

**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE
BOARD OF ADJUSTMENT
FILE NO. B24-038-VAR**

**IN RE THE APPLICATION OF
WESTERN CAROLINA
COMMUNITY ACTION, INC.
FOR A ZONING AUTHORIZATION
PIN 9569-40-8533**

DECISION

This matter came before the Hendersonville Board of Adjustment on July 9, 2024 for a quasi-judicial hearing on the application of Western Carolina Community Action, Inc., for an authorization pursuant to the Hendersonville Zoning Ordinance *Section 6-2-1(b) Nonconforming Uses* in order to add a rooftop addition to an existing structure.

Giving testimony were Sam Hayes, Planner II, Linda Carter, Children's Services Director for the Applicant, both of whom were sworn and placed under oath.

Issues

The issue is whether or not the Zoning Ordinance permits the extension of a structure devoted to a nonconforming use.

Section 6-2-1 of the Hendersonville Zoning Ordinance states in pertinent part:

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.

Section 5-3-3 of the Hendersonville Zoning Ordinance states:

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

TESTIMONY

Testimony is accurately reflected in the minutes.

FINDINGS OF FACT

Based on the above testimony, the Board finds as follows:

- 1) The subject property possesses a PIN of 9569-40-8533 and is zoned as R-15 Medium Density Residential.
- 2) Based on Henderson County records, the lot size is approximately 1 acre or 43,560 square feet.

- 3) The subject property contains one building with approximately 2,740 square feet of heated floor area.
- 4) The owner of the subject property is Western Carolina Community Action, Inc., a North Carolina non-profit corporation.
- 5) The building houses a childcare facility which is a nonconforming use in the R-15 zoning district.
- 6) The applicant is proposing to construct a 14' x 20' storage building in the rear/side yard of the property.
- 7) There is no other location on the property to store outdoor toys and various maintenance tools used for the day-to-day operation of a childcare facility.
- 8) The proposed shed will meet the applicable setbacks.

CONCLUSIONS OF LAW

Based on the above findings of fact, the Board concludes as follows:

1. The proposed enlargement or extension is de minimis in relation to the existing building or structure because the existing structure is approximately 2,740 square feet and the proposed storage building is only 280 square feet.
2. The proposed enlargement or extension does not increase the intensity of the nonconforming use because the only increase is an external storage shed, not floor area devoted to the primary commercial 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 because it will meet the applicable setbacks and storage sheds are generally permitted in the R-15 zoning district.
4. The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety or welfare.

DECISION

For the above reasons,

The Board of Adjustment grants an authorization pursuant to 6-2-1(b) of the Hendersonville Zoning Ordinance to construct a 14' x 20' storage shed to the extent represented in the application and supporting materials and based on the evidence within the record of the hearing.

Done this _____ day of _____, 2024

Ernest Mowell, Chair