



TOWN OF WAYNESVILLE Zoning Board of Adjustment

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Stephanie Strickland
Henry Kidder
Joshua Morgan
Neal Ensley (Chairman)
David Felmet (Vice Chairman)
Charles John Gisler

Development Services
Director
Elizabeth Teague

Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786
Monday, March 7 2017, 5:30 pm

The WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a regular meeting on March 7, 2017 at 5:30 pm in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER:

1. Welcome/Calendar/Announcements

Mr. Neal Ensley, Chairman, welcomed everyone and called the meeting to order at 5:30 pm.

The following members were present:

Neal Ensley, Chairman
David Felmet, Vice Chairman
Stephanie Strickland
Henry Kidder

The following members were absent:

Charles John Gisler
Joshua Morgan

The following staff members were present:

Elizabeth Teague, Development Services Director
Eddie Ward, Deputy Clerk
Ron Sneed, Attorney to the Board

2. Adoption of Minutes from the September 6, 2016 Meeting

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Board Member David Felmet made a motion, seconded by Board Member Stephanie Strickland, to approve the minutes of the September 6, 2016 meeting as presented. The motion passed unanimously.

B. BUSINESS ITEMS:

1. Variance Request to Side Yard Setback Variance of Section 2.4.1 Dimensional Standards and Lot Area of Allen's Creek NR standard Section 2.4.1 Dimensional Standards at 254 and 256 Hendrix Street PIN 8604-87-0805.

Development Services Director Elizabeth Teague and Attorney Ron Sneed explained to the applicant, Ms. Martha Gaw, that since there were four Board Member present, in order to approve the requested variance, all four members would have to vote for approval. One no vote would cancel the request. Ms. Gaw was given the option of canceling the meeting and rescheduling at a later date when another Board member would be in attendance, or continuing with the meeting as scheduled with four Board Members. Ms. Gaw chose to continue with the meeting as scheduled.

Chairman Ensley reviewed the Protocols for a Quasi-judicial hearing and asked if everyone understood the procedures that would be followed. There were no comments.

Chairman Ensley opened the Public Hearing at 5:44 pm, and asked any witnesses who wished to speak to come forward and be sworn in. After the swearing in, Chairman Ensley asked Ms. Teague to give the staff report for the request.

Background: Ms. Teague explained that this was a Variance Request at 254 and 256 Hendrix Street which is considered one parcel. The acreage of the site is 0.518 acres in the Allens Creek Residential Neighborhood District. This District has a minimum side yard setback of 10' and a minimum lot size of 1/6 acre or 7260 square feet. The applicant is requesting:

1. To allow encroachment of existing structures within side yard setbacks in order to accommodate a subdivision.
2. To create a nonconforming lot to the minimum lot size requirement for the district in order for a more straightforward subdivision.

Ms. Teague submitted items for evidence for the hearing which included:

1. Agenda Packet which included the staff report, application with narrative submitted by Ms. Gaw, and site plan map showing the aerial data from the Haywood County GIS system.
2. Pictures of the parcel.
3. Notifications which included the public notice that was sent to the newspaper and adjacent properties, and the list of properties that the notification was mailed to, and picture of the posting of the property.

Ms. Teague stated that the property is a conforming lot with two residential structures. The applicant would like to subdivide the lot in order to create two individual lots that would each hold one of the dwellings. This would make the lots a more affordable sale price for the applicant. In order subdivide

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the lot; a variance is required for those areas where the two buildings would encroach on the 10' side yard setback along the proposed boundary line. To subdivide the lot with a single boundary line to form a clearly defined boundary requires that one of the proposed lots be smaller than the minimum dimensional lot size for the District. A more complex boundary drawing is required for a lot that is in compliance with the lot size standards. The applicant has submitted two options for the subdivision, one which is compliant, but oddly shaped with a five foot connector. The second option would be a more straight forward subdivision, but the lot that would be created closest to the Baptist Church would be a smaller lot size than the District allows, and would therefore be non-compliant.

Surrounding Land Use/Zoning Patterns: The property is located in the Allens Creek Neighborhood Residential District, and is bordered on two sides by a church. It fronts Hendrix Street property that was purchased by the Town of Waynesville for the purpose of a bridge replacement, water and sewer, and sidewalk project.

Ms. Teague quoted from the Town of Waynesville Land Development Standards 2.3.3 Neighborhood Residential Districts (NR) Purpose and Intent concerning the Allens Creek Neighborhood District (AC-NR). She said that every zoning District has a purpose and needs statement that describes the goals of the zoning. She reminded the Board that any variance that is being requested should be within the spirit of the district.

Variance requirements and staff recommended findings: Ms. Teague told the Board that there are two separate variance requests being made, and consideration is provided for each separately. The Board must make all the following findings for each criteria:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

- Staff believes that un-necessary hardship would result from the strict application of the ordinance in the case of the side yard setbacks because:
The two structures are already in existence and were allowed to be built at their time of construction in 1939 and 1957.

Granting of the setback variance would not change the property or the nature of the Allens Creek district as it is now.

- Staff does believe that unnecessary hardship would result from the strict application of the ordinance in the case of the lot size because the property owners could effectively subdivide the lot and comply with the ordinance, even though this creates an odd shaped lot.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

- Staff believes that the hardship presented is peculiar to the property in both variance requests because this is a unique situation in which there is an existing lot with two individual residential structures within it.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

- Staff does not believe the hardship is the result of any action taken by the property owner in the case of the side yard setback variance
- The current owners of the property were not involved in the permitting or construction of these building.
- There is no other practical way to subdivide the lot without creating a side yard setback encroachment.
- Staff submits that the property owner's request to subdivide in such a way as would create a nonconforming lot would be a result of their action.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

- Staff believes the requested variance for the side yard setback is consistent with the spirit, purpose and intent of the ordinance because it does not create an impact to the District and would not change the physical reality of the lot and the structures as they are now. Granting of the variance would be for the minimum encroachment needed and would not allow future expansion or encroachment along the new property line.
- In regards to lot size, staff is concerned with the Board's ability to create a nonconforming lot by variance, even though it would seem practical in this case. However, in searching the Town Ordinance, Staff finds no explicit provision that would prevent the Board from doing this.

The Board had several questions for Ms. Teague and Attorney Sneed concerning the two options for the subdivision of the lot. The first option would bring both lots into conformity and the second option would have one conforming lot and one smaller non conforming lot. Ms. Teague stated she did not find in the ordinance that the Board could not grant a request to subdivide a lot and the new not be in conformity. There was also much discussion about Muse Street that divides the lot.

Chairman Ensley asked if anyone wished to speak.

Martha Gaw
135 Cross Creek Dr
Columbia, SC 29212

Ms. Gaw thanked the Board and the Staff for allowing her to make her case concerning the request for subdividing her property. She said the property on Hendrix Street was owned by her great grandparents. Ms. Gaw purchased the property in 2002, and the residences were rented to family and

non family members. In recent years, Ms. Gaw stated that the upkeep of the two houses here has become too much for her and her husband since they are living in South Carolina. The houses have remained the same as when they were built. The property has been listed for sale as one parcel since June 2016 with no offers to buy the property. Since there has been no activity in selling the two houses, Ms. Gaw would like to subdivide the property and sell the houses separately. She stated she felt like the approval of the request for subdivision would be a win-win situation for both her and the Town of Waynesville.

Board Member Henry Kidder asked Ms. Gaw what is the hardship that is caused by the property as it is now. Ms. Gaw stated that the hardship is that they have 3 homes that they are trying to maintain, and it is a three hour drive from Columbia to the property here. They do not want to have renters in the houses on Hendrix Street anymore. She said they have been trying to sell the houses and have had no interest, so they want to try to sell the property as two parcels. Board Member Kidder asked if the hardship had anything to do with the Town's ordinance. Ms. Gaw replied no.

Ms. Teague stated that the hardship is the fact that the side yard setback cannot be met without physically moving the structures on the property. She said Ms. Gaw has provided two options for subdivision of the property. One is a very simple subdivision, but it creates a nonconforming lot in size. The other option shows a five foot connector to the area across from Muse Street, which would be a conforming lot, but it would be oddly shaped. Ms. Teague suggested that if Ms. Gaw is open to either option, obviously the Board would want to create a conforming lot over a nonconforming lot.

Ms. Gaw stated she wanted what is best for the Town. She said that if she was looking at buying the houses, she would want to know where the property lines were because a home owner wants to know exactly what they own and don't own.

**Ann Eavenson
525 Auburn Park Dr
Waynesville, NC 28786**

Ms. Eavenson stated that as a realtor with many years experience, it is a lot easier to sell a smaller priced property in Haywood County than it is to sell a \$200,000.00 plus property. She said the property was listed in June of 2016 and have not had a lot of lookers or activity, and no offers. She said she felt that if the property was subdivided it would be an area where two families could have a nice home in a nice location. She said that as a realtor, she did not feel it would make a huge difference which option was chosen for the subdivision. She feels that a clean break between the two would be the best for the sale of the homes, but if the Board felt it was best for the Town to have the oddly shaped lot, that would be workable as far as the sale of the property.

Ms. Teague stated that from the Staff's perspective, there is a concern with precedent that the Board sets, even though each case is unique and tied to the specific property of the case. She would not like the Board to be in the business of varying minimum lot sizes in any district if it can be avoided. She suggested the Board maintain conformity in lot size if at all possible. She also said that if the Board grants the variance, however this lot is subdivided it would not change the nature of what is there. As Staff she feels that going with the two lots that are conforming would be the better choice.

Attorney Sneed reviewed the draft of suggested Finding of Facts he had prepared for the Board.

Attorney Sneed told the Board that they had to make conclusions based on Findings of Facts for:

1. Do or do not find the applicant is entitled to a setback variance
2. Do or do not find the applicant is entitled to a lot size variance

Ms. Teague pointed out that the greatest variance in the side yard setback is only 2.2 feet.

Chairman Ensley asked the Board if they had any questions or discussion pertaining to the request. He stated he felt there had been sufficient evidence presented to the Board in order to make a decision on the subdivision of the parcel. The Board would be voting on the setback variance first.

There were no more comments.

A motion was made by Board Member David Felmet, seconded by Board Member Henry Kidder to grant a variance to Side Yard Setback Variance of Section 2.4.1 Dimensional Standard at 254 and 256 Hendrix Street, PIN 8604-87-0805. The motion failed with three ayes (Board Members Stephanie Strickland, David Felmet, and Chairman Neal Ensley) and one nay (Board Member Henry Kidder). The variance request failed.

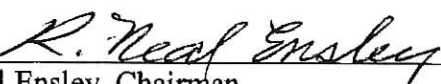
Attorney Sneed asked Board Member Kidder the reason for his no vote. Mr. Kidder said he felt there was no hardship in the case.

With no further business a motion was made by Board Member David Felmet, seconded by Board Member Stephanie Strickland to close the meeting at 6:49 p.m. The motion passed unanimously.

B. ADJOURN

With no further business, Board Member Stephanie Strickland made a motion, seconded by Board Member John Gisler to adjourn at 5:36 pm. The motion carried unanimously.

The next regularly scheduled meeting will be held on April 4th, 2017


Neal Ensley, Chairman


Eddie Ward, Deputy Clerk