



**TOWN OF BOONE**

✓ Town of Boone  
Planning & Inspections  
1510 Blowing Rock Road  
Boone, NC 28607

**ORDER GRANTING A VARIANCE**

On the date listed below, the Board of Adjustment for the Town of Boone met and held a public hearing to consider the following application:

**APPLICANT:** James P. Dunn

**CASE NO.:** ZV20100644

**PROPERTY LOCATION:** Hwy. 421 and Landfill Road

**PARCEL IDENTIFICATION NUMBER(S):** 2920-29-5940-000

**MEETING DATE:** January 6, 2011

**VARIANCE APPROVED:** Variance from Article 12, Section 200[a] Schedule of Land Use Intensity Regulations to allow two separate building encroachments into the street setback on Landfill Road: (1) a 10' maximum encroachment into the 20' street setback at the NW corner of the property; and (2) to allow an additional 7' encroachment into the street setback near the SW corner of the property along Landfill Road.

A variance from the regulations of the Town of Boone Unified Development Ordinance may be granted by the Board of Adjustment if it finds that strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, and that, by granting the variance, the intent of this ordinance and the Comprehensive Plan will be observed, public safety and welfare secured, and substantial justice done. Such findings shall be based on all seven of the following determinations:

- 1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance;**

Board Member Stroupe made a motion that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance because of the peculiar shape of the property. As stated by Mr. Trew, the property is triangular and is difficult to get a building on the property. The motion was seconded by Board Member Kaenzig.

VOTE: Aye – All  
Nay – None

The motion passed unanimously.

- 2. That the hardship complained of is one suffered by the applicant rather than by neighbors or the general public;**

Board Member Stroupe made a motion that the hardship complained of is one suffered by the applicant rather than by neighbors or the general public because of the peculiar shape of the property. The motion was seconded by Board Member Kaenzig. Chairman Crepeau wished to amend the motion to state that the odd shape of the lot is peculiar and unique to that property. Board Members Stroupe and Kaenzig accepted this amendment.

VOTE: Aye – All  
Nay – None

The motion passed unanimously.

**3. That the hardship relates to the applicant's property rather than to personal circumstances;**

Board Member Stroupe made a motion that the hardship relates to the applicant's property rather than to personal circumstances because the property is unique in its shape. The motion was seconded by Chairman Crepeau, who added that evidence and testimony were presented to indicate that alternatives were attempted and reduction in building square footage was made. Board Member Stroupe accepted the amendment

VOTE: Aye – All  
Nay – None



The motion passed unanimously.

**4. That the hardship is peculiar to the applicant's property, rather than a hardship shared by the neighborhood or resulting from the existence of nonconforming situations in the vicinity;**

Board Member Stroupe made a motion that the hardship is peculiar to the applicant's property rather than a hardship shared by the neighborhood or resulting from the existence of nonconforming situations in the vicinity because of the uniqueness of the property. The triangular shape has made it difficult to conform to regulations and testimony has shown that there is ample property from the highway to the building. The motion was seconded by Board Member HERRON.

VOTE: Aye – All  
Nay – None

The motion passed unanimously.

**5. That the hardship is not the result of the applicant's own actions;**

Board Member Stroupe made a motion that the hardship is not the result of the applicant's own actions because of the shape of the property and the fact that the property size was reduced by the widening of the highway. The motion was seconded by Board Member HERRON.

VOTE: Aye – All  
Nay – None

The motion passed unanimously.

**6. That the variance will not substantially interfere with or injure the rights of others whose property would be affected by granting the variance;**

Board Member Stroupe made a motion that the variance will not substantially interfere with or injure the rights of others whose property would be affected by granting of the variance. The Nissan dealership is on the right side of the property, sight distance will not be affected, and the entrance to the business will be on Landfill Road. The motion was seconded by Chairman Crepeau, who added that the encroachments into the setback would be on the Landfill Road side and not on the side of an adjoining property owner. Board Member Stroupe accepted the amendment.

VOTE: Aye – All  
Nay – None

The motion passed unanimously.

**7. The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of the land;**

Board Member Stroupe made a motion that the variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of the land. As testified by Mr. Trew, the property is zoned B-3 and is appropriate for the intended use. The motion was seconded by Board Member HERRON.

VOTE: Aye – All  
Nay – None

The motion passed unanimously.

Board Member Stroupe made a motion to grant the variance. The motion was seconded by Board Member HERRON.

VOTE: Aye – All  
Nay – None



The motion passed unanimously.

Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be granted.

Ordered this the 6th day of January, 2011.

  
Richard Crepeau, Board Chairman

  
Brenda Henson, Board Secretary

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Watauga County within thirty (30) days after the date this order is served on you. See Section 106 of the Town of Boone Unified Development Ordinance.

Town of Boone UDO Section 49 states that:

“Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed with the register of deeds of Watauga County or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.”

NORTH CAROLINA  
WATAUGA COUNTY

I, Brenda M. Henson, a Notary Public of Watauga County, North Carolina, certify that Richard Crepeau, Chairman of the Board of Adjustment for the Town of Boone, personally appeared before me and acknowledged, on behalf of the Boone Board of Adjustment, the due execution of the foregoing instrument.

Witness my hand and official seal, this the 3<sup>rd</sup> day of February, 2011.

(OFFICIAL SEAL)  
Brenda M. Henson  
Notary Public  
Watauga County, NC

  
NOTARY PUBLIC

My commission expires: November 4, 2012