

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: March 8th, 2022

RE: Variance Application – Dan Mock, 824 Locust St.

SUMMARY: The Community Development Department received an application from Dan Mock of AYD Partners, LLC for a variance from Section 5-12-3 Dimensional Requirements and Section 6-2-2 Nonconforming Structures. This application was presented to the Board of Adjustment during the February 8, 2022, regular meeting where seven (7) board members were present. Section 10-6 of the Zoning Ordinance requires the concurring vote of seven (7) members of the Board of Adjustment to grant a Variance. The Applicant requested that the Chair defer this application to the March regular meeting. The Applicant has requested to change the previously requested height increase of 3.2' to 4'. The Applicant has also submitted updated elevations that include the elevator shaft. (Exhibit C)

The subject property is currently zoned I-1, Industrial. The specific variance requested is for the following:

VARIANCE REQUEST: The variance requested is to increase the maximum building height of 35' allowed under Section 5-12-3 (I-1 Industrial Zoning District Classification) to 39'. Based on the application, the applicant is proposing a 4' height increase from the maximum height requirement in Section 5-12-3 of the Zoning Ordinance which will require a variance from the setback standards (see Section 5-12-3 Dimensional Requirements for Maximum Height in Feet which allows for increase in height with increase in side and front setbacks).

The building is an existing nonconforming structure as defined in Section 6-2. The building's current height is 24.5' to the top of the parapet at the front elevation. Additionally, there is a chimney stack that is 39' 11" based on the base elevation at the location of the chimney. Section 8-2 Height Limitations allows for an exception to height limitations for chimney stacks. The applicant is proposing to expand the building with an addition to the roof. The mean height of the roof will be 39' which places the mean point of the roof below the chimney stack. Section 5-12-3 states that any building that exceeds 35' in height shall increase the front and total side yards one foot for each two feet or fraction thereof of building height.

In order to bring the existing building into conformance with the current Zoning Ordinance, the building would be required to have a 37' front setback and a 22' side

setback. The proposed roof addition is setback 26.8' from the front property line and setback 0' from the Lynn St side property line and 15' from the southeast side property line. Therefore, the applicant is requesting a variance of 10.2' from the required front setback and a variance of 22' on Lynn St. side and 7' on the southeast side of the building from the required side setbacks to allow for the proposed height increase of 4'.

The applicant is also requesting a variance from Section Nonconforming Structures 6-2-2(e). Since the existing non-conforming structure does not currently meet front or side setbacks, it would be impossible for the expansion to meet side setbacks. Front setbacks could potentially be met but may present challenges to the proposed development.

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9569-80-2471 and is zoned as I-1 Industrial.
- Based on Henderson County records, the lot size is approximately 0.22 acres or 9,583.2 square feet.
- Based on Henderson County records, the existing building located on the lot was built in 1926 and the Gross Leasable Area is 13,516 square feet. (Exhibit A)
- A North Carolina Warranty Deed made on August 5, 2021, between Hunting Creek Associates, LLC (Grantor) and AYD Partners LLC (Grantee) was recorded with the Henderson County Register of Deeds on August 6, 2021. (Exhibit B)
- Section 5-12-3 of the Zoning Ordinance requires the Maximum Height for I-1 Industrial is 35 feet with the following allowances:
 - No building shall exceed 35 feet in height unless the depth of the front and total width of the side yards required herein shall be increased one foot for each two feet or fraction thereof of building in excess of 35 feet.
- The subject property contains an existing chimney measuring 39' 11" from the base elevation at the location of the chimney (Exhibit C). This exceeds the maximum height requirements in Section 5-12-3, but is allowed by an exception granted under Section 8-2.
- The existing structure on the subject property does not meet the required front and side setbacks in Section 5-12-3 and is an existing nonconforming structure as defined in Section 6-2.
- The existing non-conforming structure on the subject property may be renovated without bringing the structure into conformance given the provisions found in Section 6-2-2(d) Nonconforming Structures.
- Section 8-2 Height Limitations of the Zoning Ordinance allows certain structures, including chimneys, to exceed the height limitations contained in Article V by no more than 20% of that specified for any zoning district classification.
- The applicant submitted elevations that indicate the proposed roof will not exceed the height of the existing chimney. (Exhibit C)
- Section 6-2-2(e) allows a nonconforming structure to be expanded without bringing the nonconforming structure into conformity 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 the zoning ordinance.

APPLICABLE CODE REFERENCES.

5-12-3 Dimensional Requirements:

Minimum Lot Area in Square Feet:	40,000
Lot Area per Dwelling Unit in Square Feet:	N/A
Minimum Lot Width at Building Line in Feet:	100
Minimum Yard Requirements in Feet:	Front: 35 Side: 20 Rear: 20
Maximum Height in Feet:	35. No building shall exceed 35 feet in height unless the depth of the front and total width of the side yards required herein shall be increased one foot for each two feet or fraction thereof of building in excess of 35 feet.

Section 6-2 Nonconformities. The purpose of this section is to regulate and limit the continued existence of uses and structures lawfully established prior to the effective date of this ordinance, or any amendment thereto, that do not conform to such ordinance, as amended. Any nonconformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this section. As used in this section, the term, “effective date of this ordinance, or any amendment thereto,” refers to the date of the ordinance which first rendered a use, structure or land nonconforming.

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.

- a) A nonconforming structure devoted to a use permitted in the zoning classification in which it is located may continue to be used only in accordance with the provisions of this section.
- b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

c) Except as provided in subsections (d) and (e) below, a nonconforming structure shall not undergo a change of use, renovation or expansion.

d) A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that:

- 1) The change in use or renovation does not increase the floor area of the structure.
- 2) The change in use is to a permitted use within the district.
- 3) The number of parking spaces provided for the use is in conformity with the requirements of these regulations.

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.

Section 8-2 Height Limitations.

The following structures may exceed the height limitations contained in Article V of this Ordinance by no more than 20% of that specified for any zoning district classification: church spires, belfries, cupolas and domes not intended for human occupancy; monuments, water towers, observation towers, chimneys, smokestacks, conveyors, flag poles, masts and similar structures, except as otherwise restricted in the vicinity of airports or elsewhere in this Ordinance

Section 10-9 Variance.

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. When unnecessary hardships 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. It is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance. A Variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance is not a self-created hardship.
- 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 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. Per NCGS 160D-705 (d), appropriate conditions may be imposed on any Variance, provided that the conditions are reasonably related to the Variance.

MOTION:

With regard to the request by AYD Partners LLC for a variance from Section 6-2-2(e) Nonconforming Structures and 5-12-3 Dimensional Requirements to reduce the front setback from 37' to 26.8' and to reduce the Lynn St side setback from 22' to 0' and to reduce the southeast side setback from 22' to 15' (for a principal structure measuring 4' above 35' in height), 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.

[After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.]

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of a variance. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For variance applications, it takes seven affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

EXHIBIT LIST:

- Exhibit A – Henderson County Property Records**
- Exhibit B – North Carolina Warranty Deed**
- Exhibit C – Elevations**
- Exhibit D – Pictures of Subject Property**
- Exhibit E – Digital Renderings**
- Exhibit F – Application**