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

Stephanie Strickland
Henry Kidder
Jack Suddath
Neil Ensley
David Felmet
Charles John Gisler

Development Services Director
Elizabeth Teague

TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
Town Hall – 9 South Main Street, Waynesville, NC 28786
Tuesday, April 5, 2016, 5:30 PM

A. CALL TO ORDER:

1. Welcome/Announcements
2. Adoption of Minutes from the February 2, 2016 Meeting

B. BUSINESS ITEMS:

1. Schedule of Variance request for May Meeting.

C. ADJOURN – *The next Meeting is scheduled for May 3, 2016, 5:30 pm.*

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Stephanie Strickland
Henry Kidder
Jack Suddath
Neal Ensley (Chairman)
David Felmet (Vice Chairman)
Charles John Gisler

Development Services Director
Elizabeth Teague

Regular Meeting
Town Hall, 9 South Main Street, Waynesville, NC 28786
Tuesday February 2, 2016, 5:30 pm

The WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a regular meeting on February 2, 2016 at 5:30 pm in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

1. Welcome/Calendar/Announcements

Mr. Neal Ensley, Chairman, welcomed everyone and called the meeting to order at 5:30 pm.

The following members were present:
Chairman Neal Ensley
Vice Chairman David Felmet
Stephanie Strickland
Henry Kidder
John Gisler

Absent:
Jack Suddath

The following staff members were present:
Elizabeth Teague, Development Services Director
Ron Sneed, Attorney to the Board
Eddie Ward, Deputy Clerk
Byron Hickox, Land Use Administrator
Tom Maguire, Senior Code Enforcement Official
David Kelley, Code Enforcement Official
Kevin Teater, Development Services Intern

2. Adoption of Minutes from the January 5, 2015 Meeting

Board Member John Gisler made a motion, seconded by Board Member David Felmet, to approve the minutes of the January 5, 2016 meeting as presented. The motion passed unanimously.

Chairman Ensley stated he would like to reverse item 1 and 2 on the agenda. Board members concurred.

B. BUSINESS ITEMS

1. Variance request from Chapter 11 Signage and from Chapter 13 Nonconformities, by SMS Enterprise, at 121 Eagle's Nest Road, PIN 8605-64-6237, to allow installation of an electronic sign within the Hazelwood Business District (HBD).

Chairman Ensley asked Attorney Scott Taylor, Representing Carolina Furniture Concepts, to come forward and give information about this request. Mr. Taylor said he had just recently been contracted to represent Carolina Furniture Concepts in this proceeding. He asked for the request to be tabled until the next Board of Adjustment meeting which will be held on March 1, 2016. This will enable Mr. Taylor more time to research the variance request.

A motion was made by Board Member David Felmet, seconded by Board Member John Gisler, to allow the variance request from Chapter 11 Signage and from Chapter 13 Nonconformities, by SMS Enterprise, at 121 Eagle's Nest Road, PIN 8605-64-6237, to allow installation of an electronic sign within the Hazelwood Business District (HBD), to be continued until the next Board of Adjustment Meeting, to be held on March 1, 2016, at 5:30 p.m. in the Board Room of Town Hall, 9 South Main Street Waynesville, NC. The motion passed unanimously.

2. Variance request from Section 2.4.1 Table of Dimensional Standards by Residential District by Mark Tice, at 1111 Pigeon Street, PIN 8615-73-4306, to allow encroachment into the 20 foot rear yard setback for construction of a residential addition within the Francis Cove Low Density Residential District (FC-RL).

Chairman Ensley opened the hearing and explained the Protocols for Hearings on variance applications. He stated that the hearing would be Quasi-Judicial in nature. Only testimony or other evidence which is material and relevant to the case can be considered. Anyone wishing to testify must first be sworn or affirmed and will be subject to examination by the members of the Board, Town Staff, Applicant, or another party who may be opposed. There must be an accurate record kept of what transpires in the meeting, so Chairman Ensley asked that participants do not speak unless recognized by the Chairman, and names and addresses must by stated for the record.

The applicant bears the burden of proof. All the following must be proved:

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.

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.

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.

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

Chairman Ensley stated that a vote of four-fifths of the Board in favor of the Applicant is required to grant the requested variance.

All witnesses who wished to testify were asked to come forward and be sworn in. After swearing in the witnesses, Chairman Ensley polled the membership of the Board concerning ethical considerations, and objections to the impartiality of the Board. There were no concerns or objections.

Chairman Ensley asked Ms. Elizabeth Teague, Development Services Director, to present a staff report for the requested variance.

Ms. Teague presented the following pieces of evidence for the request.

Exhibit #1. Notification and Posting
Exhibit #2. Variance Application
Exhibit #3. Location and zoning maps
Exhibit #4. Building Permit
Exhibit #5. Staff report for February 2, 2016

Ms. Teague stated that the subject property is owned by Mr. Mark Tice, and is located at 1111 Pigeon Road, Waynesville, NC 28786. The property consists of 0.52 acres and is located in the Francis Cove Low-Density Residential District PIN 8615-73-4306, which is in the Extra Territorial Jurisdiction (ETJ). Located on the property are a house, driveway, and two accessory buildings. The house was built in 1946, and has a heated area of 1528 square feet. In May of 2014, Mr. Tice applied for, and received, a building permit to construct an addition to the east side of the house. In the Francis Cove Low-Density Residential District there are required setbacks for residential uses. The building setbacks are 20 feet in the front, the side setbacks are 10 feet, and the rear setback is 20 feet. Ms. Teague submitted for evidence:

Exhibit #6. A portion of The Town of Waynesville Ordinance related to setback requirements in Frances Cove Low-Density Residential District

Ms. Teague pointed out that in the Building Permit Mr. Tice obtained, there is a Land Development Permit which includes information on the required setbacks for the district. Also, there is a survey with a drawing attached showing the lot and hand drawing of the addition. Ms. Teague said

that when the original house was built in 1946, there was an encroachment on the rear set back of about one foot, but that encroachment was grandfathered in. When the addition was built, the encroachment was increased to eleven feet into the setback. Ms. Teague pointed out that because this lot has an odd shape, and because of the location of the driveway and accessory buildings, this was the only place that the addition could be built. Mr. Tice wanted the addition to come straight off from the existing corners of the house, and this limited the actual available space for construction.

Ms. Teague stated that the Building Inspector that was working with Mr. Tice did not recognize the encroachment, nor communicate any concerns as the construction proceeded. Once this encroachment was discovered, a Stop Work order was issued stopping all work on the project. At that point, walls and roofing had already been constructed. This encroachment was realized because of a complaint from neighboring property owners that when grading had occurred, dirt was pushed on a fence that runs along the rear property line. Mr. Tice has since pulled, graded, and reseeded the area and the dirt is no longer pushed against the fence. Ms. Teague presented the Board some photographs Mr. Tice had taken of the property which shows the fence which is the property boundary of the neighbor. Ms. Teague said this property is surrounded by open land, except for a single family residential house to the north.

Ms. Teague indicated that in this case, even though the setbacks were provided with the Land Development Permit, and Building Inspectors from the Town of Waynesville inspected the project, Mr. Tice proceeded in good faith with the addition to his house even though the footprint of the addition encroached into the rear setback. There was inadequate communication with Mr. Tice about the setbacks, and communication was not in a timely manner.

There are four Findings that must be realized before a variance is granted. Ms. Teague explained the criteria for each and staff's opinions on each criteria in this case.

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.

This is the primary residence for Mr. Tice and his family. He was trying to expand the living area in his residence with a simple footprint plan. Ms. Teague stated that the only way to correct the encroachment at this point would be to force Mr. Tice to relocate or demolish the addition which is partially completed. This would cause great expense to him. Strict application of the ordinance would force the proposed addition to be built on a curve or be offset from the existing structure, and this would create an odd shaped structure for the neighborhood and be more expensive.

Ms. Teague said Staff believes an unnecessary hardship will result with the strict application of the ordinance in this case. Staff acknowledges that the Town bears some responsibility for this current situation for not recognizing the setback encroachment as construction progressed.

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.

Ms. Teague pointed out that Staff believes the hardship presented is peculiar to the property because:

This lot is just slightly larger than the lot size allowed in the District, and faces a constrained building area compared to larger lots within the District. There is no other location on the lot in which to construct the addition to this house. The corner of the 1946 structure to which the addition is tied, is itself slightly within the rear yard setback. The lot line follows an existing fence line and ditch with a slope on the other side of the property boundary limiting the space available in the rear yard in which to construct anything. The rear lot line curves toward the road frontage of the lot reducing the available space in the rear yard. The front yard setback is also 20 feet, limiting the space in which to pull any addition forward from the curving rear boundary line.

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.

Ms. Teague stated that the Staff does not believe the hardship is the result of any action taken by the property owner alone. While Mr. Tice is ultimately responsible for adhereing to the setbacks as provided in his Land Development Permit, a Stop Work order was not issued by the Town within a reasonable time for Mr.Tice to correct the encroachment until the addition was already partially completed. North Carolina Building Codes only require a 10 foot setback from property lines, and the Building Inspector working on site did not realize the encroachment until well into the project. She also said that all property owners and applications to our Building Inspections are required to comply with our zoning ordinances, and that information was provided to Mr. Tice prior to construction. However, the building inspector on site did not communicate the encroachment as construction proceeded until well into the project.

4. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

Ms. Teague stated that Staff believes the requested variance is consistent with the spirit, purpose, and intent of the ordinance at this location because the addition is meant to blend in with the existing structure for both practical and aesthetic reasons, matching the dimensions of the older structure and making it similar to other residential structures in the District. The rear yard setback into which the addition encroaches is not adjacent to, or visible from, any neighboring residence and is also not near any other structures. The rear yard abuts open and wooded land. Staff feels this variance will not affect or impact the surrounding neighborhood.

Board Member John Gisler asked Ms. Teague if there had been a survey done. She referred the question to Mr. Tice to answer. Mr. Gisler asked how the Board knows the fence is on the property line. Ms. Teague said it was estimation from the survey that was provided. She provided a copy of that survey to the Board. He also asked about the accessory buildings and why they were allowed to be close to the fence line. Ms. Teague explained that the buildings were there prior to the property being taken into the ETJ. The hardship these existing buildings cause is that they prevent the construction addition from going that direction.

Mr. Gisler asked if there had been complaints about the accessory buildings being close to the property line. Ms. Teague referred that question to neighbors in attendance at the meeting.

Board Member Henry Kidder asked questions as to what the accessory buildings are used for and how old they were. Ms. Teague referred these questions to Mr. Tice.

Chairman Ensley said the survey in question had been done recently by a licensed surveyor, and he would like to know if iron pipes were in place for the property line.

Mark Tice
1111 Pigeon Road
Waynesville, NC 28786

Mr. Tice thanked the Board for hearing his request and Ms. Teague for her thorough research for this request. Mr. Tice said he wanted to clear up some questions the Board had concerning the property. The actual square footage of the house is 850 and not 1528 as previously stated. One of the accessory buildings that are showing in the aerial photo was a carport built in the 1970's, and was sitting very close to the property line. Mr. Tice stated he removed that building last fall. Another one of the buildings in the photo is a barn that has been on the property as long as the house has been there. It too is sitting very close to the property line. Mr. Tice acknowledged his negligence in adhering to the 20 foot setback. He said he is at the point now where the foundation and basement walls are complete as far as framing. The older structure is tied to the new addition and relies on each other which mean one structure will not stand without the other.

Chairman Ensley asked Mr. Tice the question about the location of the iron pipes indicating the property lines. Mr. Tice stated the iron pipes were there.

Martha Mills

Ms. Mills stated she is an adjoining neighbor of Mr. Tice. The property belonged to her grandfather and part of the property is now in Ms. Mills' name. She has had a licensed surveyor on the property and found the iron pipes that have been in place for a long time. She stated it was never the intention to have Mr. Tice move out of his home, or to cause him to have to shut down. She said it was her intent to make him understand that when you have property lines, you have to abide by the rules. She said it causes a problem when you make your yard on someone else. She reiterated that from now on she expected Mr. Tice to stay on his side of the fence.

Edna Hollingsworth

Ms. Hollingsworth stated that the fence line belonged to her father. She said she had come before the Planning Board and the Town of Waynesville in the past when it was requested to divide the property with the two houses. She said she felt there would be conflicts in the future with a right of way on the property. She does not hold any grudges against anyone and she does not want Mr. Tice to bother the Hollingsworth family again.

Board Member John Gisler asked Ms. Hollingsworth if she had any objection to Mr. Tice's house as it sits on the property now, as long as Mr. Tice stays on his side of the fence. She said she did

not have any objections to the current location, and she felt like there would not be anyone in her family object to the location.

Mark Hollingsworth

Mr. Hollingsworth stated the Hollingsworth property behind Mr. Tice was valuable, and gave a brief history of the property and how it came to belong to his family.

Board Member John Gisler asked Mr. Hollingsworth if he had any objections to Mr. Tice's house as it sits on the property now, as long as Mr. Tice stays on his side of the fence. Mr. Hollingsworth he had no objections, as long as Mr. Tice respected his neighbors.

Darwin Ferguson

Mr. Ferguson stated he was a Licensed General Contractor with the state of North Carolina. Mr. Ferguson said the Tice project was already in progress when he was called in to help. He said that if the new addition to the house was taken down, the existing house would have to be taken down also. Mr. Ferguson had to add extra support to the existing house because that section was failing, and it had to be tied to the addition. The house would definitely be destroyed if the addition was taken down.

Chairman Ensley asked if there any rebuttals to the testimonies. There were none.

Chairman Ensley closed the hearing to the public, and advised the Board that they would begin deliberations on the evidence they had heard. He referred them to the Variance Findings Checklist.

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

The consensus of the Board is that the applicant has built an addition to his existing house and tied the existing structure to the new addition. It would be a hardship on the applicant if he is forced to tear the house down. All five members of the Board voted yes, this would place an unnecessary hardship on the applicant.

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

The consensus of the Board is that obviously this is an odd shaped piece of property. Because of this, the applicant had limited ability to construct an addition. The applicant was granted a building permit, and at that point there was not an opportunity to change the footprint of the addition. All five members of the Board voted yes, this hardship results from conditions that are peculiar to the property, such as location, size, or topography.

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

The consensus of the Board is that the property owner worked with the Town of Waynesville and came to the conclusion he was proceeding correctly, because the Town issued the Applicant a Building Permit. The addition had been inspected by the Building Inspector, and

approved. Therefore the hardship is not a result of actions taken by the applicant or property owner. All five members of the Board voted yes that the hardship is not the result of actions taken by the applicant or the property owner.

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 is that because of the lack of complaint from property owners asking that the applicant be denied the variance, gives substantial justice to the applicant. There is no threat to public safety, and the requested variance is consistent with the spirit, purpose, and intent of the ordinance. All five members of the Board voted yes that the requested variance is consistent with spirit, purpose and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

A motion was made by Board Member John Gisler, seconded by Vice Chairman David Felmet to grant a variance request from Section 2.4.1 of Dimensional Standards by Residential District by Mark Tice, at 1111 Pigeon St, PIN 8615-73-4306, to allow encroachment into the 20 foot rear yard setback for construction of a residential addition within the Francis Cove Low Density Residential District (FC-RL). The motion passed unanimously.

C. ADJOURN

With no further business, Board Member Henry Kidder made a motion, seconded by Vice Chairman David Felmet to adjourn at 6:43p.m. The motion passed unanimously.

Neal Ensley, Chairman

Eddie Ward, Deputy Clerk