



CITY OF HENDERSONVILLE BOARD OF ADJUSTMENT

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Tuesday, May 10, 2022 – 1:30 PM

AGENDA

1. **CALL TO ORDER**

2. **APPROVAL OF AGENDA**

3. **APPROVAL OF MINUTES**

A. Minutes of March 8, 2022

4. **OLD BUSINESS**

A. Approval of Decision B22-007-VAR

5. **NEW BUSINESS**

6. **OTHER BUSINESS**

A. Presentation/Training on Quasi-Judicial Boards - Angela Beeker & Daniel Heyman, City Legal Staff

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, March 8, 2022
1:30 p.m. in the City Operations Center

The Hendersonville Board of Adjustment held its regular monthly meeting on March 8, 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, Roger Woosley, Charles Webb, Kathy Watkins, Stefan Grunwald, Libby Collina, Matthew Manley, Planning Manager, Alexandra Hunt, Planner I, Daniel Heyman, Staff Attorney and Terri Swann, Secretary to the Board.

Absent: Barbara McCoy, Michael Edney, Chris Freeman

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

Approval of the Agenda: Chair revised the agenda to include the approval of the Decisions under Old Business.

Approval of the Minutes of the February 8, 2022 meeting. A motion was made by Mr. Woolsey and seconded by Ms. Watkins to approve the minutes as written. The motion passed unanimously.

Approval of the Decisions: **B22-003-SUP** – City of Hendersonville, Special Use Permit, **B22-005-VAR** – Todd Leoni/Osceola Landing LLC, PIN #9568-31-7733, **B22-001-VAR** – Halford Partners, LLC/Alpha Investments, LLC, PIN #9569-77-4636 and **B22-010-TUP** – Ginger Elliott, 214 Wilmont Drive. A motion was made by Mr. Mowell to approve the decisions as written. Mr. Grunwald seconded the motion which passed unanimously.

Variance – Dan Mock and AYD Partners, LLC – 824 Locust Street.

Chair stated today we have one public hearing to consider, a variance application from Dan Mock and AYD Partners, LLC for 824 Locust Street. 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. Those sworn in were Alexandra Hunt, Planner I, Matthew Manley, Planning Manager, Mike Baer, Carolyn Muer, Carleton Collins and Dan Mock.

Chair opened the public hearing.

Alexandra Hunt, Planner I stated her name and title for the record. She asked that the staff report, presentation and exhibits be submitted into the record. She stated this application was deferred from the February meeting. Since then, the Applicant has requested a change to the previously requested height increase of 3.2' to 4' and has submitted updated elevations that were included as an exhibit in the staff report.

Ms. Hunt gave the project background:

The applicant is requesting the following variances:

A variance to increase the maximum building height of 35' allowed under Section 5-12-3 (I-Industrial Zoning District Classification) to 38.2'. A variance of 9.8' from the front setback requirement and a variance of 21.6' and 6.6' from the side setback requirements of Section 5-12-3. A variance from Section 6-2-2(e) Nonconforming Structures.

The purpose of the variance is to add an approximately 31.166' x 58.625' Community Room / Gym addition (1,827 Sq Ft) and two Covered Patios (436 Sq Ft and 510 Sq Ft) to the roof of an existing structure.

Subject property is approximately 0.22 acres or 9,583.2 sq ft. The subject property was built in 1926 and the Gross Leasable Area of approximately 13,516 sq ft. 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. The subject property contains an existing chimney measuring 39' 11" from the base elevation at the location of the chimney.

Site photos were shown. Digital renderings of the proposed rooftop addition were also shown. The north and south and front and rear elevations were shown.

The variance requested is to increase the maximum building height of 35' to 38.2' (3.2' height increase from setback standards). This will require a variance from setback standards in Section 5-12-3.

Building's current height is 24.5'. Building contains a chimney stack that is 39' 11". Section 8-2 Height Limitations allows for an exception to height limitations for chimney stacks. Section 5-12-3 states: 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 applicant is requesting a variance of 9.8' from the required front setback and a variance of 21.6' from the required side setbacks to allow for the proposed height increase.

Front setback: Increase height by 4'. Increase of 4' in height = Required Setback increase of 2' per Section 5-12-3 (Dimensional Requirements). Typical Required Front Setback without height increase = 35'. Required Front Setback with proposed height increase = 37'. Applicant's Proposed Front Setback = 26.8'. Applicant's Requested Variance Amount = 10.2'.

Side setback: Typical Required Side Setback without height increase = 20'. Required Side Setback with proposed height increase = 22'. Applicant's Proposed Side Setback = 0' on Lynn St side / 15' on other side. Applicant's Requested Variance Amount = 22' on Lynn St side / 7' on other side.

The applicant is proposing to expand the building with an addition to the roof. The existing nonconforming structure does not meet setback requirements. The proposed addition could only be 6.8' wide to be in conformance with side setbacks. The proposed addition would have to be setback an additional 9.8' to be in conformance with the front setback. The existing parcel area (9,583 Sq Ft) does not meet minimum lot size requirements within the I-1 Zoning District (40,000 Sq Ft). **6-2-2(e)**

Nonconforming Structures: *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 10-9 concerning Variances was read into the record. 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.

The suggested motions were shown. Ms. Hunt stated the applicant is here to give a brief presentation.

Chair asked if there were any questions for staff.

Ms. Watkins asked if the use they are proposing is permitted in this zoning district. Ms. Hunt stated yes.

There were no further questions for staff.

Dan Mock, 3616 Collinsville Road, Columbus, NC stated he is the applicant and is here with his architect Carleton Collins. Mr. Mock presented a handout to the Board. A copy was submitted for the record. Mr. Mock stated he is looking to do several projects in Hendersonville. He is a developer/contractor in California and moved his family here to Tryon two years ago. He loves the area and Main Street. He saw this building and decided he would like to do something with it other than industrial. The best use for the building is residential and he feels like a residential use could jump start the area. In order to create the open space for the roof he will need the variances on the setback requirements. He talked about sloping the roof so he will not have any water issues. He does not want a flat roof. He recently found out from Crystal Lyda, Building Services Director that they would have to install an elevator if they planned to enclose the rooftop area, so he has decided to just have a covered area on the rooftop to shield from the sun. The roof will be fully opened with only a covered area. This will not be a restaurant area. It will be an open area used only by the residents.

Carleton Collins, Architect 105 Cranford Road, Asheville NC explained reducing the footprint but still needing the height to make the project work. He explained the pitch of the roof and raising the roof level due to water issues but keeping the beams down.

Mr. Manley stated if the variance is approved, even though they plan to keep the rooftop open they could retain the right to enclose the roof if they decided to install the elevator.

Ms. Collina asked what the current height of the roof is. Mr. Collins stated 24'9" from the parapet to the sidewalk.

There were no further questions for the applicant.

Carolyn Muer, 852 Whites State Boulevard, Saluda, NC stated she is an affected party and owns a unit in the building. She understands Mr. Mock is in escrow for the unit that is beside her. She is big supporter of the Historic 7th Avenue discussions. Mr. Holloway and Mr. Connet have never used the word "development" for the 7th Avenue District. Instead, they use words such as revitalization and restoration. The Coca Cola building is an amazing building, and she is pleased they are making this a residential use. She does not have a problem with the height variance, but she was concerned about where Mr. Mock will go with the variance if it is approved. She was concerned about the public and the rooftop being open to the public for dining and drinking and the gym. There is a lack of parking on 7th Avenue. She requests that the Board in granting the 4' rooftop variance make sure that it be used for what Mr. Mock is promoting here today. She stated water is a problem and there is a water issue in the building. The Fire Chief is in the building often. She asked that the committee make sure that each of the requirements are met during the construction.

Mr. Mock stated the unit he is in escrow for is in the alley at the rear and not Elsa's unit beside Ms. Muer. The gym will be for the residents only and no one will have access to the rooftop except the residents. Concerning the parking, there is a vacant parcel in the back, and he is planning to put in a garage and a small parking lot for the residents. Concerning the water issues, that is part of the reason they need the height variance. They are planning to get a good slope and make sure they will not have any water issues. There will be a deck that can be removed on the rooftop. He has used the slope on roofs in LA and has never had any problems.

Mike Baer, 201 Crooked Creek Road stated he has a business adjacent to this proposed project. He feels that apartments would be a really good use for this building. Adding the rooftop would only help to support the other businesses in the area that are within walking distance. It will enhance the historic aspect of the area. He does support this project.

With no further questions or comments, Chair closed the public hearing for Board discussion.

Discussion was made on parking and the structure being nonconforming. Ms. Watkins stated if they approve the setback variance it will bring the structure into conformity. Mr. Mowell stated it is another case where if the Board does not grant the variance, no one can build on the property or make use of their property.

Mr. Webb made the following motion: *With regard to the request by AYD Partners LLC for a variance from Section 6-2-2(e) Nonconforming Structures, 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, and with regard to the request by AYD Partners LLC for a variance from Section 5-12-3 Dimensional Requirements to reduce the front setback (for a principal structure measuring 3.2' above 35' in height) from 36.6' to 26.8' and to reduce the side setback (for a principal structure measuring 3.2' above 35' in height) from 21.6' to 0' on the Lynn St Side and 6.6' on the opposing side, 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. Ms. Watkins seconded the motion.*

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

Mr. Woolsey	Yes
Mr. Mowell	Yes
Mr. Webb	Yes
Ms. Lowrance	Yes
Mr. Grunwald	Yes
Ms. Collina	Yes
Ms. Watkins	Yes

The vote was unanimous. Motion approved.

Meeting adjourned at 2:15 p.m.

Melinda Lowrance, Chair

Terri Swann, Secretary

DRAFT

**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 10th day of May, 2022

Melinda Lowrance, Chair