



TOWN OF WAYNESVILLE Zoning Board of Adjustment

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Stephanie Strickland (Vice-Chair)
Henry Kidder (Chairman)
Joshua Morgan
George Escaravage
Margaret Chandler
Edward Moore
John Baus

Development Services
Director
Elizabeth Teague

Special Called Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786
Wednesday, February 5th, 2020 at 5:30 pm

THE WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a special called meeting on February 5, 2020 at 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Zoning Board of Adjustment Board Member Joshua Morgan called the meeting to order at 5:42 p.m. Board Member George Escaravage advised that Chairman Kidder and Vice-Chair Strickland were both unable to attend the Board Meeting.

A motion was made by Board Member George Escaravage, seconded by Board Member Edward Moore to nominate Board Member Joshua Morgan as Acting Chair for the meeting. The motion Passed unanimously (4-0).

The following members were present:

Joshua Morgan
George Escaravage
Edward Moore
John Baus

The following members were absent:

Henry Kidder, Chairman
Stephanie Strickland, Vice-Chair
Margaret Chandler

The following staff members were present:

Elizabeth Teague, Development Services Director
Jesse Fowler, Planner
Chelle Baker, Administrative Assistant

Attorney Ron Sneed was also in attendance.

Zoning Board of Adjustment Minutes
Regular Meeting
February 5, 2020

1. Welcome/Calendar/Announcements

Acting Chair Joshua Morgan welcomed new Board Member John Baus to the Zoning Board of Administration and asked him to introduce himself. Mr. Baus stated that he was originally from New Orleans but had recently moved to Waynesville, although he had been vacationing in Waynesville for fifteen years. Mr. Baus informed that he had an accomplished career as a State prosecutor, civil lawyer and Administrative Judge. He advised he currently owns and operates, a bed and breakfast on Love Lane with his wife. He expressed that he was happy to be on the Board and thanked everyone.

2. Adoption of Minutes

A motion was made by Board Member George Escaravage, seconded by Board Member Edward Moore, to approve the minutes of the January 7, 2020 board meeting as presented. The motion passed unanimously (4-0).

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 166 Pinewood Drive, PIN 8604-94-6149

Acting Chair Joshua Morgan addressed the applicant, Ms. Hendrix, and advised her that this was a 5-Member Board but this evening there were only 4 Board Members present. He explained this meant the variance request must have a unanimous vote of all four Board members to pass or she also had the option to post pone until the next Board meeting. Applicant Ms. Hendrix stated she wished to continue. Acting Chair Joshua Morgan proceeded with the meeting and reviewed the protocols for a Quasi-judicial hearing and the rules of conduct. He advised this was a request for a variance. Acting Chair Morgan called upon anyone who wished to have Standing other than the Town and the applicant to come forward for determination of such.

Ms. Donna Parton

Introduced herself and that she would like to have Standing.

Ms. Teague, Director of Development Services addressed the Board and advised that Ms. Parton is the abutting, adjacent neighbor and staff believes that she would have Standing in this case and should be available to ask questions. There were no objections from the Board.

Witnesses including staff who wished to speak were directed to come forward and were sworn in at 5:47 p.m. Mr. Morgan continued explaining rules of conduct.

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

- I. Staff report
- II. Town Land Development Standards by Reference
- III. Applicant's Application
- IV. Parcel information provided by Haywood Co Land Records
- V. Pictures that were included as part of the staff report
- VI. Email from Town Engineer regarding Right of Way

- VII. Original plat of Pinewood Drive adjacent to this lot
- VIII. Notification that was mailed and the property addresses mailed to
- IX. Photos of property posted
- X. Affidavit that will come from the Newspaper

Background: Ms. Teague began the staff report by stating this was a setback variance, section 2.4.1(4) on the property described as 166 Pinewood Drive. She advised the property owner and applicant is Terry Lee Hendrix, who is represented by Shawna Hendrix. The property location is 166 Pinewood Drive, PIN 8604-94-6149, 2.56-acre lot in the Allens Creek Neighborhood Residential District (AC-NR). She stated that the existing development is a single-family home with accessory dwellings and outbuildings. She described two of the outbuildings as such: one that would be addressed at this meeting and the other a log cabin on site that was no longer in service and was currently a storage building. Property is within the ETJ of Waynesville.

Ms. Teague read the AC-NR LDS purpose and intent statement, 2.3.3 (A). Ms. Teague stated that the applicant would like to restore an existing building on its same footprint. The aerial data indicates that the structure has stood at its present location since at least 2004 but has not been occupied in over one year. Ms. Teague informed that in accordance with LDS 13.5 a pre-existing nonconformity "shall be presumed discontinued when, ... the property, structure, or use has been vacant or completely inactive for 365 days." She advised that the building sits near the right-of-way line for Pinewood drive and encroaches into the minimum 10 ft' front setback. The variance would allow the structure to be rebuilt where it is, but the setback encroachment should be the minimum necessary and cannot be further expanded.

Ms. Teague continued that town public services has provided a survey from 1992 designating NCDOT's right-of-way at 45 feet wide or 22 ½ feet from the center line of the roadway in either direction. The distance from the centerline in the road to the closest point of the structure, which is the old stone foundation which possibly once was a porch, is 23 ½ or 24 feet. The porch foundation is approximately 11 ½ to 12 feet more from the edge of pavement and the structure is not in the floodplain.

Ms. Teague informed that the requested variance would permit the property owner to rebuild the structure as a residential dwelling in the front-yard setback at a zero-foot setback from the right-of-way. The proposed structure would otherwise have to comply with the Town of Waynesville's standards and building codes. If granted the front-yards setback variance will continue with the property and this would eliminate its current status as a nonconforming structure as described in the Land Development Standards Section 13.5 Nonconforming uses and structures.

Staff Recommended Findings: Ms. Teague told the Board that 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.
 - The property owners would like to restore an old building utilizing the stone foundation which has been on this location since before 2004 and a strict enforcement of the zoning setback would require a demolition of the existing foundation and

relocation of the building approximately 10 feet, defeating the purpose of trying to save and restore the structure.

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.
 - This structure in question is well over fifty years old and could be considered historic. Stone foundations such as the one on this building are sited in other town historic studies, such as the residential spread-out historic district as being architecturally significant. Towns and other areas have sought out and tried to preserve stone foundations such as the one that we see here.
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 and the building have existed for many years prior to Town regulations. The property is within the Town's ETJ and became subject to Town Zoning laws when the Town extended its planning and zoning jurisdiction in 1993.
 - The 1992 plat of the NCDOT right-of-way indicates that the r-o-w line was established in 1992 and that the structure sits just outside of the r-o-w boundary and greater than 10' from the edge of pavement.
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 the rural nature of the district and seeks to promote development close to the street while promoting the eventual construction of sidewalks and connectivity. The structure is located close to the roadway but far enough from the edge of pavement to allow for construction of sidewalk should the Town or NCDOT ever determine to build one.
 - The granting of this variance will not change the nature of the existing lot, the density, or traffic pattern, may in fact be restoring it.
 - The granting of this variance will add value to the neighborhood by promoting the restoration of a building which is currently dilapidated and uninhabitable.
5. That the variance is the minimum necessary to afford relief.
 - The variance is the minimum necessary to afford relief in order to restore the existing building on its current existing foundation.
6. That the public safety and welfare have been assured and substantial justice has been done.
 - The variance to allow renovation will not change the setback condition as it currently is and has been since before the Town extended its ETJ into this area and its present location has not caused a public safety issue. The re-use of this building at its current location will not endanger the use of the roadway by the public.

Ms. Teague asked the Board if they had any questions. Acting Chair Morgan asked about the right-of-way if it was centered in the roadway? Ms. Teague advised the Board to reference the

plat map that was in the agenda packet and advised that it stated NCDOT 45 feet was what it called for. She referenced the GIS online projection and reminded that it was not a survey though. She did state that an email was sent to the Town's Public works department and they responded that they did not see a problem with this structure and the right-of-way. Ms. Teague stated staff also sent an email to DOT for comment, but no response had been received.

Board Member George Escaravage attested that building had been there since at least 1979 when he had lived on Pinewood Drive at that time.

Attorney Ron Sneed addressed the Board about non-conforming structures and the Town's non-conforming uses ordinance. He explained that someone could argue that a structure does not cease to be a structure even if someone is not living in and so its pre-existing nonconforming status could be argued to still apply. However, the ordinance addresses nonconforming uses and structures in the same paragraph, so that it reads as though a structure once discontinued in use, could be considered non-conforming. In any case, a variance to the setback provides more flexibility in the renovation of the structure and is the better option. The Board may want to advise the Town to update the ordinance.

Mr. Morgan invited the applicant to speak.

**Shawna Hendrix
Waynesville, NC**

Ms. Hendrix advised that this building had been in her family since it was built. She stated it was built by her Great-Great Grandfather Aaron Cunningham and had been in her family ever since. Her family thought it had been approximately 100 years. She stated that her dad owned that segment of the property for about thirty-five years. Ms. Hendrix advised she wanted to fix it up and handed out to the Board Members sketches of the street view and footprint. She informed the Board that she would be keeping the foundation and trying to keep it rustic, keeping and finishing the salvageable wood. Otherwise, reframing with new windows and roof. The Board marked the two sketches as H-1 and H-2 and entered them as evidence into the record with Ms. Hendrix's permission. Ms. Hendrix advised that the log cabin was also originally built by her ancestors and they wanted to try to fix it up eventually, but it needed some foundation work. Currently, her plans were to keep it for storage and fix up the outside for now. She informed the Board that the driveway would go on the right instead of the left and they would make a pull-in for parking. She stated that her Dad would prefer to divide the lot so it would be separate from the trailer and the other two buildings.

Mr. Morgan clarified that regarding the specific variance request with the evidence presented, the applicant was preserving that foundation and working up from that foundation with some modification behind the property. He asked the Applicant if this was correct?

Attorney Ron Sneed clarified that the variance request was so that the street side can stay where it is.

Board Member George Escaravage stated that this wouldn't have been necessary if someone had lived there or it wasn't empty for 365 days.

Ms. Teague agreed and reminded that as Attorney Sneed explained this could be argued in court that as a structure it has never ceased to exist, but the way the Town ordinance is written, it makes it difficult for staff to make that interpretation. She informed that the Board could help staff through ordinances and improving the text in situations like this.

Board Member George Escaravage pointed out that this building was there before the setback, because that came after the building was constructed, to no fault of the owners. Ms. Teague agreed and stated that the Town extended the ETJ out to them, and that this area did not ask to be part of the town so this was not something they could control.

Acting Chair Morgan asked when the last time this building was occupied. Ms. Hendrix replied she thought it was in the seventies, but she was unsure. She stated that her family owns a lot of land there and described her family members being excited to keep the home standing and this was one of the oldest salvageable buildings as her great grandparent's home was no longer standing anymore so they would like to keep it around for the family heritage.

The Board had no further questions for Ms. Hendrix. Acting Chair Morgan invited Ms. Parton to speak.

**Ms. Donna Parton
Waynesville, NC**

Ms. Parton introduced herself and stated that Ms. Shawna Hendrix is her niece, her brother's daughter. She informed that their Great Grandparents had owned all this property for many years, and she owns the adjoining section of land. She pointed out on the GIS County Land Records for the Board the different adjoining parcels her family owns and said they also owned the mountain behind as well. She stated that all her family lived there and stayed together. She informed the Board that this little house may not look like a lot but there was so much background and history in it that if it were restored it would mean a whole lot to their family. She advised that if it were to be fixed up it would directly affect and increase the value of her neighboring property as well versus leaving it as an eye sore. She stated that there would be no desire or intention to ever take it down with family heritage, so she felt it would be wonderful if Shawna and her family could live there. Ms. Parton stated Shawna would be proud of it and the family would be proud to have her there.

Board Member George Escaravage clarified that there was no objection. Ms. Parton stated she was happy about it and asked if there were any other questions. She advised she had been around for 73 years and stated she remembers this property being there for as far back as she could remember, and the road wasn't that wide when the house was built. She spoke about when Pineview was made into a subdivision it enhanced the area, but it widened the road and she didn't feel it was their fault it made the road come right up to the porch then.

The Board thanked her. The Board asked if there was any further comment before they closed the public comment. There was none and Acting Chair Morgan closed the public hearing at 6:20 p.m.

Mr. Morgan advised there was a unique aspect of the Code before the Board. Short discussion took place about if the variance is granted then the variance gives Ms. Hendrix more flexibility.

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.
 - Board Members Escaravage, Morgan and Baus verbally stated yes. Board Member Morgan further stated that the building structure pre-dates the ordinances and road rights-of-way which created artificial lines that now mandate setbacks through there.
 - Board Member Baus stated they can't move the building.
 - The hardship would be that they would like to save this building if possible and relocating the building is impossible.
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.
 - Board Members Baus and Moore verbally stated yes. Board Member Baus stated that the property existed prior to the alteration of the roadway. Board Member Morgan stated that one hundred years ago the State didn't even maintain the roadways.
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.
 - Board Member Escaravage stated no, but it was the result taken by other entities such as the Town, the State and whoever built the road.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secure, and substantial justice is achieved.
 - Board Member Baus stated yes. Board Member Morgan advised that the whole purpose of the variances and codes is to preserve communities and structures and not allowing the variance would counter those.
 - Board Member Escaravage stated that it would also be an asset to the community by allowing the variance.
 - The Board agreed that it increases public safety by renovating the building.
 - The Board agreed that substantial justice is achieved because allowing the family to preserve its family property and preservation of family history. Allowing them to do with a house on their own property what any other property owner could do with their own house on their property if they were ten feet away farther from the street.

A motion was made by Board Member George Escaravage, seconded by Board Member Edward Moore, to approve the request for a setback variance to Land

Development Standards 2.4.1 Table of Dimensional Standards 4. Building Setback at 166 Pinewood Drive, PIN 8604-94-6149. The motion passed unanimously (4-0).

The Board issued Ms. Hendrix Evidence H-1 and H-2 back due to the approval of the variance request.

C. PUBLIC COMMENT /CALL ON THE AUDIENCE

No one spoke

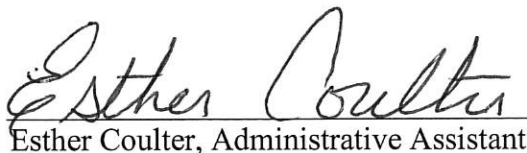
D. ADJOURN

Acting Chair Morgan stated that there was a change to the Board's organization. Ms. Teague informed the Board indicated that the Zoning Board of Administration could organize themselves, regarding Alternate/ Regular member structure at any meeting. This was done at the last Zoning Board meeting. Acting Chair Morgan stated that Board Member Moore is officially now a Regular Member and Board Member Chandler is an Alternate as from the previous meeting.

A motion was made by Board Member George Escaravage, seconded by Board Member John Baus to reverse the rolls and Mr. Edward Moore is an official Regular Member of the five member Board and Ms. Chandler is an Alternate. The motion passed unanimously (4-0).

With no further business, a motion was made by Board Member George Escaravage, seconded by Board Member Edward Moore, to adjourn the meeting at 6:32 p.m. The motion passed unanimously (4-0).


Joshua Morgan, Acting-Chair


Esther Coulter, Administrative Assistant