

TOWN OF WAYNESVILLE Zoning Board of Adjustment

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Stephanie Strickland
Henry Kidder (Chairman)
Joshua Morgan
George Escaravage
Margaret Chandler
Edward Moore

Development Services
Director
Elizabeth Teague

Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786
Tuesday, December 3rd, 2019 at 5:30 pm

THE WAYNESVILLE ZONING BOARD OF ADJUSTMENT held its regular meeting on December 3, 2019 at 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mr. Byron Hickox, Land Use Administrator advised the Board that Chairman Henry Kidder was absent and there was currently no Vice-Chair, therefore Board Member Stephanie Strickland would be serving as temporary Chair until the nominations and elections of Chair and Vice-Chair were complete.

Board Member Stephanie Strickland called the meeting to order at 5:30 p.m.

The following members were present:

Stephanie Strickland, Vice Chair
Joshua Morgan
George Escaravage
Edward Moore
Margaret Chandler

The following members were absent:

Henry Kidder, Chairman

The following staff members were present:

Byron Hickox, Land Use Administrator
Chelle Baker, Administrative Assistant

1. Welcome/Calendar/Announcements

Temporary Chair Stephanie Strickland welcomed everyone.

2. Election of Chair and Vice Chair

Mr. Byron Hickox advised that Mr. Henry Kidder stated although he was absent, he was willing to serve the Board in whatever capacity needed. Mr. Hickox opened nominations for chairman.

A motion was made by Board Member George Escaravage to nominate Mr. Henry Kidder as Chair. There being no other nominations, Board Member Joshua Morgan seconded the nomination. The motion passed unanimously (5-0).

Mr. Hickox advised by acclamation that Board Member Henry Kidder was elected as chairman.

A motion was made by Board Member George Escaravage to nominate Ms. Stephanie Strickland as Vice-Chair. There being no other nominations, Board Member Joshua Morgan seconded the nomination. The motion passed unanimously (5-0).

Mr. Hickox advised by acclamation that Board Member Stephanie Strickland was elected as Vice-chair.

3. Adoption of Minutes

A motion was made by Board Member George Escaravage, seconded by Board Member Edward Moore, to approve the minutes of the April 2, 2019 No quorum minutes, the May 7, 2019 regular meeting minutes and the July 2, 2019 No quorum minutes. The motion passed unanimously (5-0).

B. BUSINESS

1. Public Hearing on request for a variance to Land Development Standards Section 4.5.2(1)- Permitted Locations for Accessory Structures at 626 Hall Top Road, PIN 8616-05-4687.

Vice-Chair Stephanie Strickland reviewed the protocols for a Quasi-judicial hearing and advised this was a request for a variance to Section 4.5.2(1). Witnesses including staff who wished to speak were directed to come forward and be sworn in. Mr. Byron Hickox presented the staff report.

Background: Mr. Hickox explained that the subject property was .59 acres with frontage along Hall Top Road. He described the lot as containing a single-family dwelling and being heavily wooded. He referenced the topographic map, showing the house site and a small area in the front yard as the only relative flat areas on the lot, stating that the remainder of the lot drops off steeply to the rear.

Mr. Hickox stated that 4.5.2(1) of the LDS indicated that accessory structures on single-family lots of 2 acres or less must be located within the side or rear yard, but due to the steep topography of the side and rear yards this property owner has proposed the construction of an accessory structure within the front yard of the lot.

Mr. Hickox reviewed the current zoning as Hall Top Low Density Residential and read the purpose and intent of the district as established by the LDS, Section 2.3.1 (D).

Variance Requirements and staff recommended findings: Mr. Hickox told the Board that the proposed variance would permit the property owner to construct an accessory structure within the lot's front yard. The proposed structure will otherwise comply with the Town of Waynesville's accessory structure standards. Staff offers the following comments regarding the findings that must be considered by the Zoning Board of Adjustment:

1. That there are unnecessary hardships in the way of carrying out the strict letter of this chapter.
 - The requirement that an accessory structure on this property be located within the side or rear yards would force the property owner to either build no such structure or to incur considerable expense to build a structure on the very steep terrain of the side or rear yards.
2. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district.
 - The lot's shape, topography, and the principal structure's orientation to the road combine to create a peculiar situation that makes the construction of an accessory structure that meets the town's standards extremely challenging.
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 hardship is not the result of actions taken by the property owner. The property owner has done considerable work and incurred considerable expense to renovate the existing structure, including removing a manufactured home that was previously on the lot, improving the overall appearance of the lot.
4. That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.
 - The purpose and intent statement for this zoning district recognizes the unique challenges inherent in the development of its properties. This variance would serve as a recognition of the same challenges.
5. That the variance is the minimum necessary to afford relief.
 - This variance is the minimum necessary to afford relief.
6. That the public safety and welfare have been assured and substantial justice has been done.
 - While the construction of an accessory structure on piers or columns to the side or rear of the dwelling might meet the letter of the town's standards, it might also be considerably less safe and considered aesthetically unappealing.

Mr. Hickox advised the Board that the Public Notice requirements for this Hearing were met and that notice of this public hearing was mailed to owners of property within 100 feet of the subject property on November 19, 2019. Notice was also submitted to local media on November 18, 2019.

Mr. Hickox submitted items into the record for evidence which included:

1. Agenda Packet with staff report
2. Variance request
3. Topographic map
4. Site map
5. Public Notices and address labels

The Board had no questions for Mr. Hickox. The applicant was asked to come forward and speak.

**Andrew Noel
626 Hall Top Road
Waynesville, NC 28786**

Mr. Noel introduced himself and thanked the Board. He informed the Board that he had put a lot of work into the property trying to make it a nice place not only for himself but for the neighborhood as well. Mr. Noel showed before and after pictures of the property stating that when he acquired the property it had been abandoned since 2005 and it was completely overgrown. He showed the different pictures of his property and property line restrictions combined with the topography of the drop-offs. He also showed where the trailer used to sit in front of the house, before he removed it from the property. Mr. Noel explained to the Board that his intention was to put in a nice shed to store his tools so that he could continue fixing up the property, he was not looking at storing junk, he was wanting to landscape around it to make it look nice.

Board Member Joshua Morgan asked Mr. Noel if the house sat below the road and if the accessory structure would sit below the level of the road as well? Mr. Noel answered that yes, the house did, but the accessory structure would not be as far below the level of the road - there would be about a six to eight-foot difference. He described that the property dropped once from the road level to the proposed accessory structure site and then it dropped again to the house site.

Board Member George Escaravage asked Mr. Noel if he had discussed the project with any of his neighbors. Mr. Noel stated no, he had not. Mr. Byron Hickox advised that three of the neighbors had called in to the Development Services office to ask questions about the public notice received and they stated that it sounded fine with them. Board Member Morgan asked according to the topography, it seemed there was no other way to build this structure on the property and Mr. Noel stated that was correct. Vice-Chair Strickland asked if it was a metal building. Mr. Noel advised it was a metal sided pole barn.

Vice-Chair Stephanie Strickland asked if there were any further questions or comments. There were none.

A motion was made by Board Member Joshua Morgan, seconded by Board Member Edward Moore, to close the Public Hearing at 5:50 p.m. The motion passed unanimously (5-0).

Attorney Sneed passed out a checklist to the Board and told them they had to make conclusions based on Findings of Facts.

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.
 - Unnecessary hardship will result. Topography will create an excessive hardship as the grading work for the location required by the LDS would cost more than the accessory structure itself. A tremendous amount of grading work would be required to follow the ordinance.
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.
 - The topography is the largest hardship issue that Mr. Noel is facing.
 - The triangular shape of the lot is also a hardship issue.
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.
 - No, Mr. Noel did not make it steep himself. He did not physically dig the dirt out himself thus this hardship did not result from the actions taken by the applicant himself.
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.
 - Yes, it is consistent with the spirit, purpose and intent of the ordinance.
 - Public safety is secured as Mr. Noel is not trying to build next to the road, he is staying off the road.
 - Mr. Noel is also wanting to place the accessory structure where it is flat for erosion control.
 - Substantial justice is achieved.

A motion was made by Board Member Joshua Morgan, seconded by Board Member Edward Moore, to approve the variance. The motion passed unanimously (5-0).

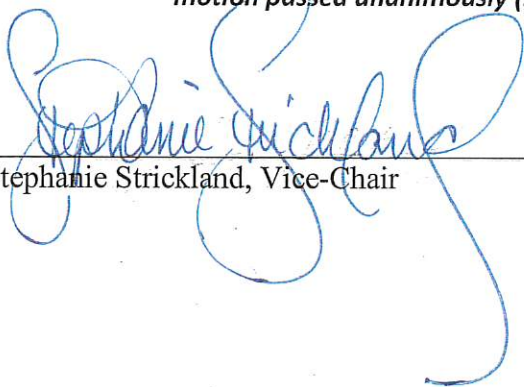
The request for a variance to Land Development Standards Section 4.5.2(1), permitted locations for Accessory Structures at 626 Hall Top Road, PIN 8616-05-4687 is approved.

C. PUBLIC COMMENT /CALL ON THE AUDIENCE

No one spoke

D. ADJOURN

With no further business, a motion was made by Board Member George Escaravage, seconded by Board Member Joshua Morgan, to adjourn the meeting at 5:58 p.m. The motion passed unanimously (5-0).



Stephanie Strickland, Vice-Chair



Chelle Baker, Administrative Assistant