

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: July 9, 2024

RE: Application for Authorization – 911 Tebeau Drive

SUMMARY: The Community Development Department has received an application from Linda Carter (Western Carolina Community Action, Inc.) for the Board of Adjustment to authorize the extension of a structure that contains a nonconforming use located on the parcel at 911 Tebeau Drive (PIN 9569408533), under Section 6-2-1 (b) Nonconforming Uses. The subject property is currently zoned R-15, Medium-Density Residential.

Section 6-2-1 (b) provides that the Board of Adjustment (BOA) may authorize such a change if they find that:

- 1) The proposed enlargement or extension shall be de minimis in relation to the existing building or structure.
- 2) The proposed enlargement or extension shall not increase the intensity of the nonconforming use, which is to say, it will not result in an increase in dwelling units for a residential use nor in gross floor area for a nonresidential use.
- 3) The proposed enlargement or extension is designed so that it will not render the use of the property any less compatible than it is in its existing circumstances.
- 4) The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety or welfare.

REQUEST: The Applicant is requesting to construct a 14' x 20' storage building on the rear corner of the property to be used for a nonconforming use (*Exhibit B*).

On May 12, 2021, the Board voted to grant the Applicant's request to alter a structure that houses a nonconforming use in order to construct a childcare center in an existing building on the property.

The Applicant is now requesting to expand the structures associated with the non-conforming use with the construction of a 14' x 20' storage building for playground equipment. The proposed storage building would conform with all other requirements of the R-15 zoning district.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9569-40-8533 and is zoned as R-15 Medium Density Residential.
- Based on Henderson County records, the lot size is approximately 1 acre or 43,560 square feet.
- Based on Henderson County records, the subject property contains one building.
- Based on Henderson County records a North Carolina General Warranty Deed between Appleland, Inc. (Grantor) and Western Carolina Community Action, Inc. (Grantees) was recorded on November 30, 2020 (*Exhibit B*).
- Section 5-3-3 requires the Principal Structure setbacks for R-15 are:
 - Front: 30'
 - Side: 10'
 - Rear: 15'
- Based on the Application (*Exhibit B*), the Applicant is proposing to construct a 14' x 20' storage building.
- On May 12, 2021, the Board voted to grant the Applicant's request to alter a structure that houses a nonconforming use.

CODE REFERENCES.

R-15 Dimensional Requirements (Section 5-3-3) :

Minimum Lot Area in Square Feet:	15,000
Lot Area per Dwelling Unit in Square Feet: additional dwelling unit in one building.	15,000 for the first; 7,500 ft ² for one
Minimum Lot Width at Building Line in Feet:	85
Minimum Yard Requirements in Feet:	
Principal Structure	Front: 30 Side: 10 Rear: 15
Accessory Structures	Front: 30 Side: 5 Rear: 5
Maximum Height in Feet:	35

6-2-1 – Nonconforming uses. A nonconforming use is a use of land, buildings, or structures that was lawfully established prior to the effective date of this ordinance, or any amendment thereto, but which does not conform to the regulations for the zoning classification in which it is located. Nonconforming uses may be continued subject to the following limitations:

- a) No nonconforming use shall be extended, expanded, enlarged, or moved to occupy a different or greater area of land, buildings or structures than was occupied by such use at the time it became nonconforming; provided, however, a nonconforming use may be extended throughout any parts of a building which were specifically designed and arranged for such use at the time it became nonconforming.
- b) No building or structure devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered unless such building or structure is thereafter devoted to a conforming use; provided, however, such building or structure may be enlarged or extended upon prior authorization from the board of adjustment, which authorization shall not be granted unless the board of adjustment makes each of the following findings of fact:
 - 1) The proposed enlargement or extension shall be de minimis in relation to the existing building or structure.
 - 2) The proposed enlargement or extension shall not increase the intensity of the nonconforming use, which is to say, it will not result in an increase in dwelling units for a residential use nor in gross floor area for a nonresidential use.
 - 3) The proposed enlargement or extension is designed so that it will not render the use of the property any less compatible than it is in its existing circumstances.
 - 4) The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety or welfare.

EXHIBITS

Exhibit A – Staff Report

Exhibit B – Application

Exhibit C – Warranty Deed

Exhibit D – Site Photos Provided by Staff