

Town of Nashville

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RANDY LANSING, TOWN MANAGER

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BOARD OF ADJUSTMENT
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EDDIE THOMAS, VICE CHAIRMAN
TOMMY SASSER SR.
DENNIS EVANS
BRIAN WEST
BILL LUMPP
WAYNE SEARS

TOWN OF NASHVILLE BOARD OF ADJUSTMENT MINUTES Tuesday, January 31, 2023

The Town of Nashville Board of Adjustment held a regular scheduled meeting on Tuesday, January 31, 2023, at approximately 7:10 PM in the Town Council Chambers located at 114 W. Church Street in Nashville, NC.

Members Present: Ross Strickland, Eddie Thomas, Tommy Sasser, Sr., Dennis Evans, Brian West, Bill Lump, and Wayne Sears

Members Absent: None

Staff: Sherry Moss, Planning Director, Shawn Lucas, Planner, and Randy Lansing, Town Manager

1. CALL TO ORDER:

The meeting was called to order by Chairman Ross Strickland at approximately 7:10pm. A quorum was present.

2. INTRODUCTION OF BOARD OF ADJUSTMENT MEMBERS:

All board members introduced themselves.

3. SWEARING IN OF NEW MEMBERS

New board members Brian West, Bill Lump, and Wayne Sears were sworn in to serve on the Board of Adjustment.

4. ELECTION OF OFFICERS:

A. CHAIRMAN

Chairman Ross Strickland was nominated again to continue to serve as Chairman.

B. VICE-CHAIRMAN

Vice Chairman Eddie Thomas was nominated again to continue to serve as Vice-Chairman.

5. APPROVAL OF MINUTES OF THE PRECEDING MEETING (October 6, 2022):

Chairman Ross Strickland called for a motion to approve the October 6, 2022 minutes. A motion was made by Board Member Dennis Evans to approve the October 6, 2022, minutes. Vice Chair Eddie Thomas seconded the motion. The motion passed unanimously 6-0. There was no further discussion.

6. APPROVAL OF 2023 BOARD OF ADJUSTMENT MEETING SCHEDULE

Chairman Ross Strickland called for a motion to approve the 2023 Board of Adjustment Meeting Schedule. Board Member Dennis Evans motioned to approve the 2023 Meeting Schedule. Board

Member Bill Lumpp seconded the motion. The motion passed unanimously 6-0. There was no further discussion.

7. BOARD OF ADJUSTMENT PROCEDURE FOR EVIDENTIARY HEARINGS

Planning Director Sherry Moss introduced and read the procedure for the Board of Adjustment evidentiary hearing.

8. NEW BUSINESS:

HEARING OF THE CASE: V 2023-01:

EVIDENTIARY HEARING: to allow reduced setbacks from the minimum requirements of the Nashville Code of Ordinances for property located at 726 E. Washington Street and 101 N. Wheelless Drive; PIN# 380120905121. The property is zoned B-1 (General Business) Zoning District.

- Hearing of Case: (Public Comments-Sworn testimony)
- Evidence Introduced
- Board Member Worksheet
- Consideration and Determination of Case (Board Members only)

Mike Gaynor, Tim Freeman, and Planning Director Sherry Moss were sworn in to give testimony.

Chairman Strickland opened the evidentiary hearing.

Planning Director Sherry Moss introduced the case to the Board of Adjustment, giving the reason for the variance request. Ms. Moss proceeded with the items in the agenda packet. She also stated and read the findings of facts with staff comments to the board and the audience as it was listed within the agenda packet.

Per the variance application, "Statement of Justification", the applicant's reason for the variance request indicated that the "owner proposes to subdivide the property into two lots. The proposed lot one contained an accessory building to the adjoining apartment complex and was a portion of that property. The proposed lot one was then combined with proposed lot two to create one lot and the accessory building did not violate setback requirements, because it was treated as an accessory building. If the lot is subdivided, then the accessory building will become a primary building and will violate the setback requirements.

The applicant's responses, per variance application, to the finding of facts are as follows:

- A. That special conditions and circumstances exist, which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.

Applicant: Because this building was originally constructed and used as an accessory building the setback requirements were not the same as if the building had been built as a primary structure. The adjoining proposed lot two is more usable without proposed lot one. In order for proposed lot two to become a desirable lot to be developed, proposed lot one will have to be subdivided and the building on proposed lot one will not be usable, thereby requiring the owner to tear down the valuable structure.

- B. That the literal interpretation of the provisions of this ordinance would deprive the applicant of a right commonly enjoyed by other properties in the same district under the terms of this Ordinance.

Applicant: A literal interpretation of the setback requirements would require demolition of this building. This building is unique as it was originally constructed as an accessory building to the adjoining apartment complex and has been put to good use over the years. The building has many uses remaining and should not be destroyed.

- C. That the special conditions and circumstances **do not** result from the actions of the applicant.

Applicant: The applicant did not construct the accessory building on the current lot and simply desires to subdivide the lots to create a better use for both lots and utilize the existing structures on the lots.

- D. That granting the variance will not confer on the applicant any special privilege that is denied by this article to other lands, structures or buildings in the same district.

Applicant: The granting of the variance will simply allow an existing building to be used in a B-1 district allowing for proper usage of the land for businesses within the town limits of Nashville and will not result in any special privilege. Further, the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that the public safety is secured, and substantial justice is achieved.

Board Member Brian West asked is the two lots are separated, is the Town going to require that the building be demolished. Ms. Moss replied that is the purpose of the variance. If the variance is approved, the owner will be able to go forward with the minor subdivision. Ms. Moss mentioned that staff can have a note on the minor subdivision plat the Board of Adjustment approved the variance for reduced setbacks.

There was further discussion on the setbacks. Ms. Moss explained the difference of the setbacks between a primary and an accessory structure, indicating that accessory structures have a six-foot setback requirement from the side and rear property line. Whereas, once the property is subdivided, the accessory building becomes a primary building and has to meet the ten-foot side and rear setbacks.

Mike Gaynor (Attorney) was present to represent Mr. Freeman. He thanked Ms. Moss for all the information that was presented. He made a reference to page 17 within the agenda packet regarding the metes and bounds description and the map. He stated the building was actually a primary building when that map was drawn and added because the apartments did not exist. It was primary building on that lot. And it violated the setback requirements on the side street when it was built; that must have been approved at some point in time prior to that, but it did violate the side street setback. Mr. Gaynor added it's about nine feet off the side street and then the apartments were built and there was a subdivision and recombination plat, which is shown on page 19, which included the front lot. Which then created it as an accessory building, which cured the setback violation. Mr. Gaynor stated now they have the request to separate these two lots, which they believe is the best use of the two lots.

Mr. Gaynor stated Mr. Freeman has retired and closed his business. He has a vacant building there and he would like to either sell the building or lease the building to somebody who would put a thriving business in that space. He added they (potential buyers) are not interested in the back portion of the property and any use of the property without a variance on the setback will require the building to be torn down. Mr. Gaynor stated the building does still have very much use left in it either as a as a warehouse or as some other use.

Mr. West asked if Mr. Freeman sells the secondary property and it doesn't meet the variance, will the new owner be able to use that building for anything. Ms. Moss replied that the variance goes with the land. Mr. Gaynor also added that if the new owner were to purchase the warehouse as it sits, they will be able to use it. He stated he thinks there's been some discussion about requiring any new build if the warehouse

will remove in any new building be put there that that would have to meet the setback requirements. He added that he doesn't think there's any objection to that; that would seem reasonable.

Mr. Gaynor stated the request is simply to not require him (Mr. Freeman) to tear down a perfectly good building, in order to be able to sell the front lot for its highest and best use as well.

Board Member Bill Lumpp questioned if the back lot was sold, with the building, in the B1, could it be used as is for somebody would have to go in there and do other things to meet our other codes, and everything is okay, except setbacks? Ms. Moss replied yes, if they have a B1 permitted use and comply with parking regulations.

Board Member Wayne Sears questioned would anybody else be impacted or harmed if not allowed to go for this. Mr. Gaynor replied that he doesn't believe anybody else will be impacted because there would be no change in the use of the property. Except that it may be used for something different permitted a B1 district. But this is still being used as what would be permitted in a B1 district, which was for storage and warehousing.

The board further discussed parking with Mr. Gaynor.

Mr. Lumpp asked Ms. Moss, if approved, that back lot with the size of it, can be used for a B1 use with the size of it and the land is allowed. Ms. Moss replied yes, because it meets the minimum lot size requirements for the B1 zoning district. Mr. Lumpp reiterated that we're (the board) are fixing the problem but don't want to create another problem.

Mr. Sears asked for clarification that this is solely a setback and nothing else. Ms. Moss confirmed that it's just the setbacks and added that the Board of Adjustment has the power to grant the variance.

The public comment portion of the evidentiary hearing was closed. Chairman Strickland asked does the applicant wish to respond to any of the comments. There were no further responses.

Chairman Strickland stated to everyone that that the documents included within the record for this quasi-judicial public hearing includes all application materials submitted by the applicant, all materials included in the board of adjustments packets, any PowerPoint or other presentations given this evening, all written referral and public comments received regarding the application, the public comment signup sheet and other applicable regulations.

The evidentiary was closed. There was no further discussion. Planning Staff's recommendation is to approve the variance.

Having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment made the following findings of fact:

1. It is the Board's CONCLUSION that, special conditions and circumstances exist, which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district. This statement is true.
2. It is the Board's CONCLUSION that the literal interpretation of the provisions of this ordinance would deprive the applicant of a right commonly enjoyed by other properties in the same district under the terms of this Ordinance. This statement is true.

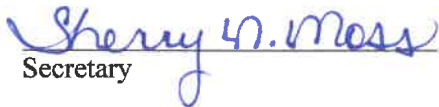
3. It is the Board's CONCLUSION that the special conditions and circumstances do not result from the actions of the applicant. This statement is true.
4. It is the Board's CONCLUSION that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district. This statement is true.
5. It is the Board's CONCLUSION that, if granted, the variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit. This CONCLUSION is based on all of the FINDINGS OF FACT listed above. This statement is true.
6. It is the Board's CONCLUSION that, if granted, the variance will secure the public safety and welfare and will do substantial justice. This CONCLUSION is based on all of the FINDINGS OF FACT listed above. This statement is true.

Board Member Bill Lumpp motioned to approve the variance. The motion was seconded by Board Member Tommy Sasser. The motion passed unanimously 6-0.

9. **ANNOUNCEMENT OF NEXT MEETING:** February 28, 2023, at 6pm (or immediately after Planning Board Meeting)

10. ADJOURNMENT

The meeting adjourned at 8:06pm.


Secretary


Chairman Ross Strickland