

# 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)

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, February 2, 2016, 5:30 PM**

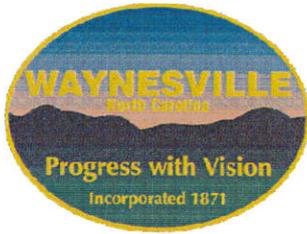
### A. CALL TO ORDER:

1. Welcome/Announcements
2. Adoption of Minutes from the January 5, 2015 Meeting

### B. BUSINESS ITEMS:

1. 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' rear yard setback for construction of a residential addition within the Francis Cove Low Density Residential District (FC-RL).
2. Variance requests 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).

**C. ADJOURN** – *The next Meeting is scheduled for March 1, 2016, 5:30 pm.*



# TOWN OF WAYNESVILLE Zoning Board of Adjustment

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Waynesville, NC 28786  
Phone (828) 456-8647 • Fax (828) 452-1492  
www.waynesvillenc.gov

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 January 5, 2016, 5:30 pm**

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The WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a regular meeting on January 5, 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

Ms. Elizabeth Teague, Development Services Director, welcomed everyone and called the meeting to order at 5:30 pm.

The following members were present:

David Felmet  
Stephanie Strickland  
Henry Kidder  
Jack Suddath  
Neal Ensley  
John Gisler

The following staff members were present:

Elizabeth Teague, Development Services Director  
Eddie Ward, Deputy Clerk

Ms. Teague asked each board member to introduce themselves and asked which members had experience serving on a Zoning Board of Adjustment. She said this would be an organizational and review meeting since this board had not met since 2013.

## **B. BUSINESS ITEMS**

### **1. Election of Chair and Vice Chair**

Ms. Teague said one of the first items that needed to be taken care of was the election of a Chairman and Vice Chairman. She outlined some responsibilities of these positions. The role of the Chairman is to “run” the meetings, which includes opening the meetings, going through the agenda, closing the meetings, managing Board Members, public comments, and rebuttals. The Chairman also has the power to call for a special meeting if necessary and is considered the liaison between the staff and the board. The Vice Chairman has the same responsibility in the absence of the Chairman.

Ms. Teague asked the Board for nominations for Chairman of the Board. There were two nominations for Board Member Neal Ensley for Chairman. One from Board Member Jack Suddath, and one from Board Member David Felmet.

*A motion was made by Board Member David Felmet, seconded by Board Member Henry Kidder, to elect Board Member Neal Ensley as Chairman of the Town of Waynesville Zoning Board of Adjustment. The motion passed unanimously.*

Chairman Ensley asked the Board for nominations for Vice Chairman of the Board. Board Member Jack Suddath nominated Board Member David Felmet.

*A motion was made by Board Member Jack Suddath, seconded by Board Member Stephanie Strickland, to elect Board Member David Felmet as Vice Chairman of the Town of Waynesville Zoning Board of Adjustment. The motion passed unanimously.*

### **2. Adoption of Minutes**

Ms. Teague asked the Board Members to look over the minutes from the December 3, 2013 regular meeting, and approve as presented or as corrected.

Chairman Ensley stated the only correction he saw was the spelling of his name should be Neal instead of Neil.

*A motion was made by Vice Chairman David Felmet, seconded by Board Member Stephanie Strickland, to approve the minutes of the December 3, 2013 minutes as corrected. The motion passed unanimously.*

*Chairman Ensley made a motion, seconded by Board Member Jack Suddath, to approve the minutes (summary) of the November 3, 2015 regular meeting as presented. The motion passed unanimously.*

### **3. Schedule for upcoming hearings**

Ms. Teague told the Board that the regularly scheduled meeting was set for the first Tuesday of each month at 5:30 p.m. She advised them that there were two variance applications that have been received in the Development Services Department for the Board’s consideration. These variances can

be set for the next regularly scheduled meeting on February 2, 2016, and there will need to be a quorum at that meeting. The Board had questions about whether two cases could be heard in one meeting, and the time length involved. Ms. Teague gave the Board a general description of the types of variances being requested. Ms. Teague said that if the Board felt that both cases could not be heard in one meeting, another meeting could be scheduled, or the meeting could be continued.

*A motion was made by Board Member John Gisler, seconded by Vice Chairman David Felmet, to set the Board's regularly scheduled meetings to be held on the first Tuesday of each month, at 5:30 p.m. in the board room of Town Hall, 9 South Main Street, Waynesville, NC. Also, February 3, 2016 will be the reserve date if the meeting held on February 2, 2016, has to be continued. The motion passed unanimously.*

#### **4. Review of Quasi Judicial Process**

Ms. Teague stated that a review of the Quasi Judicial Process was conducted at the last meeting in December 2013, but she felt that the Board needed a refresher in procedures before the upcoming hearings. Ms. Teague gave the members a copy of an excerpt from the Town's ordinance for reference. She said the role of the Zoning Board of Adjustment is to give the public a chance to appeal an interpretation of an ordinance, and possibly obtain a variance from the ordinance. These types of appeals are handled much like court proceedings. Hearings will include the person who is asking for a variance, additional parties, and Town Staff. The Board will hear all evidence, and make a decision according to what they have heard. Attorney Ron Sneed will be in attendance, and the Board can speak openly with him. The Zoning Board of Adjustment is the only opportunity for evidence to be entered into records. If someone appeals the decision of this Board, the case will go to Superior Court and a judge will consider the evidence which was heard at the Zoning Board of Adjustment Meeting.

Ms. Teague reiterated that the Board could not discuss the cases beforehand with anyone. Board members can visit the properties in the cases to be heard prior to the hearing individually, but they cannot visit the site with other Board members or discuss the case with each other prior to the meeting. The goal is for the Board to have an open mind concerning each case and to weigh the merits of testimony and evidence provided at the meeting, and to avoid forming an opinion beforehand.

The meeting follows a strict procedure. The Chairman will call witnesses forward and swear them in. Ms. Teague explained who has the right to present evidence, or has "standing," in a case. A person who has "standing" is someone who has the right to present evidence. This may be a next door neighbor whose land may be impacted by the case, or it might be an expert witness in a certain field that can give an opinion. There will be a chance for rebuttals after each side has given their testimony. If the Chairman wishes, a time limit can be established for rebuttals and input from the public. After rebuttals, the Chairman will close the hearing.

After the hearing is closed, the Board has open discussion about the case and must develop a "Findings of Fact" for each case. These are facts that are proving, from the evidence presented, that there is reason for a variance or an appeal. The Chairman will call each question to vote. The Board must agree that the criteria for each question in the Findings of Fact are met before granting or denying the request. Ms. Teague discussed the Findings of Fact and conditions that the Board may attach to the approval of a variance as it deems necessary and appropriate.

Ms. Teague said these hearings are a big responsibility, and thanked everyone for serving on the Board.

**C. ADJOURN**

*With no further business, Vice Chairman David Felmet made a motion, seconded by Board Member Jack Suddath to adjourn at 6:51p.m. The motion passed unanimously.*

---

Neal Ensley, Chairman

---

Eddie Ward, Deputy Clerk

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ADVERTISEMENT

**Notice of Public Hearing**

Town of Waynesville Board  
of Adjustment

The Town of Waynesville  
Board of Adjustment will  
hold a public hearing on  
Tuesday, February 2, 2016  
at 5:30 p.m., or as soon  
thereafter as the matter  
can be heard, at the Town  
Hall Board Room, located  
at 9 South Main Street,  
Waynesville, NC.

To consider a request for  
a setback variance for the  
residential property lo-  
cated at 1111 Pigeon Road,  
Tax Parcel Identification  
Number 8615-73-4306.

For more information  
please contact Elizabeth  
Teague, (828) 456-2004,  
email: eteague@waynes-  
villenc.gov, Mail: 9 South  
Main Street, Suite 110,  
Waynesville, NC 28786

Elizabeth Teague  
Town of Waynesville  
Development Services Di-  
rector  
No. 33099 January 20 and  
25, 2016

NORTH CAROLINA  
HAYWOOD COUNTY

AFFIDAVIT OF PUBLICATION

Before the undersigned, a Notary Public of said County and  
State, duly commissioned, qualified, and authorized by law to  
administer oaths, personally appeared \_\_\_\_\_

Richard Key who being first  
duly sworn, deposes and says: that he (she) is

Publisher  
(Owner, partner, publisher, or other officer or employee authorized to make this affidavit)

of THE MOUNTAINEER  
engaged in the publication of a newspaper known as  
THE MOUNTAINEER published, issued, and entered as second  
class mail in the City of  
WAYNESVILLE

in said County and State; that he (she) is authorized to make  
this affidavit and sworn statement; that the notice or other legal  
advertisement, a true copy of which is attached hereto, was  
published in THE MOUNTAINEER on the following dates:

January 20 and 25, 2016

and that the said newspaper in which such notice, paper, document,  
or legal advertisement was published was, at the time of each and  
every such publication, a newspaper meeting all of the requirements  
and qualifications of Section 1-597 of the General Statutes of North  
Carolina and was a qualified newspaper within the meaning of  
Section 1-597 of the General Statutes of North Carolina.

This 25th of January, 2016

Jonas [Signature]  
Signature of person making affidavit

Sworn to and subscribed before me, this 25th

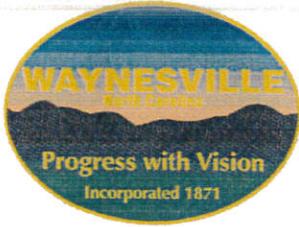
day of January, 2016

Chris B. McQuinn

My Commission expires: May 10, 2017  
Notary Public

AFFIDAVIT OF PUBLICATION

Issued by  
THE MOUNTAINEER  
Waynesville, NC 28786



# TOWN OF WAYNESVILLE

Development Services Department

PO Box 100

9 South Main Street

Waynesville, NC 28786

Phone (828) 456-8647 • Fax (828) 452-1492

www.waynesvillenc.gov

## Variance Request

Property Address/Location: 1111 Pigeon Street

Property PIN: 8615-73-4306 Property Zoning District: Francis Cove Res. low den.

Flood Zone?: NO Historic Property or District?: NO

Signature of property owner of record: Mark Edward Tice Date: 12-19-15

\*Applicant Name: Mark Edward Tice Applicant Phone #: 828.734.0282

Applicant Address: 1111 Pigeon Street Waynesville NC  
*Application must be filed by the owner of the property or by an agent specifically authorized by the owner.*

I, Mark E. Tice, hereby petition the Board of Adjustment for a variance from the provisions of the Town Ordinance Land Development Standards for this property as described below.

Applicable Ordinance Section: \_\_\_\_\_

Ordinance requirement from which relief is sought: Bear of house set back

Variance requested and why (attach additional sheets, maps, or other information as necessary):

~~Addition~~ request that a variance be given or relief of the current 20 ft. set back requirement due to the structure being 80% completed. This structure is within 10 ft of the property line, as seen in pictures will not negatively impact neighboring property.

Applicant Signature: Mark Edward Tice Date: 12-19-15

# Parcel Report For 8615-73-4306

TICE, MARK E  
TICE, BETHANY  
1111 PIGEON RD  
WAYNESVILLE, NC 28786

## Account Information

PIN: 8615-73-4306  
Deed: 724/312

## Site Information

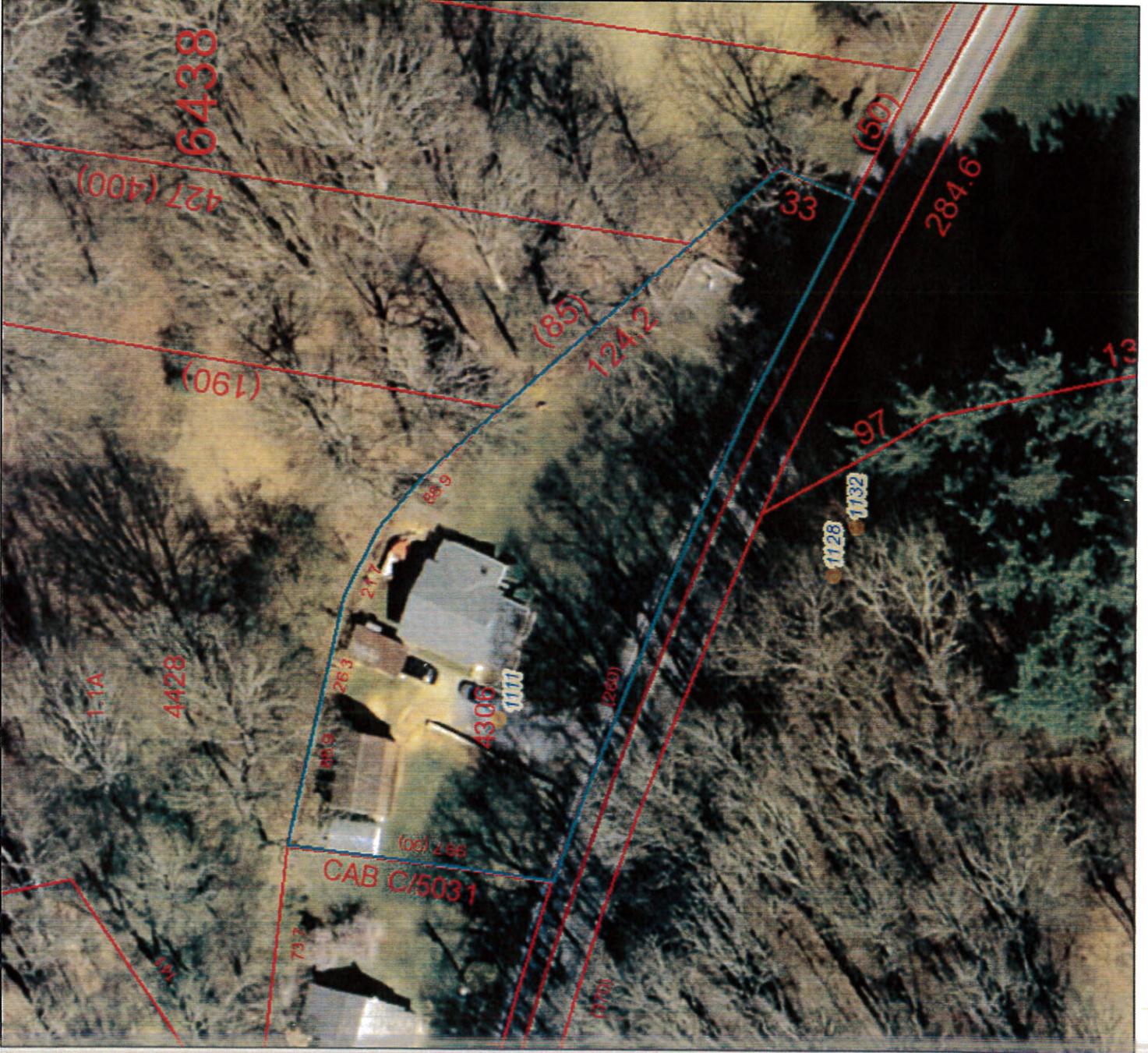
DWELLING  
SINGLE FAMILY  
1111 PIGEON RD

Heated Area: 1528  
Year Built: 1946  
Total Acreage: 0.52 AC

Township: WAYNESVILLE

## Site Value Information

Land Value: \$22,000  
Building Value: \$57,700  
Market Value: \$79,700  
Deferred Value: \$0  
Assessed Value: \$79,700  
Sale Price: \$55,000  
Sale Date: 12/12/2007  
Tax Bill 1: \$663  
Tax Bill 2: \$476.83



1 inch = 50 feet  
January 21, 2016

Disclaimer: The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information sources should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.

# Parcel Report For 8615-73-4306

TICE, MARK E  
TICE, BETHANY  
1111 PIGEON RD  
WAYNESVILLE, NC 28786

## Account Information

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Deed: 724/312

## Site Information

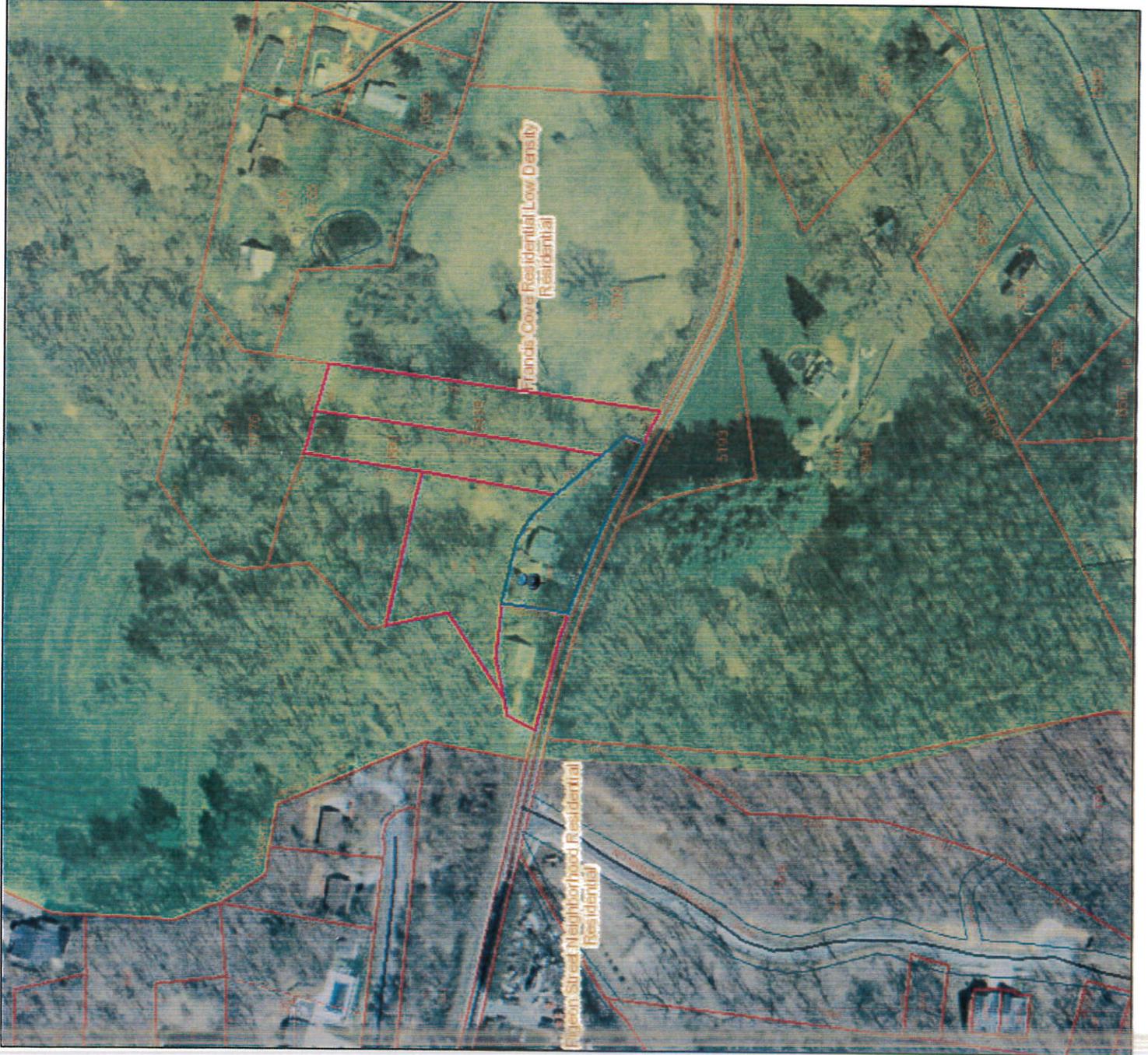
DWELLING  
SINGLE FAMILY  
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Heated Area: 1528  
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Township: WAYNESVILLE

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Assessed Value: \$79,700  
Sale Price: \$55,000  
Sale Date: 12/13/2007  
Tax Bill 1: \$663.00  
Tax Bill 2: \$476.83



1 inch = 200 feet  
January 4, 2016

Disclaimer: The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information sources should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.

## Board of Adjustment Staff Report

Subject: Variance of the rear yard setback requirement at 1111 Pigeon Street.  
Ordinance Section: Chapter 2, Section 2.4.1 Dimensional Standards by Residential District.  
Applicant: Mark Tice  
Meeting Date: February 2, 2016

### Summary Information:

Application Date: December 19, 2015  
Proposed Location: 1111 Pigeon Road– PIN 8615-73-4306  
Property Owner: Mark Tice  
Acreage of site: 0.52  
Zoning District: Francis Cove Residential Low Density District  
Existing Development: Residential lot  
Nature of Variance: Request to encroach into the rear setback with a residential addition.

### Evidence to be Presented by Staff:

Notification and Posting

Variance Application

Location and zoning maps

Building Permit

This Board of Adjustment Staff Report for February 2, 2016

### Background:

The subject property consists of 0.52 acres which is just larger than the 1/2/ acre minimum lot size for the Francis Cove Low-Density Residential District in which it is located. The property consists of a house and accessory buildings with a driveway. The house was built in 1946 with a heated area of 1528 square feet. Mr. Tice applied for and received a building permit to construct an addition to the east side of his house. Because of the location of the existing house accessory buildings and driveway, this presents the only area on the lot where Mr. Tice could add on to his existing house. This portion of the lot curves to follow a fence line back towards the road and creates a constraint in which to construct an addition that comes straight off the side of the house. The addition is designed to tie in to the corners of the existing house in order for the addition to blend in and match the older structure, coming straight out 30' at the same width of 28' as the existing house.

The building permit was accompanied by a Land Development permit that noted the Town's required setbacks for the lot per the Town's Dimensional Standards Table for the Francis Cove District. The

subsequent construction however, did not adhere to the required rear yard setback and encroached into the setback from approximately one foot (1') at the point where the addition connects to the existing house to nine feet (9') where the addition ends, as the lot line curves back in toward the road.

The building inspector who was working with Mr. Tice did not recognize the encroachment or communicate concern about the rear yard zoning requirement as the construction progressed. Once the encroachment was recognized a stop work order was placed on the project, but at that point, Mr. Tice had already constructed walls and roofing.

The encroachment was realized because of a complaint from the neighboring property when grading work pushed dirt against the existing fence that runs along the rear property line. Mr. Tice has since pulled, graded and reseeded the area and dirt is no longer pushed against the fence posts.

### **Surrounding Land Use/Zoning Patterns:**

The property is located in the Francis Cove Low Density Residential District. It is bordered on the west by a single-family residential house and to the north and east by open land. The purpose and intent of this district as established by the Land Development Standards and the Dimensional Standards for the District are attached.

### **Variance requirements and staff recommended Findings:**

The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings. Town staff has provided our findings for each criteria in bulleted format.

- (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.

- ❖ Staff believes that un-necessary hardship would result from the strict application of the ordinance because:

- The only way to correct the encroachment would be to force Mr. Tice to relocate or demolish the addition which he has already partially completed at great expense.
- Strict application of the ordinance would force the proposed addition to be built on a curve or be offset from the existing structure which would make for an odd-shaped and more expensive addition.

- (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.

- ❖ Staff believes that the hardship presented is peculiar to the property because:

- His lot is just slightly larger than the minimum lot size allowed in the District and so faces a constrained building area compared to larger lots within the District.
  - There is no other location on the lot in which to construct an addition to this house.
  - The corner of the existing 1946 house 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 front yard setback is also 20', 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.
- ❖ Staff does not believe the hardship is the result of any action taken by the property owner because:
    - A stop work order was not issued in a reasonable time for Mr. Tice to correct the yard setback. NC Building Codes only require a 10' setback from property lines, and the building inspector working on site did not realize the encroachment until well into the project.
    - The property owner proceeded in good faith with his project based upon his building and land development permits.
- (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.
- ❖ Staff believes the requested variance is consistent with the spirit, purpose and intent of the ordinance 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 does is not adjacent to, or visible from, any neighboring residence and is also not near any other structures. Rather the rear yard abuts open and wooded land.

Town of Waynesville Land Development Standards Excerpts  
 Pertaining to The Francis Cove Residential District.  
 January 4, 2016

2.3 - Purpose and Intent by District.

2.3.1 Residential—Low Density Districts (RL) Purpose and Intent.

C.

The Francis Cove Residential—Low Density District (FC-RL) is an area that will remain as a very sparsely developed area. Few urban services are available in this area to support dense development and the topography poses a limitation on development as well. Agricultural and residential uses will be the predominant future land use. Maintaining the rural character of this area will be an important focus. Clustering future development in small areas while leaving large areas undeveloped will be critical in achieving this goal.

2.4 - Dimensional Standards by District.

2.4.1 Table of Dimensional Standards by Residential District.

<i>Standard</i>	<i>Residential Low Density</i>
<b>1. Applicable Districts</b>	CC-RL, EN-RL, <b>FC-RL</b> , HT-RL
<b>2. Development Standards</b>	
a. Density (max base)	6 units/acre
b. Density (max with SUP)	12 units/acre
c. Civic Space (min) per <u>CH 7</u>	10%—Open Space Only
<b>3. Lot Standards</b>	
a. Lot Area—House	½ acre
b. Lot Area—All bldg. types with rear vehicular access	Subject to density
c. Lot Width (min)— With rear vehicular access	60 ft. n/a
d. Frontage at Front Setback	n/a
e. Pervious Surface (min)	20%
<b>4. Building Setback (min)</b>	
a. <b>Principal Front<sup>1</sup></b>	<b>20 ft.</b>
b. Street Side/Secondary Front <sup>1</sup>	20 ft.
c. Side (from adjacent lot)	<b>10 ft.</b>
d. Setback Between Bldgs.	15 ft. (10 ft.)
e. <b>Rear</b>	<b>20 ft.</b>
<b>5. Accessory Structure Setback</b>	
a. Side	5 ft.
b. Rear	5 ft.
c. Other Standards	See Section 4.6.3
<b>6. Building Height (in Stories)</b>	
a. Principal Building (max)	3 stories
b. Accessory Structure (max)	2 stories
<b>7. Outdoor Storage</b>	
a. Residential Uses	Permitted in all districts <sup>2</sup>
b. Nonresidential Uses	Not permitted

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ADVERTISEMENT

**Notice of Public Hearing**

Town of Waynesville Board  
of Adjustment

The Town of Waynesville  
Board of Adjustment will  
hold a public hearing on  
Tuesday, February 2, 2016  
at 5:30 p.m., or as soon  
thereafter as the matter  
can be heard, at the Town  
Hall Board Room, located  
at 9 South Main Street,  
Waynesville, NC:

To consider a request for a  
variance of the sign stan-  
dards for the commercial  
property located at 121  
Eagles Nest Road, Tax Par-  
cel Identification Number  
8605-64-6237.

For more information  
please contact Elizabeth  
Teague, (828) 456-2004,  
email: eteague@waynes-  
villenc.gov, Mail: 9 South  
Main Street, Suite 110,  
Waynesville, NC 28786

Elizabeth Teague  
Town of Waynesville  
Development Services Di-  
rector  
No. 33100 January 20 and  
25, 2016

NORTH CAROLINA  
HAYWOOD COUNTY

AFFIDAVIT OF PUBLICATION

Before the undersigned, a Notary Public of said County and  
State, duly commissioned, qualified, and authorized by law to  
administer oaths, personally appeared \_\_\_\_\_

Jonathan Keip who being first  
duly sworn, deposes and says: that he (she) is

Publisher

(Owner, partner, publisher, or other officer or employee authorized to make this affidavit)

of THE MOUNTAINEER  
engaged in the publication of a newspaper known as  
THE MOUNTAINEER published, issued, and entered as second  
class mail in the City of  
WAYNESVILLE

in said County and State; that he (she) is authorized to make  
this affidavit and sworn statement; that the notice or other legal  
advertisement, a true copy of which is attached hereto, was  
published in THE MOUNTAINEER on the following dates:

January 20 and 25, 2016

and that the said newspaper in which such notice, paper, document,  
or legal advertisement was published was, at the time of each and  
every such publication, a newspaper meeting all of the requirements  
and qualifications of Section 1-597 of the General Statutes of North  
Carolina and was a qualified newspaper within the meaning of  
Section 1-597 of the General Statutes of North Carolina.

This 25<sup>th</sup> of January, 2016

Signature of person making affidavit

Sworn to and subscribed before me, this 25<sup>th</sup>

day of January, 2016

Jan B. DeLuise  
My Commission expires: Aug 10, 2017  
Notary Public

AFFIDAVIT OF PUBLICATION

Issued by  
THE MOUNTAINEER  
Waynesville, NC 28786



# TOWN OF WAYNESVILLE

Development Services Department

PO Box 100

9 South Main Street

Waynesville, NC 28786

Phone (828) 456-8647 • Fax (828) 452-1492

www.waynesvillenc.gov

## Variance Request

Property Address/Location: 121 Eagles Nest Road, Waynesville, NC. 28786

Property PIN: \_\_\_\_\_ Property Zoning District: \_\_\_\_\_

Flood Zone?: \_\_\_\_\_ Historic Property or District?: \_\_\_\_\_

Signature of property owner of record: \_\_\_\_\_ Date: \_\_\_\_\_

\*Applicant Name: S M S Enterprise Applicant Phone #: 828-681-5011

Applicant Address: 2617 Hendersonville Road, Arden, NC 28704

*Application must be filed by the owner of the property or by an agent specifically authorized by the owner.*

I, Sandeep Gupta, hereby petition the Board of Adjustment for a variance from the provisions of the Town Ordinance Land Development Standards for this property as described below.

Applicable Ordinance Section: \_\_\_\_\_

Ordinance requirement from which relief is sought: \_\_\_\_\_

From 11.7.4 to allow an electronic changeable face sign or digital reader board outside of Regional Center District and within Hazelwood Business District

From 13.2.1 in order to allow modification or replacement of nonconforming structure which will not be to a less intensive use or to a structure which has not been destroyed

Variance requested and why (attach additional sheets, maps, or other information as necessary):

By using the digital LED sign would give better visibility for prospective customers. By the studies done, this would increase revenue from 15% to 25% which would give more revenue to Haywood County. We are now using an older sign cabinet and wish to update our sign since we have spent a lot of money repaving the parking lot, putting on a new roof and are in the process of painting the outside of the building.

We are also looking at the safety aspect of being able to control the signage via computer as opposed to sending an employee out, climbing a ladder and manually changing the sign. Sometimes the letters get blown off creating a very unattractive sign and misspelled words..

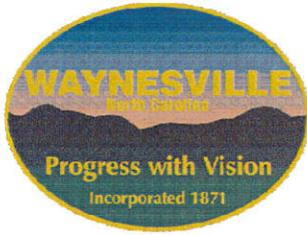
Being the first business at this exit, it is causing a hardship of getting our name "out there". We take our business very seriously and want to be able to create signage that would draw customers in.

We want to be proud of the facility and would think the "powers that be" would want the same to better represent the town and county.

As you are aware, it is hard to navigate through this exit. It would be a bit help for us.

Applicant Signature: \_\_\_\_\_

Date: 12-4-15



# TOWN OF WAYNESVILLE

## Planning Board

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

### Chairman

Patrick McDowell

### Planning Board Members

Danny Wingate (Vice)

John Feichter

Marty Prevost

Robert Herrmann

Phillip Gibbs

H.P. Dykes, Jr.

Shell Isenberg

L. Brooks Hale

### Development Services

Director

Elizabeth Teague

## MINUTES OF THE TOWN OF WAYNESVILLE PLANNING BOARD REGULAR MEETING

Town Hall – 9 South Main St., Waynesville, NC 28786  
September 21, 2015

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THE WAYNESVILLE PLANNING BOARD held a regular meeting on September 21, 2015 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.

The following members were present:

Patrick McDowell  
Danny Wingate  
Shell Isenberg  
Robert Herrmann  
Jon Feichter  
Phillip Gibbs  
Marty Prevost  
Brooks Hale

Absent:

Bucky Dykes

The following staff members were present:

Elizabeth Teague, Development Services Director  
Byron Hickox, Land Use Administrator  
Eddie Ward, Deputy Town Clerk

Also present was Ron Sneed, Attorney to the Planning Board, and Brenda Reese, CFO Carolina Furniture Concepts.

2. Adoption of Minutes

*Board Member Danny Wingate made a motion, seconded by Board Member Brooks Hale, to approve the minutes of August 17, 2015 as presented. The motion passed unanimously.*

**B. NEW BUSINESS**

3. Public Hearing for Conditional District Land Use Request for Carolina Furniture Concepts at 121 Eagles Nest Road, PIN 8605-64-6237

Chairman Patrick McDowell opened the Public Hearing and asked Byron Hickox, Land Use Administrator, to present the staff report for Carolina Furniture Concepts. Mr. Hickox gave the following presentation:

**Planning Board Staff Report**

Mr. Hickox explained that the subject property consists of 3.78 acres adjacent to 19/23 with a 39,000 square foot retail building that is currently occupied by Carolina Furniture Concepts. Carolina Furniture Concepts would like to replace their existing internally lit sign with a manually changed reader board, to an electronic changeable face sign with a digital reader board within the existing sign cabinet. This type of sign is only permitted in Regional Center Districts, and this property is currently located in Hazelwood Business District.

Hazelwood Business District is a small scale center for business, retail, and institutional activity. This district serves the residents of Hazelwood, Plott Creek, Eagles Nest and other surrounding neighborhoods, with a broad mixture of uses permitted. Development in the future must be sensitive in design and provide for a high level of pedestrian safety, and comfort.

Mr. Hickox stated that within the Town Code of Ordinances, internal signage is allowed in both the Business Districts and Regional Center District, but “electronic changeable face signs,” or digital reader boards, are only allowed in Regional Center Districts. The existing sign for Carolina Furniture Concepts is nonconforming for both the Regional Center District in which lighted signs are allowed, and the Hazelwood Business District in which it is located, because the sign cabinet is 80 square feet and over 8 feet tall. Excerpts from Ordinance:

**11.4 Permitted Signage by District**

**Business District (BD)**      **24 sq. ft.—6 ft. tall**

- ***Exceptions: Ground signs are not permitted on Main Street from Church Street to Russ Avenue;***

*Ground signs shall be limited to 16 ft.—4 ft. tall along Wall Street from East Street to Howell Street 1 sq. ft. for each 1 linear ft. of wall frontage - maximum of 100 sq. ft.*

*Internal illumination permitted except within a National Register Historic District*

*Pedestrian Sign - 1 per business*

*Marquee Sign - 11.7.6*

**Regional Center (RC)**      *48 sq. ft.—8 ft. tall*

*15% of wall*

*Internal illumination permitted*

*Pedestrian Sign - 1 per business*

**11.7.4 Electronic Changeable Face Signs (Permitted in RC Only).**

*Electronic changeable face signs are permitted as a component of otherwise permitted signage subject to the following standards.*

- A. No electronic changeable face sign may change its message or copy, or any pictures or images that are part of the message, more frequently than once every minute.*
- B. When the message of an electronic changeable face sign is changed mechanically, it shall be accomplished in three (3) seconds or less. When the message of an electronic changeable face sign is changed in an electronic manner, through the use of light emitting diodes, back lighting or other light source, the transition shall occur within two (2) seconds.*
- C. The portion of the sign face of an electronic changeable face sign which accommodates multiple messages shall not exceed 50 percent (50%) of the total sign face area and may not change its message or copy, or any pictures or images that are part of the message, more frequently than once every minute; the remaining portion shall be static.*
- D. Electronic changeable face signs which are illuminated or which use electronic lighting to display message shall be subject to the restrictions and limitation applicable to illumination in this ordinance.*
- E. There shall be located no more than one electronic changeable face sign per lot, and such sign shall be permitted only on a ground sign and not on any attached sign or window sign.*

Mr. Hickox stated that the first Land Use Goal in Waynesville Our Heritage, Our Future, 2020 Land Development Plan is to:

“Promote orderly growth, development and enhanced land values of the Town of Waynesville by preserving and improving Waynesville’s existing neighborhoods, creating more attractive commercial centers, maintaining a strong downtown area, taking steps to reduce urban sprawl and protecting the natural beauty of the community.”

Under this goal, actions include:

“Develop the community core of Hazelwood into a small urban center through the use of the principles of the Main Street Program led by community infrastructure elements (curb and gutter sidewalks, streetscape elements, etc.)..

“Evaluate and implement methods for reducing ‘light pollution’ to minimize the impact of artificial lighting without sacrificing safety.”

### **Staff Recommendation**

Mr. Hickox explained that staff feels the requested rezoning would allow for signage normally associated with more urbanized development areas. One of the objectives of the Town is to reduce light pollution. Considering the nonconformity of height and size of the sign itself, the light and visual impacts would go beyond the property boundary. Staff is concerned that such an action would set a precedent for others who may want to transition to digital signage in other areas of the Town.

Staff recommends denial of this request as proposed. The purpose of this request for rezoning is to allow the installation of a type of sign that is not permitted in the current zoning district. Mr. Hickox stated that there will be ramifications in the future by accommodating signage that is not allowed anywhere else in Town. The applicant has mentioned the proximity to the highway as a reason for placing an electronic changeable face sign on this property. While the Town of Waynesville desires to support the local business community, and it is understandable that Carolina Furniture Concepts wants every signage advantage available to identify itself to passing traffic, this particular situation would outweigh the goals of the overall community.

Mr. Hickox that the possible motions for this request are:

1. Motion to recommend approval/denial of the request for rezoning from Hazelwood Business District to Hazelwood Business District Conditional District to the Town of Waynesville Board of Aldermen.
2. Motion to recommend modification of the application to create Conditional District standards that would allow electronic changeable face signs, but require the applicant to reduce the size of their sign to meet current maximum area and height standards for the Hazelwood (or Regional Center) District.

The Board had questions for Mr. Hickox concerning the speed of the message on an electronic changeable face versus the speed of the message when changed through the use of light emitting diodes. Mr. Hickox referred the Board to Section 11.7.4 of the Lighting Ordinance referring to Electronic Changeable Face Signs (Permitted in RC Only) which says the electronic changeable face is accomplished in three seconds, and the light emitting diodes is accomplished in two seconds.

Chairman McDowell asked if anyone would like to speak.

Brenda Reese  
Chief Finance Officer  
Carolina Furniture Concepts

Ms. Brenda Reese stated that Carolina Furniture Concepts is a locally owned and operated in Waynesville. She said the reason for the rezoning request is to allow the business to change its existing sign to an electronic changeable face sign. Carolina Furniture Concepts' owners feel that with a lighted electronic sign, the business will be more visible from Highway 19/23. The sign that is currently in place, even though lighted, is not visible from the highway because of trees. Ms. Reese said several nationwide revenue studies have been done, and with visible signage the revenue of the businesses have increased 20 – 30%. That increase of 20 – 30% means an increase in taxes for Haywood County and the Town of Waynesville. Ms. Reese stated that the Carolina Furniture Concepts store in Fletcher has an electronic sign, and that store does about 2/3 more business than the store in Waynesville does.

Carolina Furniture Concepts opened in Waynesville in 2007, and started with two employees. Now there are nine employees, and more people could be employed with revenue brought in from a more visible sign. Ms. Reese said Carolina Furniture Concepts is growing, and wants Waynesville to benefit from that growth.

Ms. Reese said Carolina Furniture Concepts is well aware of light pollution, and they have talked with Duke Energy concerning the amount of light that will be generated from the sign if allowed. She also stressed to the Board that this light would not be glaring, and would not in any way affect the safety of people driving in the area.

Chairman McDowell closed the Public Hearing.

The Board had several questions concerning the size of the sign compared to other businesses in the area. Mr. Hickox explained that the sign was the same one that had been in place for a Food Lion Store in previous years. It was erected before any sign standards for the Town were in place.

There was much discussion among the Board on how much better the sign could be seen from Highway 19-23 if the sign was changed to an electronic changeable face sign within the existing cabinet. Ms. Reese stated they wanted to have the sign more legible to draw attention. When asked about the nonconformity of the sign now, Ms. Elizabeth Teague, Director of Development Services, stated that this request would create a unique sign that is not allowed anywhere else in Town.

Board Member Jon Feichter stated that as a small business owner himself, he understood fully the desire of Carolina Furniture Concepts to have an electronic lighted sign, and it is a difficult issue to face. He said surrounding property owners in the area need to be taken into consideration also. He stated that he recalled the amount of work and effort that went in to developing the sign ordinance and the discussion regarding electronic signs when the ordinance was being developed. He felt that it would open a "Pandora's" box if Carolina Furniture Concepts is allowed the requested sign. He made the point that a line has to be drawn somewhere, and recommended a "no" vote for the request.

Board Member Phillip Gibbs stated he felt that at some point in time, some changes needed to be made. He feels there are more "pros" than "cons" in this issue as far as revenue and employment.

***A motion was made by Board Member Jon Feichter to deny the request for a Conditional Land Use Request for Carolina Furniture Concepts at 121 Eagles Nest Road, PIN 8605-64-6237. The motion passed with seven ayes (Patrick McDowell,***

***Danny Wingate, Shell Isenberg, Robert Herrmann, Jon Feichter, Marty Prevost, and Brooks Hale) and one nay (Phillip Gibbs).***

Chairman McDowell advised Ms. Reese that the Planning Board's decision could be appealed to the Town Board of Aldermen. If she wished to do so, the Staff would be glad to help her with the process.

Board Member Brooks Hale brought to the Staff's attention a concern about trucks being parked in front of an old convenience store across from Junaluska School. Ms. Teague stated staff would go look at the area.

**C. ADJOURN**

***With no further business, a motion was made by Board Member Marty Prevost, seconded by Board Member Robert Herrmann, to adjourn at 6:20 pm. The motion passed unanimously.***

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Patrick McDowell, Chairman

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Eddie Ward, Deputy Clerk

## Planning Board Staff Report

Subject: Rezoning of Carolina Furniture Concepts Property from Hazelwood Business District (HBD) to Hazelwood Business Conditional District (HBD-CD)  
Ordinance Section: 11.7.4 and 2.1  
Applicant: Sandeep Gupta  
Meeting Date: September 21, 2015

### Summary Information:

Application Date: August 10, 2015  
Proposed Location: 121 Eagles Nest Road – PIN 8605-64-6237  
Property Owner: SMS Enterprise LLC  
Acreage of site: 3.78 acres  
Zoning District: Hazelwood Business District  
Existing Development: Developed lot with large retail building (approximately 39,000 square feet) and paved parking area

### Background:

The subject property consists of 3.78 acres adjacent to 19/23 with a 39,000 square foot retail building that is currently occupied by Carolina Furniture Concepts. Carolina Furniture Concepts would like to replace their existing internally lit sign with a manually changed reader board, to an electronic changeable face sign with a digital reader board within the existing sign cabinet. This type of sign is only permitted in Regional Center Districts. The property in question is currently located in Hazelwood Business District.

Originally, Carolina Furniture Concepts discussed with staff the possibility of a text amendment, but then applied to have their property at 121 Eagles Nest Road rezoned into a Regional Center District. When staff brought up concerns about spot zoning, they amended their request to a conditional district.

Current zoning is Hazelwood Business District (H-BD). The purpose and intent of this district as established by the Land Development Standards, Section 2.3.6(B) states:

The **Hazelwood Business District (H-BD)** is a small scale center for business, retail and institutional activity serving the residents of Hazelwood, Plott Creek, Eagles Nest and other surrounding neighborhoods. A broad mixture of uses is permitted; however, development in the future must be sensitive in design and provide for a high level of pedestrian safety and comfort. The large undeveloped tracts of land in this district must be well connected both to the neighborhood and the center as they develop. On-street parking is permitted and encouraged on many streets. Articulation in this area should occur at the scale of the pedestrian with buildings built at the scale of a neighborhood center. Connections among properties within this district and to surrounding districts are very important.

Within the Town Code of Ordinances, Chapter 11.6 and 11.7.4 Permitted Signage by District, internal signage is allowed in both the Business Districts and Regional Center Districts, but “electronic changeable face signs,” or digital reader boards, are only allowed in Regional Center Districts. The existing sign cabinet is 80 square feet and over 8 feet tall, making it nonconforming for both the RC District in which lighted signs are allowed, and the Hazelwood BD District in which it is located. Excerpts from Ordinance are provided below:

**11.4 Permitted Signage by District**

<i>Business District (BD)</i>	<i>24 sq. ft.—6 ft. tall Exceptions: Ground signs are not permitted on Main Street from Church Street to Russ Avenue; Ground signs shall be limited to 16 ft.—4 ft. tall along Wall Street from East Street to Howell Street</i>	<i>1 sq. ft. for each 1 linear ft. of wall frontage - maximum of 100 sq. ft.</i>	<i>Internal illumination permitted except within a National Register Historic District</i>	<i>Pedestrian Sign - 1 per business Marquee Sign - 11.7.6</i>
<i>Regional Center (RC)</i>	<i>48 sq. ft.—8 ft. tall</i>	<i>15% of wall</i>	<i>Internal illumination permitted</i>	<i>Pedestrian Sign - 1 per business</i>

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This rezoning request would make this sign conforming on this parcel. However, being mounted on a pole, and of this height, size and lighting, it would be unique as permitted within Town zoning.

The site was posted beginning on September 8, 2015. Notice of the Public Hearing was mailed to owners of property within 100 feet of the property in question on September 8, 2015 and mailed again with a correction on September 11, 2015. Notice was submitted to local media on September 8, 2015.

### **Consistency with 2020 Land Development Plan:**

Under North Carolina law local municipal zoning is required to be based on an adopted comprehensive land development plan. In Waynesville Our Heritage, Our Future, 2020 Land Development Plan, the first Land Use Goal is to:

“Promote orderly growth, development and enhanced land values of the Town of Waynesville by preserving and improving Waynesville’s existing neighborhoods, creating more attractive commercial centers, maintaining a strong downtown area, taking steps to reduce urban sprawl and protecting the natural beauty of the community.” (p. 4-2)

Under this goal, actions include:

“Develop the commercial core of Hazelwood into a small urban center through the use of the principles of the Main Street Program led by community infrastructure elements (curb and gutter, sidewalks, streetscape elements, etc.).” (p. 4-5)

“Evaluate and implement methods for reducing “light pollution” to minimize the impact of artificial lighting without sacrificing safety.” (p. 4-6)

The requested rezoning would not change the uses of the area but would allow for signage normally associated with more urbanized development areas.

Staff does not believe that an electronic changeable face sign is consistent with the small urban center objectives of the Hazelwood Business District or with the Town’s efforts to reduce light pollution. Light and visual impacts, especially considering the nonconformity of height and size of the sign itself, would go beyond the property boundary. While we understand the concerns for visibility of the applicant in this case, we are also concerned with the precedent such an action would set for others who may want to transition to digital signage in other areas of Town.

### **Surrounding Land Use/Zoning Patterns:**

Surrounding land use is commercial to the north and east on the properties that front Eagles Nest Road and Sulphur Springs Road. The property is bordered along its entire western edge by U.S. Highway 23/74. Across this highway are a medical office and a neighborhood of single-family homes. The properties to the south are occupied by single-family homes. All properties that are contiguous to the property in question are also located within the Hazelwood Business District.

## **Proposed Map Amendment:**

The requested map amendment would change the zoning from Hazelwood Business District (HBD) to Hazelwood Business District Conditional District (HBD-CD). The purpose of this request is to allow Carolina Furniture Concepts to replace the face of its existing, and nonconforming, sign with an electronic changeable face sign using the same sign structure and cabinet which are nonconforming to Town ordinances in terms of height, and dimension.

## **Staff Recommendations:**

Staff recommends denial of this request as proposed. The expressed purpose of this request for rezoning is to allow the installation of a type of sign that is not permitted in the current zoning district, and will have ramifications into the future. Rezoning this property will accommodate signage that is not allowed anywhere else in Town. This request would allow a nonconforming sign to be brought into conformity and be enhanced through lighting in a way that would only accentuate its variance with the Town of Waynesville's regulations. It would create unique signage under the ordinance.

The fundamental question is whether or not the Planning Board membership, or the Board of Aldermen, feels that a digital reader board sign of this height and scale is appropriate at this location. While the property is currently being occupied by a fairly large retail operation, future uses of the site may change, and the rezoning would allow the signage to continue. The Town of Waynesville desires to support our local business community, and while it is understandable that Carolina Furniture Concepts would want every signage advantage it could get to identify itself to passing traffic. However, does the supposed benefit to the business in this particular situation outweigh the goals of the overall community in this case?

This digital type of reader board, of a smaller scale and height, is allowed within Regional Center Districts of high traffic. The applicant has mentioned the proximity to the highway as a reason for the desire to place an electronic changeable face sign on this property. This means that the digital sign would be designed to light up and be visible beyond the property boundaries and have light impacts on areas that are zoned Business District. It may even be visible from residential areas at higher elevations. Interestingly, the visibility of the existing sign from the roadway of 23/74 is limited now due to the trees that are located along the highway right-of-way. Therefore, even with a lighted sign, the business may not achieve its goal for reaching vehicles traveling that corridor except during the winter, but would still impact surrounding areas.

By ordinance, the Planning Board has 64 days in which to make a recommendation to the Board of Aldermen. If the Board turns it down, the applicant can still request a public hearing at the Board of Aldermen level for further consideration, and the Board of Aldermen may adopt the amendment with modifications. The Planning Board could recommend the alternative approaches of a text amendment which would allow digital signage in the HBD, or could refer the case to the Zoning Board of Adjustment for a variance based on the applicant's location and hardship.

## **Attachments:**

1. Site Location Map
2. Application Materials Submitted

## **Suggested Actions:**

1. Motion to recommend approval/denial of the request for rezoning from Hazelwood Business District to Hazelwood Business District Conditional District to the Waynesville Board of Alderman.
2. *Motion Option2*: Motion to recommend modification of application to create Conditional District standards that would allow electronic changeable face signs, but require the applicant to reduce the size of their sign to meet current maximum area and height standards for the Hazelwood (or Regional Center) District.



**TOWN OF WAYNESVILLE PLANNING DEPARTMENT**

**Application for Land Development Standards Text Amendment**

Application is hereby made on 8/10, 2015 to the Town of Waynesville for the following amendment:

Designate the specific section(s) of the Land Development Standards being requested for change:

121 Eagles Nest Road  
Waynesville NC 28786

Description of the requested amendment, (attach additional sheets if necessary):

Change the ordinance for regional from business center  
Paul Brown asked us to submit request

The reasons for the requested amendments, (attach additional sheets if necessary):

Want to install bright digital sign which would give  
prospective customers options to increase revenue for both  
the company and county/town - having a unique sign helps  
bring in more customers instead of a generic type sign that just  
sits there

**Applicant Contact Information**

Name (Printed): Sandeep Gupta  
Mailing Address: 2617 Hendersonville Road Arden NC 28704  
Phone(s): 828-681-5011 or 828-582-2999  
Email: sandeepgupta@bellsouth.net

Note: Text Amendment Requests require a fee of \$500.00. The request will be scheduled for the next agenda opening for the Waynesville Planning Board. Please submit application to: Town of Waynesville Planning Department, 9 South Main Street, Waynesville, NC 28786.

SMS ENTERPRISE LLC  
2617 HENDERSONVILLE ROAD STE 1  
ARDEN, NC 28704

1327  
66-112531

DATE August 10, 2015

PAY TO THE ORDER OF

Town of Waynesville Planning Board

\$ 500<sup>00</sup>

Five hundred and no/100

DOLLARS





CAROLINA  
FURNITURE CONCEPTS

*Your Leader In Savings*

2617 Hendersonville Road  
Arden, N. C. 28704  
Phone: 828-681-5011  
Fax: 828-681-5022

[www.carolinafurnitureconcepts.com](http://www.carolinafurnitureconcepts.com)  
FIN 46-0490457

121 Eagles Nest Road  
Waynesville, N. C. 28786  
Phone: 828-454-9293  
Fax: 828-454-9294

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August 20, 2015

Town of Waynesville

Re: Sign Request Page 2

According to market studies, business increase sales from 20% to 30% with a lighted digital sign as opposed to the generic type of sign. Having said this, this will also bring more revenue to Haywood County and the Town of Waynesville.

One exit down from us, both Best Buy and Walmart have lighted digital signage. We are on the same highway corridor and a locally owned business trying to get in the larger market aspect and according to studies this would be a major step in that direction.



19mm Full Color Message Display



- ① Existing Sign Cabinet and Pipe, Repainted OS-199 Black
- ② L101 White Pan Formed Sign Faces with L-437 Unique Red, Embossed and Painted Copy
- ③ OS-199 Black Painted Divider Bar and Filler Panels
- ④ 19mm Red LED Electronic Message Display

# Parcel Report For 8605-64-6237

SMS ENTERPRISE LLC  
1652 OLMSTED DR  
ASHEVILLE, NC 28803

## Account Information

PIN: 8605-64-6237  
Deed: 690/1899

## Site Information

STORE, DISCOUNT  
COMMERCIAL USE  
121 EAGLES NEST RD

Heated Area:

Year Built:

Total Acreage: 3.78 AC

Township: TOWN OF WAYNESVILLE

## Site Value Information

Land Value: \$371,200  
Building Value: \$1,024,500  
Market Value: \$1,395,700  
Deferred Value: \$0  
Assessed Value: \$1,395,700  
Sale Price: \$1,475,000  
Sale Date: 12/19/2006  
Tax Bill 1: \$7,554.92  
Tax Bill 2: \$7,554.92



1 inch = 400 feet  
August 24, 2015

Disclaimer: The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information sources should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.

**CAROLINA  
FURNITURE  
CONCEPTS**

**YES OPEN  
DETAILS INSIDE**



## Board of Adjustment Staff Report

Subject: Variance of the sign standards for Carolina Furniture Concepts' property located at 121 Eagles Nest Road  
Ordinance Section: Chapter 11 Signage and Chapter 13 Nonconformities  
Applicant: Sandeep Gupta of SMS Enterprise LLC  
Meeting Date: February 2, 2016

### Summary Information:

Application Date: December 4, 2015  
Proposed Location: 121 Eagles Nest Road – PIN 8605-64-6237  
Property Owner: SMS Enterprise LLC  
Acreage of site: 3.78 acres  
Zoning District: Hazelwood Business District  
Existing Development: Developed lot with large retail building (approximately 39,000 square feet) and paved parking area  
Nature of Variance: Carolina Furniture Concepts would like to re-use an existing signage cabinet to install a digital reader board.

1. Digital signage is not allowed in the Hazelwood Business District in which the structure is located.
2. The existing sign structure which would be utilized is itself nonconforming in dimension to the Town's signage regulations.

### Evidence to be Presented by Staff:

Notification and Posting

Variance Application

September 21, 2015 Planning Board Minutes and Staff Report with Application and Attachments

This Board of Adjustment Staff Report for February 2, 2016

### Background:

The subject property consists of 3.78 acres adjacent to 23/74 with a 39,000 square foot retail building that is occupied by Carolina Furniture Concepts. Carolina Furniture Concepts would like to replace their existing internally lit sign that includes a reader board which is changed manually, to an electronic changeable face sign with a digital reader board within the existing sign cabinet. This type of sign is only permitted in Regional Center Districts. The property in question is currently located in Hazelwood Business District.

At the Planning Board meeting on September 21, 2015, an application by Carolina Furniture Concepts for Conditional District Zoning was heard. After a presentation of the above information and a statement by Ms. Brenda Reese, the Chief Finance Officer for Carolina Furniture Concepts, the Planning Board voted 7-1 to deny the request for Conditional District Zoning made by Carolina Furniture Concepts. Much of the Planning Board’s discussion prior to the vote focused on the fact that approval of this request would establish a precedent that would encourage future applications for Conditional District Zoning solely for the purpose of allowing larger signage or electronic signage than is otherwise allowed.

Within the Town Code of Ordinances, Chapter 11.6 and 11.7.4 Permitted Signage by District, internal signage is allowed in both the Business Districts and Regional Center Districts, but “electronic changeable face signs,” or digital reader boards, are only allowed in Regional Center Districts. The existing sign cabinet is 80 square feet and over 8 feet tall, making it nonconforming for both the RC District in which lighted signs are allowed, and the Hazelwood BD District in which it is located. Relevant excerpts from Chapter 11 are provided in italics below:

**11.1 - General Purpose and Intent.**

*The purpose of this section and the other sign standards contained in this chapter, is to support and complement the various land uses allowed in the Town of Waynesville by the adoption of standards concerning the placement of signs. These standards are adopted under the zoning authority of the Town to achieve the following:*

- *To encourage the effective use of signs as a means of communication in the Town while preserving the rights of free speech under the First Amendment to the United States Constitution.*
- *To maintain and enhance the aesthetic environment and the Town's ability to attract sources of economic development and growth.*
- *To improve pedestrian and traffic safety.*
- *To minimize the possible adverse effect of signs on nearby public and private property.*

**11.4 Permitted Signage by District**

<i>Business District (BD)</i>	<i>24 sq. ft.—6 ft. tall Exceptions: Ground signs are not permitted on Main Street from Church Street to Russ Avenue; Ground signs shall be limited to 16 ft.—4 ft. tall along Wall Street from East Street to Howell Street</i>	<i>1 sq. ft. for each 1 linear ft. of wall frontage - maximum of 100 sq. ft.</i>	<i>Internal illumination permitted except within a National Register Historic District</i>	<i>Pedestrian Sign - 1 per business Marquee Sign - 11.7.6</i>
<i>Regional Center (RC)</i>	<i>48 sq. ft.—8 ft. tall</i>	<i>15% of wall</i>	<i>Internal illumination permitted</i>	<i>Pedestrian Sign - 1 per business</i>

**11.7.4 Electronic Changeable Face Signs (Permitted in RC Only).**

*Electronic changeable face signs are permitted as a component of otherwise permitted signage subject to the following standards.*

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- C. *The portion of the sign face of an electronic changeable face sign which accommodates multiple messages shall not exceed 50 percent (50%) of the total sign face area and may not change its message or copy, or any pictures or images that are part of the message, more frequently than once every minute; the remaining portion shall be static.*
- D. *Electronic changeable face signs which are illuminated or which use electronic lighting to display message shall be subject to the restrictions and limitation applicable to illumination in this ordinance.*
- E. *There shall be located no more than one electronic changeable face sign per lot, and such sign shall be permitted only on a ground sign and not on any attached sign or window sign.*

To install the proposed sign would require variances from the existing sign regulations for the Hazelwood Business District to be larger than allowable sign dimension and to be an electronic changeable face sign.

Another aspect of this request requiring a variance is that the sign is a nonconforming structure as it is. The Town's regulations limit the extent to which nonconforming structures may be altered. Relevant excerpts from Chapter 13 are provided in italics below:

**13.5 - Nonconforming Uses and Structures.**

- B. ***Nonconforming Structure:** A nonconforming structure does not conform to dimensional, design, locational, or other requirements of this Ordinance. The nonconformity may result from adoption of this Ordinance or any subsequent amendment.*

**13.5.3 Standards for Nonconforming Structures.**

- A. ***Continuation Permitted:** Any legally established nonconforming use or structure may be continued subject to the standards listed in this section. However, once a nonconforming use or structure is made conforming, it may not later be used for any nonconforming use or expanded in violation of this Ordinance.*
- B. ***Legal Expansions Permitted:** A nonconforming structure may be enlarged, maintained, repaired or altered; provided, however, that no such enlargement, maintenance, repair, or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of the structure. However, this provision is not intended to permit substantial reconstruction or new construction on the same building footprint.*

If granted, this sign structure which is nonconforming in dimension would become permitted use in perpetuity on this property. Further it would add the aspect of an electronic changeable face, creating a new and additional nonconformity within the Hazelwood Business District to be allowed.

### **Surrounding Land Use/Zoning Patterns:**

The sign property is located in the Hazelwood Business District (H-BD). The purpose and intent of this district as established by the Land Development Standards, Section 2.3.6(B) states:

The **Hazelwood Business District (H-BD)** is a small scale center for business, retail and institutional activity serving the residents of Hazelwood, Plott Creek, Eagles Nest and other surrounding neighborhoods. A broad mixture of uses is permitted; however, development in the future must be sensitive in design and provide for a high level of pedestrian safety and comfort. The large undeveloped tracts of land in this district must be well connected both to the neighborhood and the center as they develop. On-street parking is permitted and encouraged on many streets. Articulation in this area should occur at the scale of the pedestrian with buildings built at the scale of a neighborhood center. Connections among properties within this district and to surrounding districts are very important.

Surrounding land use is commercial to the north and east on the properties that front Eagles Nest Road and Sulphur Springs Road. The property is bordered along its entire western edge by U.S. Highway 23/74. Across this highway are a medical office and a neighborhood of single-family homes. The properties to the south are occupied by single-family homes. All properties that are contiguous to the property in question are also located within the Hazelwood Business District.

### **Variance requirements and staff recommended Findings:**

The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings. Town staff has provided our findings for each criteria in bulleted format.

- (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.
  - ❖ Staff does not believe that the current sign in its present state presents an un-necessary hardship because:
    - Carolina Furniture Concepts (“CFC”) has operated and may continue to operate and use their property without the variance.
    - CFC may continue to utilize the existing sign, even as a nonconforming structure in terms of dimension and height without the variance, and is the largest and tallest sign in the district already.
- (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.

❖ Staff does not believe that the hardship presented is peculiar to the property because:

- The property's and surrounding neighborhood's location and elevation relative to 23/74 limits public access and visibility from the highway. The highway elevation is higher than the sign, and the highway only has one exit from the south bound lane and only one access to the north bound lane. The variance being requested will not change the highway access, elevation or size of what is already there.
- Use of the existing sign requires someone to climb a ladder to change the reader board and the reader board letters occasionally blow off. CFC would like to add light and a digital reader board which can be programmed from inside the store improving visibility and safety of employees. However, they could also lower the height of the sign to reduce the nonconformity and provide easier access to their reader board.

(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.

❖ Staff does not believe the hardship is the result of any action taken by the property owner because:

- The property, building and sign were formally a grocery store when CFC purchased it. The sign has functioned as a pre-existing nonconforming structure within the district and may continue to do so.

(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.

❖ Staff does not believe the requested variance is consistent with the spirit, purpose and intent of the ordinance because:

- The requested variance would allow Carolina Furniture Concepts to replace the face of its existing, and nonconforming, sign with an electronic changeable face sign thereby creating an additional nonconformity in conflict with Chapter 13.
- Given the sign's height, square footage, and the addition of an electronic changeable face, it would be unique within the District and within the Town of Waynesville and be inconsistent with the Town's Sign Ordinance, Chapter 7.
- Electronic changeable face sign is not consistent with the small urban center objectives of the Hazelwood Business District or with the Town's efforts to reduce light pollution and signage impacts. Light and visual impacts, especially considering the nonconformity of the height and size of the sign itself, would go beyond the property boundary.

- While we understand the concerns for visibility of the applicant in this case, we are also concerned with the precedent such an action would set for others who may want to transition to digital signage in other areas of town. Once a variance is granted to allow electronic, changeable face signs outside of the Regional Center Districts, than a precedent could be set for these types of signs to proliferate in other areas of Town, which would be counter to the goal of protecting the aesthetic environment and could adversely impact surrounding areas.