

MINUTES OF THE HENDERSONVILLE BOARD OF ADJUSTMENT

Tuesday, September 9, 2025
1:30 p.m. in the Council Chambers

The Hendersonville Board of Adjustment held their regular meeting on September 9, 2025, at 1:30 p.m. in the Council Chambers in City Hall, 160 6th Avenue East, Hendersonville, North Carolina. Those present were: Charles Webb, Reid Barwick, Chair, Rhona Reagan, Kyle Gilgis, Brett Werner, Sam Hayes, Planner II, Daniel Heyman, Assistant City Attorney.

Absent: Laura Flores, Libby Collina, Steve Collins

Chair called the meeting to order at 1:30 p.m. Chair stated a quorum has been established and it takes four out of five votes in favor to approve a variance.

Approval of the Agenda: A motion was made by Ms. Gilgis to approve the agenda. The motion was seconded by Ms. Reagan and passed unanimously.

Approval of the Minutes of the August 12, 2025 meeting. A motion was made by Ms. Gilgis to approve the minutes as written. The motion was seconded by Ms. Reagan and passed unanimously.

Variance – 1926 Haywood Road – (25-66-VAR). Chair stated today we have one public hearing to consider. A variance from Diane Newman for the property located at 1926 Haywood Road. Any persons desiring to testify in these hearings must first be sworn in. Since this is a quasi-judicial hearing, it is very important that we have an accurate record of what goes on here. Therefore, we must ask that you refrain from speaking until recognized by the Chair and, when recognized, that you come forward to the podium and begin by stating your name and address. Anyone present who has knowledge of anything of value that has been given or promised in exchange for a position to be taken on these applications should disclose it now.

Chair swore in all persons to give testimony. Diane Newman, Patrick Tighe, Dawn Castle, Judy Riedl, Jeff Riedl, Jeff Martin and Sam Hayes were sworn in.

Chair opened the public hearing.

Sam Hayes, Planner II stated his name and title for the record. He formally entered the staff report and presentation into the record. He stated the City is in receipt of an application from property owner Diane Newman for the property located at 1926 Haywood Road.

Mr. Hayes gave the project background:

The applicant for this property is Diane Newman and she is also the property owner. The PIN is 9569-14-8474. The zoning for is R-15, Medium Density Residential. The applicant would like to construct an addition on the northeastern portion of their current structure and they are requesting a variance from Section 5-3-3, the dimensional requirements for the side yard.

The subject property is 0.41 acres and the current residence located on the property is approximately 1,227 square feet. A photo was shown with the property highlighted in yellow.

A Henderson County GIS map was shown with the property highlighted in blue. There is a right-of-way that runs along the right-hand side of the property and then around the rear of the property. It is a 16-foot right-of-way that goes through there. It is not maintained by anyone except the property owners that live along the right-of-way. It is not maintained by the city.

Site photos were shown and are included in the staff report. Mr. Hayes pointed out where the proposed addition would go.

Exhibit B (the site plan) was shown and is included in the staff report and presentation. Mr. Hayes discussed the site plan. Mr. Hayes explained the variance request to the Board. He stated the setbacks have been updated. It was a 10-foot side setback and it is now an 8-foot side setback. The structure is currently nonconforming. They need a variance because they are trying to extend that nonconformity.

Mr. Hayes discussed Section 10-9 of the zoning ordinance concerning variances to the Board. This is included in the staff report and presentation.

Mr. Hayes stated he will answer any questions the Board may have.

Chair asked if this building was in place before the variance was set on the 10-foot setback. Mr. Hayes stated are you asking if the building was in place before that. Chair stated yes, basically is the building grandfathered in because of the circumstances? Mr. Hayes stated the structure itself is allowed to be a nonconforming structure. It is legally nonconforming. The footprint itself is fine. It is the extension into the setback that would require a variance or does require a variance.

Ms. Gilgis asked the petitioner to tell the Board how old the house is.

Mr. Werner asked if the addition would interfere with the right-of-way. Mr. Hayes stated it is not a publicly maintained right-of-way. Ms. Reagen stated so the answer is no, she actually went out to see the property and the proposed addition is not anywhere near the gravel road. Mr. Hayes stated it does not encroach into that right-of-way. It goes to the property line and ends.

There were no further questions for staff.

Chair asked the applicant to address the Board.

Diane Newman, 1926 Haywood Road stated she is with her husband Patrick. She stated the number they were given when they purchased the house was that it was constructed in 1910. They owned it for a couple of years putting everything they had to make it livable, to do the not-sexy repairs, the foundation, the tilting in walls and things like that. She stated when they first bought the house they went to the courthouse hoping that there was a recorded survey or plat of some sort and this is what they got. This plat is dated 1925, so that makes the subdivision layout a full 100 years old. Sometime after the cabin was built somebody else laid out something called the Lynwood subdivision. She wanted to name the cabin so she took that name. Also the street right here is called Lynwood Circle, and literally if you bring up a map or anything like that, this is a broken circle and this is now called Honeysuckle Drive and so there has been a lot of changes over time anyway. She pointed out where the right-of-way comes up and bumps into the current Honeysuckle Drive that literally has five property owners that touch that portion of the right-of-way. There is a vacant lot and a rental home above them and then they are the across the road owners. Her and her husband Patrick are the only ones who have maintained the road since they moved there.

Ms. Newman showed a survey that was recorded by Freeland Clinkscales and it is recorded at the courthouse so it is accurate. Ms. Newman explained the addition and pointed it out on the site plan.

Ms. Newman stated they have spoken to all of their neighbors and no one has objected to them impacting the gravel with a little addition right there. One of the property owners lives in Arizona, one is sitting up there and one she has spoken to many times about this. They are not trying to restrict anyone's access, they are not trying to shrink the road. The road will still be sixteen feet wide. She stated everyone that uses the right-of-way to get to their property has two ways to get to their property. You can go to the asphalt by going uphill to Honeysuckle, or you can go out Haywood Road. They would just like to get some utility out of this old part of their house that right now is sort of expensive storage. Mr. Tighe stated it is also nine feet from the corner of the gravel. Ms. Newman stated you still have nine feet before you get to the road bed.

Ms. Gilgis asked how many square feet would this new addition be. Ms. Newman stated 7' x 12' which is 84 square feet. The width of the building right there is thirteen feet inside. It is really hard to use.

Chair asked if there were any questions for the applicant.

Chair asked so they are adding a rectangular cube onto the building and this space is going to be used for what? Ms. Newman stated what they want to do with this part of the house is make it a livable area that is accessible. She has come to find out how difficult it is in Hendersonville to get a location that has accessibility for people with mobility issues. They want to reconfigure that whole thing so that anybody that needs to could be in there and have the room to move around and navigate.

Discussion was made on the walls and the space and the existing roof. Ms. Newman discussed the rear wall and the work that had been done. There is a garage below but you will come in on one level and everything will be on one level including the bathroom.

Ms. Newman pointed out and discussed the sewer lines.

Chair asked about this being an Airbnb. Ms. Newman stated that is not their intention. Chair stated he just wanted to know what the long term intent would be. Ms. Newman stated they have had Airbnb revenue in the front. They have not used this portion for anything. Chair asked if she resides there. Ms. Newman stated she lives next door but she has lived here too. They own them both.

There were no questions for the applicant.

Daniel Heyman, Assistant City Attorney stated he represents staff and does not represent the Board but he wanted to offer a comment from the staff's position that just in light of the discussion of whether or not this would be used as an Airbnb, the city cannot regulate use in terms of a variance. No matter what it is used for, as long as it is permitted under the zoning, the city would not be able to regulate the use and that the city does not have any current regulations for short-term rentals versus long-term rentals. He just wanted to make that distinction and keep the evidence that is presented relevant.

Ms. Gilgis stated we take this at face value, not what it might be, what it could be, what's going to happen in the future. We evaluate and vote on this variance and nothing outside the parameters of this variance request, correct? Mr. Heyman stated yes, that is staff's position and he says that in terms just to constantly get it on the record that he cannot give you legal advice but he can tell you staff's position.

Chair stated this is just a variance discussion but they appreciate what they are trying to do and their explanation for doing, which helps the Board make a decision, but it is a variance and strictly a variance decision.

Chair asked if there was anyone that would like to speak against the application.

Dawn Castle stated she lives on the other side, so she doesn't live on the side that they want to build the addition on. Her concern is strictly in concerns for overabundance to the easement. There's a right-of-way that runs from her house. In the beginning when they started to build their little village they did not have any access to their property. Hence, since then, they have constructed a road that comes off of Haywood that connects their three properties. Although there's still a lot of traffic, vehicle traffic and construction traffic coming down the road that she solely maintains. It had been a road for her house and for the gentleman that unfortunately has passed away a few years ago. She stated she has been maintaining it, paving it, filling in holes while they were building their other two properties. There was construction vehicles going up that ruined the road, that crushed her drainage that put a lot of wear and tear. There is still a lot of BRBO and Airbnb traffic that's coming from all three residences down the road. We have put up 10 mph signs and recently spent about \$400 getting speed bumps to try to slow the traffic down. Her concern is that even though this property that they want to do the variance on has really, they have no right to come down that road at all because it's existing on Haywood Road. Her concern based on past behaviors that there will be construction vehicles going up and making a turn and going down and putting excess burden on an easement causing more property damage for her and increased traffic. She had pictures of everything.

Ms. Gilgis asked Ms. Castle to show the Board where she lives in relation to this property. She pointed it out for the Board.

Ms. Castle stated when she purchased her property there was Tract 1, Tract 2 and Tract 3. She bought Tract 1 and Tract 2 and didn't want Tract 3, which was the two lakes in the field, which they bought and put two houses on. When they were developing their property, they did not have full access from 1926 Haywood Road. Subsequently now they have a road, which she has pictures of that, that connects all three of their properties and their farm. They are still using her road and she just doesn't want more construction vehicles going up and down this small road which is impossible to maintain by herself.

Chair asked if there was anyone that would like to speak.

Judy Riedl, 212 Allen Paul Drive stated she lives up in this area and that was the last construction by Diane and Patrick and many promises were made about the construction and what it would do and consequently we are now dealing with wild animals running through our yard. We are dealing with sheep and sheep and chickens that get out, which they have done a nice job of trying to keep them contained but they are animals so they will still move out of there. We also support Dawn in that road would make an impact because we know from experience that when they were building that house, they used a truck that went up the road and they broke our sewer line. They (being part of the Homeowner's Association for Gann Village) paid for half of that sewer line to be repaired. She can appreciate that what they are asking for is a small piece of property to add on to something that is already existing. However, she knows this probably won't be the last time they're going to build and she is concerned also about the number of people that will encroach upon this property. She was also concerned about the wildlife they can have because it is now not in the city limits.

Jeff Riedl, 212 Allen Paul Drive stated he was also concerned about the sheep and wildlife and the bird flu and this being detrimental to their health.

Ms. Riedl stated she is concerned about the promises that have not been kept and she stated they do use the three properties as Airbnb's. She stated she knows there are no regulations for Airbnb's but they do rent the properties, there are people staying there and they don't live in one of them, they live

in a camper which is by her property. She supports Dawn in the fact that the road will be used for more than it was intended for.

Jeff Martin stated he owns the property where the fields are in yellow. He stated to get back to what they are here for which is the variance, it in no way inhibits the traffic pattern of this gravel. So it doesn't inhibit it because there's already a cross-tie wall there that the house will not proceed beyond. All this stuff they are talking about, animals this, that, maybe they shouldn't live in Mills River. We are a cattle community. The property on the other side of the pond, he has traveled up that road and there's not one pothole that's been patched on that road. There is a serious water issue that comes from Mr. Jenkin's house up above but nothing on this road. The variance that they are asking for, they have talked to us about it. We know about it and he thinks it is going to enhance the property. The property the way it is now, is old and they plan on redoing the property, re-roofing it, re-siding it so it will enhance the look. To him, what they are actually here for today is the variance on this road, not the goats and sheep and chickens and all that other stuff. It will enhance our drive to our property which for us, is a plus. The road is 16 feet wide and he has never had any issues with any of their people coming out of the cabin and trying to get by. The house above them, they don't own it, those are the people that are in Arizona. He does not have an issue with it and they actually have a vested interest because we are on the road.

Chair closed the public hearing for Board discussion.

The Board discussed hearing a lot of information that did not relate to the variance. Discussion was made on being good neighbors.

Chair made the following motion: **With regard to the request by Diane Newman and Patrick Tighe for a variance from Section 5-3-3 Dimensional Requirements in accordance with the definition of "building, setback line" in Section 12-2-2 Definition of Terms to: 1. Reduce the side setback requirement from 8' to 0'. I move the Board to find that: 1) An unnecessary hardship would result from the strict application of the ordinance. 2) The hardship results from the conditions that are peculiar to the property, such as location, size, or topography. 3) The hardship did not result from actions taken by the applicant or the property owner. 4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.** For the following reasons: the reasons in the context that it is strictly a variance without any peripheral considerations in the application. *Ms. Gilgis seconded the motion.*

Chair called for the vote. The following vote was taken by a show of hands.

Ms. Reagen	Yes
Mr. Webb	Yes
Mr. Barwick	Yes
Ms. Werner	No
Ms. Gilgis	Yes

The vote was four in favor and one opposed. Motion passed.

Approval of Decision – 709 Florida Avenue (25-52-VAR) – Mr. Webb made a motion to approve the Decision for 25-52-VAR. Ms. Reagen seconded the motion which passed unanimously.

Meeting adjourned at 2:11 p.m.

Reid Barwick, Chair

Terri Swann, Secretary

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