

AMENDED MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: June 10th, 2025

RE: Variance Application –713 N Lakeside Drive

SUMMARY: The Community Development Department has received an application from Mark Ellsworth for a variance from Section 5-3-3. – Dimensional requirements in accordance with the definition of “setback” in Section 12-2 Definition of Terms to reduce the required 5’ side setback to 3’ on the western side of the property. The subject property is currently zoned R-15 Medium-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The Applicant is requesting a variance from the requirement that side yards shall be a minimum of 5’ wide in accordance with Section 5-3-3 of the Zoning Ordinance. The applicant is seeking a retroactive variance for a renovation done to an existing nonconforming structure (*Exhibit B*). The structure was extended forward, thereby violating the zoning ordinance for nonconforming structures where it states,

A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of this ordinance.

The subject property is .34 acre or a 14,810 square foot lot zoned R-15 Medium-Density Residential. There are two structures on the property currently. The side setback requirements for R-15 is according to Section 5-3-3. – Dimensional requirements. Other requirements for this district are a 70’ minimum lot width, a front setback of 15’, rear setback of 15’, and a maximum height of 35’.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9568-20-4808 and is zoned as R-15 Medium-Density Residential.
- Based on Henderson County records, the lot size is approximately .34 acres or 14,810 square feet.
- Based on Henderson County records, the subject property has two structures built on it.

- Based on Henderson County records a North Carolina General Warranty Deed between Shawn Valentine Lindsey (Grantors) and Mark C. Ellsworth and wife, Debra B. Ellsworth (Grantees) was recorded on January 5, 2024.
- *Section 5-3-3* of the zoning ordinance requires the accessory structure setbacks for R-15 be:
 - Front: To side or rear of principal structure
 - Side: 5'
 - Rear: 5'
- *Section 12-2-2* defines the building setback as an open, unobstructed area that is required by this zoning ordinance to be provided from the furthestmost projection of a structure to the property line of the lot on which the building is located.
- Based on the Variance Application (*Exhibit B*), the accessory structure was an existing nonconforming structure due to it being 3' from the side setback of the property line.
- Based on the site plan submitted by the Applicant, the structure was extended forward approximately 10'.
- Based on a staff visit to the site, the side setback is 3' from the property line.

CODE REFERENCES.

5-3-3 Dimensional Requirements:

Minimum Lot Area in Square Feet: 15,000

Minimum Lot Width at Building Line in Feet: 70

Minimum Yard Requirements in Feet:

Principal Structure

Front: 15

Side: 8

Rear in Feet: 15

Accessory Structure

Front: To side or rear of principal structure

Side: 5

Rear: 5

Maximum Height in Feet: 35

Section 12-2 Definition of Terms

Setback: An open, unobstructed area that is required by this zoning ordinance to be provided from the furthestmost projection of a structure to the property line of the lot on which the building is located.

Section 10-9 Variance.

A Variance is a means whereby the City may grant relief from the effect of the Zoning Ordinance in cases of hardship. A Variance constitutes permission to depart from the literal requirements of the ordinance. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of the following:

- 1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance. A Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- 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 is not a self-created hardship.
- 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.

The Board of Adjustment shall not have authority to grant a Variance when to do so would:

- 1) result in the extension of a nonconformity regulated pursuant to Section 6-2, above, or
- 2) permit a use of land, building or structure which is not permitted within the applicable zoning district classification. Per NCGS 160D-705 (d), appropriate conditions may be imposed on any Variance, provided that the conditions are reasonably related to the Variance.

