

## MINUTES OF THE HENDERSONVILLE BOARD OF ADJUSTMENT

Tuesday, October 11, 2022  
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on October 11, 2022, at 1:30 p.m. in the Assembly Room in City Operations Center, 305 Williams Street, Hendersonville, North Carolina. Those present were: Melinda Lowrance, Chair, Ernest Mowell, Vice-Chair, Laura Flores, Charles Webb, Kathy Watkins, Stefan Grunwald, Peter Hanley, Alexandra Hunt, Planner I, Daniel Heyman, Staff Attorney, Tyler Morrow, Planner II and Kathy Martin, Code Enforcement Officer.

Absent: Michael Edney, Libby Collina, Fred Nace

Chair called the meeting to order at 1:35 p.m.

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

Approval of the Minutes of the September 13, 2022 meeting. A motion was made by Ms. Watkins and seconded by Mr. Hanley to approve the minutes as written. The motion passed unanimously.

Approval of the Decision: **B22-051-ADMIN** – OP Management Administrative Appeal. A motion was made by Mr. Mowell to approve the decision as written. Mr. Hanley seconded the motion which passed unanimously.

### **Variance – Rick Moore – 153 Queen Street (B22-087-VAR).**

Chair stated today we have two public hearings to consider. First, a variance application from Rick Moore for the property located at 153 Queen Street and a variance from Maria Lawing for the property located at 1523 Dawnview Drive. 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 this application should disclose it now.

Chair swore in all persons to give testimony.

Chair opened the public hearing.

Alexandra Hunt, Planner I stated her name and title for the record. She stated staff is in receipt of an application from Rick Moore for a variance from Section 5-14-6.2 Dimensional Requirements of the Zoning Ordinance.

Ms. Hunt gave the project background:

The subject property is identified as PIN 9569-75-0342 and is zoned R-20, Low Density Residential. The variance request is to reduce the setback requirements of Section 5-14-6.2 from the required 35' from

the centerline of the street to 27' from the centerline for only townhomes numbered 1-10 as shown on the submitted preliminary site plan as Exhibit C in your staff report. The purpose of this variance is to reduce the amount of required fill within the 100-year flood zone as set out in Section 17-2-2(d) of the Zoning Ordinance.

The subject property is located at 153 Queen Street and is located in the ETJ. Based on Henderson County records, the lot size is approximately 13.26 acres. Henderson County records indicate that a NC General Warranty Deed between the Estate of Martha Kate Maxwell Lancaster (Grantor) and Rick Moore and Mitch Gaither (Grantees) was recorded on April 22, 2022. Additionally, Henderson County GIS shows a portion of the subject property is in the 100-year Floodplain.

A view of the subject property on the County GIS map showing the portion of the property in the Floodplain was shown and is included in the staff report.

The preliminary site plan submitted by the applicant was shown and is included in the staff report. Ms. Hunt explained the variance requested.

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

Section 10-9 pertaining to variances along with Section 17-2-2(d) pertaining to the Floodplain was shown and is included in the staff report.

Staff suggested motions were presented to the Board.

Ms. Hunt stated the applicant is present.

Chair asked if there were any questions for staff. There were no questions for staff.

Chair asked if there were any questions for the applicant. There were no questions for the applicants.

Chair asked if anyone would like to speak in favor or against the application.

Darrin May, 312 Queen Street stated he knew when the original construction of the house and the barn took place on that single one-lane road, it created quite an issue for residents coming in and out with the heavy equipment going up and down the road. Has there been any thought process to that so that it does not affect the residents trying to get in and out of that one-lane single road? That is his only concern. Tyler Morrow, Planner stated the timetable on this project got delayed a little bit so the variance is basically accompanying an application for preliminary plat and preliminary site plan review which is a function of the Planning Board. Corrections to that plat and site plan pushed that review to November Planning Board so this is the front end of that. The preliminary site plan they have requested requires this variance to be in place in order for them to be able to do that site plan. This is an aspect of that, he would think that the construction entrance is definitely a concern, and it would be more of a concern during the preliminary and site plan approval since it doesn't coordinate with the variance exclusively. He believes this would be something good to discuss during the November Planning Board.

Chair asked if anyone else would like to speak. When no one spoke, Chair closed the public hearing.

Mr. Mowell thought minimizing the impact of the flooding was a good idea. Filling the area was discussed along with the flooding of the property and keeping the structures away from the stream.

Mr. Mowell made the following motion: *With regard to the request by Rick Moore for a variance from Section 5-14-6.2: Setback Requirements to: Reduce the setback requirement from 35' to 27' for townhomes numbered 1-10 on the submitted preliminary site plan attached and labeled as Exhibit C. I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (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. The motion was seconded by Mr. Grunwald.*

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

Mr. Hanley	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Ms. Flores	Yes
Ms. Watkins	Yes

The vote was unanimous. Motion approved.

**Variance – Maria Lawing – 1523 Dawnview Drive (B22-093-VAR).**

Chair opened the public hearing.

Ms. Hunt entered the amended staff report into the record which clarifies that the variance request is to reduce the front setback requirements from the required 25' to 19.5'.

Ms. Hunt gave the project background:

Staff is in receipt of an application from Maria Lawing for a variance from Section 5-4-3 Dimensional Requirements in accordance with the exception to the minimum front yard requirements in Section 8-1 Minimum Required Front Yard Dwellings. The subject property is identified as PIN 9569-33-8202 and is zoned R-10, Medium Density Residential. The variance request is to reduce the front setback requirements of Section 5-4-3 from the required 25' to 19.5' for the purpose of constructing a 10' x 14' sunroom on the front of the existing home to accommodate the needs of a person with a disability.

The subject property is located at 1523 Dawnview Drive and is approximately 0.2 acres. Based on Henderson County records a NC General Warranty Deed between Michael C. Anderson and Paula G. Anderson (Grantors) and Maria B. Lawing (Grantee) was recorded on June 20, 2013.

The subject property is 27' from the edge of the ROW for Dawnview Drive. Section 8-1 of the zoning ordinance is an exception to the front yard requirements for dwellings if the average front yards of existing buildings fronting the same side of the street is less than the minimum front yard requirement. The minimum front yard requirement in Section 5-4-3 is 25'. The average front setbacks of eight existing homes that front Dawnview Drive is 23.5' as indicated on the table included in your packet. This would allow the applicant a 23.5' front setback.

A visual of the proposed addition was shown. In order for the applicant to construct a 10' x 14' sunroom, they would need to reduce the required setback of 25' to 19.5'. With Section 8-1 exception, the applicant is requesting to encroach a total of 4.5' into the front setback to construct a 10' x 14' sunroom.

Section 10-9 pertaining to variances was shown and is included in the staff report.

The Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations Under the Fair Housing Act was included in the staff report and labeled Exhibit D.

Staff suggested motions were presented to the Board.

Ms. Hunt stated the applicant is present.

Chair asked if there were any questions for staff.

Ms. Watkins asked if the average setback on the street was 23.5'. Ms. Hunt stated yes.

Mr. Grunwald asked how many homes make up the 23.5' average. Ms. Hunt stated eight homes. Ms. Hunt referred to the table included in the staff report and explained Section 8-1. Mr. Mowell stated so the addition would extend a little over the average, but it still wouldn't meet the one that is only 15', it would still be more of a setback than that dwelling. Ms. Hunt stated yes that property sits rather close.

Ms. Watkins asked if it was not possible to put this on the back side of the house.

Maria Lawing, 1523 Dawnview Drive stated the back of the house, she did put a gazebo back there. She introduced Angie Smith and stated she also lives there. With the gazebo being in the back of the house, there is nothing for Angie to watch back there. Others may like the seclusion, but she does not. She uses the bay window on the front of the house as her social life. The neighbors come by and wave at her, the trashman blows the horn and it is part of her social activity. The little porch they have right now is 4' x 5' so in order for them to sit out there they have to break an ADA rule by blocking the access to get out. The gazebo didn't work, and she tried a bug screen because she does not like bugs. She is red-headed, light sensitive and burns very easily. With all of those considerations, this is the only thing that she knows to do. Plus, she would have to navigate all through the house and navigate outside to the backyard which would be virtually impossible. With this addition she could go straight to it from the living room with no access to the outside. If she went on the front porch right now, she could roll off the porch and into the yard.

Chair asked if anyone would like to speak in favor or against the application. No one spoke.

Chair closed the public hearing.

Mr. Grunwald made the following motion: *With regard to the request by Maria Lawing for a variance from Section 5-4-3: Dimensional Requirements to: Reduce the front setback requirement from 25' to 19.5' for the construction of a 10' x 14' sunroom. I move the Board to find that (a) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant, (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. The motion was seconded by Mr. Hanley.*

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

Mr. Hanley	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Ms. Flores	Yes
Ms. Watkins	Yes

The vote was unanimous. Motion approved.

Discussion was made about the next meeting. There was no new business as of today. The deadline would be this Friday for applications. Ms. Hunt will reach out if any applications are received. Otherwise since the next meeting date is Election Day in November, she will cancel the meeting that day. Ms Hunt also stated the School of Government training video will be shown October 20<sup>th</sup> at 1:00 pm until 3:30 pm in the Downtown office on 5<sup>th</sup> Avenue.

Meeting adjourned at 2:07 p.m.

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Melinda Lowrance, Chair

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Terri Swann, Secretary