

# TOWN OF WAYNESVILLE Zoning Board of Adjustment

9 South Main Street,  
Suite 110  
Waynesville, NC 28786  
Phone (828) 456-8647 • Fax (828) 452-1492  
[www.waynesvillenc.gov](http://www.waynesvillenc.gov)

**Board Members:**

Joshua Morgan, Chairman  
Edward Moore, Vice Chairman  
Henry Kidder  
John Mason  
Sam Hyde (Alternate)  
Carly Pugh (Alternate)

**Development Services Director**  
Elizabeth Teague

**Assistant Development Services Director**  
Olga Grooman

## TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT REGULAR MEETING

Town Hall – 9 South Main Street, Waynesville, NC 28786  
Tuesday, March 4, 2025, 5:30 PM

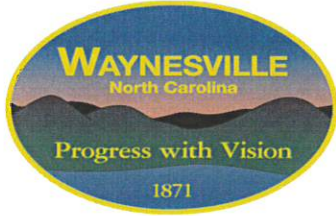
**A. CALL TO ORDER:**

1. Welcome/Announcements/Introductions
2. Adoption of Minutes (as presented or amended):
  - November 5, 2024, quasi-judicial training workshop
  - Tuesday, December 3, 2024, regular meeting

**B. BUSINESS ITEMS:**

1. Vote to appoint one of the alternates as a regular Board Member.
2. Introduction to the Quasi-Judicial Handbook (2024 Edition) by the D. Owens & A. Lovelady, in partnership with the UNC School of Government. Attached is an abstract on Alternate Members.

**C. ADJOURN.**



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Henry Kidder  
Judi Donovan  
John Mason  
Sam Hyde (Alternate)

### MINUTES OF THE TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT

#### Regular Meeting

Town Hall – 9 South Main St., Waynesville, NC 28786  
Tuesday November 5<sup>th</sup>, 2024

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THE TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT did not hold a meeting on Tuesday, November 5<sup>th</sup>, 2024, at 5:30 p.m. in the Town Hall Board Room at 9 South Main Street, Waynesville, NC 28786, due to a lack of quorum. Instead, a Quasi-Judicial Training Workshop was held. No business was conducted, and no action was taken.

The following Zoning Board of Adjustment members were present at the training:

Judi Donovan  
John Mason

The following Planning Board members were present:

Jan Grossman  
Ginger Hain

The following staff members were present:

Olga Grooman, Assistant Development Services Director  
Alex Mumby, Land Use Administrator  
Tyler Anderson, Stormwater Management Coordinator  
Esther Coulter, Administrative Assistant

The following Attorney was present:

Ron Sneed, Attorney for the Board

The following Zoning Board of Adjustment members were absent:

Joshua Morgan, Chair  
Henry Kidder  
Edward Moore, Vice Chair  
Sam Hyde

Assistant Development Services Director Olga Grooman introduced all the board members from the Planning Board and Zoning Board of Adjustment. The Boards' attorney Ron Sneed led the training on Quasi-Judicial Procedures.

Attorney Ron Sneed gave a Power Point presentation to all the board and staff members who were present and answered their questions.

The training lasted 1 hour and 32 minutes, ending at 7:02 p.m.

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*Olga Grooman, Assistant Development Service Director*

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*Esther Coulter, Administrative Assistant*

DRAFT



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**MINUTES OF THE TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT  
Regular Meeting  
Town Hall – 9 South Main St., Waynesville, NC 28786  
Tuesday December 3<sup>rd</sup>, 2024**

THE TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a Regular Meeting Tuesday December 3<sup>rd</sup>, 2024, at 5:30 p.m. in the Town Hall Board Room at 9 South Main Street, Waynesville, NC. 28786.

**A. CALL TO ORDER**

1. Welcome/Calendar/Announcements

The following members were present:

Joshua Morgan, Chair  
Sam Hyde  
Henry Kidder  
John Mason  
Carly Pugh

The following members were absent:

Edward Moore, Vice Chair  
Judi Donovan

The following staff were present:

Olga Grooman, Assistant Development Services Director  
Alex Mumby, Land Use Administrator  
Esther Coulter, Administrative Assistant

The following Attorney waw present:

Ron Sneed, Attorney for the Board

Chairman Joshua Morgan welcomed everyone and called the meeting to order at 5:29 p.m. Mr. Morgan introduced the new Zoning Board of Adjustment member Carly Pugh.

Assistant Development Services Director Olga Grooman made the announcement that no applications had been received for next month's agenda.

*A motion was made by Board member John Mason, seconded by Board member Carly Pugh, to approve the August 15<sup>th</sup>, 2024, minutes as presented. The motion carried unanimously.*

Chairman Joshua Morgan read through the process and procedures for the Quasi-Judicial Public Hearings. All parties were sworn in. The board members had no conflicts of interest.

Chairman Joshua Morgan opened the public hearing at 5:38 p.m.

**B. BUSINESS:**

1. A variance to allow the reconstruction of a single-family dwelling within the same footprint, requiring a deviation from the setbacks established within the Country Club Residential Low-Density District, for the property at 90 Chelsea Road (PIN 8605-90-3134), Land Development Standards Sections 2.4.1 and 13.7.

Ms. Grooman read through her staff report and stated that the lot and the house pre-empt the current zoning ordinances of the Town. The applicant wants to demolish the existing delapidated house and replace it with a new single-family home in which he will live. In the application materials, the applicant and property owner, Scott Lilly, explains the conditions of the lot and existing home as follows:

1. "90 Chelsea Rd is a 0.0735-acre parcel with a 1,006 sq-foot home."
2. "In 1953, the lot and house [were] created by Mr. and Mrs. Feichter."
3. "The entire lot is only 43 feet wide by 74.5 feet long."
4. "The existing house was constructed [approx.] 5 feet from the property line against the condos, [approx.] 8 ft from the property line against the 4-unit apartment house, and [approx..] 13 feet from the pavement. And about 27' setback to the back property line."
5. "There is no chance to combine property with any adjacent property as all 3 neighbors are also developed within 10 feet of the [side] property lines."
6. "Upon inspection, there was severe termite damage in the home and now flood damage from the hurricane. Any rehab of the existing structure would be impractical."

Ms. Grooman stated the applicant is seeking a variance from the LDS section 13.7 that specifically requires the reconstruction of the pre-existing nonconforming buildings to comply with the current dimensional standards of the zoning district, such as setbacks. Mr. Lilly proposes to construct a single-family home with "880 square feet on the main level and 963 square feet on the second level, with the proposed design contained within the footprint of the existing structure." Ms. Grooman said the house will be moved 7 ft back on the lot, which will be in better conformity with the current zoning because front and rear 20-ft setbacks will be compliant.

Ms. Grooman explained that the area surrounding the lot is densely developed, with adjacent properties also having sizes and densities exceeding the current zoning standards. She stated that the lot was in the

100-year floodplain, and the new house must meet all floodplain requirements, such as elevation above the base flood level, which would make it safer.

Mr. Grooman stated that the applicant offers the following comments regarding the findings that must be considered by the Zoning Board of Adjustment:

a) *Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

The lot is only 43 feet wide by 74.5 feet long. The applicant is not increasing non-compliance. In fact, the newly proposed structure will respect the district's front and rear setbacks and improve the existing condition of the property.

b) *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.*

The property is a pre-existing nonconformity and is surrounded by other densely developed small lots. It is also located within the 100-year floodplain. The proposed variance aligns with the surrounding development and floodplain requirements and provides the opportunity for in-fill re-development.

c) *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.*

The lot and house were established decades ago, prior to the current ordinances, and no actions by the applicant have contributed to the noncompliance.

d) *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.*

Public safety is secured, and substantial justice is achieved because the construction of a new house will eliminate the need for street parking, the property will comply with all floodplain regulations making it safer, and the structure will be compliant with the latest building, fire, and zoning codes. The house will be positioned in the center of the lot to respect neighbors' privacy, and the applicant intends to live in it.

**Items Entered as Evidence:**

1. Staff Report
2. LDS Sections 13.7 and 2.4.1
3. Application materials with payment
4. Maps: property, zoning, floodplain, street view
5. Public notices
6. Town of Waynesville LDS, NC Building and Fire Codes, and NC GS 160D by reference

The Board asked Ms. Grooman for a few clarifications.

The Applicant Scott Lilly said that his architect, Andy Bailey, still has a few things to fix on the plans. Mr. Lilly stated that the demolition of the old house will take place in January 2025.

***A motion was made by Board member John Mason, seconded by Board member Sam Hyde, to close the public hearing at 6:05 p.m. The motion carried unanimously.***

The board deliberated.

***A motion was made by Board member Henry Kidder, seconded by Board member John Mason, to accept the proposed variance request for 90 Chelsea Rd. with the 4 hardships as presented. The motion carried unanimously.***

- 2. A variance from the front setback requirements of the Eagles Nest Residential Low-Density District on the unaddressed parcel off Deer Path Road (PIN 8605-38-2095), Land Development Standards Section 2.4.1.

Land Use Administrator Alex Mumby read the staff report stating that the property is a 0.47-acre undeveloped lot. The applicant would like to build on the upper section of the lot to minimize disturbance of the slope. The proposed variance would allow the home to be 16 feet from the edge of the roadway and 25 feet from the property line. The site plan would still be required to comply with the Town's steep slope regulations.

Mr. Mumby presented the applicant's hardships that the Zoning Board of Adjustment must consider:

- a) *Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

The property is a large existing lot in which the regulatory setback could be met, but it would cause greater disturbance to a steep slope. The requested variance would help to align with the Eagle's Nest Residential Low Density District's goal to minimize environmental impact and support the Town's Hillside Protection Ordinance (12.6) by preserving natural features like trees, plants, and rock outcroppings to stabilize the slope (LDS Section 12.6.3).

- b) *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.*

The platted right-of-way extends 12 feet from the paved right-of-way. Without a variance, the house must be built 26 feet from the paved roadway. With the variance, the house will be 16 feet from the paved roadway.

- c) *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.*

The current property owner purchased the lot as it is now, and so the hardship is not self-created.

- d) *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 setback variance would allow the builder to preserve vegetation and land to the rear of the proposed building and to minimize the use of fill on the slope. Under no circumstances, however, would the proposed building be allowed to encroach into the platted right-of-way or interfere with other adjacent properties and the use and access to other lots.

**Items Entered as Evidence:**

- Staff Report
- Application with payment
- Town of Waynesville LDS sections 2.4.1 and 12.6
- Maps
- Site images
- Public notices
- Town of Waynesville LDS, NC Building and Fire Codes, and NC GS 160D by reference

The Board clarified the right-of-way and setbacks with Mr. Mumby and Ms. Grooman.

**Applicants**

The applicant's architect, Steven Coffey, explained to the board the steepness of the property's slopes and why they are requesting the variance. Mr. Coffey referenced the site plan on page 44 of the agenda packet. Mr. Coffey said the owners want to minimize the disturbance to the land to avoid erosion and possible landslides. Mr. Coffey explained that the retaining wall will be 13 ft tall and 12-14 inches thick with 8-10 ft depth for stability. The variance would allow for a smaller retention wall.

**Public Comment**

The applicant's neighbor Mike Wallace explained to the board he used to build skyscrapers. Mr. Wallace said that the home needs to be closer to the road, and the retaining wall's fill is very important. His concern is that there will be no room for parking for family, visitors, and delivery trucks. He said there are no shoulders on either side of the road.

John, another neighbor, said his concern is that when turning onto the narrow street, there is 5 ft of land from the edge of road to where the slope starts. He said there is no room to park on the road. He also shared concerns about the future house sliding down the hill as it's happened before in the neighborhood.



Chairman Joshua Morgan wanted some clarification regarding the requirements for impervious surface under the steep slope regulations (LDS 12.6.4).

Board Member Sam Hyde requested clarification on whether the intent of the ordinance would be less effectively served if the structure were 10 feet closer to the right-of-way.

Mr. Mumby said if the variance was denied the applicant may come back and ask for a variance from the steep slope ordinance.

*A motion was made by Board member John Mason, seconded by Board member Henry Kidder, to close the public hearing at 7:07 p.m. The motion carried unanimously.*

The Board deliberated.

*Board Member Henry Kidder made a motion, seconded by Board Member Carly Pugh, to approve the first hardship criterion for the variance as presented by staff. The motion passed unanimously.*

*Board member Sam Hyde made a motion, seconded by Board member Carly Pugh, to approve the second hardship criterion for the variance as presented by staff. The motion passed unanimously.*

*Board member John Mason made a motion, seconded by Board member Sam Hyde, to approve the third hardship criterion for the variance as presented by staff. The motion passed unanimously.*

*Board member John Mason made a motion, seconded by Board member Carly Pugh, to approve the fourth hardship criterion for the variance as presented by staff. The motion passed unanimously.*

*A motion was made by Board member John Mason, seconded by Board member Henry Kidder, to approve the variance for the front setback as presented, including the 4 hardships. The motion carried unanimously.*

**C. ADJOURN**

*Chairman Joshua Morgan adjourned the meeting at 7:31 p.m.*

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*Joshua Morgan, Chairman*

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*Esther Coulter, Administrative Assistant*

Finally, the General Statutes specify that the extraterritorial members should be residents of the extraterritorial area. If an insufficient number of area residents are willing to be appointed, the county commissioners may appoint other county residents to fill the needed number of seats. The statute does not require that these appointees reside outside the city, only that they be residents of the county.

The municipal development regulation determines the matters on which the extraterritorial members are allowed to vote. If authorized by the regulation, ETJ members are allowed to vote on any and all matters coming before the board. If the regulation does not so specify, ETJ members may vote only on matters arising within the extraterritorial area.

### **Alternate Members**

The General Statutes allow but do not require boards of adjustment to have alternate members.<sup>11</sup> This is a common and worthwhile practice, however. If the development regulation provides for alternate members, they must be appointed for the same terms, at the same time, and in the same manner as regular members.

Alternate members participate and vote on matters when a regular member of the board is not available. It may be that a member is simply unable to attend a particular meeting. It also could be that a regular member is present but has a conflict of interest on an individual case and therefore is not allowed to participate in the matter. Or there may be a vacant seat on the board. In any of these circumstances, an alternate member allows the board to proceed and conduct its business with a full complement of voting members.

Having an alternate member available is particularly important when hearing requests for variances. State law requires a four-fifths majority of the board to grant a variance, not four-fifths of the members present at a particular meeting.<sup>12</sup> Thus, a five-member board with one person absent and no alternate would be unable to achieve a four-fifths majority for granting a variance without a unanimous vote; a 3 to 1 vote to grant the variance would be insufficient. While the voting calculation is slightly different, the same practical problem arises when a member has a conflict

<sup>11</sup> G.S. 160D-302(a).

of interest. That member's seat is not counted in the calculation, but the four-fifths requirement still applies. So, in the event that one member of a five-member board has a conflict of interest, the applicant must get four-fifths of the four members who are eligible to vote. In that case, a 3 to 1 vote in favor is only three-quarters of the four voters, not the required four-fifths. Having an alternate member would restore the board to having five votes in either circumstance, meaning that a unanimous vote would not be necessary to grant a variance. In situations where a unanimous vote would be necessary, many boards give the petitioner the choice of continuing the hearing to a later date or proceeding with only four voting members.

In addition, the use of alternates allows meetings, hearings, and decisions to proceed in an orderly, predictable, and efficient fashion. Regular members sometimes must be absent or have unavoidable conflicts, so having no alternate member available can lead to meetings being canceled or delayed. For these reasons, most development regulations provide for alternate members of boards of adjustment.

Some boards have their alternate members attend all meetings, while others call them in only if it is clear that their participation will be needed. Either practice is legally acceptable, but regular attendance by alternates can be helpful for several reasons. First, it gives alternate members exposure to the work of the board, thereby helping them be better prepared to act when needed. Second, the need for an alternate is sometimes not known until the meeting itself. A regular member may have to miss the meeting at the last minute. Or it may be at the hearing that a member discovers a conflict of interest. Having an alternate member present and ready to participate is useful in those situations.

There are multiple options for how to address the question of meaningfully engaging alternate members in the work of the board. One option is to have a rolling alternate designation. Suppose there is a board with seven voting members. Typically, there would be an additional one or two individuals named as alternates who are always available but rarely needed. As an alternative, the board could be appointed with nine full members who rotate the responsibility of serving as alternate. For one case, members A and B are designated as the alternates and the balance of the board serves as the seven voting members. For the next case, members C and D are designated as the alternates, and so on. This option allows all members to

regularly participate as voting members and ensures that there are always alternates available in case of a conflict or an absence.

Regardless of how alternate members are involved in the board as a whole over time, it is critical that each individual case be handled in a way that protects the due process rights of all parties. An alternate member can be called into service for an entire meeting or for a single case. If serving for a regular member who is absent, the alternate will fully participate in all matters arising at that meeting. Conversely, if a regular member is present but has a conflict of interest on one of several cases coming before the board, the alternate will serve for only the one case involving that conflict, with the regular member resuming his or her seat for the other cases. While serving for a regular member, the alternate member has the same powers and duties as the regular member. It is perfectly acceptable for an alternate member to observe the proceedings, but active participation by an alternate who is not serving on a given case raises due process problems that are best avoided by having the alternate observe only.

Provisions for appointing alternate members from inside both the city and the extraterritorial jurisdiction, though not addressed by state statute, are provided in many municipal development regulations. Such regulations commonly specify that alternates from inside the city limits may serve only to replace regular members from inside the city and that ETJ alternates may serve only to replace ETJ regular members. Given that the role of city/ETJ alternates is not specified by statute, it is prudent to have municipal development regulations include instructions on the matter.

### **Term of Office**

The General Statutes require that board of adjustment members be appointed to three-year terms of office.<sup>13</sup> Members may be reappointed, but each individual term must be for three years. A development regulation may limit the number of consecutive terms an individual may serve, but if there are no such limits in the development regulation, reappointment is solely at the discretion of the appointing board. The three-year term provision applies to alternate members as well.