



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

City Hall - Council Chambers | 160 6th Avenue East | Hendersonville NC 28792
Tuesday, June 10, 2025 – 1:30 PM

AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES**
 - A. Minutes of December 10, 2024
4. **OLD BUSINESS**
5. **NEW BUSINESS**
 - A. Chair Election
 - B. Bylaws Revisions
 - C. 713 N Lakeside Drive – Variance (25-35-VAR) – Sam Hayes / *Planner II*
6. **OTHER BUSINESS**
7. **ADJOURNMENT**

The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.

MINUTES OF THE HENDERSONVILLE BOARD OF ADJUSTMENT

Tuesday, December 10, 2024
1:30 p.m. in the Council Chambers

The Hendersonville Board of Adjustment held their regular meeting on December 10, 2024, at 1:30 p.m. in the Council Chambers in City Hall, 160 6th Avenue East, Hendersonville, North Carolina. Those present were: Ernest Mowell, Chair, Charles Webb, Reid Barwick, Vice-Chair, Libby Collina, Laura Flores, Mark Russell, Sam Hayes, Planner II, Daniel Heyman, Staff Attorney.

Absent: Chauncey Whiting

Chair called the meeting to order at 1:30 p.m.

Approval of the Agenda: A motion was made by Ms. Collina to approve the agenda minus the variance application. The motion was seconded by Mr. Barwick and passed unanimously.

Approval of the Minutes of the November 12, 2024 meeting. A motion was made by Ms. Collina to approve the minutes as written. The motion was seconded by Mr. Barwick and passed unanimously.

Approval of Decision B24-040-VAR. A motion was made by Mr. Barwick to approve the decision as written. The motion was seconded by Ms. Collina and passed unanimously.

Approval of Decision B24-073-SUP. A motion was made by Ms. Flores to approve the decision as written. The motion was seconded by Mr. Russell and passed unanimously.

Variance – 2420 Rolfe Street – (B24-081-VAR). This application was not heard due to a lack of a quorum. Only six members were in attendance.

Approval of the Annual Meeting Dates for 2025. A motion was made by Mr. Webb to approve the annual meeting dates for 2025. The motion was seconded by Ms. Collina and passed unanimously.

Meeting adjourned at 1:37 p.m.

Chair

Terri Swann, Secretary



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY PLANNING DIVISION

SUBMITTER: Sam Hayes, Planner II **MEETING DATE:** June 10th, 2025

AGENDA SECTION: New Business **DEPARTMENT:** Community Development

TITLE OF ITEM: 713 N Lakeside Drive – Variance (25-35-VAR) – Sam Hayes / *Planner II*

SUGGESTED MOTION(S):

1. For Recommending Approval:

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: *[list factual basis for Approval here.]*

[DISCUSS & VOTE]

1. For Recommending Denial:

With regard to the request by Andrew Griffin for a variance from *Section 5-3-3. Dimensional requirements* to:

2. *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 not** result from the strict application of the ordinance.
- 2) The hardship **does not** result from the conditions that are peculiar to the property, such as location, size, or topography.
- 3) The hardship **did** result from actions taken by the applicant or the property owner.
- 4) The requested variance **is not** consistent with the spirit, purpose, and intent of the regulation, such that public safety **is not** secured and substantial justice **is not** achieved.

For the following reasons: *[list factual basis for Denial below.]*

[DISCUSS & VOTE]

SUMMARY:

The Community Development Department has received an application from Mark Ellsworth for a variance from Section 5-3-3. – Dimensional requirements in accordance with the definition of “setback” in Section 12-2 Definition of Terms to reduce the required 5’ side setback to 3’ on the western side of the property. The subject property is currently zoned R-15 Medium-Density Residential. The specific variance requested is for the following:

The Applicant is requesting a variance from the requirement that side yards shall be a minimum of 5’ wide in accordance with Section 5-3-3 of the Zoning Ordinance. The applicant is seeking a retroactive variance for a renovation done to an existing nonconforming structure (Exhibit B). The structure was extended forward, thereby violating the zoning ordinance for nonconforming structures where it states,

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.

The subject property is .34 acre or a 14,810 square foot lot zoned R-15 Medium-Density Residential. There are two structures on the property currently. The side setback requirements for R-15 is according to Section 5-3-3. – Dimensional requirements. Other requirements for this district are a 70’ minimum lot width, a front setback of 15’, rear setback of 15’, and a maximum height of 35’.

PROJECT/PETITIONER NUMBER:	25-35-VAR
PETITIONER NAME:	Mark Ellsworth (Owner/Applicant)
EXHIBITS:	<ul style="list-style-type: none"> A. Staff Report B. Application C. Warranty Deed D. Site Photos

AMENDED MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: June 10th, 2025

RE: Variance Application –713 N Lakeside Drive

SUMMARY: The Community Development Department has received an application from Mark Ellsworth for a variance from Section 5-3-3. – Dimensional requirements in accordance with the definition of “setback” in Section 12-2 Definition of Terms to reduce the required 5’ side setback to 3’ on the western side of the property. The subject property is currently zoned R-15 Medium-Density Residential. The specific variance requested is for the following:

VARIANCE REQUEST: The Applicant is requesting a variance from the requirement that side yards shall be a minimum of 5’ wide in accordance with Section 5-3-3 of the Zoning Ordinance. The applicant is seeking a retroactive variance for a renovation done to an existing nonconforming structure (*Exhibit B*). The structure was extended forward, thereby violating the zoning ordinance for nonconforming structures where it states,

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.

The subject property is .34 acre or a 14,810 square foot lot zoned R-15 Medium-Density Residential. There are two structures on the property currently. The side setback requirements for R-15 is according to Section 5-3-3. – Dimensional requirements. Other requirements for this district are a 70’ minimum lot width, a front setback of 15’, rear setback of 15’, and a maximum height of 35’.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records the subject property possesses a PIN of 9568-20-4808 and is zoned as R-15 Medium-Density Residential.
- Based on Henderson County records, the lot size is approximately .34 acres or 14,810 square feet.
- Based on Henderson County records, the subject property has two structures built on it.

- Based on Henderson County records a North Carolina General Warranty Deed between Shawn Valentine Lindsey (Grantors) and Mark C. Ellsworth and wife, Debra B. Ellsworth (Grantees) was recorded on January 5, 2024.
- *Section 5-3-3* of the zoning ordinance requires the accessory structure setbacks for R-15 be:
 - Front: To side or rear of principal structure
 - Side: 5'
 - Rear: 5'
- *Section 12-2-2* defines the building setback as an open, unobstructed area that is required by this zoning ordinance to be provided from the furthestmost projection of a structure to the property line of the lot on which the building is located.
- Based on the Variance Application (*Exhibit B*), the accessory structure was an existing nonconforming structure due to it being 3' from the side setback of the property line.
- Based on the site plan submitted by the Applicant, the structure was extended forward approximately 10'.
- Based on a staff visit to the site, the side setback is 3' from the property line.

CODE REFERENCES.

5-3-3 Dimensional Requirements:

Minimum Lot Area in Square Feet: 15,000

Minimum Lot Width at Building Line in Feet: 70

Minimum Yard Requirements in Feet:

Principal Structure

Front: 15

Side: 8

Rear in Feet: 15

Accessory Structure

Front: To side or rear of principal structure

Side: 5

Rear: 5

Maximum Height in Feet: 35

Section 12-2 Definition of Terms

Setback: An open, unobstructed area that is required by this zoning ordinance to be provided from the furthestmost projection of a structure to the property line of the lot on which the building is located.

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.



For use by Principal Authority / Para uso de la Autoridad Principal		
Cloudpermit application number / Número de solicitud de Cloudpermit US-NC30720-P-2025-75		
PIN / Número de rollo 59678		
Application submitted to / Solicitud presentada a Hendersonville, NC, North Carolina / Hendersonville, NC, Carolina del Norte		
Description of Subject Property		
Address / Dirección 713 N LAKESIDE DR		
Municipality / Municipio Hendersonville, NC, North Carolina / Hendersonville, NC, Carolina del Norte		
PIN / Número de rollo 59678		
Purpose of Application		
Application type / Tipo de solicitud Variance		
Applicant, Property owner		
Last name / Apellido Ellsworth	First name / Nombre de pila Mark	Corporation or partnership / Corporación o sociedad
Street address / Dirección de la calle 713 N Lakeside Dr	Unit number / Número de unidad	Lot / Con.
Municipality / Municipio Hendersonville	State / Provincia North Carolina	ZIP code / Código postal 28739
Other phone / Otro teléfono +1 5126275323		Mobile phone / Teléfono móvil +1 5126272566
Fax		Email / Correo electrónico mark@ellsworthteam.com

Declaration and Signatures	
	Item C.
Applicant	
<p>I, Mark Ellsworth (The Applicant), do hereby declare that the information contained in this application, the attached schedules and forms, the attached plans and specifications, and other attached documentation is true to the best of my knowledge. If a permit is granted, I agree to comply with Local Ordinances and the conditions of the permit. If the Applicant is a corporation or partnership, I have the authority to bind the corporation or partnership by signing off, I understand that it constitutes a legal signature confirming that I acknowledge and agree to the above declaration.</p>	
	Digitally signed on 05/20/2025, 12:34:14 PM EDT by Mark Ellsworth. / Firmado digitalmente el 20/5/25 12:34:14 EDT por Mark Ellsworth.
Property owner	
<p>I, Mark Ellsworth (The Property owner), do hereby declare that the information contained in this application, the attached schedules and forms, the attached plans and specifications, and other attached documentation is true to the best of my knowledge. If a permit is granted, I agree to comply with Local Ordinances and the conditions of the permit. If the Property owner is a corporation or partnership, I have the authority to bind the corporation or partnership by signing off, I understand that it constitutes a legal signature confirming that I acknowledge and agree to the above declaration.</p>	
	Digitally signed on 05/20/2025, 12:34:19 PM EDT by Mark Ellsworth. / Firmado digitalmente el 20/5/25 12:34:19 EDT por Mark Ellsworth.

Project Description	Item C.
<p>Please describe the nonconformity:</p> <p>The added length of the house increased by 10 feet. The variance is due to the extra length of the house not being in compliance with the width of the structure's set back next to the neighbor's property. We did not change the width of the structure at all. It is the same as it was before.</p>	
<p>Please describe the requested modifications:</p> <p>On January 5, 2024, we, Mark and Debra Ellsworth, purchased the property located at 713 N. Lakeside. The original house was built in 1921. The cottage on the property was built sometime afterwards but it is quite old. Both homes needed extensive work to bring up to current code. Neither of the buildings were safe for occupancy when we purchased the property. During the purchase investigations, our realtor informed us that according to the GIS site view, the retaining wall between the properties was technically on the property of 1602 Georgia Ave. We contacted the owners of 1602 Georgia and asked if this was a problem that and they assured us there were no issues with it. The cottage structure is not on their property, even though the GIS map provided inaccurately shows the cottage is on the 1602 property. We can see the Map a to this variance is the same as when we were considering purchased the property. Additionally, this particular diagram shows the cottage on an angle and further back on the property than it actually is. We replaced all plumbing, mechanical and electrical in both buildings, as well as a significant amount of beams, joists, flooring, etc. We had to raise the rood on the cottage as it was barely over 7' high. We also had to replace the old wall shingles with new vinyl siding. After completing the main house, we began work on the cottage. The only way to enter the property was via a rickety old wooden staircase that was in between the two buildings. It was extremely dangerous as the incline was drastic, the width was too narrow and the entrance had a door that hit the roof of the cottage and didn't allow it to open all the way. This caused limitations to safely access the building. We moved the entrance to the front of the building and created a safe staircase and entrance. We have diligently worked with the county and secured all permits for the main house, which lead to us acquiring our Certificate of Occupancy. We have been working on the cottage for the last six months and have acquired all permits, except final inspections. At no time were we instructed by any inspector that we needed or should ask about a zoning permit. On Thursday April 24, 2025 we received a Certified letter from the City of Hendersonville that said we needed a zoning permit. We had already scheduled all final inspections to be done on Friday, April 25, 2025 which did not happen as the city stopped this. The positioning of the cottage has not been changed or expanded except slightly in the front. We added the front porch area in the front. The setback from Georgia Ave for the cottage with the new front entrance is the same as the main house. There has been no changes to the Cottage that affected the width of the structure. It is the same as it always was. We have turned this dilapidated structure into a beautiful little cottage that will help with raise the value and quality of the neighborhood.</p>	
<p>Total Project Area (acres)</p> <p>0.01</p>	

Variance Burden of Proof*Item C.*

When unnecessary hardships would result from carrying out the strict application of a zoning ordinance, the Board of Adjustment shall vary any of the provisions upon a showing of the factors listed below. The Board does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board shall grant a variance only upon showing of all of the factors below as provided in Section 10-9 of the City of Hendersonville Zoning Ordinance.

Instructions: In the spaces provided below, indicate the facts you intend to demonstrate and the arguments that you intend to make to demonstrate to the Board that it can properly grant the variance as provided in Section 10-9 of the City of Hendersonville Zoning Ordinance.

1. Unnecessary hardship would result from the strict application of the ordinance. In order to determine whether an unnecessary hardship exists, the Applicant must demonstrate the following factors:	<p>a. Indicate how an 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.</p> <p>We simply did not know of any setback restriction. We had a permit pulled with the County and had all necessary inspections done. No inspector ever mentioned anything about a zoning permit with the city.</p>	<p>b. Indicate how 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</p> <p>The cottage (over 70 years old) has always been about 4 ft from the next door neighbor's property. There is simply no way to expand the cottage any further width wise.</p>	<p>c. Indicate how the hardship did not result from actions taken by the applicant or 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.</p> <p>We did nothing different to the cottage to change the setback issue on the side of the house. It is the same. Also again, no one from the county raised a red flag or said a variance was needed.</p>
--	--	--	---

2. Indicate how 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.

We have not changed the footprint of the cottage width wise at all. We have spent a lot of money to make the cottage a safe place to live and enhance the safety and beautification of the structure.

BK 4123 PG 427 - 429 (3)

This Document eRecorded:

Fee: \$26.00

Henderson County, North Carolina

William Lee King, Register of Deeds

DOC# 1001008782

01/05/2024 12:29:52 PM

Tax: \$590.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax:	\$590.00
Parcel ID:	102044
Mail/Box to:	Staton Law Firm, 640 North Main Street, Hendersonville, NC 28792
Prepared by:	Staton Law Firm, 640 North Main Street, Hendersonville, NC 28792
Brief description for the index:	

THIS GENERAL WARRANTY DEED ("Deed") is made on the 5th day of January, 20 24, by and between:

GRANTOR	GRANTEE
Shawn Valentine Lindsey a/k/a Shawn Lynn Lindsey, unmarried 44 Eastbury Drive, Apt D Hendersonville, NC 28792	Mark C. Ellsworth and wife, Debra B. Ellsworth 101 Sugarberry Lane Hendersonville, NC 28739

Enter in the appropriate block for each Grantor and Grantee their name, mailing address, and, if appropriate, state of organization and character of entity, e.g. North Carolina or other corporation, LLC, or partnership. Grantor and Grantee includes the above parties and their respective heirs, successors, and assigns, whether singular, plural, masculine, feminine or neuter, as required by context.

FOR VALUABLE CONSIDERATION paid by Grantee, the receipt and legal sufficiency of which is acknowledged, Grantor by this Deed does hereby grant, bargain, sell and convey to Grantee, in fee simple, all that certain lot, parcel of land or condominium unit in the City of Hendersonville, Henderson County, North Carolina and more particularly described as follows (the "Property"):

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

All or a portion of the Property was acquired by Grantor by instrument recorded in Book 1643 Page 498.

All or a portion of the Property ☐ includes or ☒ does not include the primary residence of a Grantor.

A map showing the Property is recorded in Book _____ Page _____.

EXHIBIT "A"

WHEREAS, Katherine Ann Bauer and Robert John Bauer both held a life estate on the below described property; and,

WHEREAS, Katherine Ann Bauer died on October 27, 2016 in Henderson County, North Carolina and Robert John Bauer died on August 25, 2023 in Henderson County, North Carolina.

Now Therefore, This Conveyance:

BEING all that property previously conveyed from Charles C. Channell, unmarried to Katherine Ann Channell Valentine dated October 31, 1978 and recorded in Deed Book 570 at Page 549 in the office of the Register of Deeds for Henderson County, North Carolina, as described as follows:

TRACT 1: Being all of Lot 26, Block 12 of Osceola Lake Park Subdivision as shown on a plat thereof recorded in Plat Book 1 at Page 109 of the Henderson County Registry and being the same property described in that deed from J.D. Solley, unmarried to Conrad J. Nill, dated August 11, 1924 and recorded in Deed Book 128 at Page 149 in the office of the Register of Deeds for Henderson County, North Carolina. Charles C. Channell inherited this property from Conrad J. Nill.

TRACT 2: That tract or parcel of land described in that deed from Albert Monroe Cantrell to Charles C. Channell dated August 7, 1947 and recorded in Deed Book 284 at Page 111 in the office of the Register of Deeds for Henderson County, North Carolina.

TRACT 3: All that property described in that deed from C. C. Redden and wife, Agnes Redden to Charles Channell and Katherine A. Steinman dated August 31, 1972 and recorded in Deed Book 500 at Page 45 in the office of the Register of Deeds for Henderson County, North Carolina.

Reference to said deeds is hereby made for a more complete legal description.

AND BEING all of that same property as described in recorded Deed Book 1643, Page 498, Henderson County Registry.

Parcel Number: 102044



Front view of subject property. The right side of the structure is encroaching into the setback by two feet. Provided by staff.



View of front corner of building to property line stake. Provided by staff.



Before image of subject property. Provided by applicant.



View of subject property in progress. Roof extended forward from original footprint of subject property. Provided by applicant.