

**MINUTES OF THE HENDERSONVILLE
BOARD OF ADJUSTMENT**
Tuesday, November 12, 2024
1:30 p.m. in the Council Chambers

The Hendersonville Board of Adjustment held their regular meeting on November 12, 2024, at 1:30 p.m. in the Council Chambers in City Hall, 160 6th Avenue East, Hendersonville, North Carolina. Those present were: Ernest Mowell, Chair, Charles Webb, Reid Barwick, Vice-Chair, Libby Collina, Laura Flores, Mark Russell, Kathy Watkins, Sam Hayes, Planner II, Tyler Morrow, Current Planning Manager, Daniel Heyman, Staff Attorney.

Absent: Steve Saalfield, Chauncey Whiting

Chair called the meeting to order at 1:40 p.m.

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

Approval of the Minutes of the July 9, 2024 meeting. A motion was made by Mr. Webb to approve the minutes as written. The motion was seconded by Ms. Collina and passed unanimously.

Approval of Decision B23-081-VAR. A motion was made by Ms. Watkins to approve the decision as written. The motion was seconded by Ms. Collina and passed unanimously.

Approval of Decision B24-038-VAR. A motion was made by Ms. Collina to approve the decision as written. The motion was seconded by Mr. Barwick and passed unanimously.

Variance – 709 Florida Avenue – (B24-040-VAR). Chair stated today we have two public hearings to consider. A variance from Andrew Griffin for the property located at 709 Florida Avenue and a Special Use Permit from George Workman and Jessica Bayer to operate a restaurant/coffee shop at 629 5th Avenue West. 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. Andrew Griffin, Jessica Bayer, Tyler Morrow and Sam Hayes were sworn in.

Chair opened the public hearing.

Sam Hayes, Planner 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 Andrew Griffin for a variance application for 709 Florida Avenue, PIN #9568-58-3783. The application is to construct an addition with a footprint of 336 square feet on the side of his house. The subject property is zoned MIC – Medical Institutional and Cultural.

The request is for a variance from the minimum yard requirements for the side yard to reduce the 20' setback total for the lot to 11.1' and reduce the minimum 5' setback on the east side of the lot to 4.3'.

Mr. Hayes gave the project background:

The subject property is located at 709 Florida Avenue. Based on Henderson County records, the subject parcel lot size is approximately 3,484 square feet or .08 acres. Based on Henderson County records, the structure on the property is approximately 1,872 square feet.

Site photos were shown and are included in the staff report.

The proposed site plan was shown and is included in the staff report.

Mr. Hayes gave a recap and stated this property is zoned MIC – Medical Institutional and Cultural. The applicant is seeking to construct an addition with a footprint of 336 square feet. The applicant is seeking a variance from section 5-10-3: minimum yard requirements for the side yard which includes reducing the total 20' requirement for the lot to 11.1' and reducing the required 5' minimum on the east side of the property to 4.3'.

Mr. Hayes stated he wanted to give the Board a summary of Section 10-9 of the ordinance which goes over how a variance constitutes the permission to depart from the literal requirements of the ordinance. When unnecessary hardship 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. 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. 3. The hardship did not result from actions taken by the application 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.

The Board of Adjustment cannot grant a variance when to do so would: 1. Result in the extension of a nonconformity regulated pursuant to Section 6-2 or 2. Permit a use of land, building or structure which is not permitted within the applicable zoning district classification.

Staff suggested motions were presented to the Board.

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

Chair asked to look at the photo again. The drive was pointed out. Chair asked about the porch on the diagram and if it was enclosed or covered. Mr. Hayes stated it was not covered or enclosed.

Discussion was made on the MIC zoning district. Mr. Hayes stated residential is allowed in this district. He stated it does not necessarily fall into the Medical, Institutional or Cultural classification, that is overarching in that district but the residential is allowed.

Clarification was made on the setbacks and where the addition was going. Mr. Hayes stated the 20 feet requirement comes in with a total on either side. Right now it looks like there is 6.8 feet on the righthand side and 4.3 feet on the left and that does not meet the full 20 feet that is needed. They allow the five foot minimum so you could put it to one side if you have 15 feet on the other side.

Ms. Collina stated it does not look like it has five feet on the rear. Mr. Hayes stated we know that this property may be difficult and may be nonconforming but it is grandfathered.

A Board member asked about the trees. Mr. Hayes stated he believes the trees are part of the development of the new apartments that are being constructed. The applicant can speak to that.

There were no further questions for staff.

Chair asked the applicant to address the Board.

Andrew Griffin, 709 Florida Avenue stated UGG means underground gas because there is a gas line going beside his house. The meter will not be influenced by this construction. The trees are on the Hawkins Pointe property and they will remain. They do not have anything to do with his project.

Ms. Collina stated she sees where he is asking for the variance for the two-story addition with a garage on the ground level and an upstairs apartment, that is the front. Are you also asking for the variance on the rear where it says porch. Mr. Griffin stated no, that is a preexisting deck. It is just a deck and it is not covered. It is already there. Chair stated to clarify on that question in the photo it is actually behind the fence and they cannot see the porch. Mr. Griffin stated correct.

Mr. Barwick asked if there were any kind of elevations to show what it would look like. Mr. Griffin stated he had the floor plan. He stated he has not spent money on that because he wanted to get the variance first. His intent would be to mirror the house.

Ms. Collina asked if it would be connected. Mr. Griffin stated yes.

Chair asked if there was parking on the street. Mr. Griffin stated yes. The garage would be going in the space where he currently parks his vehicles.

Ms. Collina asked when he puts the garage in how many vehicles will he be able to park on the property. Mr. Griffin stated he will have room to park one car in the garage with other things and he will have room for a SUV in the front. It will be in the driveway and not obstructing the sidewalk.

There were no further questions for the applicant.

Chair asked if there was anyone that would like to speak in favor of the application. No one spoke. Chair asked if there was anyone that would like to speak against the application. No one spoke.

Chair closed the public hearing for Board discussion.

Ms. Watkins stated they are only talking about 1.87 feet that it is off, right? Chair stated for the side but it eats up the whole from the 20 foot requirement. Ms. Collina stated they are talking about a variance of 8.9 feet. The shape of the property verses how the house is lined up. The Board discussed having a road on one side and a parking lot on the other side. Chair stated there is a little bit of a natural barrier there already. Chair asked if it was a unique situation and stated it seems unique, it is not like all the houses are in a row with the same issue because it sounds like it is an isolated house between two commercial uses, with the apartment which is residential but kind of commercial and then a doctor's office on the other side. Ms. Collina stated it was a pretty commercial area. Chair asked the Board if they see any issues with the questions. Chair didn't see any. Ms. Flores stated if the construction was more narrow it would defeat the purpose of having a garage. Ms. Watkins stated it would be a hardship to reduce the size of the garage. Ms. Collina stated a single car garage is 12' x 20'. Sizes of garages were discussed.

Ms. Watkins made the following motion: ***With regard to the request by Andrew Griffin for a variance from Section 5-10-3: 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 5' to 4.3' on***

the east side of the subject property and reduce the total side setback requirement from 20' to 11.1' for the construction of an addition to the existing structure on the subject property. 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: Ms. Watkins stated she does not like to grant variances but she feels like this is not a huge deal especially with what is on the size of the property at this current time. Ms. Flores seconded the motion.

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

Mr. Mowell	Yes
Mr. Webb	Yes
Mr. Barwick	No
Ms. Flores	Yes
Ms. Collina	Yes
Ms. Watkins	Yes
Mr. Russell	Yes

The vote was six in favor and one opposed. Motion denied.

Special Use Permit – 629 5th Avenue West (B24-073-SUP). Mr. Hayes stated he will be presenting on the Special Use Permit application for 629 5th Avenue W, PIN # 9568-58-7321. The applicants are George Workman and Jessica Bayer, owners of G&J Coffee House. The current zoning for this property is MIC – Medical, Institutional and Cultural. The request is for a Special Use Permit for a restaurant. The applicant is requesting this for a coffee house and the city considers a coffee house use the same as a restaurant. In MIC the use of a restaurant does require a Special Use Permit.

Mr. Hayes gave the project background:

The subject property is located at 629 5th Avenue W. The parcel lot size is .3 acres. The coffee shop will be located in the left ground floor storefront.

Site photos were shown and are included in the staff report.

Section 5-10-2 of the zoning code outlines which uses in MIC are considered special uses and therefore require a special use permit for the Board of Adjustment. Restaurant is one of those uses.

There are additional standards that must be followed for restaurants as a special use in MIC. Mr. Hayes went through each of these requirements and address the applicants response. Pursuant with section 16-4-26 of the zoning code, restaurants must: a) Be located and have primary access from a major or minor thoroughfare. The applicant states that the property is located on a major thoroughfare and staff has also confirmed this. b) Ensure storage areas including dumpsters are on the rear of the building, compliant with setback requirements, and made unnoticeable to adjacent residential and public right of ways. The applicant will have no exterior storage, and the dumpster will remain in the rear of the property and will be properly screened in accordance with our ordinance. c) Be limited to no more than 40 seats. The applicant confirmed that seating will not exceed 40 seats. d) Limit hours of operation

between 7:00 am and 11:00 pm. The applicant confirmed that the hours of operation fit into this time frame.

In addition to these requirements, the applicant has addressed the other requirements for special use permit. The second requirements is: the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use. The applicant has stated they will comply with health regulations, will limit noise, will properly manage waste and sanitation, and will engage the community.

The final requirement for special use permit is: The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use. The applicant responded to this requirement by making the case that the coffee shop will serve as a complimentary use for the area and will increase property values. They also plan to make investments in infrastructure, will minimize their environmental impacts, and will take measures to mitigate any additional impacts on the community.

Chair asked if there were any questions for staff.

There were no questions for staff.

Chair asked if the applicant would like to come forward and speak.

Jessica Bayer, 451 Hill Branch Road stated they had partnered together to live out a dream and they have 50 years combined restaurant experience but they wanted to do their own thing. She felt like this would be a nice service to the area. They are refreshing the space and hope the community can get something out of it. They are renting a store front.

Ms. Bayer stated the people they rent from own the whole building. There are apartments above the stores. They do plan to buffer noise form the shop.

Ms. Collina asked if the owner of the building knows what they plan to do. Ms. Bayer stated yes and the space was a restaurant two tenants ago. It was a sandwich shop at one point.

There were no further questions for the applicant.

Chair asked if there was anyone that would like to speak in favor of the application. No one spoke.

Chair asked if there was anyone that would like to speak against the application. No one spoke.

Chair closed the public hearing for Board discussion.

Chair clarified that this is not for a variance but a special use permit.

Discussion was made on this application would be a majority approval and Chair discussed how many current members were on this Board. Mr. Hayes stated there are nine members. Chair stated five would be the simple majority.

Ms. Collina was concerned about the tenants and the smell.

Parking was also discussed.

Ms. Collina made the following motion: ***With regard to the Special Use Permit request by George Workman and Jessica Bayer: 1. Special Use Permit is requested for restaurant use under Section 5-10-2 of the Zoning Ordinance. I move the Board to find that: 1. The proposed use complies with the standards for such use contained in Article XVI of the Zoning Ordinance. 2. The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use. 3. The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use, for the following reasons: the proposed use of a coffee shop won't injure anyone and should not affect the tenants or any other use of the building.*** Mr. Webb seconded the motion.

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

Mr. Mowell	Yes
Mr. Webb	Yes
Mr. Barwick	Yes
Ms. Flores	Yes
Ms. Collina	Yes
Ms. Watkins	Yes
Mr. Russell	Yes

The vote was unanimous. Motion approved.

Meeting adjourned at 2:27 p.m.

Ernest Mowell, Chair

Terri Swann, Secretary