



## **TOWN OF WAYNESVILLE Zoning Board of Adjustment**

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

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

**Development Services  
Director**  
Elizabeth Teague

### **TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT REGULAR MEETING**

**Town Hall – 9 South Main Street, Waynesville, NC 28786  
Tuesday, August 4<sup>th</sup>, 2020, 5:30 PM**

#### **A. CALL TO ORDER/BUSINESS ITEMS:**

1. Welcome/Announcements

- Introduction of new appointee and board membership
- Draft Comprehensive Plan will go before Board of Aldermen in August and is on the Town website at:

<https://www.waynesvillenc.gov/departments/development-services/comprehensive-plan-update>

2. Nominations and Election of Chair and Vice Chair

3. Adoption of Minutes (as presented or amended) from June 2, 2020

4. Approval of Board Order from June 2, 2020

#### **B. ADJOURN**



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Henry Kidder (Chairman)  
Stephanie Strickland  
Joshua Morgan  
George Escaravage  
Edward Moore  
John Baus  
Margaret E. Chandler

**Development Services  
Director**  
Elizabeth Teague

### **Town of Waynesville Zoning Board of Adjustment Regular Meeting**

**Town Hall-9 South Main Street, Waynesville, NC 28786  
Tuesday, June 2, 2020, 5:30pm**

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THE WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a regular meeting on June 2, 2020 at 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

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

Chairman Henry Kidder called the meeting to order at 5:33 p.m.

The following members were present:

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

The following Alternates were present:

Margaret Chandler  
John Baus

The following members were absent:  
None

The following Attorneys were present

Ron Sneed, Attorney for the Board  
Bill Cannon, Attorney for the Town of Waynesville  
Russell McLean, Attorney for the Applicant

Zoning Board of Adjustment Minutes  
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Aug 4th, 2020

The following staff members were present:

Byron Hickox, Land Use Administrator  
Jesse Fowler, Planner  
David Kelly, Building Inspector  
Esther Coulter, Administrative Assistant

Others:

Applicant Juan Camacho

1. Welcome/Calendar/Announcements  
Chairman Henry Kidder welcomed everyone.
2. Adoption of Minutes

***Joshua Morgan made a motion to approve the minutes of the February 5, 2020 meeting. The motion was seconded by Board Member George Escaravage. The motion Passed unanimously (5-0).***

## **B. BUSINESS**

1. Appeal of Administrative Decision regarding Land Development Standards Section 2.4.1 Table of Dimensional Standards and 4.5.3. Accessory Uses and Structures. Maximum Number and Area. at 311 Hyatt Street- PIN 8605-61-7970

Chairman Kidder opened the hearing, stating that this is a public hearing before Zoning Board of Adjustment and is an appeal of an order, requirement, decision, or determination made by an administrative official charged with enforcing the Town's ordinances. He advised that the hearing is quasi-judicial in nature and read instructions for how the hearing would proceed.

He asked if anyone other than the Town or applicant wished to be recognized as having standing in the case. No one came forward.

He asked that those who wanted to speak at the hearing come forward to be sworn in. Byron Hickox, David Kelley, and Jesse Fowler came forward to be sworn in and Chairman Kidder asked if these were the only people going to testify. No one else came forward, and those that came forward were sworn in.

Chairman Kidder polled the board members concerning with the following questions:

1. First, have any member of this board had any conversation or contact concerning this case other than the agenda packet distributed to the board prior to this meeting?

All 5 Board members stated No.

2. Is any member subject to any impermissible conflict of interest which would make the member unable to be impartial or to be impartial decision maker in the matter under consideration?

All 5 Board members stated No.

3. Does any party have any objections concerning the impartiality of this Board to this case?

All said No.

Mr. Kidder went on to explain the order of presentations and board deliberation. He then concluded that after a decision is reached, that it will be put in writing and permanently filed in the minutes of the board and the Town, and either party may appeal the decision to the Superior Court within thirty days after being served with that written decision.

Mr. Kidder asked if there was someone from Town staff that wanted to present the case. Byron Hickox came to the podium.

Byron Hickox introduced himself as the Town of Waynesville's Land Use Administrator, with an office at 9 N. Main Street Suite 110 Waynesville, NC 28786.

Mr. Hickox read from his staff report that on March 21, 2020 the Development Services Department received a complaint from a neighbor regarding a building on the lot at 311 Hyatt Street. The complainant was concerned that the building was built without a permit.

On March 30, 2020 Jesse Fowler and David Kelley visited the property in question and confirmed that an accessory structure had been built without a building permit. Additionally, the building does not appear to meet setbacks, is located within the floodplain, and is the fourth accessory structure placed on this property. The previously existing three accessory structures already exceed the maximum of two allowed by the Land Development Standards Section 4.5.3 but are legal nonconforming structures. A fourth accessory structure would not be permitted.

On March 31, 2020 Jesse Fowler and David Kelley called Mr. Camacho and informed him that the building in question would have to be removed, and that they would mail a letter to that effect. The letter contained information regarding the North Carolina Residential Building Code, Zoning Board of Adjustment Minutes  
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flood hazard areas, accessory structure standards, and setback standards. The letter was mailed on March 31, 2020.

The domestic return receipt card indicating Mr. Camacho's receipt of the letter was returned to the Development Services Department and indicated that Mr. Camacho had received the letter on April 4, 2020.

On April 17, 2020 the Development Services Department received an application for an Appeal of an Administrative Decision to take this matter before the Zoning Board of Adjustment.

Mr. Hickox asked that the following be entered into evidence (page numbers reference location in the agenda packet provided):

1. Staff Report **Page 10**
2. Aerial Photograph of Subject Property-**Page 12**
3. Photographs of Prohibited Accessory Structure-**Pages 13, 14, 15**
4. Notice of Violation-**Page 16, 17**
5. Domestic Return Receipt Card-**Page 18**
6. Application for Appeal-**Page 19**
7. Photographs of Property Posting Sign-**Pages 20, 21**
8. Adjacent Landowner Notice- **Page 22**
9. Adjacent Landowner Mailing List- **Page 23**

Mr. Hickox stated that notice of this public hearing was mailed to owners of property within 100 feet of the subject property on May 11, 2020. Notice was published in The Mountaineer on May 20 and 27, 2020.

Vice-Chairman Stephanie Strickland asked which building is shown in the picture on page 13.

Land Use Administrator Byron Hickox clarified on page 13 that it is the taller structure in the rear and added that you can see on the aerial photo page 12 with cross-hatched red area showing the location of the accessory structure in question.

Board member Joshua Morgan asked if there are legal nonconforming structures on site.

Mr. Hickox clarified that on page 16 and 17 (the notice of violation) is copied and pasted two sections out of the Land Development Standards, specifically Section 4.5.3 - Accessory Uses and Structures. For a single-family lot less than 1 acre the maximum number of accessory structures permitted is two. The third one is grandfathered (legal nonconforming structure).

Board member Joshua Morgan asked what the long structure shown in the rear is.



Land Use Administrator Byron Hickox stated the longer one in the back is a manufactured home and is being used as accessory dwelling.

George Escaravage asked whether the owner constructed the buildings or were they there when he bought the property.

Land Use Administrator Byron Hickox did not know.

Board member George Escaravage stated he would wait to ask the question later.

Board member Joshua Morgan asked when was the aerial photo taken? (page 12)

Land Use Administrator Byron Hickox stated that is from 2019.

Chairman Henry Kidder asked why 2017 appeared on the property information.

Land Use Administrator Byron Hickox stated that was the sale date of the property.

Board member George Escaravage summarized by stating that the structure in question is in the floodplain, was built without a permit, and is in the setback.

Mr. Hickox stated the way we would prioritize those things is that 1) it was built without a permit. The application for a building permit gives the Development Service Department the opportunity to review. During the review staff asks, is it in the Flood Plain? Do you already have too many accessory structures and therefore are not be able to build another one?

The structure in question is the fourth accessory structure on the property. The other 3 structures could legally remain as legal nonconforming structures. It is also in the floodplain. If you were to construct a building in the floodplain there are some additional standards that would apply to the construction of that building. It also appears to violate setback requirements.

Chairman Henry Kidder asked if anyone measured the setbacks on site.

Land Use Administrator Byron Hickox stated that because there was no permit applied for, those measurements were not provided. If the normal procedure was followed, town staff could have communicated to the owner before the building was built.

Board member George Escaravage stated that an inspection was conducted because the town received a complaint from a neighbor.

Land Use Administrator Byron Hickox stated that was correct.

Board Member Stephanie Strickland asked if the building is shown on the aerial photo on page 12.

Land Use Administrator Byron Hickox said no. That's why the location is shown with cross-hatching.

Board Member Stephanie Strickland asked if it is a 3-sided building and open on one side. (page 13)

Land Use Administrator Byron Hickox stated it appears to be a 3-sided building.

Board member Joshua Morgan asked about the "code" that is in effect.

Land Use Administrator Byron Hickox stated that the adoption of our current version of the Land Development Standards is April 4, 2011.

Chairman Henry Kidder asked if there is now anything different than the previous standard.

Land Use Administrator Byron Hickox stated that he couldn't testify to that and would have to consult the original Land Development Standards.

Chairman Henry Kidder asked if Byron was here before 2011.

Land Use Administrator Byron Hickox said that he was.

Chairman Henry Kidder asked if there were any other questions.

Attorney Bill Cannon came to the podium and stated that he is the Town Attorney. He had individual pieces of evidence labeled with exhibit numbers. As he introduced each piece of evidence, he asked Mr. Hickox to identify them.

Attorney Bill Cannon stated the first exhibit is a certified copy of the Land Development Standards Mr. Cannon entered it as Exhibit one.

Exhibit 2 was presented as a certified copy of the area that is the property in question.

Land Use Administrator Byron Hickox stated that appears to be the exact same property in question.

Exhibit 2A was presented as an enlargement of Exhibit 2.

Exhibit 3 was presented as Sections 4.1 and section 4.2 of the Land Development Standards.

Exhibit 4 was presented as Section 4.5.3 of the Land Development Standards.

Exhibit 5 was presented as a photograph showing the view from the street of the building in question. It's the building in the rear of the photograph.

Exhibit 6 was presented as another photograph of the building in question.

Exhibit 7 was presented as a photograph of the building in question.

Exhibit 8 was presented as photographs of the signs posted at the property notifying the public of this public hearing.

Exhibit 9 was presented as the notice of violation letter mailed to Mr. Camacho indicating the violations related to the building. The third page is the domestic return receipt card received indicating that Mr. Camacho received the letter.

Attorney Russell McLean stated Mr. Camacho had no objections with any of the exhibits. Chairman Henry Kidder called for a motion to accept the exhibits.

***A motion was made by Board Member George Escaravage, seconded by Board Member Joshua Morgan to accept all the Plaintiff's Exhibits 1-9 into evidence. The motion passed unanimously (5-0).***

Attorney Russell McLean identified himself by his bar number 7220 as the legal representative of Mr. Camacho and began his cross-examination of Mr. Hickox.

Attorney Russell McLean asked Mr. Hickox what the blue line in Plaintiff's Exhibit 2 indicates.

Mr. Hickox said that the blue line is an approximate property line.

Mr. McLean asked who prepared this document.

Mr. Hickox said that the document is from the Haywood County Land Records Office.

Mr. McLean said that he noticed in one photograph that the building in question looked like it was closer than 5 feet. He asked Mr. Hickox if he could testify to the distance between that blue property line and that building.

Land Use Administrator Byron Hickox stated that he would not testify to that. He stated that it appears to be closer than 5 feet. Definitive distances cannot be based on property lines found on Haywood County GIS. They are a starting point to give you an idea where a property line lies,



but a survey prepared by a licensed surveyor would be required to show exactly where the property line is.

Attorney Russell McLean asked if the scale of 1 inch to 50 feet is what is being used to determine the distance from the property line.

Mr. Hickox stated that the exhibit is intended to simply show the basic location on the property. Mr. Hickox indicated that the suspicion that the building is too close to the property line was based on a field inspection conducted by Jesse Fowler and David Kelly.

Mr. McLean asked whether the fence is on Mr. Camacho's property.

Mr. Hickox stated that he did not know.

Attorney Russell McLean referenced Exhibit 9. He asked Mr. Hickox whether the house trailer shown on Exhibit 2 is the modular home.

Mr. Hickox corrected the terminology as a manufactured home.

Mr. Hickox stated that it is a residential structure. The Land Development Standards indicates that the maximum number of accessory structures is 2, then indicates maximum square footage.

Attorney Russell McLean asked what makes the manufacture home an accessory dwelling instead of the other dwelling on the lot.

Mr. Hickox stated that the house was built first and is larger in scale and size. One is either the accessory and the other the principal, or one is the principal and the other is the accessory. The end result is the same - there are too many accessory structures on the lot.

Mr. McLean asked whether the LDS defines "accessory structure."

Mr. Hickox read from Chapter 17 of the Land Development Standards: "Accessory Structure- A detached subordinate structure(s), the use of which is clearly incidental to and customarily found in connection with a principal building or use, is subordinate to and serves a principal building or use and is subordinate in area, extent and purpose to the principal building or principal use served. This term includes "accessory buildings."

Mr. McLean asked if two families lived on this property with different addresses and separate water and sewer hookups and if the manufactured home is accessory to the residence that was built first.

Mr. Hickox said yes, because the two dwellings are on the same property.

Attorney Russell McLean asked for confirmation that two dwelling units can be placed on the same property.

Land Use Administrator Byron Hickox stated that you can have one principal dwelling and you can have one accessory dwelling which is a detached unit per the definition that he previously read.

Attorney Russell McLean asked for confirmation that if these people are unrelated that the second dwelling is still an accessory dwelling to the main house.

Mr. Hickox confirmed that whether occupants are related, unrelated, or even if the structure is unoccupied for eleven months out of the year, it is still an accessory dwelling.

Mr. McLean noted that the notice of violation letter does not state explicitly which building must be removed.

Mr. Hickox deferred to Jesse Fowler or David Kelly, the staff members who visited the property and drafted the letter.

Mr. McLean asked whether the structure in question could remain if the manufactured dwelling was removed.

Mr. Hickox said the building in question was built without a permit. So, at the very least the process would begin with obtaining a building permit.

Mr. McLean asked if Mr. Camacho could apply for a building permit.

Mr. Hickox said yes, he could apply for a building permit.

Attorney Russell McLean asked if Mr. Hickox could describe the nature of this building (he pointed to a building in Exhibit 5).

Mr. Hickox stated that he did not know anything about that particular building.

Mr. McLean asked if he knew if it was grandfathered in or not.

Land Use Administrator Byron Hickox said that it is currently in existence and there is no reason to believe that it was built illegally. The Town's current concern is not with that building.

Attorney Russell McLean asked whether Mr. Hickox would testify that the building in question is within five feet of the property line.

Mr. Hickox said that he would testify that it appears to be, but not that it absolutely is. Mr. Hickox stated that he would testify that it was built without a building permit. He would also testify that it exceeds the maximum number of accessory structures permitted on this property.

Attorney Russell McLean asked if this was a carport would it make any difference.

Mr. Hickox said it would make no difference as a carport is an accessory structure just as sure as any enclosed structure of any other type.

Mr. McLean asked whether a separate residence is also an accessory structure. Mr. Hickox confirmed, that it is.

Mr. McLean stated that he had no further question for Mr. Hickox.

Attorney Bill Cannon asked Mr. Hickox how town staff determined whether or not a permit had been issued or applied for regarding the building in question.

Mr. Hickox deferred to another member of the Development Services staff who initially received the complaint.

Attorney Bill Cannon called David Kelly to testify.

Mr. Kelly introduced himself as a Town of Waynesville Building Inspector with an address of 9 South Main Street, Suite 110, Waynesville.

Attorney Bill Cannon asked Mr. Kelly how he determined whether or not a building permit was applied for or issued by the town for the building in question.

Mr. Kelly stated that the town maintains a data base that can be searched for all permits that have been issued or applied for.

Attorney Bill Cannon asked for confirmation that when a permit is applied for, it is entered into the data base.

Mr. Kelley confirmed that it is.

Attorney Bill Cannon asked if there is any evidence that there was a permit issued for this building in the data base.

Building Inspector David Kelly stated that there was no evidence that a building permit had been issued for the building in question.

Attorney Bill Cannon had no further questions for Mr. Kelley.

Attorney Russell McLean asked Mr. Kelly if he was aware that the manufactured dwelling had water, sewer, and electricity.

Building Inspector David Kelly said that he had no record of that.

Attorney Russell McLean asked whether he checked.

Mr. Kelly stated that he did not.

Mr. McLean asked if he checked to see if it was classified as a residence by the utilities of the Town of Waynesville.

Mr. Kelly stated that he did not.

Mr. McLean asked whether he found out who lived there.

Mr. Kelly stated that he did not.

Mr. McLean asked whether he found out how they acquired that trailer.

Mr. Kelly stated that he did not.

Attorney Russell McLean had no further questions for Mr. Kelley.

Attorney Bill Cannon called Jesse Fowler to testify.

Mr. Fowler introduced himself as the Planner for the Town of Waynesville with an office address of 9 South Main Street, Suite 110, Waynesville.

Mr. Cannon asked Mr. Fowler to describe the procedure that was used to contact Mr. Camacho regarding the complaints about the building in question.

Mr. Fowler said that the first step was to call Mr. Camacho and schedule a site visit. A site visit was conducted with Mr. Kelley, Mr. Fowler, Mr. Camacho and Mr. Camacho's son. Mr. Camacho showed Mr. Kelley and Mr. Fowler the property and the buildings located on it. During this site visit Mr. Camacho was informed that he would have to apply for a building permit.

Mr. Cannon asked Mr. Fowler whether Exhibit 7 is a true and correct copy of the photograph of the building in question.

Planner Jesse Fowler confirmed that it was.

Attorney Bill Cannon asked Mr. Fowler to draw an arrow pointing to the building in question.

Mr. Cannon asked for clarification that Mr. Fowler had identified the building to Mr. Camacho during the site visit.

Planner Jesse Fowler stated that he could not specifically remember who identified the building in question during the site visit, but that an agreement was reached on the site as to which building was in violation.

Mr. Cannon asked if Mr. Fowler had any kind of subsequent hearing or action after the initial site visit.

Planner Jesse Fowler stated that after the initial site visit, staff called Mr. Camacho on the phone to let him know that he needed to apply for a building permit and that regardless of that permit status of the building in question, it was clear that there were too many accessory structures on the lot. Mr. Camacho was also told that town staff would send him a written notice of violation in the mail.

Attorney Bill Cannon had no further questions for Mr. Fowler.

Attorney Russell McLean asked Mr. Fowler whether the aerial photograph of the property accurately represents the property lines.

Mr. Fowler stated that he could not testify whether this accurately represents the property line. Mr. Fowler stated that the photograph came from the Haywood County GIS.

Mr. McLean pointed to a building on the aerial photograph and stated that the setback could not accurately be determined from this image.

Mr. Fowler indicated that Mr. McLean was not pointing to the building in question.

Mr. McLean asked for clarification.

Mr. Fowler stated that this image was taken in 2019 prior to the construction of the building in question and indicated the approximate location of the building in question by pointing.

Mr. McLean indicated one of the accessory structures shown on the aerial photograph by pointing and asked Mr. Fowler if it was removed would the building in question be able to remain.

Mr. Fowler stated that it would not be able to remain.

Mr. McLean asked for clarification.

Mr. Fowler indicated that the building in question could not remain because there would still be three accessory structures on the lot.

Mr. McLean asked for confirmation that the manufactured home is considered an accessory structure based on the definition that was read earlier in the public hearing by Mr. Hickox.

Mr. Fowler stated that yes, this building is considered an accessory structure based on the definition read earlier in the public hearing.

Mr. McLean asked whether 2 accessory structures would be permitted for each residential structure.

Mr. Fowler stated that no, that is not true. two accessory structures are permitted per principal structure.

Mr. McLean asked what is considered a principal structure.

Mr. Fowler said that the structure that is larger and was built first would be considered the principal structure.

Mr. McLean asked how big the manufactured home is.

Mr. Fowler could not testify to its size.

Mr. McLean asked what the manufactured home's square footage is.

Mr. Fowler could not testify to its square footage.

Mr. McLean asked who is living in the manufactured home.

Mr. Fowler could not testify regarding the residents of the manufactured home.

Mr. McLean asked whether the Town of Waynesville services the manufactured home.

Mr. Fowler could not testify to that.

Mr. McLean asked for confirmation that town staff considered the manufactured home an accessory dwelling because it's behind the stick building house.

Mr. Fowler confirmed that it is considered an accessory dwelling because it is an additional structure on the lot in addition to the main structure, which he indicated by pointing.



Mr. McLean stated that no one is living in the other accessory structures.

Mr. Fowler stated that whether they are lived in is irrelevant because they are still structures.

Mr. McLean asked if the relevant question is whether the accessory building is a structure that doesn't have any utilities such as sewer. He asked whether there is a definition for accessory building.

Mr. Fowler reiterated that accessory structure is defined in the definition that was presented into evidence earlier in the public hearing. Mr. Fowler indicated that the definition of accessory structure did not mention utilities.

Mr. McLean asked whether one accessory structure would be permitted for the stick-built home and one for the manufactured home.

Mr. Fowler stated that no, even if the manufactured home is considered the principal dwelling, and the stick-built home the accessory dwelling, the other structures would still be considered accessory structures and would still be greater in number than the allowed maximum number of accessory structures.

Mr. McLean asked whether the Town of Waynesville recognized a livable manufactured home as a principal structure and how many principle structures can be on one lot?

Mr. Fowler stated that there can be one principal structure on a lot. Whether the board considers the house in front the principal dwelling or whether the board considers the house in the rear the principal dwelling, the other would be considered the accessory dwelling.

Mr. McLean asked for clarification about accessory structure square footage.

Mr. Fowler clarified by stating that in the instance of accessory structures located on a lot that is less than one acre, only two accessory structures would be permitted with a maximum size of 1,000 square feet in aggregate. The issue, therefore, is not only the size of accessory structures but the total number of them.

Mr. McLean asked if a lot contained two dwellings, would one accessory structure or two accessory structures be permitted.

Mr. Fowler answered that with one principal structure on a lot that is less than one acre two accessory structures would be permitted.

Mr. McLean asked what would be permitted on a larger lot.

Mr. Fowler answered that if the lot is between one acre and three acres two accessory structures would be permitted.

Mr. McLean asked about the size of the property in question.

Mr. Fowler indicated that the lot in question is 0.6226 acres.

Mr. McLean asked for clarification regarding the building's location within the floodplain and asked whether the primary reason for a notice of violation was related to the number of accessory buildings on the lot.

Mr. Fowler answered that the notice of violation stated that the building in question was built in the flood plain.

Board Member Joshua Morgan advised Mr. Mclean that at this point in the public hearing the board members sufficiently understood the specific code sections in question.

Mr. McLean replied that his questions were intended to establish these matters for the record.

Mr. Morgan disagreed and asked that Mr. McLean please make a point or move on to another line of questioning.

Mr. McLean agreed and asked Mr. Fowler whether the written notice of violation specifically stated which building on the property in question was to be removed.

Mr. Fowler stated that the building referred to in the notice of violation is the illegal building that was found during a site visit.

Mr. McLean indicated that the notice of violation did not state that specifically.

Mr. Fowler stated that it was referred to as the illegal building.

Mr. McLean asked Mr. Fowler to show it to him in the letter.

Mr. Fowler stated that it was not described specifically because it does not have an address or building number.

Mr. McLean said that the notice of violation did not sufficiently describe the building in question.

Mr. Fowler said that in the letter there was no specific direction to the building.

Mr. McLean no further questions for Mr. Fowler.

Attorney Bill Cannon asked Mr. Fowler whether town staff ever received any communication from Mr. Camacho indicating that he did not know which building was being referred to in the notice of violation.

Mr. Fowler answered no and stated that during the site visit Mr. Camacho identified the building himself.

Mr. Cannon had no further questions.

Mr. McLean asked whether this was specifically stated in the notice of violation.

Mr. Fowler answered no.

Chairman Henry Kidder asked if anyone had any further questions.

Board Member Joshua Morgan asked how the notice of violation might indicate which building was the one in question.

Mr. Hickox indicated that the complaint was received regarding the newest building. When Mr. Kelley and Mr. Fowler made the site visit Mr. Camacho spoke with them and an agreement was reached concerning which building was being referred to. The other 3 structures already existed and were of no concern at the time. It was abundantly clear between Mr. Camacho, Mr. Fowler, and Mr. Kelley which building was being discussed. It is the also the only building on the property that is not shown on the 2019 aerial photograph. Therefore, it is clear which one is the newest structure on the property.

Board Member George Escaravage asked whether a Building Permit could be applied for and approved retroactively.

Building Inspector David Kelley answered that the situation depends on how the structure was built. For an existing structure that was built without a permit, a building inspector would visit the site, examine the structure, and make a determination.

Mr. Escaravage asked for clarification as to whether Mr. Camacho would possibly be able to obtain a building permit for the building in question.

Mr. Kelley answered that the permit application would be reviewed by planning staff and building inspections staff to determine whether the permit process could proceed.

Mr. Hickox reiterated that when a building permit application is received planning staff review the application and issue a Land Development Permit. He stated that he would not have issued

a Land Development Permit for the building in question because there are already 3 accessory structures on the lot.

Attorney Bill Cannon stated that the Town had no further evidence.

Chairman Henry Kidder asked Mr. McLean if he had any additional evidence.

Mr. McLean asked for a few minutes to talk to Mr. Camacho.

Mr. Kidder agreed to allow this.

Mr. McLean stated that he had no additional evidence.

Attorney Bill Cannon stated that "it is undisputed that the building in question has no permit, which alone is sufficient grounds to require its removal." He also stated that, "the Land Development Standards permit one principal structure and a maximum of two accessory structures on the lot in question, and that a plain reading of this standard would show that there is a violation on the lot in question." He concluded by stating that "the town has presented sufficient evidence to support the decision by the department and by the town," and asked for that decision to be affirmed.

Attorney Russell McLean stated:

"You heard them define what an accessory building meant and what I suggest to you making the code self-ambiguous. It has to be connected to the principle residence. You all heard the definition you had it read to you. I suggest to you that the trailer is as principle residence as the house. Nobody ever established how long the trailer had been there and whether the house or the manufacture home was there first and the house built second. Nobody ever told you that, but yet I suggest to you that the definition does not apply to a livable residential structure. Whether it be a manufacture house or a stick-built house. Which gives you the opportunity to have one ancillary building per structure which means he can have two on this lot. Which means if he could tear down the blue building that he intended to tear down. Which is the little on in the photograph that you saw. That means he can come back to the board to the count down. He can say I've done built it come in and inspect it and tell me if I have complied with the regulation and the building codes that's in the existence at this time.

It's the definition of principle residence that we suggest has created this problem in the first place. Because that new building and the building beside it. One goes with the trailer and the other goes with the house that gives both residences an opportunity to have a garage. It would be our position. That the little building shown on Plaintiff exhibit Number two could be removed the biggest problem that I suggest the town has, is when you look at their application under Plaintiff Exhibit number nine. They never told him what building needed to be removed they could have discussed that nice building that he built all they wanted too. He could have showed them. But when they sent him the letter, they needed to define to him which building

you have got to tear down. They didn't tell him in exhibit nine which building was the problem. They could have said move the trailer, they could have said take down the little building, they could have said take down the new building. That's the problem in the law. You can't assume anything because it creates a situation ambiguous term. Ambiguous situations. You look at this letter. You got this letter in the mail to you. You would say which building is he talking about. The town it would have been very simple Mr. Camacho you need to tear down this new building that you put on this property. That would have been sufficient, or they could have said the garage that we talked about you need to tear it down. They never notified him of what he was supposed to remove. That was one reason we appealed this. Between that and the definition of the residences in that code and the principle building and the accessory building. I suggest that create the rights for us to be here and argue this before you, your Honor. Thank you."

Chairman Henry Kidder asked if there were any questions from the Board or from anyone else. He then asked if a Board member would like to make a motion to close the public hearing for board deliberation.

***A motion was made by Board Member Joshua Morgan, seconded by Board Member George Escaravage***

Board Member George Escaravage commented that the first fact is that there was no permit. Nobody disputes that the building was built without a permit. Secondly, he did not think that it's in the Board's purview to be analyzing the ordinance. He stated, "the ordinance has been passed and has been accepted. If the ordinance is not well written and is ambiguous, then there is an available procedure for that I'm assuming, and the Development department will have to go back, and have it rewritten when its approved. I would say we have to use our judgement based on how it is written today because its already been approved." He concluded that the facts are that the principle building, accessory building, and total number of buildings exceed what is allowed by the ordinance. Also, that there is no building permit. He stated that he does not think the Board has to judge on setbacks, just those two facts will be enough to affirm the decision.

Board Member Joshua Morgan said that he seconded Mr. Escaravage. Going back to the first piece, it starts with the permit. The permit would have taken care of the rest of these things.

Mr. Escaravage added that is why he was asking if he got a permit to just take it out of the equation based on what Mr. Hickox said. So, possibly get a permit.

Chairman Henry Kidder asked if Ms. Strickland had any comments.

Ms. Strickland replied that those two facts are the biggest problems for her also: the permit and the amount of structures.

Chairman Henry Kidder called on Mr. Moore.

Board Member Edward Moore stated the same.

Chairman Henry Kidder stated that he concurred: that not having a permit is sufficient for the decision. If the applicant would have applied for a permit, it wouldn't have been approved unless he had taken two buildings down.

Board Member Joshua Morgan said I think one thing to make note of is the letter. I think some sort of schematic is or outline of the issues that are raised here is needed. I don't think it changes anything because the permit is the driving factor we are going to decide on though.

Chairman Henry Kidder clarified, that Mr. Morgan thinks that some sort of indication included in the letter would be helpful. Mr. Morgan said yes, it a simple clerical item and would address follow up and provide clarity.

Chairman Henry Kidder stated that the Board needs a motion to affirm the decision of the Town officials.

***Board Member Joshua Morgan made a motion to affirm the zoning officials decision. The motion was seconded by board member Stephanie Strickland. The motion passed unanimously (5-0).***

Chairman Kidder asked if there was any other business and there was none.

**C. ADJOURN**

***A motion to adjourn was made by Board Member George Escaravage, seconded by Board Member Joshua Morgan. To adjourn the meeting at 7:17pm. The motion passed unanimously (5-0).***

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Henry Kidder, Chairman

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Esther Coulter, Administrative Assistant



TOWN OF WAYNESVILLE  
COUNTY OF HAYWOOD

BEFORE THE WAYNESVILLE  
ZONING BOARD OF ADJUSTMENT

In the Matter of the Appeal of )  
JUAN CAMACHO, from a )  
decision of the Waynesville Planner )  
and Waynesville Building Inspector )  
\_\_\_\_\_ )

ORDER

THIS CAUSE, coming on to be heard before the Zoning Board of Adjustment for the Town of Waynesville in the board meeting room of Town Hall at 9 South Main Street in Waynesville, on June 2, 2020, upon the appeal of Juan Camacho from a decision of the Waynesville Planner and the Waynesville Building Inspector.

William E. Cannon, Town Attorney, represented the Town and Appellant was represented by Russell L. McLean, III. Byron Hickox, Land Use Administrator for the Town, Jesse Fowler, Waynesville Planner ("Planner"), and David Kelley, Waynesville Building Inspector ("Building Inspector"), testified. The Appellant offered no testimony or additional evidence.

The Zoning Board of Adjustment, having considered all testimony and all exhibits and physical evidence presented by the Land Use Administrator, the Planner, and the Building Inspector, and having heard the arguments of counsel, the Appellant, makes the following

FINDINGS OF FACT

1. The Zoning Board of Adjustment has jurisdiction to hear appeals of decisions of administrative officers of the Town pursuant to Ordinance § 14-4-1 of the Land Design Standards set out in Appendix A to the Code of Ordinances of the Town of Waynesville (hereinafter "LDS").
2. Proper notice of the meeting and hearing of the Zoning Board of Adjustment was provided as required by Town ordinances and state law.
3. The Appellant Juan Camacho, and Rosita Ruiz-Camacho, are the owners of property on Hyatt Street, having two addresses, to wit, 311 Hyatt Street and 309 Hyatt Street.
4. This property is in the Hazelwood Urban Residential zoning district.
5. Prior to the adoption of the current LDS, there was a stick built house on the property used as a residence, and a manufactured home on the property used as a residence, and two other structures used for storage or other purposes.
6. Section 4.5.3 of the LDS allows two accessory structures on each residential lot in the Hazelwood Urban Residential zoning district.

7. At the time of adoption of the current LDS, the stick built home was the principal residential structure and the manufactured home and the two other structures comprised three accessory structures, one of which would be prohibited under the current LDS, but that third structure is a lawful non-conforming structure as it was in place prior to adoption of the current LDS.

8. On March 21, 2020, the Development Services Department received a complaint about an additional structure being placed on the property without a building permit.

9. On March 30, 2020, Planner Jesse Fowler and Building Inspector David Kelley visited the property and determined that an additional structure had been placed on the property without a building permit and that such structure may violate the setbacks, was located within the floodplain, and was the fourth accessory structure to be placed on the property in a zoning district where only two accessory structures are allowed.

10. On March 31, 2020, a Notice of Violation and order to remove the structure that was constructed on the lot without a building permit and as an additional accessory building beyond the number allowed in the zoning district was issued by the Planner and the Building Inspector and sent to the property owners by certified mail, return receipt requested.

11. The Notice was received by the property owners on April 4, 2020.

12. The Notice of Violation did provide notice that the property owners could appeal the decision of the Building Inspector within ten days by appeal to the commissioner of insurance and that they could appeals the decision of the Planner within thirty days to this Zoning Board of Adjustment.

13. No evidence was provided to inform this Board whether the Building Inspector's decision was appealed to the commissioner of insurance.

14. The property owner did file a timely notice of appeal of the zoning decision of the planner.

15. The Notice of Violation did not specify which building on the property of the Appellant was the offending structure by address, location on the lot or other physical description, but from the violations recited in the notice, it can be reasonably concluded that the offending structure was the one most recently placed on the property.

16. The Appellant did not testify that he did not know what building was the subject of the notice of violation, and Appellant had spoken to Jesse Fowler and to David Kelley about which building was the problem on more than one occasion.

17. No survey was done to determine whether or not the building setback requirements were violated and no finding on this issue can be made.

18. If a building permit had been applied for, and if the additional structure was otherwise lawful, the owner would have been required to meet specific building requirements for placing a structure within flood plain.

19. The additional structure is the fourth accessory structure on the property and is not allowed under the LDS section 4.5.3.

20. For purposes of this decision, the manufactured home on the property is an accessory structure under definition of accessory structure in Section 17.4 of LDS, as all structures other than the principal residential structure are deemed to be accessory structures.

21. All structures on the lot prior to the Town receiving a complaint about a new structure on the property were either legal (the stick built residence and one accessory structure) or lawful non-conforming structures (the additional two structures.)

22. The structure most recently placed on the property at 311 Hyatt Street was constructed without a building permit and without consideration for its location in a flood plain, and is not permitted as it is an additional accessory structure on a lot which already has one accessory structure more than permitted by the LDS.

BASED UPON THE FOREGOING FINDINGS OF FACT, the Zoning Board of Adjustment by a 5 to 0 vote concludes that the decision of the Town Planner and Building Inspector should be upheld, except for their finding that the new building on the property of the Appellant violates setback requirements.

IT IS NOW, THEREFORE ORDERED, that Planner and the Building Inspector's decision as set out in the Notice to the Appellant dated March 31, 2020, is affirmed in part, but reversed insofar as it states that the new accessory building is constructed over the building setback line.

This the \_\_\_\_\_ day of July, 2020.

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HENRY KIDDER, Chairperson

**If you are dissatisfied with this decision of the Board, an appeal may be taken to the Superior Court of Haywood County within 30 days after the date this order is served on you. See Section 15.13.4 of the Land Development Standards.**