

# TOWN OF WAYNESVILLE

## Planning Board

9 South Main Street  
Waynesville, NC 28786  
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### Chairman

Patrick McDowell (Chairman)

### Planning Board Members

Anthony Sutton (Vice Chairman)

Marty Prevost

Robert Herrmann

Jason Rogers

H.P. Dykes, Jr.

Don McGowan

Ginger Hain

Susan Smith

### Development Services

#### Director

Elizabeth Teague

## MINUTES OF THE TOWN OF WAYNESVILLE PLANNING BOARD

### Regular Meeting

Town Hall – 9 South Main St., Waynesville, NC 28786

October 21, 2019

THE WAYNESVILLE PLANNING BOARD held its regular meeting on October 21, 2019 at 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

### A. CALL TO ORDER

#### 1. Welcome/Calendar/Announcements

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

The following members were present:

Patrick McDowell (Chairman)

Anthony Sutton (Vice Chairman)

Don McGowan

Robert Herrmann

Bucky Dykes

Susan Smith

Jason Rogers

Marty Prevost – arrived at 5:52 p.m.

The following Board members were absent:

Ginger Hain

The following staff members were present:

Elizabeth Teague, Development Services Director

Amie Owens, Assistant Town Manager

Jesse Fowler, Planner

Chairman McDowell asked Development Services Director Elizabeth Teague if she had any announcements. There being none, he moved to the next agenda item.

2. Adoption of the Minutes from the Special Called Meeting of October 1, 2019

***Motion: Planning Board Member Don McGowan made a motion, seconded by Planning Board Member Anthony Sutton to adopt the minutes of the October 1, 2019 Special Called Meeting as presented.***

**B. BUSINESS**

1. Discussion and Recommendations

Development Services Director Elizabeth Teague explained that there were three items that had been brought to her attention during the last month. Each of these items is being brought forward for the Planning Board to discuss to determine if there needs to be amendment to the Land Development Standards as they relate or if other action is required.

a. Ordinance to regulate fences within the Town

Jesse Fowler, Planner I, noted that the Board of Alderman has requested that the Planning Board to discuss the possibility of drafting an ordinance to regulate fencing within the Town of Waynesville. Currently, the Town of Waynesville does not have an ordinance regulating the types of fences that are constructed in the Town. Planning staff has researched fencing ordinances in Western North Carolina and throughout the state and found common themes that exist within such fence ordinances including:

1. Materials permitted and prohibited in fence construction.
  - a. Some towns adopt design standards in their fence ordinances and only permit fences to be built with certain materials such as wood, wrought iron, or products created to resemble these materials.
2. Permitted and prohibited location of fences.
  - a. Some towns adopt ordinances that permit different types of fences depending on their location. For example, some towns only permit chain link fences in the back yard and prohibit fences in the front yard in some districts.
3. Permitted height of fences.
  - a. Some towns prohibit the height of fences. For example, some towns might prohibit fences higher than 7 feet in the back yard and 3 to 4 feet in the front yard
4. Fencing permitted for bona fide farms.
  - a. It is common for bona fide farms to be exempt from fencing ordinances due to their need to protect their livestock from roaming off their property.

Most ordinances that were researched by Planning staff included regulations like those mentioned above, but these regulations tend to exist in the spirit of new development buffering and screening requirements. He reminded members that this ordinance was not directed and should not be directed at one location, but rather, if considered, should be a town-wide ordinance.

Lengthy discussion was held, and the following points were made related to any proposed ordinance including:

- Consider ordinance that is appropriate for residential areas, but what about ETJ?
- Enforcement of such an ordinance in all areas
- Does this move into regulation of plantings such as trees and shrubs?
- Protection of individuals right to privacy
- If the situation that was noted in the media had not surfaced, would this be an issue for the Town?

- Can we regulate aesthetics outside of covenants and home owner association requirements?
- Such ordinances tie to the zoning of an area, how difficult would it be to amend all the areas of the ordinance for all the various neighborhoods and would there be different fences in different areas?
- What would the scope and scale of this ordinance be if buffers are already included in other areas; it creates potential for contradictory information in the LDS.

Ms. Teague received a "Statement to the Waynesville Planning Board Concerning A Proposed Fence Ordinance" from a group of concerned citizens. A full copy of the statement is included in these minutes and recorded as Attachment A.

***Board Member Susan Smith made a motion, seconded by Board Member Anthony Sutton to recommend to the Board of Aldermen that at this time, the Planning Board felt a fencing ordinance is not a pressing issue and that fencing situations should be viewed as a civil issue between neighbors not regulated by the local government. Board Members Marty Prevost, Robert Herrmann, Don McGowan and Jason Rogers and Chairman Patrick McDowell voted in the affirmative; Board Member Bucky Dykes voted in opposition of the motion. The motion carried by a vote of 7 to 1.***

b. Clarification of Short-term rental regulations

Mr. Fowler explained that currently the Town of Waynesville does not have a regulatory policy concerning short-term vacation rentals. Short term rentals are mentioned in section 2.5 of the Land Development Standards but are referred to in the context of traditional lodging, such as inn, bed and breakfasts, boarding houses, and hotel/motels, rather than the context of today's online short-term vacation rental platforms. (see section 2.5 to follow).

**2.5- Use Categories and Interpretation of Uses.  
modified**

**2.5.1 Use Categories.**

All uses permitted in this Ordinance have been divided into nine general categories and are generally defined as follows:

- Residential: Premises available for long-term human habitation by means of ownership and rental but excluding short-term leasing or rental of less than a month's duration.
- Lodging: Premises available for short-term human habitation, including daily and weekly rental.

The Board of Aldermen asked Planning staff to research short-term vacation rentals in Waynesville and the consensus from the Board was that this was not an issue that rose to the level of a concern in the past. However, the Planning Department has received two specific complaints about single-family structures that are being used as short-term vacation rentals. This coupled with the fact that the inventory of short-term vacation rentals in the Town of Waynesville is increasing, suggests that it is time to think about regulating short-term vacation rentals.

Planning staff is asking for Planning Board guidance as to if and how we should craft language to amend the text of our Land Development Standards in order to fill a gap in our regulatory policy where short-term vacation rentals are concerned.

Board Member Jason Rogers noted that he felt that this would be a worthwhile item to study as part of the zoning ordinance, but there are other areas that the Planning Board should be addressing at this time. Board Member Susan Smith suggested checking with larger home owners' associations to determine if they have covenants prohibiting or allowing such activity and if so, where are these HOAs/neighborhoods located.

Mr. Fowler noted that he has been looking into this issue for some time and that there are resources available from the Tourism Development Authority (TDA) related to statistics of the number of Airbnb and VRBO rentals in the county. He referenced Asheville's policy noting that it has been revised multiple times since its inception. Chairman Patrick McDowell asked an audience member to speak who had indicated an interest in this topic.

**Janet Preston  
1227 Rocky Knob Road  
Waynesville**

Ms. Preston explained that she has three properties that she is currently advertising on VRBO and Airbnb. She has received great reviews for her homes and noted that families are looking more for this option in order to maintain privacy, have their pets with them and avoid potentially noisy hotels. She added that all the occupancy tax is collected via VRBO and Airbnb and paid to the County. Ms. Preston has filed one complaint against a patron and all others have been fine.

Board Member Susan Smith inquired if there could be a permitting process related to these short-term rentals. Chairman Patrick McDowell suggested an informational piece could be developed.

Ms. Teague noted that there is a legislative gap due to no definition in the LDS. Currently, Ms. Teague makes a judgement related to the rental and provides the decision in writing. The applicant does have appeal rights related to her decision.

***Chairman Patrick McDowell made a motion, seconded by Board Member Anthony Sutton to table the discussion related to short-term rentals as they are addressed sufficiently at this time and the current regulations do not prohibit them. The motion carried unanimously.***

c. Definition of Town homes, cottages and tiny home development

Ms. Teague explained that The Town of Waynesville defines Townhomes as (LDS 17.3) as:

**Dwelling- Townhome.** Three or more attached dwelling units in which each unit has its own front and rear access to the outside, no unit is located over another unit, each unit is separated from any other unit by one (1) or more vertical common, fire-resistant fire walls, and the land underneath each unit is titled to the unit.

A request has been received from a property owner to do a 3-unit townhome development, who asked if there was a way to do each unit as stand-alone (i.e. unattached) structures. This request has come on the heels of other inquiries related to "tiny homes," or smaller stand-alone structures being located on a single lot within the density and dimensional requirements of the district.

Ms. Teague provided an example of a "cottage" development standard from the Town of Black Mountain for review.

Planning staff is asking if the Planning Board feels it is appropriate to re-examine the definition of a townhome, or to bring forward a new category of dwelling unit that might accommodate this development approach.

Ms. Teague asked the property owner to come forward and address the board.

**Frank Bonomo  
96 Waynewood Drive  
Waynesville**

Mr. Bonomo explained that he had a piece of property that was .75 acres. The current standard would allow for 6 duplex units. What he would like to do is have only three units but have them separated rather than connected. Mr. Bonomo noted that the lot size would be .25 acres for each and that the homes would be approximately 2,000 sq. ft. The current zoning is for Auburn Drive and he wanted to present to the Planning Board to potentially look at the possibility of this change for other developers. He added that the area is walkable to downtown and all utilities are there already, and the homes would fit the neighborhood rather than a larger building that may look substantially different in that location.

Ms. Teague asked if the Planning Board wished to look at changing the definition of townhome or developing new definitions for cottage or tiny home developments.

Discussion was held and Board Members brought forth the following for consideration:

- Is there a need for another category?
- If this is a trend in the market, would it be advantageous and impactful for housing in the Town?
- Could such a development be done under a Special Use Permit or would a new category be required?
- Could conditional use permitting be a solution?
- How difficult will it be to update the code in its entirety to ensure that there are no contradictory statements?

**There was no formal motion; however, the Board Members agreed by consensus that this would be an item that staff should continue researching and developing proposed language for use with the LDS. Staff will provide an updated report to the Planning Board later.**

2. Continuation of Board Discussion on the Comprehensive Land Use Plan Update Draft, Chapter 5: Recommendations

Due to the length of the discussion related to other items before the Board, it was suggested that the Board's review of Chapter 5 of the Comprehensive Plan occurs at a special called meeting on Monday, November 4<sup>th</sup> at 5:30 p.m. Notice will be provided to the appropriate media outlets and posted on the Town of Waynesville website.

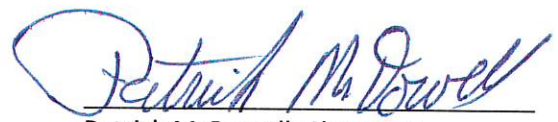
**C. PUBLIC COMMENT/CALL ON THE AUDIENCE**

No one spoke.

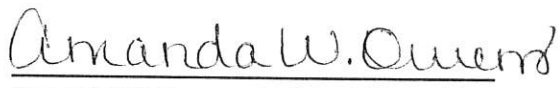
**ADJOURN**

*With no further business to discuss, a motion was made by Board Member Marty Prevost, seconded by Board Member Anthony Sutton, to adjourn the meeting at 7:15 pm. The motion carried unanimously.*

**ATTEST:**



Patrick McDowell, Chairman



Amanda W. Owens, Assistant Town Manager  
Acting Clerk



## ATTACHMENT "A"

### Statement to the Waynesville Planning Board Concerning A Proposed Fence Ordinances

At the recent Board of Aldermen meeting, on October 8th, the matter concerning a fence ordinance was referred to the Planning Board for further research and discussion. We would like to make a statement to the Planning Board voicing our opinion on the matter.

This issue has been raised because the town hall was "pummeled" with complaints about a particular fence, according to an article in the Mountaineer. It is important to note that this entire ordeal was began by an activist group by the name of 4 Love of Animals/Chain Free. It's founder, Denise Brooker, began the group in order to pressure legislators into passing an ordinance in Haywood County to make it illegal to chain a dog. She found a 'poster child' in the form of a dog on Eagles Nest Rd. and focused all of her efforts and all of her followers' efforts on harassing and intimidating the owner of that dog, Mr. David Acosta. Ms. Elizabeth Teague has informed us that the members of the Planning Board have a copy of a recent statement that we made to the Board of Aldermen which contains more detail about the conflict between Ms. Brooker's group and Mr. Acosta.

When the Mountaineer article stated that the town hall was "pummeled" with complaints about the fence, we knew from experience that the people calling were Ms. Brooker and her followers. 'Call floods' to public officials appears to be their specialty. After the article was published, Ms. Brooker posted on the 4 Love of Animals/Chain Free Facebook page, "The Mountaineer's article is very slanted and totally misses the point. It claims the town is going to consider an ordinance on the type of fence one can put up and if they can have a doghouse in their front yard. How about the town deciding on an ordinance against chaining your dog 24/7 in your yard." Ms. Brooker and her followers don't actually want a fence ordinance. They have actually been very vocal about their desire for people to erect fences in order to allow their pets to be 'unchained.' Passing a fence ordinance isn't even the goal of the people who complained about the fence in the first place!

We would like to discuss how difficult it would be to pass an ordinance that would regulate fencing without infringing on civil rights and private property rights. The 4th Amendment in the United States Constitution is intended to protect personal privacy, and every citizen's right to be free from unreasonable government intrusion into their persons, homes, businesses, and property. This right is NOT limited to just a physical search. For example, law enforcement does not have the right to tell us that we must leave our curtains open or to open our vehicle's glove compartment so that they can see inside our home or closed areas of the car. They cannot demand to see our identification for the sole purpose of knowing who we are. Private property and private information are PRIVATE; therefore, we have the right, based on the 4th Amendment, to protect it. Fencing that you can see through, such as chain link, protects private property from unwanted people and pests. Fencing that you cannot see through, such as wood, mesh, and shrubbery, protects private INFORMATION. We have the right to protect both. We have the right to block other people's view of our property and information by closing the curtains, locking the glove compartment, and putting up whatever fence that suits our purpose.

There was some discussion in the Mountaineer article about 'spite fences' being a problem and possibly a violation of law. The NC Supreme Court case *Welsh v. Todd*, 133 S.E.2d 171, states that "A spite fence is one which is of no beneficial use to the owner and which is erected and maintained solely for the purpose of annoying a neighbor." Mr. Acosta has repeatedly explained that his fence was erected because of the ongoing harassment and attempted intimidation, in order to protect his children and their privacy. Although the people complaining about the fence are obviously annoyed, they are NOT Mr. Acosta's neighbors. An example of a 'spite fence' can be seen at 245 Eagles Nest Rd. It is a section of fence located on property adjoining Mr. Acosta's property, is approximately 6' tall, and made of solid wood. It only contains a few sections, and is definitely a 'spite fence' that was erected due to a dispute. Being solid wood, it has much more potential of being damaged in the wind than Mr. Acosta's mesh fence that is designed to allow air to flow through it. If the neighbor's wooden fence sections 'blew over on a child,' or 'blew out into the roadway' it would cause much more damage than Mr. Acosta's lightweight mesh fence. The wooden fence was erected by the homeowner and resident of the property, Mr. Larry Bryson, former Haywood County Interim Sheriff, and former Chief Deputy under Sheriff Bobby Suttles.

The county ordinance about tall grass is somewhat understandable because rodents, snakes, etc. can reside in overgrown areas and become a problem for surrounding areas. The county ordinance about an accumulation of junk

or trash is understandable because of rodent infestation that can occur and, again, become a problem for surrounding areas. There is NO public safety concern with fences, of any type, that are erected on private property. There is already an ordinance in the Town of Waynesville's chapter on nuisances that states that fences must be maintained in safe and substantial condition, and should bear a wind load of 90 mph. That ordinance is sufficient to protect other residents from "unsafe" fences. The town legislators do NOT have the authority to base an ordinance simply on aesthetics. Where does their authority begin and end? How many ordinances would have to be passed to please the elite few that complain? It is a dangerous and slippery slope when the government begins to legislate private property rights at the request of a few upscale homeowners based solely on aesthetics.

We understand that some of the Planning Board members already agree with and share our concern. We applaud those member's willingness to stand up for and protect our rights. We also understand that there are some that think that the Town of Waynesville needs some type of ordinance on fencing simply because we currently have nothing in place. To these members, we only have one question, "Why do we NEED any type of ordinance?" We would like to remind these members that driving through our town and seeing one house with a chain link fence, and another with no fence, and another with a privacy fence, and another with a hedge is WHAT FREEDOM LOOKS LIKE!

When the elected officials of Waynesville decide they have the authority to legislate ordinances designed to limit or infringe on our constitutional rights, especially at the request of a special interest group or a select few, the citizens will not stand for it. We are each separate and unique individuals, free to do as we please on property we pay for unless we cause actual harm to someone else, and we intend to keep it that way.

### **Residents and/or Property Owners in Waynesville**

Kimberly Phillips, property owner  
Ann McCall, resident and property owner  
Randy Phillips, property owner  
Scott Mehaffey, resident and property owner  
John Carr, resident and property owner  
Sue Carr, resident and property owner  
Alan Parker, resident and property owner  
Amanda Parker, resident and property owner  
Tony Winchester, resident and property owner  
Rebecca Osborne, resident  
David Acosta, resident and property owner  
Ruth Rich, resident and property owner  
Jessica Belt, resident and property owner  
Julie Rackley, resident and property owner  
Ann Roger, resident and property owner