

**STATE OF NORTH CAROLINA
HENDERSON COUNTY**

**BEFORE THE HENDERSONVILLE
BOARD OF ADJUSTMENT
FILE NO. B22-007-VAR**

**IN RE THE APPLICATION OF
DAN MOCK and
AYD PARTNERS, LLC,
FOR A ZONING VARIANCE
PIN 9569-80-2471**

DECISION

This matter came before the Hendersonville Board of Adjustment on 8 March 2022 for a quasi-judicial hearing on the application of Dan Mock and AYD Partners, LLC, for a variance from the Hendersonville Zoning Ordinance *Section 5-12-3 Dimensional Requirements* and *Section 6-2-2 Nonconforming Structures* in order to add a rooftop addition to an existing structure.

Giving testimony were Alexandra Hunt, Planner I, Matthew Manley, Planning Manager, Dan Mock, Applicant, Carleton Collins, an architect retained by the Applicant, Carolyn Muer, a neighboring property owner, and Mike Baer, a neighboring property owner, all of whom were sworn and placed under oath.

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 5-12-3 of the Hendersonville Zoning Ordinance states:

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 6-2-2 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.

- 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.
- f) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning classification in which it is located.
- g) Where a nonconforming structure is damaged by fire, flood, wind, or other act of God, and such damage does not exceed 50 percent of the current assessed taxable value of the structure, it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within 12 months of the date of the damage.

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 9569-80-2471 and is zoned as I-1 Industrial.
- 2) Based on Henderson County records, the lot size is approximately 0.22 acres or 9,583.2 square feet.
- 3) 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)

- 4) 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)
- 5) Section 5-12-3 of the Zoning Ordinance requires the Maximum Height for I-1 Industrial is 35 feet with the following allowances:
 - a. 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.
- 6) 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.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) The applicant submitted elevations that indicate the proposed roof will not exceed the height of the existing chimney. (Exhibit C)
- 11) 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.

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, because the proposed addition will improve drainage as well as provide common area for a residential development which is necessary for the long-term success for the development.

- 2) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, because the applicant has tried to mitigate encroachments by making sure the addition cannot easily be seen from public rights-of-way.
- 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 that the applicant would have to reduce usable space in the existing building to improve the drainage of the flat roof, and the applicant is attempting to re-use an existing structure.
- 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 to from Sections 5-12-3 and 6-2-2 of the Hendersonville Zoning Ordinance 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 25' in height) to the extent represented in the application and supporting materials.

Done this 14th day of June, 2022

Melinda Lowrance, Chair