



Town of Waynesville

TOWN OF WAYNESVILLE
Planning Board – Regular Meeting
Town Hall, 9 South Main St, Waynesville, NC 28786
April 21, 2014
Monday – 5:30 PM

A. CALL TO ORDER

1. Welcome/Calendar/Announcements
2. Adoption of Minutes

Motion: *To approve the minutes of March 17, 2014 as presented (or as corrected)*

B. NEW BUSINESS

3. **Public Hearing:** Consideration of text amendment to Section 14.5.2A, Historic Preservation Commission Membership and Quorum, of the Town of Waynesville Land Development Standards
4. **Public Hearing:** Consideration of a text amendment to Chapter 15, Administration of the Town of Waynesville Land Development Standards

C. ADJOURN

MINUTES OF THE TOWN OF WAYNESVILLE PLANNING BOARD
REGULAR MEETING
Town Hall – 9 South Main St., Waynesville, NC 28786
March 17, 2014

THE WAYNESVILLE PLANNING BOARD held a regular meeting on Monday March 17, 2014 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 welcomed everyone and called the meeting to order at 5:30 p.m. with the following members present:

Marty Prevost
Jon Feichter
Brooks Hale
Bucky Dykes
Patrick McDowell
Don Stevenson
Shell Isenberg

The following staff members were present:

Paul Benson, Planning Director
Eddie Ward, Deputy Town Clerk
Jason Rogers, Codes Administrator

2. Minutes of February 17, 2014

Board Member Brooks Hale made a motion, seconded by Board Member Don Stevenson, to approve the minutes of February 17, 2014 with the correction as follows: In line one of the first paragraph, the date should read Monday February 17, 2014. The motion passed unanimously.

B. NEW BUSINESS

3. Public Hearing: Rezoning Request – Rezoning property located on Norman Street - PIN 8604-89-4553 – from Allens Creek Neighborhood Residential (AC-NR) to South Main Street Business District SM-BD)

Chairman Patrick McDowell asked Planning Director Paul Benson to give background information on the rezoning request. Mr. Benson said this request was submitted by Mr. Jerry Owen for the property located on Norman Street consisting of .15 acre. The property currently contains a vacant residence, and is used for vehicle parking and outdoor storage. Mr. Owen also

owns the adjacent property at 27 Norman Street, which is zoned as South Main Business District (SM-BD). He would like to be able to use both properties for vehicle parking, repair, and outdoor storage.

Mr. Benson said the 2020 Land Development Plan shows the property remaining residential. The requested zoning would permit non-residential development and is not consistent with the adopted land use plan. Because of this, the recommendation of staff is to leave the zoning as is.

Chairman McDowell opened the Public Hearing and asked if anyone wished to make a public comment.

Jerry Owen
Waynesville, NC

Mr. Owen stated the property that fronts his property is zoned commercial, and he is asking for this property to be rezoned as commercial. Mr. Owen had questions concerning how the property could be used if it is rezoned and about the placement of buffering along the property lines.

Ms. Janice Haynes
Waynesville, NC

Ms. Haynes stated her mother lived on Norman Street. She had questions about what would be required of Mr. Owen to enhance the property if it is rezoned.

Ms. Karen Kaufman
Waynesville, NC

Ms. Kaufman stated she was Ms. Haynes' sister. She said she doesn't feel the property should be rezoned so that Mr. Owen can continue to use the property as a parking lot for his trucks.

Members of the Planning Board had questions about a 12 foot right of way adjacent to Mr. Owen's property. Mr. Benson said this strip of land is not included in the request.

There was much discussion about the commercial zoning of property adjacent to and fronting Mr. Owen's property, and about the current use of the property at 27 Norman Street.

Ms. Haynes and Ms. Kaufman stated they did not have objection to the rezoning as long as the property is cleaned up.

Chairman McDowell closed the Public Hearing.

A motion was made by Board Member Marty Prevost, seconded by Board Member Shell Isenberg, to deny the rezoning request of property located on Norman Street, PIN 8604-89-4553, from Allens Creek Neighborhood Residential (AC-NR) to South Main Business District (SM-BD). The motion passed with five ayes (Board Members Marty Prevost, Patrick McDowell, Shell Isenberg, Bucky Dykes, and Jon Feichter) and two nays (Board Members Don Stevenson, and Brooks Hale).

Chairman McDowell explained to Mr. Owen that his request had been denied by the Town of Waynesville Planning Board, and that he has the option of appealing the decision to the Town of Waynesville Board of Aldermen at an upcoming meeting by contacting the Town Clerk.

C. ADJOURN

With no further business, a motion was made by Board Member Brooks Hale, seconded by Board Member Bucky Dykes to adjourn at 6:00 PM. The motion passed unanimously.

Patrick McDowell, Chairman

Eddie Ward, Deputy Town Clerk

15 Administration

15.2.3 Permit/Process Type

Permit/ Process Type	Section	Permit/ Process Type	Reviewing Agency	Public Notification (15.3)	Approving Agency	Appeal Process	Permit Period	Permit Extension
Certificate of LDS Compliance	15.6.1	Administrative	Admin	None	Admin	BOA	6 months	6 months
Temporary Use Permit	15.6.2	Administrative	Admin	None	Admin	BOA	See 4.7	n/a
Certificate of Occupancy	15.6.3	Administrative	Admin	None	Admin	BOA	n/a	n/a
Modification of Dimensional Standards	15.6.4	Administrative	Admin	None	Admin	BOA	n/a	n/a
Grading Permit	15.7.1	Administrative	Admin	None	Admin	BOA	6 months	Re-submit
Floodplain Development Permit	15.7.2	Administrative	Admin	None	Admin	BOA	1 year	Re-submit
Stormwater Permit	15.7.3	Administrative	Admin	None	Admin	BOA	1 year	Re-submit
Site Plan/Design Review (Minor)	15.8.1	Administrative	Admin	None	Admin	BOA	1 year	1 year
Site Plan/Design Review (Major)	15.8.2	Quasi-Judicial	Admin	1, 2, 4	Planning Board	Superior Court	1 year	1 year
Subdivision (Minor)	15.9.1	Administrative	Admin	None	Admin	BOA	30 days to file Plat	Re-submit
Subdivision (Major)	15.9.2	Quasi-Judicial	Admin	1, 2, 4	Planning Board	BOA	1 year to Final Plat	6 months
Subdivision (Major) – Preliminary Plat	15.9.3	Administrative	Admin	None	Admin	BOA	1 year to Final Plat	6 months
Subdivision (Major) – Final Plat	15.9.4	Administrative	Admin	None	Admin	BOA	30 days to file Plat	Re-submit

Permit/ Process Type	Section	Permit/ Process Type	Reviewing Agency	Public Notification (15.3)	Approving Agency	Appeal Process	Permit Period	Permit Extension
Special Use Permit	15.10	Quasi-Judicial	Planning Board	1, 2, 5	Planning Board	Superior Court	1 Year	1 Year
Designation of Historic Landmarks/Districts	15.11.1	Legislative	HPC	1, 2, 3	Board of Aldermen	Superior Court	n/a	n/a
Certificate of Appropriateness (Minor)	15.11.2	Administrative	Admin	None	Admin	HPC	6 months	Re-submit
Certificate of Appropriateness (Major)	15.11.3	Quasi-Judicial	Admin	1, 2, 4	HPC	BOA	6 months	Re-submit
Appeal of Administrative Decision	15.12	Quasi-Judicial	BOA	1, 2, 4	BOA	Superior Court	30 days to Appeal	n/a
Variance	15.13	Quasi-Judicial	BOA	1, 2, 4	BOA	Superior Court	30 days to Appeal	n/a
Text Amendment	15.14	Legislative	Planning Board	1, 2, 3, 4	Board of Aldermen	Superior Court	n/a	n/a
Map Amendment (Rezoning)	15.14	Legislative	Planning Board	1, 2, 3, 4	Board of Aldermen	Superior Court	n/a	n/a
Conditional District	15.15	Legislative	Planning Board	1, 2, 5	Board of Aldermen	Superior Court	May be rescinded after 2 years	n/a
Vested Right	15.16	Legislative	Planning Board	1, 2, 4	Board of Aldermen	None	2-5 years	Up to 5 years total

Admin – Administrator (14.1) | Board of Aldermen (14.2) | BOA – Board of Adjustment (14.4) | HPC – Historic Preservation Commission (14.5) | Superior Court of North Carolina

15.3.3 Level 3 – Notification to Affected Property Owners

The applicant and The owners of all property affected by a pending action (e.g., new overlay district) shall be notified of the hearing/meeting by first class mail. Such notification shall be **deposited in the mail** **postmarked** at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard. In addition, a sign shall be prominently posted on the subject property(ies) or on an adjacent public street or highway right-of-way with a notice of the pending action and a phone number and email address to contact for additional information. Except for a town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The applicant shall certify to the Board of Aldermen that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud. (For Third Party Rezoning: If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. §7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply.)

15.3.4 Level 4 – Notification to Adjacent Property Owners

The applicant and The owners of property within one hundred (100) feet on all sides of the subject property (not including street rights-of-way that are less than 100 feet in width) shall be notified of the hearing/meeting by first class mail. Such notification shall be **deposited in the mail** **postmarked** at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard. ~~In addition, a sign shall be prominently posted on the subject property(ies) or on an adjacent public street or highway right-of-way with a notice of the pending action and a phone number and email address to contact for additional information.~~

15.3.5 Level 5 – Notification to Property Owners in Close Proximity

The applicant and The owners of property within five hundred (500) feet on all sides of the subject property shall be notified of the hearing/meeting by first class mail. Such notification shall be **deposited in the mail** **postmarked** at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard. ~~In addition, a sign shall be prominently posted on the subject property(ies) or on an adjacent public street or highway right-of-way with a notice of the pending action and a phone number and email address to contact for additional information.~~

15.5.1 Standards for Conduct of Quasi-judicial Hearings

- A. Contact with Decision-Making Board Members:** Contact with any members of a decision-making board prior to the public hearing by any individual regarding the matter is prohibited.
- B. All Participants to be Sworn In:** All participants in the public hearing shall be duly sworn in prior to the submission of any testimony **by the Chair or Clerk to the Board/Commission.**
- C. Competent Evidence Required:** All decisions shall be based on competent evidence entered in as part of the record. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
1. The use of property in a particular way would affect the value of other property.
 2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
 3. Matters about which only expert testimony would generally be admissible under the rules of evidence.
- D. Cross-Examination Permitted:** The cross-examination of witnesses submitting testimony shall be permitted upon request.

15.5.3 Record of Decision

- A.** The following shall become part of the official record of decision:
- Documents and exhibits submitted to the decision-making board
 - Meeting minutes
- B. Transcript of Audio/Video of Meetings:** Any party may request, at their expense, a transcript of the proceedings from any recorded audio/video.
- C. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based on competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request**

for a copy, prior to the date the decision become effective.
The Administrator shall certify that proper notice has been
made.

15.12 Appeals of Administrative Decisions

15.12.1 Applicability

This process is hereby established to provide an appeal process for parties aggrieved by any order, requirement, decision or determination, made by an administrative officer charged with enforcing the provisions of this ordinance.

15.12.2 Filing Procedures

A. **Process Types:** Quasi-Judicial (See also 15.4)

B. **Filing Procedure:** An appeal of an administrative decision may be taken by any person aggrieved (or by their authorized agent) or may be taken by any officer, department, board or bureau of the town. Such an appeal shall be made to the ~~town~~ **Town Clerk** within thirty (30) days of the receipt of the written notice of decision from the town.

C. **Stay of Proceedings:** The filing of an appeal shall stay all proceedings in furtherance of the contested action unless the Administrator certifies that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such a case, proceedings shall not be stayed except by restraining order granted by the Superior Court of Haywood County on notice to the administrative official from whom the appeal is taken with due cause shown. **If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situation the appellant may request and the board may grant a stay of a final decision of the permit applications or building permits affected by the issue being appealed.**

D. **Required Application Information:** All information relevant to describing the applicant's appeal to the Board of Adjustment. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision. **The Administrator shall provide a copy of this information to the appellant and to the owner of the property that is the subject of the appeal.**

E. **Public Notification:** Level 1 & 2 **4**

15.12.3 Formal Review

- A. Upon receiving the application, the Board shall conduct a public hearing on the appeal. Any party may appear in person or be represented by an agent at the hearing.
- B. After conducting the public hearing, the Board shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision or determination in question. ~~It shall take a 4/5ths vote of the Board to reverse or modify the contested action.~~
- C. The Board, in making its ruling, shall have all the powers of the Administrator from whom the appeal is taken, and may issue or direct the issuance of a permit.
- D. The decision of the Board must be in writing and permanently filed in the minutes of that reviewing body as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board, which must be delivered to parties of interest by certified mail.
- E. **The Administrator making the decision being appealed shall be present at the hearing as a witness.**
- F. **If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.**

15.13 Variances

15.13.2 Filing Procedures

- A. **Process Types:** Quasi-Judicial (See also 15.4)
- B. **Pre-Application Procedure:** Every applicant for a variance is strongly encouraged to meet with the planning department in a pre-application conference prior to the submittal of a request for a variance. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.
- C. **Filing Procedure:** An application for a variance may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application.
- D. **Required Application Information:** All information relevant to describing the applicant's request to the Board of Adjustment.
- E. **Public Notification: Level 1, 2 & 4**
- F. **Determination of Completeness:** Staff shall review an application for a variance to determine if it is complete. If an application is complete, the Administrator shall schedule the matter for consideration at a meeting of the board of adjustment. The Administrator shall prepare a staff report regarding the submitted variance application.

15.13.3 Formal Review

- A. **Action by the Board of Adjustment**
 - 1. Upon receipt of the request for a variance from the Administrator, the board of adjustment shall hold a quasi-judicial hearing on the request.

2. After conducting the hearing, the Board of Adjustment may: deny the application; conduct an additional public hearing on the application; or grant the application.
3. A decision by the Board of Adjustment shall be made within thirty-two (32) days of the date of the hearing.
4. Any approval or denial of the request shall be accompanied by written findings that the variance meets or does not meet each of the standards set forth in Section 15.13.3.B.1 below. Standards for floodplain development regulation variances are set forth in Section 15.13.3.B.2.
5. Any applicant to whom a variance from the floodplain development regulations is granted shall be given written notice. This notice shall specify the difference between the base flood elevation and the elevation to which the structure is to be built and contain a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions. Variances records shall be provided to the Federal Emergency Management Agency upon request.

B. Standard of Review

1. **General Variance Requests:** The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:
 - a. That there are ~~practical difficulties or~~ unnecessary hardships in the way of carrying out the strict letter of this chapter.
 - ~~b. That if the applicant complies with the provisions of the chapter, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property.~~
 - c. 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.
 - d. 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.**
 - e. That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.
 - f. That the variance is the minimum necessary to afford relief.
 - g. That the public safety and welfare have been assured and substantial justice has been done.

14 Administrative Agencies

14.5 Historic Preservation Commission

14.5.2 Membership and Quorum

- A. The Waynesville Historic Preservation Commission shall consist of ~~seven (7)~~ **nine (9)** members. A quorum of ~~four (4)~~ **a majority of the current** members shall be necessary to transact business.
- B. The Waynesville Board of Aldermen shall appoint all members. Vacancies shall be filled by the Waynesville Board of Aldermen as they occur.
- C. All members shall serve three (3) year terms and may succeed themselves.
- D. Officers shall be elected in accordance with the adopted rules of procedure.

Planning Board Staff Report

Subject: LDS text amendment - increase HPC membership
Section: 14.5.2
Applicant: Staff initiated
Meeting Date: April 21, 2014

Background:

The Historic Preservation has voted to recommend that it's membership be increased by 2 members for a total of 9 members. Current Commission members recommend this change to bring more vitality to the Commission.

Prior to adoption of the revised Land Development Standards on 4/12/11 the Commission was composed of 9 members, but membership was reduced primarily out of concern that it was difficult to fill all 9 positions with interested persons.

Since Commission membership has been relatively stable over the past 2 years, the Commission would like to again increase membership to 9 persons.

Members must reside with the planning jurisdiction of the Town of Waynesville (corporate limits and extra-territorial jurisdiction). All appointments are made by the Waynesville Board of Aldermen. By state law a majority of the members must have a demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields.

Staff Recommendation:

Staff recommends that the requested amendment be approved.

Planning Board Staff Report

Subject: LDS text amendment – update Quasi-Judicial Procedures
Sections: 15.2, 15.3, 15.5, 15.12, 15.13
Applicant: Staff initiated
Meeting Date: April 21, 2014

Background:

In the 2003 session the North Carolina General Assembly adopted Session Law 2013-126 modifying the NC General Statutes regarding quasi-judicial proceedings handled by local governments. The changes were adopted in response to a request by the NC Bar Association and are regarded by experts in municipal law with the NC School of Government to be an improvement over the former statutes.

Town staff has attended briefing sessions on these changes held by the School of Government and has prepared a revision to the Town's Land Development Standards to implement these changes. The changes apply primarily to Appeals of Administrative Decisions and Variance Requests handled by the Zoning Board of Adjustment. All changes may be categorized as being made to keep Town Code in compliance with state enabling legislation:

1. Changes public notice of Variance and Appeal requests to remove published notice and add mailed notice to affected and adjacent property owners.
2. Enables the Clerk to the Board as well as the Chair to swear in witnesses.
3. Clarifies the requirements for written notice of decision and the delivery of that notice.
4. Adds provisions for an expedited hearing process in cases where enforcement actions are not stayed until the hearing is held.
5. Eliminates the super-majority (4/5 ths) vote required to uphold an appeal of an administrative decision.
6. Requires that the Administrator appear as a witness in cases of appeal of an administrative decision.
7. Eliminates the "practical difficulties" language from considering the granting of a variance.
8. Eliminates the test that a variance may not be properly granted if the applicant can make reasonable use of the property without the variance.

Staff Recommendation:

Staff recommends that the requested amendments be approved.