

## MINUTES OF THE HENDERSONVILLE BOARD OF ADJUSTMENT

Tuesday, June 10, 2025  
1:30 p.m. in the Council Chambers

The Hendersonville Board of Adjustment held their regular meeting on June 10, 2025, at 1:30 p.m. in the Council Chambers in City Hall, 160 6<sup>th</sup> Avenue East, Hendersonville, North Carolina. Those present were: Charles Webb, Reid Barwick, Vice-Chair, Laura Flores, Mark Russell, Kyle Gilgis Rhona Reagan, Brett Werner, Sam Hayes, Planner II, Tyler Morrow, Current Planning Manager, Daniel Heyman, Staff Attorney.

Absent: Steve Collins, Libby Collina

Chair called the meeting to order at 1:30 p.m. Chair stated a quorum has been established and it takes four out of five votes in favor to approve a variance.

Mark Russell left the meeting.

Approval of the Agenda: A motion was made by Ms. Reagan to approve the agenda. The motion was seconded by Ms. Flores and passed unanimously.

Approval of the Minutes of the December 10, 2024 meeting. A motion was made by Ms. Reagan to approve the minutes as written. The motion was seconded by Ms. Flores and passed unanimously.

Approval of the Minutes of the Special-Called meeting of January 30, 2025. A motion was made by Ms. Reagan to approve the minutes as written. The motion was seconded by Mr. Werner and passed unanimously. Chair stated the case had been dismissed. Mr. Heyman stated the appeal to Superior Court had been dismissed.

**Election of Chair.** Mr. Werner moved to nominate Reid Barwick as Chair. Ms. Reagan seconded the motion which passed unanimously.

**Election of Vice-Chair.** Ms. Reagan moved to nominate Laure Flores as Vice-Chair. Mr. Barwick seconded the motion which passed unanimously.

**Approval of amended Bylaws.** Daniel Heyman, Staff Attorney explained the amendments to the Bylaws. Mr. Webb made a motion to place the approval of the amendments to the Bylaws on the July meeting for adoption. Mr. Werner seconded the motion which passed unanimously.

**Variance – 713 N. Lakeside Drive/1600 Georgia Avenue – (25-35-VAR).** Chair stated today we have one public hearing to consider. A variance from Mark Ellsworth for the property located at 713 N. Lakeside Drive/1600 Georgia 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 these applications should disclose it now.

Chair swore in all persons to give testimony. Mark Ellsworth, Debra Ellsworth and Sam Hayes were sworn in.

Chair opened the public hearing.

Sam Hayes, Planner stated his name and title for the record. He formally entered the staff report and presentation into the record. He stated the City is in receipt of an application from Mark Ellsworth for the property located at 713 N. Lakeside Drive.

Mr. Hayes gave the project background:

The PIN for this property is 9568-20-4808. The applicant for this property is Mark Ellsworth and he is also the property owner. The zoning for this area is R-15, Medium Density Residential. This is an extension of a nonconformity of the side setback by ten feet.

The subject property is located at 713 N. Lakeside Drive. Based on Henderson County records, the subject parcel lot size is approximately 14,810 sq. ft. or 0.34 acres. The applicant extended the front portion of the building. This structure was previously considered nonconforming because it was within the side setback. The reason for this variance request is because it has been extended forward still within that side setback.

The site plan that was submitted by the applicant was discussed and is included in the staff report and presentation.

Mr. Hayes stated they extended the front of this cottage by ten feet. Everything behind that was nonconforming and they did not touch it so it does not need to be updated. It is really just that front ten feet within that side setback that the Board is considering today.

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

Mr. Hayes discussed Section 10-9 of the zoning ordinance concerning variances to the Board. This is included in the staff report and presentation.

Mr. Hayes stated he will answer any questions the Board may have.

Ms. Reagen asked if the property was not in violation when the applicants purchased the property. Mr. Hayes stated the cottage on the right-hand side was previously, they would have considered it nonconforming because it was in that setback. She asked if they purchased the property with structures as they are now. Mr. Hayes stated yes and then they did the work.

Mr. Werner stated to clarify, this is an extension of a nonconforming structure. Mr. Hayes stated that is for the Board to determine. There is nuance in that and it is for the Board to determine.

Chair asked when this situation became aware by the city. Mr. Hayes stated our Code Enforcement Officer was made aware of it. He did not have the actual timeline. That is how it became known to the city. The Code Enforcement Officer was in the area and noticed the work being done. Mr. Hayes explained the process of construction in the city and how a zoning permit is needed before construction. After the zoning permit is obtained you can go and get your building permit from Henderson County. They were issued building permits and they were not required to get a zoning compliance permit. It slipped through the cracks somehow.

Chair stated this is like asking for forgiveness after the action. Mr. Hayes stated yes, this would be a retroactive variance.

Chair asked the applicant to address the Board.

Mark and Debra Ellsworth, 713 N. Lakeside Drive. Mr. Ellsworth stated they moved here from Austin, Texas a few years back. They started renovating the main house and when they got here they were told they had to get a permit from the county and they did. Ms. Ellsworth stated the main house was 104 years old and it was dilapidated. They renovated the main house and now they are living in it. It went through the inspection process for the county. The city got involved in it at the end with the issuance of a Certificate of Occupancy. After that the cottage was a dump. It was unlivable and someone had been in it. It was not safe. They started working on the cottage to renovate it. They went through the exact same process as they did with the main house and they got all the way up to the end and the day before their final inspections they got a certified letter and so the city said stop. They have essentially been stopped since April 22<sup>nd</sup>. The cottage which is 65 or 70 years old, they brought it forward because there was a door entrance that was next to the main house with rickety stairs and it was not safe and you could fall through if you walked up on them. They put the entrance on the front to make it more usable and the stairs were also in violation. Since then the setbacks have changed and those are now in compliance but the side setback is not. They didn't change anything on the side, they just came out about ten feet and the cottage went from 400 something square feet to 575 square feet. It is now a livable structure.

Ms. Ellsworth stated another reason they needed to put the stairs out front is the old entrance was between the house and the cottage and you couldn't open the door in the cottage. So they put it out front where it was safe to construct a stairwell.

Ms. Flores stated when they jugged it out the ten feet, do you know how far that is from the road. Mr. Ellsworth stated it is still 25 feet. It is in compliance now with the front setback.

Mr. Werner asked what the intent of the cottage is moving forward. Mr. Ellsworth stated primarily for her Dad and Stepmom. They are getting elderly and they are thinking about putting them in the lake house and moving into the cottage.

Mr. Werner stated he has a question for the Staff Attorney. Mr. Heyman stated he was welcome to ask but he represents staff and not the Board of Adjustment and he can't give them legal advice. Mr. Werner stated generally passing a retroactive variance is that setting precedent in any way. Mr. Heyman stated staff's position on that issue, they feel like the precedence value on a variance is that your decisions, in staff's opinion, your decision aren't binding precedence like a Supreme Court case might be. But at the same time there are issues like due process that you have to treat everybody the same. So if you are presented with the exact same facts, it stands to reason that you would reach the same conclusion regardless of who asked. You are not technically bound but the principle of due process would say that if you got the exact same facts that apply to the exact same law, that you would reach the exact same result.

Mr. Ellsworth stated they have been doing this process now for two years and nowhere during that two years, they never had anybody tell them anything during the entire inspection process on two properties that something else needed to be done. They were really trying to comply. They tried to follow everything by the book but they did not know and they are not general contractors.

Ms. Reagen asked how this got missed if they were trying to go through all the channels. Chair asked if this could be addressed in private session. Mr. Hayes stated they can address it afterwards.

There were no further questions for the applicant.

Chair asked if there was anyone that would like to speak in favor of the application. No one spoke.

Chair asked if there was anyone that would like to speak against the application. No one spoke.

Chair closed the public hearing for Board discussion.

Mr. Webb stated he has been on this Board for many years and there are probably thousands of noncompliant properties. This is not uncommon and if you look at the street view picture they haven't changed anything other than bringing it forward which is not out of compliance. The lack of compliance was way before they bought the property. He feels the spirit of their request is absolutely what this is for.

Chair reopened the public hearing.

Chair asked are we sure that is the property line. Mr. Hayes stated where the stake was, that is what they are going by as the property line. Mr. Ellsworth stated the neighbors were supposed to close on that property the day Hurricane Helen hit. And so it got pushed out. They ended up getting a survey within the last four months or so and they put those stakes out. That is their stakes for the property line.

Chair closed the public hearing.

Ms. Flores made the following motion: **With regard to the request by Mark Ellsworth for a variance from Section 5-3-3. Dimensional requirements to: 1. Reduce the side setback requirement 5' to 3' on the western portion of the property. 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 applicants felt they were in compliance and they were unaware of any situation that would create this to begin with. They did not modify the side setback which in essence triggered the situation to arise. Chair stated this falls under recommendation for compliance that is in the agenda.** *Ms. Reagen seconded the motion.*

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

Mr. Russell	Yes
Mr. Webb	Yes
Mr. Barwick	Yes
Ms. Flores	Yes
Ms. Reagen	Yes
Mr. Werner	Yes

The vote was unanimous to approve.

The Board had discussion on properties being out of compliance and when there is an issue of property owners not knowing they are already out of compliance.

Tyler Morrow, Current Planning Manager explained the process for zoning permits and building permits and contracting with Henderson County Building Inspections Department to do the city's building inspections and issuing the building permits.

Discussion was also made on zoning enforcement and issuing civil penalties.

Meeting adjourned at 2:22 p.m.

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Reid Barwick, Chair

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Terri Swann, Secretary