



TOWN OF WAYNESVILLE Zoning Board of Adjustment

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George Escaravage, **Chairman**

Henry Kidder, **Vice-Chairman**

Robert Herrmann

Joshua Morgan

Edward Moore

John Baus (Alternate)

Judi Donovan (Alternate)

Development Services

Director

Elizabeth Teague

MINUTES OF THE TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT

Regular Meeting

Town Hall – 9 South Main St., Waynesville, NC 28786

March 7th, 2023

THE WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a Regular Meeting March 7th, 2023, 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

Robert Herrmann

Edward Moore

Joshua Morgan

Judi Donovan (Alternate)

John Baus (Alternate) in audience

The following Board members were absent:

Henry Kidder, Vice Chairman

The following staff members were present:

Elizabeth Teague, Development Service Director

Esther Coulter, Administrative Assistant

Byron Hickox, Land Use Administrator

The following Attorneys were present:

Ron Sneed, Board Attorney

Martha Bradly, Town Attorney

Frank Queen, County Attorney

Others present:

Peggy Hannah, Applicant

Zoning Board of Adjustment Minutes

Regular Meeting

March 7, 2023

Chairman George Escaravage welcomed everyone and called the meeting to order at 5:30 p.m.

A motion was made by Board member Bob Herrmann, seconded by Edward Moore to approve the February 7th, 2023, minutes as presented or amended. The motion carried unanimously. (5-0)

Chairman George Escaravage asked Attorney Ron Sneed to open the Public Hearing by explaining the process for the appeal of an administrative decision. Attorney Ron Sneed explained in detail the procedures for the quasi-judicial hearing, which are much like a court and all speakers and evidence given will be under oath.

Chairman George Escaravage stated that the purpose of the meeting was a public hearing for an appeal of an administrative decision related to the interpretation of the property use as “Government Services” as defined in the Land Development Standards, Section 17-3. The subject property is at 1620 Brown Avenue, Waynesville, NC 28786 (PIN 8605-70-8724). Mr. Escaravage read through the rules for the hearing. Those who wished to speak were asked to come forward, and were sworn in.

Chairman George Escaravage asked Director Elizabeth Teague to present her report and evidence of this appeal of administrative decision. Mrs. Teague read her report which stated that the applicant Peggy Hannah filed a timely appeal on February 3, 2023, with the Town Clerk Candace Poolton.

Ms. Teague continued in her staff report to provide background on the appeal. Haywood County made application to renovate and enlarge the county detention facility and improve adjacent parking lots and the stormwater area. The new detention facility would be attached to the existing building that holds the Sheriff’s Department, Magistrate’s Office, and County 911 Center. Mrs. Teague determined that the property in question meets the definition of “government services.” The site was posted on January 6, 2023, of the zoning determination. Ms. Teague explained that the Haywood County Staff submitted preliminary plans for the Detention Center in August of 2022 and made application for administrative approval by the Planning Board on February 20, 2023.

Mrs. Teague entered Evidence:

1. Staff Report
2. Zoning Decision
3. Photographs of posted Zoning Decision
4. Notice of Appeal with attachments A, B, C, and D
5. Planning Board Agenda Packet with exhibits
6. Notification Materials of Appeal Hearing
7. Town of Waynesville Land Development Standards (LDS) by Reference

Chairman George Escaravage asked Director Elizabeth Teague to explain the process when making her zoning determination. Ms. Teague answered that when there is an application, staff looks to the ordinance to see how a proposed use is defined and allowed. There are different uses on that site, all of which are part of Haywood County government. He asked how many options looked at other than correctional facility and government services? Ms. Teague responded that she focused on what the site plan application was asking for when she looked at the definition of correctional facility. Staff felt that the property where the project is located is a multi-use campus that has a variety of government service uses. The detention facility is part of the Sheriff and Magistrates Office.

Board Member Bob Herrmann asked if there were going to be any new uses other than what the uses are now. Ms. Teague answered that the applicant is following the State's guidance to improve and expand the current detention facility. The original plan for the site shows improvement for the convenience center also, but that plan was not part of this application. The County is not changing any uses other than what is there now.

Mr. Escaravage asked if the convenience center was there prior to the adoption of the ordinance? Ms. Teague stated yes. Mr. Escaravage asked if this meant it was grandfather in. Mrs. Teague stated that this property was originally part of the Town of Hazelwood. When Hazelwood merged with Waynesville, Waynesville regulations were then extended and applied at that time.

Mr. Herrmann asked what the Planning Board's determination was? Mrs. Teague stated that the Planning Board determined that the application met the ordinance requirements for a major site plan. They voted to approve 7 to 1.

Chairman Escaravage asked if any other staff wished to speak. With no reply, he asked the applicant Ms. Peggy Hanna to give her report.

Applicant Peggy Hannah came to the podium and stated she lived in Waynesville, and she filed this appeal but wants to state a few things first. Ms. Hannah stated, "I support the Jail. . . one thousand percent I support our Sheriff and I support our Law Enforcement Officers. My appeal is based on Ms. Teague's opinion to make this administrative decision." Ms. Hannah stated she has lived in her house 40+ years. Ms. Hannah explained this facility at one time was a prison with armed guards. "I was never scared or worried. I grew up there. Everything ran as it should."

Ms. Hannah said that her appeal is questioning the administrative decision. Everything that is there on this property at this given moment is not permitted under the Waynesville Land Development Standards. So, if this is Ms. Teague's administrative decision in my opinion, and if this appeal is denied, we are handing the county a blank slate to do what they want to there, from here on out without following the process of getting the property rezoned." She continued saying that "It is not fair to the neighborhood residents that an administrative decision that is going to affect that neighborhood so greatly, can be made by one person, it's not fair to Elizabeth Teague to have to take all of the heat because she made that decision. It's not fair to me and my neighbors some of whom are here, that we do not have a fair chance to step up in front of the Aldermen and let them do the deciding. It's being decided for us and ... we are coming here appealing and if we lose our appeal then we are going to Superior Court that it's not fair to the residents. It's not fair to Ms. Teague to be put on this seat where her administrative decision is going to get her a lot of grief and it's causing the neighborhood grief. At the end of the day what I'm asking is to overturn her decision, let the county come before the town and ask for a zoning change, let it go through the proper channels like everything else does because what's there now as I see it is not meeting the Land Development Standards."

Ms. Hannah continued, "I will also state that I had meetings with (County Manager) Mr. Morehead and two of our County Commissioners to try to come to a reasonable solution where I could drop my appeal. We met, we had talks, neither one was willing to cave in. Mr. Morehead and the County Commissioners, and what started this whole fuss, is potentially they move the transfer station down

closer to my house. I wanted that left alone or moved out of the city limits of Waynesville. It is the only one in the county that is within the city limits. It is right here in the residential neighborhood. It's currently not permitted under our Land Development Standards. Mr. Morehead was very nice."

Ms. Hannah said she didn't have any problems with anyone in the county. She talks to them all. Ms. Hannah asked if the Town could issue a Notice of Violation to the county. She stated that the county would shut it down if the Town issued a violation on the property. Ms. Teague didn't want to do that because it affects all of the property. Ms. Teague said she could do a letter of non-compliance. That was not good enough for the county. Ms. Hannah stated, "I respect that. I'm asking each one to seriously think what this is going to do from this day forward. I have no personal agenda except my neighborhood is all elderly. We have suffered for 20 years and just found out that everything that has been thrown at us and put on that small parcel of land. That it wasn't allowed by the Land Development standards. So, if you deny my appeal the county gets a blank check, and the zoning will be changed, which in my opinion is not fair for the neighborhood and the people of Waynesville. I support the jail. We are asking not to stop the Jail, but to overturn Ms. Teague's administrative decision and let the county come before the Town and go through the proper steps. Don't give them a free pass because they are the county."

Board Member Joshua Morgan said that there is a great degree of empathy with everything Ms. Hannah saying. "No one wants to have to be the one to make decisions. We all have heard the emotion and passion you bring with this. Our responsibility is to not look at the emotion of the situation but look at facts. How things are defined within the zone, to seek either a missed interpretation or a missed application specifically of an existing zone. Our place is not meant to go and retro zone parts of town. We have had situations where people, even in the audience that they're not compliant, they come in front of the zoning board and they're compliant, so we have sides where we are for and against the town on these types of matters." Mr. Morgan asked Ms. Hannah to explain what exactly she is asking the Board to deny with this finding. What merit of the zoning are we asked to deny?

Ms. Hannah stated she is asking to deny the administrative decision that Ms. Teague made on the zoning. She stated that things were not clear when posted. Ms. Hannah said that the Board should overturn the decision and let the county come to the Town and go through the proper channels to get the land rezoned.

Mr. Morgan spoke with Ms. Hannah saying that what the zoning board is trying to understand are the definitions that are in the zone. The decision made was that the property is a government service campus and facility. The issue is not (how) that is for the Board of Aldermen to decide. The Zoning Board must decide if the property is not government services. Mr. Morgan asked, "Ms. Hannah, if the property is not government services, then what is it?"

Ms. Hannah said she didn't think she could answer that. Ms. Hannah stated that anything could be considered Government Services, Pathways Homeless Shelter is on that property is that government service? Depending on people's opinion, also the convenience center could be placed under government service. Ms. Hannah said nothing really could be excluded, even passing out trash bags to the community for picking up trash.

Board member Bob Herrmann asked, “other than the procedure of administrative decision, how does it personally or community-wise affect you since there is no change happening on that property except to improve the buildings and add buffer and screens which will benefit the community?” Mr. Herrmann asked, “Ms. Hannah how does this affect you personally?”

Ms. Hannah stated that the street was too small for buffer and asked county member Chris Boyd to confirm that statement and he confirmed. Ms. Hannah said that she asked the county to close that entrance and add a fence. Ms. Hannah said the issue is that the street is too small to add buffers or a fence. She is trying to get the county to fix the issue for her and her community.

Attorney Frank Queen representing the county came to the podium. Mr. Queen said that he compliments Ms. Hannah’s good faith, great attitude with the issues she is bringing to the board. Mr. Queen suggested to the board that the board’s decision is made on sworn evidence. Mr. Queen brought attention to other permitted uses of this property. Including EMS facility with 911 dispatch headquarters office, sheriff offices with Magistrate office holding Judicial proceeding, detention center and convenience center. Mr. Queen stated that if you examine your table of permitted uses there isn’t a single other classification that can be used for this multi-use property. He also said that if you simply applied correctional institution definition you would have to delete all other uses on that site which is not appropriate. With the administrator officer’s decision to categorize the majority of the uses as government services, the site would not require any variance or rezoning. He felt the decision is consistent, and he supports the decision of the administrator officer.

B. PUBLIC COMMENT

John Baus
Waynesville, NC 28786

John Baus stated he was an alternate member for the Zoning Board, and a member of the Planning Board that voted no because part of what they were to decide was whether or not the site complied to all zoning ordinances which he feels it did not. There are three possible classifications that apply under office space like doctor’s office, attorney’s, salons, government services fall in that category, in the civic-institutional category in which government services is there too. The definition states that a correctional institution and detention center facility are the same and these are not permitted uses. There is nothing in the code that says if you combined a not-permitted use and 3 other permitted-uses, that it overrides that provision.

Mr. George Escaravage asked Attorney Ron Sneed for guidance. Mr. Sneed indicated that the definitions for correctional center and detention center could be more specific.

Jason Hopkins
Mathews, NC
Architect

Attorney Frank Queen called and questioned the Architect of the project Jason Hopkins. Attorney Queen asked if Mr. Hopkins was a licensed architect for the state of North Carolina.

Architect Jason Hopkins said Yes.

Attorney Queen asked if he was familiar with the site and if so why.

Architect Jason Hopkins said he is the project manager for the Haywood County Detention Center.

Attorney Queen asked that in his preparation and research under state law, did the State distinguish between correctional institution and detention Center?

Architect Jason Hopkins stated, yes, and he had defined them.

Attorney Queen read from the Ordinance Section 17.3 definition of Correctional Institution, that they are "Government establishments generally designed for the confinement, correction, and rehabilitation of offenders sentenced by a court."

Attorney Queen asked, under state law what is the facility you designed called?

Architect Jason Hopkins stated that it's considered a jail because North Carolina defers to it. Local jails are considered to be part of the Department Health and Human Services and must follow those guidelines. Detention Centers and Jails are used interchangeably in this field.

Attorney Queen asked what the distinction is made between a Detention Center and a Correctional facility under state law?

Architect Jason Hopkins said a Correction Facility will house 100 percent post-adjudicated inmates.

Attorney Queen confirmed that these are people that have been convicted of a crime and sentenced to serve their time in jail. Is this right?

Mr. Hopkins answered correct.

Is this the kind of person that are housed in the Haywood County detention facility?

Mr. Hopkins, said no.

Mr. Queen asked why not?

Mr. Hopkins stated that these will be pre-trial inmates. They will be arrested and detained but not tried.

Attorney Queen asked how is it that design differs between Detention Center vs Correction Facilities?

Mr. Hopkins responded that the detention center is always owned by the County and run by the Sheriff. Correctional Facilities are state or federally owned and operated, one or the other. He continued by saying that there are different construction standards and operational standards that apply to a correctional facility than a local jail. Here in Haywood County, the jail is under the jurisdiction of

the North Carolina Department of Health and Human Services. They have their jail rules. A Federal Facility or a State Prison will be under the purview of ACA (American Corrections Association).

Attorney Queen stated that those correctional facilities are always post-trial confinement, and this is not the case for the jail.

Mr. Hopkins says that is correct.

Attorney Queen said that was all the questions he had for Mr. Hopkins.

Ms. Teague came to the podium to inform the board of how she made her zoning determination. Ms. Teague explained, the table of permitted uses from the Land Development Standards. The property in question is zoned Hyatt Creek Regional Center.

Ms. Teague addressed Ms. Hannah's statement that the zoning is being changed. The zoning is not being changed. She then stated that she wanted to address, the second statement that the uses on this site are not permitted. Ms. Teague stated that there also has not been any applications received to change the zoning for this property. Ms. Teague also read the ordinance for Outside Storage- The storage of any material for a period greater than forty-eight (48) hours, including items for sale, lease, processing and repair also read through Recycling Collection Station- A center for the acceptance by donation, redemption, or purchase, of recyclable materials from the public. Government Services- Includes federal, state, and local government agencies that administer, oversee, and manage public programs and have executive, legislative, and judicial authority. Ms. Teague stated that all these uses are permitted in that zoning district.

When looking at this site, government services seemed to be the most appropriate use definition. When looking at the definition of correctional institution, it says that they are generally designed for correction and rehabilitation of post-trial offenders sentenced by a court. This facility handles mostly pre-trial detainees. She added that in making zoning determinations, staff has to look at the definitions that are provided in the ordinance, not through a google search.

Sherry Morgan
Waynesville

Ms. Morgan read information off the Haywood County Detention Center website that states that not all inmates are pre-trial, some detainees serve a short-term post incarceration for felonies that have been convicted of minor crimes. She also read through descriptions of what kind of inmates who might be incarcerated in the center.

Ms. Teague stated she had a question for Mr. Queen and Mr. Hopkins. She asked if the fact that the jail has some post-trial detainees makes it a correctional institution under the State of North Carolina?

Mr. Hopkins said, no.

Ms. Teague asked Mr. Queen if he knew how many inmates are post sentencing or if anyone from the detention center knows how many. A representative from the detention center stated that there were 6 post-conviction inmates currently, and the center holds 109 inmates.

Dustin Smith
Waynesville

Mr. Smith shared his opinion that the town is showing favoritism for the county. That he had come before the Town to ask for rezoning and had been denied. He stated that it was unfair.

Mr. Escaravage asked if there were any other comments. Hearing none, he asked to close the hearing.

A motion was made by Board member Bob Herrmann, seconded by Board member Joshua Morgan to close the public hearing at 6:53.

The Zoning Board deliberated.

A motion was made by Board member Bob Herrmann, seconded by Edward Moore to affirm the administrative decision. The motion carried unanimously.

A motion was made by Board Member Joshua Morgan, seconded by Board member Edward Moore to adjourn the meeting at 6:57pm. The motion carried unanimously.

George Escaravage, Chairman

Esther Coulter, Administrative Assistant