how long it was going to meet and how it was going to handle the meeting but she would add language to clarify that.

ADJOURNMENT

MOTION

Board Member Williamson made a motion to adjourn the meeting at 8:08 p.m. The motion was seconded by Board Member Brooks.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Pam Williamson, Board Member
SECONDER:	Andrew Brooks, Board Member
AYES:	Welsh, Crepeau, Brooks, Williamson, George

Brenda Henson, Board Secretary

Rich Crepeau, Chairman