



# 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, January 7th, 2020 at 5:30 pm**

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THE WAYNESVILLE ZONING BOARD OF ADJUSTMENT held its regular meeting on January 7, 2020 at 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

### A. CALL TO ORDER

Chairman Henry Kidder called the meeting to order at 5:30 p.m.

The following members were present:

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

The following members were absent:

None

The following staff members were present:

Byron Hickox, Land Use Administrator  
Chelle Baker, Administrative Assistant

#### 1. Welcome/Calendar/Announcements

Chairman Henry Kidder asked if there were any announcements. Board Member Margaret Chandler stated that she refused to act. It was determined that with the confusion regarding Primary and Alternate appointments to the board, Ms. Chandler was refusing to act for this meeting so that Board Member Edward Moore, who had tenure, could proceed to be one of the five sitting Board Members for the meeting. Board Member Joshua Morgan asked for staff to take

concerns back to the Town with how appointments are made to the vacancies on the Zoning Board due to the confusion and this being the second instance of this circumstance.

Chairman Kidder asked if there were any other announcements. There were none.

2. Adoption of Minutes (as presented or amended) from December 3, 2019

Vice-Chairman Stephanie Strickland asked for the presentation of minutes from the December 3, 2019 meeting and asked if there were any changes or corrections. Ms. Elizabeth Teague, Director of Development Services advised there was one correction to the signature line.

***A motion was made by Board Member Joshua Morgan, seconded by Board Member George Escaravage, to approve the minutes of the December 3, 2019 meeting with the following correction: page 6, signature line should read "Stephanie Strickland, Vice-Chairman," instead of Henry Kidder, Chairman. The motion passed unanimously (5-0).***

**B. BUSINESS**

1. Public Hearing on request for a variance to Land Development Standards Section 2.4.1 Table of Dimensional Standards 4. Building Setback at 180 Ridgewood Drive, PIN 8615-05-4762.

Chairman Henry Kidder reviewed the protocols for a Quasi-judicial hearing and the rules of conduct. He 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 were sworn in at 5:45 p.m. Chairman Kidder called upon anyone who wished to have standing other than the Town and the applicant and there were none.

Chairman Kidder polled members of the Board to see if there were any procedural matters, ethical considerations or conflicts of interest that should be disclosed prior to beginning the hearing:

- Have any Members of this Board had any conversations concerning this case other than the agenda packet distributed to the Board in anticipation to this meeting?  
All Board Members answered No.
- Any Board Member subject to an impermissible conflict of interest which would make a Member unable to be an impartial decision maker in the matter under consideration?  
All Board Members answered no.
- Does any party have an objection concerning the impartiality of this panel?  
Mr. Muse stated he had no problem with the Board.

Mr. Kidder invited staff to present. Ms. Elizabeth Teague, Director of Development of Development Services began by entering into evidence the following documents:

- I. Town ordinance by reference
- II. Town Staff report that's included in the agenda packet
- III. Attached maps and property information including property report from county land records, and two aerial photography sites from land records dated 2019 and 2004.

- IV. Notice that was sent to the Mountaineer for publication in two subsequent weeks prior to hearing and mailed to adjacent property owners
- V. Photographic documentation of the property posting at 180 Ridgewood and photographs taken December 30th of the site in question
- VI. Mr. Muse variance application

Chairman Kidder asked Ms. Teague what the distance was that people are notified. Ms. Teague informed that for a variance it is 100 feet from the property boundary on all four sides.

**Background:** Ms. Teague began the staff report by stating this was a setback variance, Land Development Standards Section 2.4.1 (4) on the property described as 180 Ridgewood Avenue owned by Ron Muse who was present as the applicant. She advised that the applicant would like to build a storage building within the same footprint where one previously had existed. Ms. Teague pointed out the desired footprint site on a GIS map for the Board to see.

Ms. Teague reviewed the staff report with the Board and advised that the property was located in the Hazelwood Urban Residential District. And there was a chain link fence separating the subject property from the back of the Waynesville Middle School Ms. Teague read the purpose and intent of the Hazelwood Urban Residential District (H-UR) Section 2.3.4(B).

Ms. Teague stated that the applicant informed staff that several years ago a storage building on the site burned down. County aerial data from 2004 indicates that the building was gone at that time, but there remains a concrete pad with concrete blocks indicating a former structure. She explained in accordance with LDS 13.2.2, a pre-existing nonconforming use “shall be presumed discontinued when, ...the property, structure, or use has been vacant or completely inactive for 365 days.” The pad is opposite a driveway from an existing storage/garage building which is about the same size of the pad. She stated while the address of the property is Ridgewood Drive, the location of the subject building site is accessed from Balsam Drive. Currently cars are parking in the area where the building once stood. She explained that the applicant would like to rebuild a new storage building on the footprint of the one that burned down. However, the rear of the old building footprint would be within any of the minimum setbacks for buildings within the H-UR District (10’ Side, 6’ in the rear, or 5’ for accessory structures) and a survey would be required to determine the distance exactly to the boundary line.

**Variance Requirements and staff recommended findings:** Ms. Teague told the Board that the proposed variance would permit the property owner to construct an accessory structure within the setback for accessory structures. The proposed structure will otherwise have to comply with the Town of Waynesville’s accessory structure standards and building codes, including separation from power lines. Staff offers the following recommendations for possible findings for the Zoning Board of Adjustment’s consideration:

1. That there are unnecessary hardships in the way of carrying out the strict letter of this chapter.
  - As a property that is already developed, there is no other location available to accommodate a storage structure and garage that can be accessed by vehicles for the residents than on the proposed location.
  - The existing space is already used as a parking area and once held a storage building which was brought down by fire many years ago.

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 property serves a multi-family development that is adjacent to the Middle School. The proposed location of the variance would be against the fence line and boundary of the Middle School and would not impact any other residential properties.
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 was not caused by actions of the property owner. Rather, his inaction over time to restore the building after the fire, meant that setbacks imposed by new and updated regulations are now in effect.
  - The addition of a structural storage building and garage would help to clean up the parking area that is adjacent to the school and meet the needs of the residents.
4. That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.
  - As indicated above, the purpose and intent statement for this zoning district recognizes the urban nature of the district and the need for “self-contained affordable housing.”
  - The granting of this variance will not change the nature of the development, the density, or traffic pattern. However, it will provide indoor storage area for the residents of this lower income development.
5. That the variance is the minimum necessary to afford relief.
  - The variance is the minimum necessary to afford relief in order to install a storage building within an existing concrete pad footprint that encroaches in the rear yard setback.
  - A survey will be required as part of the building permit and will determine the actual on-the-ground location of the boundary line so that there is no encroachment onto the school property.
6. That the public safety and welfare have been assured and substantial justice has been done.
  - The addition of the accessory building will improve the parking lot area and the view from the back of the school building onto the subject lot.

Ms. Teague 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 December 23, 2019. Notice was also submitted to local media on December 23, 2019 and published in two successive weeks prior to this date.

Ms. Teague asked if there were any questions. Chairman Kidder asked Ms. Teague to clarify the address as Ridgewood Avenue or Ridgewood Drive. Ms. Teague stated Ridgewood Drive. Board Member Joshua Morgan questioned how the permitting process would be handled if after having a survey an issue was found such as the concrete pad was on the line or over the line. He stated the concern being making the decision before knowing the survey results and not knowing if it was encroaching. Ms. Teague explained that Development Services cannot issue a building

permit to anyone who is not in possession of the property and recommended that this is included in their action and Attorney Sneed could help the Board with the wording of such.

Chairman Kidder asked who owned the fence between this property and the Waynesville Middle School. Ms. Teague answered that it appeared to be primarily on the school property but Mr. Muse when he spoke may have the answer.

Chairman Kidder invited Mr. Muse to come forward and speak.

**Ron Muse  
730 Woodfield Dr  
Waynesville, NC 28786**

Mr. Muse stated that this area is ten foot away from the boundary and he can't patrol there, and it is a good hiding place. He described that there is a fence, but kids would crawl under the chain link fence and that is how the previous building got burnt down. He stated that he will go through the building inspections office for permitting. He also advised that he had pictures of the dumpster on the property of people dumping their trash and hanging out back there at 2:30 in the morning. He stated that the building that was there before since 1958 or 1959 and it worked well for all the years it was there. He stated he didn't feel like he would be creating anything new by placing another building there. He thanked the Board for listening and asked if they had any questions.

Chairman Kidder asked Mr. Muse why he wanted to build the building. Mr. Muse replied for storage of items such as lawnmowers and appliances. Mr. Kidder asked Mr. Muse what he used the building across the way for. Mr. Muse advised he felt he would be bringing his storage area back to where it used to be. Board Member Joshua Morgan asked Mr. Muse to clarify how putting another structure there would help in keeping down "riff-raff". Mr. Muse explained that he would be creating a 10 ft x 60 ft structure in a space where nobody could see what was going on. He stated that there would not be a hidden space anymore since he would be putting the building in it and filling it up. Chairman Kidder reiterated that there would be no hiding space because the building would be right up against the fence. Mr. Muse stated yes. Chairman Kidder asked Mr. Muse if he had any plans on repairing the drive coming into it and Mr. Muse replied no, because he did not want people coming in and he wanted them to slow down. He advised he would rather them park on Ridgewood. Chairman Kidder asked about a gate and Mr. Muse advised that this is the location that his dumpster fit, and his dumpster guy would not want to do a gate. Mr. Muse talked about putting up new signs for no trespassing and no dumping on the dumpster but felt like people would still take advantage once it was dark outside.

Chairman Kidder asked if there were anymore questions from the Board for Mr. Muse and there were none. He thanked the applicant, he asked staff if there were anymore questions. Ms. Teague asked Mr. Muse when he puts the building in where the dumpsters would go. Mr. Muse advised it might stay right where it is, they will try to work around it. Ms. Teague advised the Board that if the building is constructed, staff still asks that Mr. Muse consider that still must accommodate for his dumpster and it still has to have a pad. Mr. Muse may have to change the location of the dumpster due to the construction and the dumpster still has to be provided.

Board Member Joshua Morgan stated that there were two things he felt the Board was being asked to address with this variance the first being a variance to the physical location in regards to the property line and the 2<sup>nd</sup> to do a variance to the part of the Hazelwood Urban Residential District purpose and intent statement “non-residential uses supporting the community are permitted if contributing in scale, design and use to the area.” Mr. Morgan stated that that he already had something on the property that seemed like it was doing the same thing that he was wanting to do and so Mr. Morgan asked Mr. Muse to clarify how this variance was going to help if it’s a nonresidential use and how it was going to support that community with scale and design.

Vice-Chair Stephanie Strickland asked Mr. Muse if there were things he would store to sustain the apartments for example, appliances so if apartment number ones stove expires, would he store an extra stove in there. Mr. Muse stated occasionally he would store furniture for them. Ms. Strickland asked if it could be for residential as well then and Mr. Muse advised he goes through a lot of lawn mowers his own self. Chairman Kidder asked about the design of the building. Mr. Muse replied rectangle with a single, pitched roof, and that he hoped he had answered Mr. Morgan’s question. Mr. Morgan replied not really and that although he understood about storing mowers and weed eaters, he felt the Board was not only being asked to do a variance on the physical space but also a variance on the Residential district as well and he did not want to create a precedent. He advised this building would be a tight squeeze and with a pitched roof would possibly create a run-off issue. Mr. Muse advised he would put gutters on.

Chairman Kidder asked Mr. Muse if he had any further clarification for Board Member Morgan’s question. Ms. Teague reviewed the purpose and intent statement of the Hazelwood Urban Residential District, quoting: “Since it is convenient to shopping and employment, the goal for Hazelwood is to encourage infill development and the rehabilitation of existing structures in keeping with the residential scale and character of the existing neighborhood. Limited non-residential uses supporting the community are permitted if contributing in scale, design and use to the area.” She further stated that looking at those two sentences alone she felt that a storage building is there to support the residents and the property is consistent with this purpose and intent statement. Also, the fact that there used to be a storage building there and Mr. Muse is rehabilitating it or putting it back would also be consistent with this statement.

Chairman Kidder asked how much control staff had with the design of the building and Ms. Teague informed that in this case it is a very small footprint, it was not a very big building and with an accessory structure this size there was not design guidelines to impose on it. Planner Jesse Fowler scaled the building out as max 60 x 20 and Mr. Hickox advised that there would be a land development permit done as well and most of the questions related to land disturbance and floodplain on the form would be a “no”.

Vice-Chair Strickland stated that residents and middle school kids weren’t really going to pay attention and they were really the only ones who were going to be able to see it.

Chairman Kidder asked if there was anything else before closing the public hearing. Or any other questions of the applicant. There were none and Chairman Kidder closed the public hearing at 6:31 p.m.

Board Member George Escaravage stated that if the project complied with all building codes, he felt it was a good utilization for the existing footprint and he would support it.

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.
  - Yes, utility of this building in this residential development is significant enough that not to be allowed to have that building would be a hardship.
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 width of the driveway to the present location of the slab are some of the things being seen as topographical issues
  - Location with regards to the property line and conditions procured to the property
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, there has been no evidence heard that Mr. Muse put that slab where it is, therefore, he did not cause this problem.
  - Setbacks were changed well after the building was built.
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 one of the goals of the project and Substantial justice is achieved.

***A motion was made by Board Member Stephanie Strickland, seconded by Board Member Joshua Morgan, to approve the request for a variance to Land Development Standards 2.4.1 Table of Dimensional Standards 4. Building Setback at 180 Ridgewood Drive, PIN 8615-05-4762. The motion passed unanimously (5-0).***

**C. ADJOURN**

***With no further business, a motion was made by Board Member Joshua Morgan, seconded by Board Member George Escaravage, to adjourn the meeting at 6:36 p.m. The motion passed unanimously (5-0).***

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Henry Kidder, Chairman

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Chelle Baker, Administrative Assistant