

**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE
BOARD OF ADJUSTMENT
FILE NO. V-11-09-01**

**IN RE THE APPLICATION OF
JERRY AND ANGELA SULLIVAN,
FOR A ZONING VARIANCE
PIN 9568-47-0819**

DECISION

This matter came before the Hendersonville Board of Adjustment on 9 November 2021 for a quasi-judicial hearing on the application of Jerry and Angela Sullivan, for a variance from *Section 6-1-7 Corner Lots* of 7 feet in order to build a deck that would connect two points of egress from the dwelling unit. The proposed deck would require extending 1ft beyond the landing that currently exists on the property into the side setback. Granting this variance would also require a variance from *Section 6-2-2 (e) Nonconforming Structures*.

Giving testimony were Tyler Henry, Code Enforcement Officer, and Angela Sullivan, Applicant, both of whom were sworn and placed under oath. Planning Manager, Matt Manley spoke but did not give testimony.

Issues

Section 10-9 of the Hendersonville Zoning Ordinance states in pertinent part:

Section 10-9 Variances. 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.

A variance from the dimensional requirements of this ordinance may be granted by the Board of Adjustment if it finds the following:

- a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance,
- b) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and
- c) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Such findings shall be based on the following considerations:

- 1) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.
- 2) The hardship relates to the applicant's property rather than to personal circumstances.
- 3) The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property or previous owners.
- 4) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.

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.)

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

5-5-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	15,000
Lot Area per Dwelling Unit in Square Feet:	15,000 for the first; 7,500 ft ² for one additional dwelling unit in any one building
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

Section 6-1-7 of the Hendersonville Zoning Ordinance states:

6-1-7 Corner Lots

In any residential district, the side yard requirements for corner lots along the side street shall be increased by ten feet. Accessory buildings shall observe all setback requirements.

Section 6-2-2 (e) of the Hendersonville Zoning Ordinance states:

6-2-2 Nonconforming Structures

A nonconforming structure is a building or other structure which lawfully existed prior to the effective date of this ordinance, or an amendment thereto, and which no longer could be built under the terms of this ordinance, as amended, by reason of restrictions on area, footprint, open space, building height, setbacks, lot width, or other requirements concerning the structure.

- e) 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.

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 9568470819 and is zoned as R-15 Medium Density Residential.
2. Based on Henderson County building records, the dwelling unit located on the property was built in 1952.
3. Based on Henderson County building records, the lot size is approximately 14,810 Sq Ft. This is not within the required minimum lot size for the R-15 zoning district (15,000 Sq Ft) and is considered a nonconforming lot.
4. Section 5-3-3 (R-15) of the Hendersonville Zoning Ordinance requires a side setback of 10 feet for principal structures.
5. Section 6-1-7 of the Hendersonville Zoning Ordinance requires that the side setback for all residential corner lots to be increased by 10 feet. This increases the required setback to 20 feet.
6. The current landing that exists affixed to the dwelling unit is 4' wide. According to Henderson County Building Code department, a landing is required to be at least 5' X 5' in size to be compliant with North Carolina State Building Code standards. To meet North Carolina State Building Code standards the applicants would be required to expand 1' further into the side setback.
7. Section 12-1 of the Zoning Ordinance excludes the outermost 3 feet of any uncovered portions from setback requirements, and therefore a variance of only 7 feet is required.
8. Currently, there are no steps leading from the rear door of their home to the back yard, and the back hard slopes away from the rear door, resulting in a drop off from the door to the ground that is unsafe. Not allowing the variance would pose an undue hardship.

CONCLUSIONS OF LAW

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

- 1) strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance.
- 2) the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and
- 3) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done.
- 4) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance has not been considered as grounds for granting the variance.
- 5) The hardship relates to the applicant's property rather than to personal circumstances. In particular, the hardship would be the continuance of the unsafe drop off from the rear door to the back yard.
- 6) The hardship results from the application of the ordinance and from no other cause, including the actions of the owner of the property or previous owners.
- 7) The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.

DECISION

For the above reasons,

The Board of Adjustment grants a variance of 7 feet foot side setback (Section 6-1-7) and from the requirements of Section 6-2-2(e) of the Hendersonville Zoning Ordinance, but only to the extent represented in the application and supporting materials.

Done this 11th day of January, 2022

Melinda Lowrance, Chair