



# TOWN OF WAYNESVILLE Zoning Board of Adjustment

9 South Main Street  
Waynesville, NC 28786  
Phone (828) 456-8647 • Fax (828) 452-1492  
[www.waynesvillenc.gov](http://www.waynesvillenc.gov)

Henry Kidder, Chair  
David Felmet, Vice-Chair  
Stephanie Strickland  
Joshua Morgan  
George Escaravage  
Edward Moore

Development Services  
Director  
Elizabeth Teague

## TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT REGULAR MEETING

Town Hall – 9 South Main Street, Waynesville, NC 28786  
Tuesday, May 7, 2019, 5:30 PM

### **A. CALL TO ORDER:**

1. Welcome/Announcements
2. Adoption of Minutes from the December 4, 2018 Meeting.

### **B. BUSINESS ITEMS:**

1. Board Discussion on the Comprehensive Land Use Plan Update.

### **C. ADJOURN**



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Stephanie Strickland  
Henry Kidder (Chairman)  
Joshua Morgan  
George Escaravage  
David Felmet (Vice Chairman)  
Edward Moore

Development Services  
Director  
Elizabeth Teague

## Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786  
**Tuesday, December 4th, 2018 at 5:30 pm**

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THE WAYNESVILLE ZONING BOARD OF ADJUSTMENT held its regular meeting on December 4<sup>th</sup>, 2018 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  
David Felmet, Vice Chairman  
Joshua Morgan  
George Escaravage  
Edward Moore

The following members were absent:

Stephanie Strickland

The following staff members were present:

Elizabeth Teague, Development Services Director  
Byron Hickox, Land Use Administrator  
Jesse Fowler, Planner  
Chelle Baker, Administrative Assistant  
Ron Sneed, Attorney to the Board

1. Welcome/Calendar/Announcements

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

2. Adoption of Minutes

Zoning Board of Adjustment Minutes  
Regular Meeting  
December 4, 2018

***A motion was made by Board Member David Felmet, seconded by Board Member George Escaravage, to approve the minutes of the September 4<sup>th</sup>, 2018 board meeting as presented. The motion passed unanimously.***

**B. BUSINESS**

Chairman Kidder explained to the applicants that since there were four Board Members present, in order to approve the requested variances, all four members would have to vote for unanimous approval. The applicants were given the option of canceling the meeting and rescheduling at a later date when another Board member would be in attendance, making the totality of Board members present five, or continuing with the meeting as scheduled with four Board Members. Each applicant was asked individually.

Mr. Steven McClure, the applicant on behalf of the variance request at 519 N Main Street, chose to continue with the meeting as scheduled.

Mr. Chuck Reece, the applicant on behalf of the variance request for 1700 Russ Avenue, chose to continue with the meeting as scheduled.

Ms. Jackie Rich, the applicant on behalf of the variance request for 62 Overbrook Drive, chose to continue with the meeting as scheduled.

Chairman Kidder approved the affirmations to proceed from each of the applicants. He then reviewed the Protocols for a Quasi-judicial hearing, including the rules of conduct and the variance hardship ordinance rules and asked if everyone understood the procedures that would be followed. There were no questions or comments.

Chairman Kidder asked any witnesses who wished to speak to come forward and be sworn in at 5:38 p.m. After the swearing in, Chairman Kidder reviewed the rules of Standing, advised that the Town and the Applicant are determined to be parties of Standing in these matters and asked if anyone else had a Standing request. 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 first 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, except Chairman Kidder whom answered yes and explained he spoke to Director Elizabeth Teague concerning procedural matters.
- 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?  
There were no objections.

***Board Member Edward Moore arrived at the meeting at 5:43 p.m.***

Chairman Kidder asked Mr. Moore the same poll questions and Mr. Moore responded “No” to each. Chairman Kidder then asked if there were any objections concerning Mr. Moore’s impartiality and there were no objections.

Chairman Kidder opened the public hearing at 5:43 p.m. and called on Ms. Elizabeth Teague to present the Staff Report.

1. Requested variance of setback standards, Land Development Standards Section 2.4.1, at 519 North Main Street, Tax Parcel Identification Number 8615-58-0518.

Ms. Teague welcomed everyone and thanked everyone for coming. She began by entering into evidence the following documents:

- I. Staff Report
- II. All Maps that are part of the Agenda packet
- III. Town’s LDS-Current edition as of today’s date
- IV. Application- in Agenda packet/ Steve McClure & Bobby Joe McClure
- V. Attached Photographs and proposed surveys
- VI. Copy of mailed notice and Mailing lists of adjacent properties
- VII. Copy of Notice to Mountaineer Newspaper(affidavit should be forthwith and will be added to the Evidence also)
- VIII. Letter of Authorization to appear form- Steven McClure on behalf of Bobby Joe McClure (did not have at the time the Agenda packet went out). Noted that Steven McClure is the son of Bobby Joe McClure.

**Background:** Ms. Teague explained that this was a Variance Request at PIN 8615-58-0518 for a reduction in side yard setback between units 519 and 525 North Main. She advised the Town ordinance section in question is the Dimensional Standards by District, Chapter 2, Section 2.4 of the Land Development Standards. This is a single lot of multiple units at North Main Street numbers 519, 525, 545 and 555. The zoning district is the Walnut Street Residential Neighborhood District and is part of the “mixed-use” area which allows certain commercial uses. It has a minimum side yard setback of ten feet and a minimum lot size of 1/6 acre or 7,260 sf. The existing development is as professional offices and the nature of the variance is to allow 3.01 feet encroachment of existing structures within side yard setbacks in order to accommodate the drawing of a subdivision of land between existing buildings. Ms. Teague advised the property is a conforming lot with one residential structure and one multi-unit commercial structure that are currently used for offices. She stated the owner is Bobby Joe McClure and he would like to subdivide the lot in order to convey a newly created lot holding the residential structure to his son Steven McClure. The two structures currently exist in the same lot and are just under 14 feet apart at their closest points. When two buildings are on the same lot, the setback requirements is six feet between buildings. When two buildings are on separate, abutting lots, the side yard setback (building to boundary line) is ten feet. The applicant has submitted a draft survey showing that each building would be 6.99 feet from the boundary line at its closest point. Therefore, a maximum side yard setback variance of about 3.01 feet on each side of the newly drawn subdivision boundary would be required where the buildings would encroach upon the side yard setback of the new lots.

From a building code standpoint, each building is considered a “Group B” type of building with an assumed Type IV Construction. Therefore, wherever the buildings encroach within ten feet of the

side yard setback, the building walls must be rated to a one hour fire wall. Ms. Teague also advised that outside of this hearing staff would be looking at Land Use regulations and building code issues because building separation distances are different when buildings are on the same lots versus adjacent lots.

**Surrounding Land Use/Zoning Patterns:** This property is located along North Main Street within the Walnut Street Neighborhood Residential District as part of the “Mixed use” area which allows professional offices. It is bordered to the north and south by commercial property and to the east by a single family home.

Ms. Teague quoted from the Town of Waynesville’s Land Development Standards 2.3.3 Neighborhood Residential Districts Purpose and Intent concerning the Walnut Street Neighborhood District (WS-NR) and 2.6.2 Mixed-Use Overlay District (MX-O) A. Purpose and B. Applicability. Ms. Teague read the Purpose and Applicability statements that describe the goals of zoning.

**Variance requirements and Staff Recommended Findings:**

Ms. Teague reminded that the Board of Adjustment shall not grant a variance unless and until it makes all of the following findings and that Town staff has provided possible findings for each criteria for Board Members’ considerations:

- I. Un-necessary 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 submits:
  - An 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, with tax records listing construction as 1925.
  - The variance requested is the minimum necessary and would not change the nature of what is already there or create new construction or impact.
  - Without the variance, the property cannot be conveyed to a direct descendent through the “family subdivision” statutory exemption as provided in Section 6.2.1 of the Land Development Standards.
- II. 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 that it is an existing lot with two individual structures within it. The only way to subdivide the property is to draw the boundary line between the two buildings as depicted on the survey
  - The property houses professional offices as allowed by zoning with a shared parking lot, driveway access and dumpster. In order for the lot to be subdivided without the

variance, one of the buildings would have to be moved over in order to create the prescribed side yard setback.

- III. 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 states that the property was purchased by current owners in 1978 and there is no other practical way to subdivide the lot without creating a side yard setback encroachment
- IV. 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 that the requested variance is consistent with the spirit, purpose, and intent of the ordinance because granting of this variance would not create an impact to the District and would not change the physical reality of the existing 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. This would create a nonconformity that would convey to the property. The buildings are there in existence and staff does not see it as impacting the existing conditions as we know them.

Chairman Kidder asked for clarification on the staff report regarding the house number: 515 N Main Street. Ms. Teague advised that it was a typo and the correct address was 519 N Main Street. Board Member Felmet asked about the zoning in place during the time the office was built on the property. Ms. Teague advised it was in place in 2002 and updated in 2011. Board Member Escaravage asked if the variance was approved and the one hour fire rating is not there would they be required to bring the building up to code. Ms. Teague advised yes, at least the portion that is less than ten feet from the property line. The Board had questions for Ms. Teague concerning the mixed-use overlay and the subdivision of the lot. Ms. Teague advised that it could be used for residential also. She also reviewed the square footage from the survey provided and advised that both proposed lots being created were compliant with the minimum standards of the District in terms of minimum lot size.

Chairman Kidder asked the applicant to speak.

**Steven McClure  
187 Worsham Dr  
Waynesville, NC 28786**

Mr. McClure said that the property at 519 N Main Street was deeded to him by his parents and they did not realize it was not divided. He told the Board it was his wish to have it divided. Mr. McClure stated he currently owns 563 North Main Street and with this property he will own the

corner. He re-iterated that it was the wish to have this property deeded to him from his parents and asked if the Board had any questions for him.

Board Members asked him questions about the houses and buildings on the property and Mr. McClure advised that the commercial building was built in 1986 by his father.

There being no further questions of the applicant, the public hearing was closed at 6:06 p.m. so that the Board could begin deliberations on the evidence they had heard. Attorney Ron Sneed passed out a Variance Findings checklist to the Board to assist in their deliberations.

**1. Will unnecessary hardship result from the strict application of the Ordinance?**

The discussion of the Board is that the applicant does not plan to do anything other than have the house and this essentially leaves him with “bookends” with a commercial office building. The consensus of the Board is that with the proximity of the buildings he cannot divide his buildings like anybody else in the neighborhood and this is an unnecessary hardship.

**2. Does the hardship result from conditions that peculiar to the property, such as location, size, or topography?**

The discussion of the Board is that conditions are peculiar to the property. Board Member Morgan described how the building codes as a single lot at this property do not mesh with the code for two separate properties. The Board discussed that if the building codes had been aligned they would have moved the building when they built it. Therefore, the consensus of the Board is that the hardship is the buildings are too close together without a subdivision.

**3. Is the hardship the result of actions taken by the applicant or the property owner?**

The discussion of the Board is that the building codes don't align with the ultimate division of this lot, if they did then they wouldn't have built it fifteen feet apart, they would have built it twenty feet apart. Board Members Felmet and Morgan discussed the building codes going into effect in 2002 and being updated in 2011. Therefore, the consensus of the Board is that the hardship is not the result of actions taken by the applicant or property owner as the buildings were built at their present location on the property before the building code went into effect.

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

The consensus of the Board was that the requested variance is consistent with spirit, purpose, and intent of the ordinance. The discussion of the Board is that substantial justice is achieved because by granting the variance this allows the applicant to do with their property divided like everyone else in the neighborhood can do. The Board also stated that public safety was secured. They addressed the comment from Ms. Teague that the buildings are there in existence and there would be no impacting of the existing conditions as know them.

***A motion was made by Board Member David Felmet, seconded by Board Member Joshua Morgan, to grant a variance request for a side setback variance for Property at 519, 525, 545 & 555 North Main Street. The motion passed unanimously.***

Chairman Kidder called on Mr. Byron Hickox, Land use Administrator, to present the staff report, reminded everyone that they were still sworn in and opened the second public hearing at 6:10 p.m.

2. Requested variance of commercial building design guidelines, Land Development Standards Section 5.10, at 1700 Russ Avenue, Tax Parcel Identification Number 8616-36-7164.

Mr. Hickox began by entering the following into evidence items in Agenda Packet including:

- I. All maps in the Agenda Packet
- II. Land Development Standards with design guidelines in Agenda Packet
- III. Application in Agenda Packet
- IV. Authorization to present at this hearing and all future hearings on behalf of MCU
- V. Proposed Site plan
- VI. Two building design sheets included in the Agenda packet
- VII. Public notice letter and mailing labels

Mr. Hickox stated that the property was 6.23 acres and the address is 1700 Russ Avenue. He advised it is in the Dellwood Medium Density District and within the mixed-use overlay of that district. He also said the lot has been graded and some site and foundation work has been done, but it is otherwise undeveloped. He stated that the proposed development is the construction of a new 2-story building with a footprint of 2,700 square feet and a covered drive through area. He noted that the Mountain Credit Union will be a financial institution.

Mr. Hickox advised that Section 5.10.3 (C)2 of the Land Development Standards states that “at least fifty percent of the length of building along the side street building facade” must be comprised of transparent glazing. He stated that the proposed building has a front facade that is 111 feet in length. Therefore, 55.5 feet of transparent glazing would be required on this facade. The original building drawings indicated 33 feet of windows and doors along the Russ Avenue facade, only 29.7 percent of the total length of the facade. He said that a second building design was submitted with several windows added, but this design only brought the total percentage of glazing to 40.5 percent, still 9.5 percent short of the LDS requirement.

Mr. Hickox advised that the current zoning is the Dellwood Medium Density Mixed-Use Overlay. He reviewed the Purpose and Intent of this district as established by the Land Development Standards, Section 2.3.2 (B) Stating:

The Dellwood Residential-Medium Density District (D-RM) shall develop predominately as a low to medium density residential district separating the Russ Avenue and Dellwood/Junaluska Town Centers. Promoting a mixture of residential densities, this district shall be developed with such enhancements to residential living as pedestrian access and the provision of open space. Higher density development and limited business and professional services shall be promoted along Russ Avenue with larger lots and cluster development promoted throughout the district.



Nonresidential uses typically found in residential areas are permitted, however, development in this district shall be designed to clearly define the residential appearance and scale of the area and to define the differences between this area and the Russ Avenue Town Center and Dellwood/Junaluska Area Center.

Mr. Hickox advised the Board that the requested variance would permit Mountain Credit Union to construct a new building with a design that incorporates glazing (windows and doors) as 40 percent of the front façade ground floor. He stated that the building will otherwise comply with the Town of Waynesville's commercial building design standards.

He stated that town staff has encountered previous proposed developments for which the glazing requirement were extremely difficult to meet. The fifty percent requirement for transparent glazing along a front façade seems to have been conceived with a downtown style building in mind, and would make sense in such a setting. He explained to the Board that in mixed-use areas, this amount of glazing seems excessive. Mr. Hickox added that the Land Development Standards' purpose and intent for this district calls for development to define the "residential appearance" of the area. Facades with fifty percent of their length composed of glazing would not have a particularly residential appearance.

Mr. Hickox offers the following findings for the Boards consideration:

- I. Unnecessary hardship would result from 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.
  - The requirement of fifty percent of glazing along the front façade of the proposed building would greatly impact the overall function of the building. As a financial institution, there are specific uses of the interior space that require enhanced privacy and security. Windows simply would not permit this.
- II. 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 to the general public, may not be the basis for granting a variance.
  - Given the building's location along Russ Avenue, a 5-lane state highway, and its proposed placement 95 to 105 feet from the edge of the roadway, the requirement of a large amount of glazing does not correspond to the Land Development Standards' emphasis on designing buildings with a residential appearance.
- III. 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.
  - The hardship is not the result of actions taken by the property owner. In fact, Mountain Credit Union and its design professionals have made a significant good faith effort to redesign the proposed building to incorporate as much glazing as is feasible considering the overall function of the building.
- IV. 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 consensus is that the building's design meets these standards. Forty percent glazing is a significant amount of windows and doors on the front façade of the proposed building. Staff consensus is that the addition of more windows or doors would actually detract from the building's overall appearance.

Mr. Hickox asked the Board if they had any questions. Chairman Kidder asked in regards to the distance from the road, about the rules on commercial buildings being blockable in certain districts. Mr. Hickox advised that was not a standard in this district.

Mr. Hickox introduced Mr. Odell Thompson, Architect to speak on behalf of the developer.

**Odell Thompson  
Sylva, NC  
MOT Architect**

Mr. Odell Thompson introduced himself and submitted a diagram into evidence. He explained that this diagram was a drawing he did based off the design guidelines ordinance to help with the transparency standards and was labeled with possible transparency options one, two and three and the bottom diagram is what was on the original design. Mr. Thompson stated that he felt these three versions embody the spirit of the design guidelines and how the guidelines are meant to make it look like a beautiful building. He also submitted that the original design does not look as good as option number one on the diagram and that he felt the closer it gets to achieving the fifty percent transparency ordinance the worse the building looks. Mr. Thompson described to the Board that the base of the building was stone, this gave a strong appearance of a financial institution that was protecting money; therefore, the more glass that was put in the less stone there was, thus creating psychologically the feeling of it being less secure. He further stated that from a graphic standpoint the less stone that was used, the less sturdy the building felt. Mr. Thompson requested the Board to take this into consideration.

Board Member Felmet asked about the different options on the diagram. Mr. Thompson explained the different options and stated that they are happy to follow the rules, but also want to honor the client and neighborhood. He pointed out to the Board that the building is 100 feet off the road and the Town's landscape ordinance requires trees and shrubs; therefore, from the roadway, the visibility of the bottom of the building would be unlikely.

Board Member Morgan asked if the variance request Mr. Thompson was proposing for approval was for option #2 on the diagram he submitted of 40% glazing. Mr. Thompson acknowledged yes, but asked if it was a possibility for option #1 of 35%, because this was the preference as a design professional in the spirit of design guidelines. Board Member Morgan asked if they were subject to hold option #2 or if they could switch to option #1. Mr. Hickox advised that the Board was able to approve the variance to whatever degree they chose. Board Member Morgan advised that he agreed the original design does not meet the spirit of what this is intended to do and that option #1 on the submitted diagram would be the best while still recognizing the variance in a mixed use overlay in a residentially zoned district.

Discussion took place along with reviews of the drawings of the sixteen foot portico that sticks out and has its own façade. Chairman Kidder asked Mr. Thompson, when he stated the proposal would greatly impact the overall function of the building, which specific uses of the interior would he not use

by putting more glazing in. Mr. Thompson advised the mechanical rooms and stairwell. Mr. Kidder asked if there were any concerns for the second floor and Mr. Thompson advised no, only the glazing on the main level.

Chairman Kidder asked the public for questions and comments. There were none.

Elizabeth Teague, Director of Development Services, asked to cross examine Mr. Odell Thompson. Chairman Kidder granted.

Ms. Teague asked Mr. Thompson from an architectural standpoint the difference between glazing on a suburban design versus a downtown building. Mr. Thompson advised that this financial building is an isolated building, also described as a monument building. These types of buildings are seen as pharmacies, financial institutions, museums and are not designed for the window shopping experience. He explained that the window glazing ordinance is made for a type of experience on Main Street that is window shopping. He further stated this was the difference between urban transparency versus suburban transparency. Discussion between the Board, staff, and Attorney Ron Sneed took place regarding the transparency ordinance becoming more difficult to meet fifty percent as more development grows outside the central business and commercial districts in new areas. Board Member Felmet advised staff to pass along glazing ordinance concerns information to the Planning Board.

Chairman Kidder invited and swore in for public comment:

**Dr. Kristen Hammett  
164 Augustus Circle  
Waynesville, NC**

Dr. Hammett introduced herself and advised that she was an adjacent property owner of 1606 Russ Avenue. She stated that the 35% option (1) looked significantly more balanced and the best of the options on the diagram. She also stated that in the neighborhood was the Maple Tree Veterinary building, also a monument building, with less than 35 percent glazing. She advised it was a nice looking building and felt this building would look great with it. She thanked the Board.

There being no further questions of the public or applicants, the public hearing was closed at 6:45 p.m. so that the Board could begin deliberations on the evidence they heard.

**1. Will unnecessary hardship result from the strict application of the Ordinance?**

The discussion and consensus of the Board is that the interior of the building would have to be redesigned to find a more secure and pleasant view for people who are looking into the windows.

**2. Does the hardship result from conditions that peculiar to the property, such as location, size, or topography?**

The discussion and consensus of the Board is that with this property and the distance from the road with the required Land Development Standards are excessive in their application.

**3. Is the hardship the result of actions taken by the applicant or the property owner?**

The discussion and consensus of the Board is that there is no indication the hardship is something that the owner did. The Board determined that the use the applicant is proposing of the property is an allowed use as a bank and for that reason it is not their actions and the glazing is creating the hardship that the applicant did not bring on themselves.

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

The discussion and consensus of the Board is that the requested variance is consistent with the spirit, purpose and intent of the ordinance as it conforms to the area it is in and this being a residential area it is consistent with that look. The Board agreed that there are no safety concerns and there are no problems with its location on Russ Avenue.

*A motion was made by Board Member George Escaravage, seconded by Board Member Joshua Morgan, to grant a variance request on a commercial building design for 35 percent transparency glazing along the front façade ground floor of the Mountain Credit Union at 1700 Russ Avenue, Tax Parcel Identification Number 8616-36-7164. The motion passed unanimously.*

**3. Requested variance of commercial building design guidelines, Land Development Standards Section 5.10, at 62 Overbrook Drive, Tax Parcel Identification Number 8615-79-2340.**

Mr. Hickox began by entering the following attachments into evidence:

- I. Staff report
- II. Maps
- III. Land Development Standards
- IV. Application with Attachments
- V. Site Plan
- VI. Building Drawings- Transparency and Glazing
- VII. Mailing and Notices/ Mailing Labels

Mr. Hickox presented background information to the Board stating that the property was .81 acres at the corner of Overbrook Drive and Broadview Road. He stated that the lot has been graded, some site work has been done, and the building is approximately 35% built. He also advised the Board that the proposed development is the construction of a new one story building with a footprint of 6,960 square feet divided into three separate tenant spaces.

He read Section 5.10.3(C)2 of the Land Development Standards that "At least fifty (50) percent of the length of building along the side street building façade" must be comprised of transparent glazing. The

proposed building has a façade along Broadview Road that is 120 feet in length. Therefore, sixty feet of transparent glazing would be required on this façade. The applicant has proposed a building with twenty seven feet of transparent windows and doors. This amount of glazing would only constitute 22.5 percent of the building's façade, 27.5 percent short of the design guideline requirement.

Mr. Hickox stated that the building's relation to Broadview Road is somewhat different than a typical new commercial development. The property sits south of an existing commercial development which front along North Main Street. He informed the Board that the developer chose to also orient the new development towards North Main Street, which is a thoroughly commercial developed street. He advised the Board that because of the building's design and placement on the lot, the Broadview Road façade is actually a rear façade. Due to this being the true rear of the building, this is the location of storage areas, mechanical rooms, and a proposed kitchen. He stated that these interior uses are not well suited to an overabundance of windows due to privacy and security concerns.

Mr. Hickox informed the Board that while the developer is seeking relief from the glazing requirements along the Broadview Road façade, the front (north) façade of the building exceeds the minimum glazing requirement, with 55 percent of its façade comprised of transparent windows and doors.

He advised that the current zoning is North Main Neighborhood Center. The purpose and intent of this district as established by the Land Development Standards, Section 2.3.5 (A) states:

The **North Main Street Neighborhood Center District (NM-NC)** is a mixed use district that forms the gateway into town from the northeast. The setting of this district is important as it frames Eagles Nest Mountain at the apex of the hill on North Main and forms a forced perspective to the "center" of the district- the intersection of Walnut and Main Streets. As a result, maintaining inviting vistas down Main Street and creating an attractive public realm are the objective of many of the standards set forth for this district. Street walls, boulevard trees and sign control will all be important in meeting these objectives as the street is redesigned. Working to keep traffic congestion to a minimum in this area will require the use of rear access drives, side street entrances

- The building's location is within the NM-NC district, and it fronts North Main Street with the Broadview road façade serving as the rear of the building. The properties across Broadview Road, and far to the south, are residential. The requirement of a large amount of glazing along this façade would seem to be out of character with this neighborhood.

Chairman Kidder stated that it seemed as if this ordinance were made for downtown and the chances of new buildings being developed in downtown were minimal.

Board Member Joshua Morgan advised that if the applicant's building was flipped 180 degrees then it would fit the ordinance. Mr. Hickox agreed and pointed out that the building faces the commercial district that it is a part of, and is not facing the residential district. Board Member Morgan also stated that from a functional standpoint if it were flipped the parking would then have to be in the back of the building. The Board and staff discussed the difficulty in trying to put this ordinance over some of the new growth and development in the mixed use zones.

Chairman Kidder opened the public hearing at 6:59 p.m. and welcomed the first applicant to speak.

**Jackie Rich  
3 Bradford Circle  
Waynesville, NC 28786**

Ms. Jackie Rich introduced herself and stated that she was the owner of All About You Salon, 379 Walnut Street and Overbrook Village, 62 Overbrook Drive.

**Tim Bowers  
3 Bradford Circle  
Waynesville, NC 28786**

Mr. Tim Bowers introduced himself and stated that he was the co-owner and developer. Mr. Bowers and Ms. Rich presented a power point for the Board and stated that it was in reference to ordinance requirements 5.10 for transparency. Mr. Bowers advised the Board that he tried to angle the building due to traffic flow. He described the orientation of the building on the lot in relation to the established commercial entrance and the shared easement in keeping traffic exiting out of that commercial entrance. Mr. Bowers further explained to the Board that the building is 120 feet long and the ordinance would require sixty feet of glass. He spoke about the building occupying commercial tenants and this creating apprehension of the glass requirements due to it being a security risk on what they see as the backside (Broadview) of the building. He stated that they had 3 glass doors and some windows for a totality of 27 feet, thus they were requesting the variance of 22.5% of glazing on the back (Broadview) side. He advised the Board that on the front of the building the glazing exceeded 55%. Mr. Bowers described that the rooms located in the back of the building in each of the tenant spaces were back work rooms and why they did not need windows in these rooms such as the salons pedicure/manicure vent room. He invited the owner of one of the tenants, Los Amigos Restaurant, to speak on their own behalf.

**Hilda Rios  
366 Russ Avenue  
Waynesville, NC**

Ms. Hilda Rios introduced herself and stated that she was the owner of the Los Amigos Restaurant and would not be able to add windows in her back workspace. She advised that she had a sink along the back wall and next to that would be a dishwasher where the window would need to be added.

Mr. Bowers returned to the Power Point presentation and stated that there were more reasons along the Broadview, backside, interior walls unabling them to incorporate more windows. He described the support cables for structural integrity that expanded cross-wise along the wall disallowing a window. He showed the proposed pedicure room and walk-in cooler area. He talked about looking into the option of fake windows and glazing but that he felt it did not have a good design look. Mr. Bowers requested relief from the Board to reduce the glazing requirement along Broadview from 50% to 22.5% and asked if they had any questions for him.

Questions and discussion took place between the Board and the applicants regarding if there were any noticeable condenser noise and the applicants answered no. The Board asked if there would be fencing around the patio areas and Ms. Rios advised if fencing was a requirement of the ABC permit

then she would comply. Measurements of the sidewalks and porch areas were discussed along with the landscaping.

There being no further questions of the public or applicants, the public hearing was closed at 6:45 p.m. so that the Board could begin deliberations on the evidence they heard.

**1. Will unnecessary hardship result from the strict application of the Ordinance?**

The discussion and consensus of the Board is that this particular part of the ordinance does not fit with regards to the windows exposing a lot of the unaesthetically pleasing parts of the building. The Board also added how following the ordinance with this building creates a situation where the side itself lends to the building having its back on the street side and the ordinance thus creates a hardship.

**2. Does the hardship result from conditions that peculiar to the property, such as location, size, or topography?**

The discussion and consensus of the Board is that to make this ordinance work a commercial building facing a residential neighborhood goes against the spirit of the ordinance creating a hardship based on location.

**3. Is the hardship the result of actions taken by the applicant or the property owner?**

The discussion and consensus of the Board is that the property owner has tried to address the ordinance on the part of the building that's facing the commercial part of town. The Board discussed that following the ordinance as written would create hardships in line with the first two variance findings in terms of character of the site.

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

The discussion and consensus of the Board is that with the spirit of the ordinance the building fits in within the surroundings and with the other buildings. Chairman Kidder stated that there are visible windows and even though not at fifty percent, they still soften the wall and are sufficient for the building. Board Member Morgan stated that following the ordinance would create a structural nuisance.

Ms. Teague submitted into record a handout provided to the Board by the Applicants.

***A motion was made by Board Member Joshua Morgan, seconded by Board Member David Felmet, to grant a variance request of the commercial building design guidelines for a proposed commercial building located at 62 Overbrook Drive, Land Development Standards Chapter 5.1, applicant is Jackie Rich, the request is for less than 50% transparent glazing. The motion passed unanimously.***

**C. PUBLIC COMMENT /CALL ON THE AUDIENCE**

No one spoke

**D. ADJOURN**

***With no further business, a motion was made by Board Member Dave Felmet, seconded by Board Member Joshua Morgan, to adjourn the meeting at 7:26 p.m. The motion passed unanimously.***

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Henry Kidder, Chairman

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Chelle Baker, Administrative Assistant

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