



TOWN OF WAYNESVILLE Zoning Board of Adjustments

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**Development Services
Director**
Elizabeth Teague

George Escaravage, **Chairman**
Henry Kidder, **Vice-Chairman**
Stephanie Strickland
Joshua Morgan
Edward Moore
John Baus (Alternate)
Robert Herrman (Alternate)

MINUTES OF THE TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT Regular Meeting

**Town Hall – 9 South Main St., Waynesville, NC 28786
April 5, 2022**

THE WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a Regular Meeting April 5, 2022, at 5:30 p.m. in the Boardroom of Town Hall, 9 South Main Street, Waynesville, NC. 28786.

A. CALL TO ORDER

1. Welcome/Calendar/Announcements

The following members were present:

George Escaravage, Chairman
Henry Kidder, Vice Chairman
Edward Moore
Joshua Morgan
John Baus (Alternate)

The following Board members were absent:

Stephanie Strickland

The following staff members were present:

Elizabeth Teague, Development Services Director
Byron Hickox, Land Use Administrator
Tom Maguire, Codes Administrator
Esther Coulter, Administrative Assistant
Kathy Johnson, Deputy Clerk
Ron Sneed, Attorney
Martha Bradley, Town Attorney

The following media were present:

No media were present

Others:

Andy Brown, Applicant
Travis Dustin Smith, Applicant
John Sutton, Attorney for Travis Dustin Smith

1. Welcome/Announcements

Zoning Board of Adjustment Chairman George Escaravage welcomed everyone and called the meeting to order at 5:31 p.m.

2. Adoption of Minutes (as presented or amended) from January 4, 2022.

Chairman Escaravage asked if everyone had reviewed the minutes for January 4, 2022, meeting.

A motion was made by Board member Henry Kidder, seconded by Board member John Baus to approve the January 4, 2022, meeting as presented. The motion carried unanimously. (5-0)

Chairman Escaravage read the protocols and rules of conduct for a quasi-judicial hearing and explained the rules regarding standing. Attorney John Sutton identified himself as the attorney for the applicant Mr. Travis Dustin Smith. Mr. Escaravage asked that anyone prepared to testify in either hearing to come forward to be sworn in. Five people came forward and were sworn in: Elizabeth Teague, Tom Maguire, Byron Hickox, Travis Dustin Smith, and Andy Brown.

Chairman Escaravage asked if any of the Board Members had a conflict of interest on either hearing. All Board members stated they had no conflict of interest.

3. Public Hearing to consider a variance request at 282 and 296 Richland Street, Waynesville, NC, PIN 8615-06-8891, of the minimum Lot Width Standards for the Main Street Neighborhood Residential (MS-NR) District, Land Development Standards Section 2.4.1(3) c.

Mr. Escaravage opened the public hearing at 5:37 pm and invited Mr. Andy Brown to come forward to give his presentation. Mr. Brown introduced himself and said he lived at 305 Boysenberry Lane in Waynesville. He presented the Board with maps showing two structures on one lot which he would like to subdivide. He gave a brief history of the property. He said that he and his wife had bought the property in the eighties, and in the past few years have maintained them as rental properties with long-term renters. He is seeking a variance from the minimum lot width standards. He has worked with Kevin Ensley and Patrick Bradshaw to help split the lots. The property needs to be subdivided in order for him to sell it. He answered questions regarding the proposed property lines.

Development Services Director Elizabeth Teague gave the staff report and explained that the property in its entirety consists of 0.43 acres. It is surrounded by single family lots and has two single family homes on the lot, each with their own address and parking space. She referred to the aerial map and the draft plat and explained that because of the locations of the existing buildings on the lot, a

subdivision that met the minimum width requirements would create a setback violation. The proposed lots otherwise conform to minimum lot standards in the zoning district in which they are located.

Ms. Teague summarized that the granting of this variance would not change the appearance or character of the lot as the structures are already in existence. Additionally, there are other lots nearby that do not meet the minimum lot width. She referred the Board to the proposed plat showing that the minimum variance needed to subdivide the property has been proposed.

Ms. Teague entered the following items into evidence:

- Staff Report
- Variance request application
- Payment receipt for variance application
- Proposed preliminary plat showing the proposed lots, setbacks, lot widths, and old lot line
- Property information and arials from Haywood County Land Records 2019 and 2004
- Zoning map of the Subject Property and Surrounding Area
- Notification Materials
- Town of Waynesville Land Development Standards (LDS) by Reference

A motion was made by Board Member John Baus, seconded by Board Member Henry Kidder to close the public hearing at 6:01 pm. The motion carried unanimously. (5-0).

A motion was made by Board Member John Baus, seconded by Board Member Henry Kidder to grant the requested variance, and adopt the findings of facts as presented in the staff report:

1) That there are unnecessary hardships in the way of carrying out the strict letter of this chapter. The variance would create two conforming lots in all but lot width, and the preliminary plat is drawn in order to accommodate existing residential structures. A strict enforcement of the minimum lot width would prevent the subdivision.

2) That special conditions and circumstances exist which are peculiar to the land, structure, or buildings located in the same land development district. The lot to be subdivided contains two single family homes that are already individually addressed and is drawn so that the proposed property line does not create any setback issues with exiting structures. The variance requested would be for minimum lot width. Any possible future development on the property in question would still have to comply with the district setbacks.

3) That the special conditions and circumstances do not result from the actions of the applicant. 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. The property has existed in its current state since the time it was purchased by the Browns. It was conveyed from the Browns to an LLC which the Browns own.

4) That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit. There exist properties within this same zoning district which do not meet

the minimum lot width standards. The proposed subdivision does not change the nature of the property as it exists now. The property was originally platted as 2 lots as noted in the proposed survey.

5) That the variance is the minimum necessary to afford relief. The requested variance is for 11.1' reduction in minimum lot width in order to accommodate the required property line setback. The lots created from the proposed subdivision are compliant with the minimum lot size and setbacks for the MS-NR zoning district.

6) That the public safety and welfare have been assured and substantial justice has been done. The variance to the minimum lot width would not cause a public safety issue. The variance does not change the physical configuration of existing structures but would allow the property owner the ability to convey by sale either of the structures separately.

The motion carried unanimously. (5-0).

4. Public Hearing on an appeal of an Administrative Decision related to 134 Belle Meade Drive, Waynesville, NC, PIN 8605-81-6159, in the Hazelwood Urban Residential District (H-UR).

Chairman Escaravage opened the second public hearing and invited Land Use Administrator Byron Hickox to present the staff report. Mr. Hickox explained this was a hearing for an appeal of an administrative decision submitted by Travis Dustin Smith regarding 134 Belle Meade Drive.

This property is located in the Hazelwood Urban Residential District, and previously contained two single-family dwellings, one of which has been demolished. The applicant then began using the lot for additional storage of vehicles associated with his business, Triangle Automotive, which is located across Brown Avenue. Mr. Hickox explained that several letters were sent to the applicant regarding outside storage and vehicle services, which are uses not permitted in this zoning district. Mr. Hickox read from the Land Development Standards Section 17.3, which defines outside storage as the storage of any material for a period greater than forty-eight hours, including items for sale, lease, processing, and repair (excluding vehicles for sale) outside the principal or accessory buildings on a property.

Mr. Hickox also read the definition for vehicle services (minor maintenance/repair/wash) as the repair, servicing, alteration, restoration, towing, painting, cleaning, or finishing of automobiles, trucks, recreational vehicles, boats and other vehicles as a primary use, including the incidental wholesale and retail sale of vehicle parts as an accessory use. Minor facilities providing limited repair and maintenance services. Examples include car washes (attended and self-service), car stereo and alarm system installers, detailing services, muffler and radiator shops, quick lube services, tire and battery sales and installation. Vehicle services (major repair/body work) include the repair, servicing, alteration, restoration, towing painting, cleaning, or finishing of automobiles, trucks, recreational vehicles, boats, large appliances, commercial and industrial equipment and other vehicles as a primary use, including the incidental wholesale and retail sale of vehicle parts as an accessory use. This includes major repair and body work which encompasses towing, collision repair, other body work and painting services, and tire recapping.

Mr. Hickox entered the following items into evidence on behalf of the Town:

- Staff report
- Staff Interpretation Letter Sent to Mr. Sutton
- Zoning Violation Letters sent to Mr. Smith (2)
- Email to Lauren at Triangle Automotive with Zoning Map Amendment Application
- Email to Town Clerk Eddie Ward from Mr. Sutton
- Zoning Map of Subject Property
- Aerial Photographs of Subject Property from 2015 & 2019
- Photographs of Property Posting Sign
- Adjacent Landowner Notice
- Adjacent Landowner Mailing List
- LDS Definitions of Outside Storage and Vehicle Services – Section 17.3
- Land Development Standards- By Reference

There was discussion between Board members and Mr. Hickox regarding the number of cars being stored on the lot with no tags and a fence that has been put up around the property.

Attorney John Sutton spoke on behalf of his client Travis Dustin Smith. He said that in 2019 the town filed an injunction, and the parties attended court-ordered mediation in December 2021. In the mediation, the parties reached an agreement. Mr. Sutton disputes that his client was out of compliance with the ordinance due to the fact that all the vehicles on the property were in either his or his wife's name and not related to the business. Since the mediation all the vehicles have been removed.

Mr. Sutton submitted the following evidence on behalf of his client.

- March 2022 photo of 134 Belle Meade Drive
- March 2022 photo of 134 Belle Meade Drive
- March 2022 photo of 134 Belle Meade Drive
- Bill of sale for 2009 Dodge Ram 5500
- May 2019 Installation of Building
- May 2019 Installation of Building
- June 2019 Building after power installed
- May 2019 Installation of Building
- Caldwell Custom Exhaust shop
- Caldwell Custom Exhaust shop
- Add for Caldwell Custom Exhaust Shop
- Add for Caldwell Custom Exhaust Shop
- Commercial Truck parked at residence
- Horner Motorwerkz 1384 Brown Avenue Waynesville without fence
- Horner Motorwerkz 1384 Brown Avenue Waynesville without fence
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- Horner Motorwerkz 1384 Brown Avenue Waynesville without fence

Mr. Sutton answered questions from the Board concerning the aerial photos that had been taken. There was discussion about these photos as well as questions regarding a building that has since been built on

the property. Mr. Smith was asked by the Board to speak. He stated that of the eleven vehicles in the photo, at least ten of them were his personal vehicles. When the building was built and inspections were performed, Mr. Smith was notified that the power could not be turned on until all the cars were moved.

Board Member Joshua Morgan asked what the purpose of storing so many cars. Mr. Smith stated that some of the vehicles were going to be sold for scrap metal and some were to keep and drive. Mr. Morgan asked Mr. Smith why he did not submit a rezoning application in April 2019. Mr. Sutton stated that he spoke to Mr. Hickox at the time and decided not to apply for rezoning. He decided to put up a fence instead.

Ron Sneed and Board members spoke about their options for a decision. Town Attorney Martha Bradley explained that the Board needs to base its decision on the evidence and findings of facts. Mr. Sutton explained that both sides were ready to get this matter resolved.

Ms. Bradley asked Mr. Smith to clarify that the lot has been used to store cars owned by his wife or him. Mr. Smith stated that the lot has been used to store cars owned by his wife or him. Ms. Bradley asked how many cars were stored on the lot by Mr. Smith or his wife at any given time. Mr. Smith replied anywhere from ten to fifteen. Ms. Bradley asked whether it is Mr. Smith's contention today that any vehicles owned by him can be stored on the lot in question. Mr. Smith responded yes. Ms. Bradley asked if after this Board's decision Mr. Smith purchases a new fleet of cars for scrap for personal income, would he use that lot for storage. Mr. Smith said yes, he would, because they are his vehicles. Ms. Bradley asked Mr. Smith to go through each of the evidence photos to confirm who took the photos and when they were taken. Mr. Smith went through each of the evidence photos and gave dates for most of them.

Mr. Hickox went through the photos submitted by the town, provided dates for each photo, and answered questions from the Board and Ms. Bradley. Ms. Bradley asked Mr. Hickox if he was familiar with the address and zoning of Triangle Automotive. Mr. Hickox stated that Triangle Automotive is located in the Hazelwood Business District and that the property in question is located across the street and is in the Hazelwood Urban Residential District.

Ms. Teague asked Mr. Hickox to clarify that during mediation there had been no mention of all the vehicles being removed. Mr. Hickox confirmed that during the mediation there had been no mention of the vehicles being removed. Ms. Teague clarified that it is not the town's intent to punish, but to bring the lot into compliance with the Land Development Standards.

Ms. Bradley said that the evidence is clear that Mr. Smith admits to a use of the property that violates the standards for its zoning district. Several letters have been issued to that effect even though today the property appears to be in compliance. Mr. Smith has given testimony that if he comes into possession of a fleet of scrap cars, he will store them on this property because he believes owning them in his individual name exempts him from any commercial use standards. Ms. Bradley stated that a side gig scrapping cars to make money is a commercial or business use, and is not a personal use. Ms. Bradley stated that it is essential that this Board uphold the staff interpretation.

Mr. Sutton said that he has been involved with the case since the filing in 2019 and that there has always been an effort to resolve this case. There are no vehicles on the property now and Mr. Smith would be willing to apply for rezoning. Mr. Sutton stated that it is unfair to say that Mr. Smith is going to violate the LDS again. Mr. Baus said that according to the photos submitted, it appeared that there was commercial activity going on with cars being hooked up to tow trucks. Mr. Smith said that he only owns one roll back truck now, but he previously parked his tow trucks on the lot because they were his tow trucks, and he did not see an issue with his trucks being parked on his property. He stated that his lot at his shop is very small, and he more than likely parked the tow trucks on the lot until he could get them moved back over. Mr. Morgan stated that there was certainly cause for the letters to be sent to the applicant, and he questioned whether a guarantee could be made that this would not be an issue with the applicant in the future. Mr. Smith said that if the staff interpretation is upheld, he would apply for rezoning.

There was much discussion between Board members and Mr. Sneed along with staff members. Ms. Teague stated that the concern is residential property being used as part of a commercial enterprise. It appeared that the residential property was being used for a commercial purpose. The town's position is that if the lot is located in a UR district, only allowed uses may be conducted on it. Outside storage and vehicle services are not allowed in that district. If Mr. Smith wants to conduct such uses on the property in question, he would need to apply for rezoning.

Mr. Sutton said that as of now there are no cars being stored and no commercial activity on the property. Mr. Sutton answered questions from the Board about the vehicles.

Ms. Bradley asked if this was a hyper-technical loophole that anyone can use to violate residential zoning by titling their business or commercial property in their own name. The point of permitting or not permitting specific uses is to maintain consistency within districts and from lot to lot. She stated that the vehicles are not for personal use, that Mr. Smith does not drive them to work or take his children to school or get groceries in them. Although there is a building on the property, it is not a residence, and Mr. Smith does not live there. Mr. Smith has stated that some of the vehicles are sold for scrap, or that he flips them by fixing them up and reselling them. Ms. Bradley stated that it is the responsibility of the Zoning Board of Adjustment to determine whether the town will allow commercial uses in residential districts through such a loophole.

A motion was made by Board Member Joshua Morgan, seconded by Board member John Baus to close the public hearing at 7:19 pm. The motion carried unanimously. (5-0)

Board Member Joshua Morgan said that although the applicant was compliant now, there was a period in which he was out of compliance. It appears that both sides are ready to bring closure and he agreed with the town staff that there was a non-compliance. As of today, it is compliant, which is the goal of town staff. To redefine what is allowed on these properties will create a mess, and this will happen all the time. He said that the ZBA must acknowledge that there was a violation of the ordinance, but should also not ignore the fact that the applicant is compliant now.

Ms. Bradley said that the Board needs to make specific findings, because Mr. Smith needs to know what he can or cannot do, just as town staff needs to know what it can or cannot enforce.

Board Member John Baus stated that he understands that Mr. Smith wants to use his property fully within the town's standards. Part of this process is to test what the limits are. He stated that there is evidence of the property being used for commercial purposes, and that any storage for commercial use is prohibited.

A motion was made by Board Member John Baus, seconded by Board Member Joshua Morgan to adopt the findings of fact that in 2019 there was outside storage of vehicles both in connection with Triangle Automotive and at other times for Mr. Smith's commercial ventures in buying vehicles in his own name, which indicated a violation of the Land Development Standards. At the current time, Mr. Smith is not in violation of the Land Development Standards regarding the outside storage of vehicles. Any outside storage of vehicles for commercial use is in violation of the outside storage standards. The motion carried unanimously. (5-0)

C. ADJOURN

A motion was made by Board Member Joshua Morgan, seconded by Board member Henry Kidder to adjourn the meeting at 7:47 pm. The motion carried unanimously. (5-0)

George Escaravage, Chairman

Kathy Johnson, Deputy Clerk