

**MINUTES OF THE HENDERSONVILLE  
BOARD OF ADJUSTMENT**  
Tuesday, December 13, 2022  
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on December 13, 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, Libby Collina, Charles Webb, Kathy Watkins, Stefan Grunwald, Peter Hanley, Chauncey Whiting, Alexandra Hunt, Planner I, Daniel Heyman, Staff Attorney and Kathy Martin, Code Enforcement Officer.

Absent: Michael Edney, Laura Flores

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 October 11, 2022 meeting. A motion was made by Ms. Collina and seconded by Mr. Hanley to approve the minutes as written. The motion passed unanimously.

Approval of the Decisions: **B22-087-VAR** – Rick Moore and **B22-093-VAR** – Maria Lawing. A motion was made by Mr. Mowell to approve the decisions for Rick Moore and Maria Lawing as written. Mr. Hanley seconded the motion which passed unanimously.

**Variance – Patricia Addiss – 714 Florida Avenue (B22-107-VAR).**

Chair stated today we have one public hearing to consider. A variance request from Patricia Addiss for the property located at 714 Florida Avenue. 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 Patricia Addiss for a variance from the Dimensional requirements in Section 5-10-3 of the Zoning Ordinance.

Ms. Hunt gave the project background:

The subject property is identified as PIN 9568-58-3641 and is zoned MIC, Medical, Institutional and Cultural. The variance request is to reduce the side and rear setback requirements of Section 5-10-3,

specifically to reduce the required 10' side setback to 1.4' and to reduce the required 20' rear setback to 4'.

The subject property is located at 714 Florida Avenue and is part of the West Side Historic District as the structure on the subject property was constructed in 1930. The single-family use on the subject property pre-dates the City's Zoning Ordinance. Based on Henderson County records the lot size of the subject property is approximately 5,227.2 sq. ft. or 0.12 acres.

An aerial view of the subject property on the County GIS map was shown and outlined in red. There are 11 parcels that front Florida Avenue.

The Community Development Department received a complaint about a storage shed at 714 Florida Avenue stating the shed did not conform with the setback requirements of Section 5-10-3. The City's Code Enforcement Officer investigated the complaint and determined that the storage shed was in violation of the side and rear setback requirements. The property owner/applicant was notified of the violation and promptly filed for a variance. The photo on the bottom left is the photo that was sent to the property owner/applicant along with the violation notice. The applicant submitted a survey along with her application showing the current location of the shed and where it is in proximity to the property line.

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

The minimum yard requirements of the MIC zoning district were shown.

There are no setback standards for accessory structures in the MIC district which means accessory structures must meet the same setback requirements as principal structures. Based on Henderson County GIS records, there are 11 lots fronting Florida Avenue with the average lot size being 10,019 sq. ft. or 0.23 acres. The subject property is one of the four lots that do not meet the minimum lot size requirements of the MIC zoning district. The property at 714 Florida Avenue is approximately 5,227.2 sq. ft. and the minimum lot size requirement in the MIC district is 8,000 sq. ft.

Section 10-9 of the Zoning Ordinance states that a variance constitutes permission to depart from the literal requirements of the ordinance. In order for a variance to be granted, the findings of fact in subsections 1-4 of Section 10-9 must be made.

Staff suggested motions were presented to the Board.

Ms. Hunt stated the applicant is present.

Chair asked if there were any questions for staff. A Board member asked when the shed was constructed. Ms. Hunt stated she did not know the exact date.

Chair asked if anyone would like to speak concerning the application.

Patricia Addiss, 714 Florida Avenue stated she was the applicant. She stated the shed was placed on her property in August of 2021. The company she bought the shed from stated a permit was not needed. She is at fault for not checking with the city first, but she took the business at their word. She pointed out the driveway and Mr. Smolski's property. There are businesses all around her. She pointed out her home and the businesses all around her including Mr. Smolski's business and his property. She pointed out how small her property really is. She does not have a garage and needs a place to keep her stuff in it. She asked Mr. Smolski about getting a shed and he actually recommended Boondock's. The color of the shed matches the color of her home and she wanted it to look nice for the neighbors. When her shed got placed it was during covid and it got delivered unexpectedly after waiting quite some time for

it. Mr. Smolski was there when the shed was delivered and later after the shed was placed, he told her that he really did not like where the shed had been placed. It was a little close to the property line. At her own expense she called the company and asked if they would come back out and move it, which they did for a cost. He was there for the second placement, and she asked Mr. Smolski if he was happy where they had moved it. He said it was fine and that is where it remains today. She rents two storage spaces also. She moved here from Raleigh to start a new life and this unfortunate situation happens.

Mr. Mowell asked the space between the corner of the house and the shed is that reading 56". Ms. Addiss stated she had four feet there.

Discussion was made on the moving of the shed and if it was very far from where it first was placed. Ms. Addiss stated it was not far from the first location. Discussion was also made on Mr. Smolski's concerns. Ms. Addiss stated he just had some input that he didn't like it that close to the property line. There was an old fence down the property line, and it must have been a shared fence because it is right on the property line so it was clear to her what her property line was and it was in that but just a little too close for comfort for Mr. Smolski.

Ms. Addiss stated her property is so small that wherever she sets the shed it will not be in compliance with the setbacks. She discussed an area that would not be feasible for the shed as she could not access her crawl space if placed there. She did offer to buy some property from Mr. Smolski, but he wanted to keep it.

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

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

Chair swore in Tom Fox.

Tom Fox, 1743 Haywood Manor Road stated when they put the shed up there, they were not aware of any variance request up there. They took it at face value when they bought the shed from Pineview here in Hendersonville, we asked about permits and he said you don't need a permit. They took that as they did not need any type of permit. They didn't understand and they were unaware of the setbacks. They did not do anything intentional to bypass the requirements. When someone sells you a shed, you think they are the authority and when they say you don't need anything, you don't think anything is needed. They moved it and they asked the neighbor is this is okay, and they thought everything was fine until they got the letter.

The Board asked if Mr. Fox lived at 714 Florida Avenue. He stated part time as they are getting married, and he will be living there.

Joe Smolski, 723 Florida Avenue stated like Ms. Addiss said neither one of them knew there were setbacks. He knows ignorance of the law is no excuse. They were not happy about her putting it there. He discussed there being a fence there originally and if she placed the shed there, she would not be able to paint it. He is not against it being there, but he would like to have it five feet over. The back if it is four feet, he doesn't know if it could be five feet or not. He understands it is a small lot and we all accumulate more stuff. Basically, if she could get around her shed, we don't have a problem with it. It's not particularly something they would like to look at, but everyone has their own land. He wants to be a good neighbor, but he wants to be able to put a fence up there.

Ms. Collina asked when he found out about the setbacks. Mr. Smolski stated he did not find out about the setbacks until later. They are building a low-income housing thing off of 64 and that is when he was reading about setbacks. When he was reading about the setbacks for MIC it does not have setbacks for out buildings like the other residential districts do, so he assumed there were no setbacks.

Mr. Smolski thought the original placement of the shed was over the line. He was there for the second placement of the shed. He thinks five feet would be a reasonable request so that he could install a fence and she could have a space to paint the shed.

Ms. Addiss stated there was a fence there and it was right on the lot line and apparently the previous owners of both properties had agreed they could put the fence on the lot line. That fence has been gone for a few years now. There were the existing posts and that is how she knew where the lot line was. They were cut down, but you could still see them. It is to her knowledge that if he puts up a fence, it would have to be six inches away from the lot line. He is worried about her being able to paint the shed, but it is a high quality shed and she doesn't know that it will need painting anytime soon. She is not a big person, and she would still have room to paint the shed if need be.

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

The Board discussed having to go by the setbacks for primary structures because this zoning district does not allow different setbacks for accessory structures. Ms. Hunt explained that residential districts do have separate setbacks for accessory structures but this district does not.

Daniel Heyman, Staff Attorney explained the accessory uses for this district are listed in the permitted uses.

Ms. Hunt gave an example of the R-6 zoning and how that residential zoning has different setbacks for accessory structures. Mr. Heyman clarified this property is not zoned R-6.

The Board discussed if the accessory structure could actually meet the setbacks or not. The aerial map was shown again. Mr. Mowell pointed out this was one of the smallest lots in the neighborhood and it could not compare to the other lots on Florida Avenue. This is a unique situation for the neighborhood.

Ms. Hunt explained the suggested motions and the recommendation that are included in their packets now. These are examples provided by staff. She also explained that fences under nine feet in height do not have to meet the setback standards.

The Board discussed the different configurations and size of the different sheds.

Mr. Mowell made the following motion: *With regard to the request by Patricia Addiss for a variance from Section 5-10-3: Dimensional Requirements to: Reduce the side setback requirement from 10' to 1.4' and the rear setback requirement from 20' to 4' for an existing storage shed. I move the Board to find that: 1. An unnecessary hardship would result from the strict application of the ordinance. 2. The hardship results from the conditions that are peculiar to the property, such as location, size, or topography. 3. The hardship did not result from actions taken by the applicant or the property owner. 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. For the following reasons: The lot size and its peculiar alignment with surrounding properties.*

The Board discussed the applicant placing the shed on the property before finding out the setbacks. Ms. Collina felt like the shed was too close to the side property line. Discussion was made on finding a resolution that was agreeable and more in line with the requirements. Mr. Mowell stated while he does

agree nothing the Board will do or say will bring that shed into compliance. The Board discussed Mr. Smolski being able to put up his fence and the applicant still be able to have her shed.

Ms. Hunt discussed this application being withdrawn and the applicant coming back with another plan as an alternative for the Board to consider with the shed not placed as close to the side setback. Mr. Mowell stated that would be the applicant's decision to withdraw and come back. Chair stated it will take seven affirmative votes to pass this variance.

Chair reopened the public hearing.

Ms. Addiss stated the shed costs \$6,000 and it will cost a lot to move it. She placed it at the end of her driveway where a garage would normally be. If this was not approved, it won't fit anywhere else. If she got a different size, she will be out \$6,000. She stated this is where a garage would be. If she asked for a garage this is where it would go. The variance process is for a hardship, and this is a hardship. She would also like to have some usable yard. Wherever she placed this shed on her property, it would not meet the setbacks.

The Board discussed adding conditions to the motion. Ms. Hunt stated they could do that. The Board was in agreement with amending the motion. Ms. Collina felt like it would be better to get a surveyor out there and have the placement of the shed and the setbacks staked and drawn on a survey. The Board discussed the cost and it being difficult to move the shed.

Mr. Heyman stated staff position is as long as it is clear what motion is being approved and they place a reasonable condition on it that would be satisfactory. Staff's position is they do not have to repeat the motion. A variance does run with the land.

***The motion was amended to include the condition that the shed has to be moved and placed with a minimum setback on the side and rear of 4'. Mr. Hanley seconded the amended motion.***

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. Collina	Yes
Ms. Watkins	Yes
Mr. Whiting	Yes

The vote was unanimous. Motion approved.

**Approval of the Annual Schedule of Regular Meeting Dates for 2023.** Mr. Mowell moved to adopt the annual schedule of regular monthly meeting dates. Mr. Hanley seconded the motion which passed unanimously.

Meeting adjourned at 2:35 p.m.

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Melinda Lowrance, Chair

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Terri Swann, Secretary

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