



Lenoir Board of Adjustment

Agenda • January 23, 2023

Meeting Information

Location

City /County Meeting Room
905 West Avenue
Lenoir, NW 28645

Time

5:30 p.m.

Board Members

Sharon Bryant, Chairperson

Leah Hamilton, Vice-Chair

James Bradshaw

Lucy McCarl

Tim Scobie

Welcome!

We are glad you have joined us for tonight's meeting. The Lenoir Board of Adjustment is a quasi-judicial board comprised of citizen members appointed by the City Council in accordance with G.S. 160A-388. The Board of Adjustment is tasked with hearing variance requests and appeals of land development decisions by administrative officials.

In order to grant a requested variance, a 4/5 majority of the Board must find that the requested variance satisfies four related standards established by state statutes – competent, material, and substantial evidence in the record must support findings that:

1. The ordinance creates an unnecessary hardship
2. The hardship is peculiar to the property
3. The hardship is not self-created, and
4. The requested variance meets the intent of the ordinances, upholds public safety, and achieves substantial justice.

Each decision of the Board will be reduced to writing and be signed by the Chair, and shall become effective upon delivery of the signed decision to the applicant, property owner, and to any person who has submitted a written request for a copy.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the Clerk of Superior Court within 30 days of the effective date of the board's decision.

General Rules of Order

If you wish to appear before the Board, please fill out an Appearance Request Form and give it to the Recording Secretary. Anyone who wishes to appear before the Board must be sworn in prior to delivering testimony or entering other evidence into the record. When the Chairperson recognizes you, state your name and address and speak directly into the microphone. ROBERT'S RULES OF ORDER govern the conduct of the meeting.

OPENING SESSION

- Determination of a Quorum
- Call to Order
- Consideration of April 25, 2022 Minutes

REGULAR AGENDA

1. 701 Stage Street NW

Applicant: James Goines

Owner: Partners for Payment Relief, DE IV, LLC

Location: 701 Stage St NW

V# 2-22 A variance requesting 15 ft. to allow a 10 ft. street side yard setback, where 25 ft. is required (R-6 standards, sec. 800, table A).

Recommended Action: Staff recommends approval of the variance request, subject to the conditions in the staff report.

Order of Proceedings:

- Swearing in of applicant, staff, and all others who wish to provide testimony.
- Staff summary of request, opportunity for cross examination
- Testimony by applicant, opportunity for cross examination
- Testimony by others, opportunity for cross examination
- Closing of the Evidentiary Hearing/Board deliberation (discussion of four standards)/entertainment of motions
- Call for a vote

ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT MEETING
April 25, 2022
5:30 PM**

LOCATION:
City /County Meeting Room
905 West Avenue

MEMBERS PRESENT:
Sharon T. Bryant, James Bradshaw, Jeff Church, Leah Hamilton, Lucy McCarl

MEMBERS ABSENCE:
Tim Scobie

STAFF PRESENT:
Jenny Wheelock, Hannah Williams, Lauren Hartley

A quorum was established and Chairperson Bryant called the meeting to order.

MINUTES:

Board Member Hamilton moved approval of the meeting minutes of September 27, 2021. Board Member Church seconded the motion, which was voted upon and passed by unanimous vote.

NEW BUSINESS:

1. 507 Yorktown Court NE

Applicant: Joel and Shirley Swanson
Owner: Joel and Shirley Swanson
Location: 507 Yorktown Court NE
V# 1-22 Variance to section 800 table A; Front Setback

Recommended Action: Staff recommends approval of the variance request.

Hannah Williams and Joel Swanson were placed under oath.

This item was presented by Hannah Williams using the staff report, which was entered into the record as evidence. The request is for a variance to section 800 table A in reference to the R-15 40 ft. front setback. Ms. Williams stated this is a single family home with a walk-out basement where the main level of the home sits even with street level, while the lot slopes down from the street, making the main floor elevated more like a second floor. The applicants are proposing a raised walkway that will extend from the front porch to 11.4 ft. from the curb. This will provide the homeowners level access to the home on a sloped yard.

Chairperson Bryant closed the public hearing.

Board Member McCarl made a motion to approve the variance request as stated in the staff report based on the findings on page 7 of the staff report. Board Member Church seconded the motion, which was voted upon and passed unanimously.

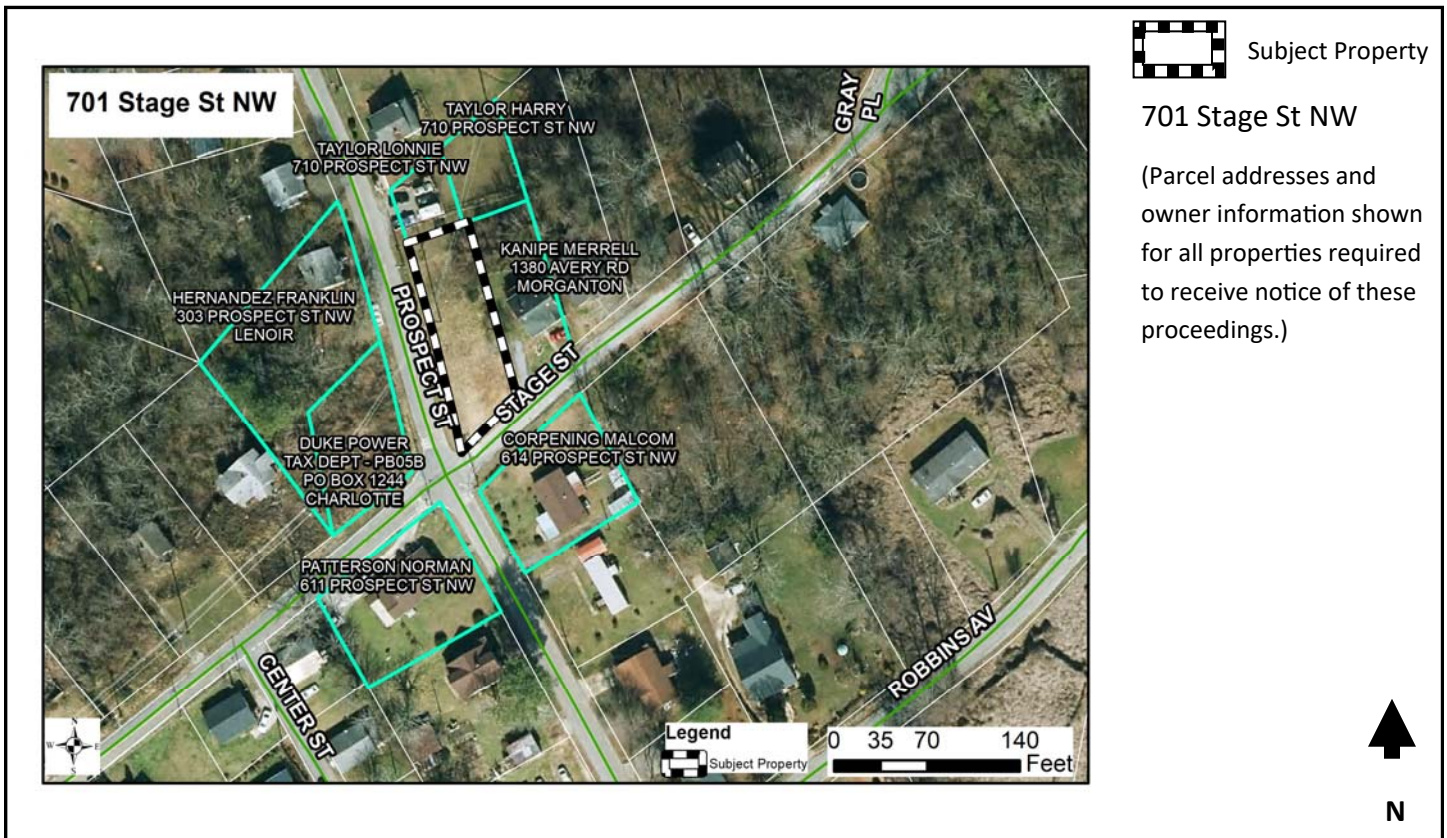
ADJOURNMENT:

There being no further business to be brought before the Board, Chairperson Bryant adjourned the meeting at 6:00 p.m.

Sharon T. Bryant, Chair

Jenny Wheelock, Planning Director

LOCATION MAP/AERIAL PHOTOGRAPH



Subject Property
701 Stage St NW
 (Parcel addresses and owner information shown for all properties required to receive notice of these proceedings.)

SUMMARY

Owner
 Partners for Payment Relief,
 DE IV, LLC

Applicant
 James Goines

Location
 701 Stage St NW, corner lot
 with Prospect Street (.17 AC)

NC PIN
 2749691530

Project Planner
 Hannah Williams, CZO

Updated January 11, 2023

Applicant's Request:

The applicant is requesting a 15 ft variance to the street side yard setback, to allow development 10' from the street side property line where 25' is required, as established in Sec. 800, Table A, of the Lenoir Zoning Ordinance. The applicant proposes to build a 3-unit bungalow court, which is a permitted use in the R-6 district. However, the findings presented in this report are related to characteristics of the lot itself — unique factors that would make any redevelopment difficult if not impossible. Therefore, staff's recommendation is that the variance apply to this lot in perpetuity, rather than be conditioned to this specific use or site plan.

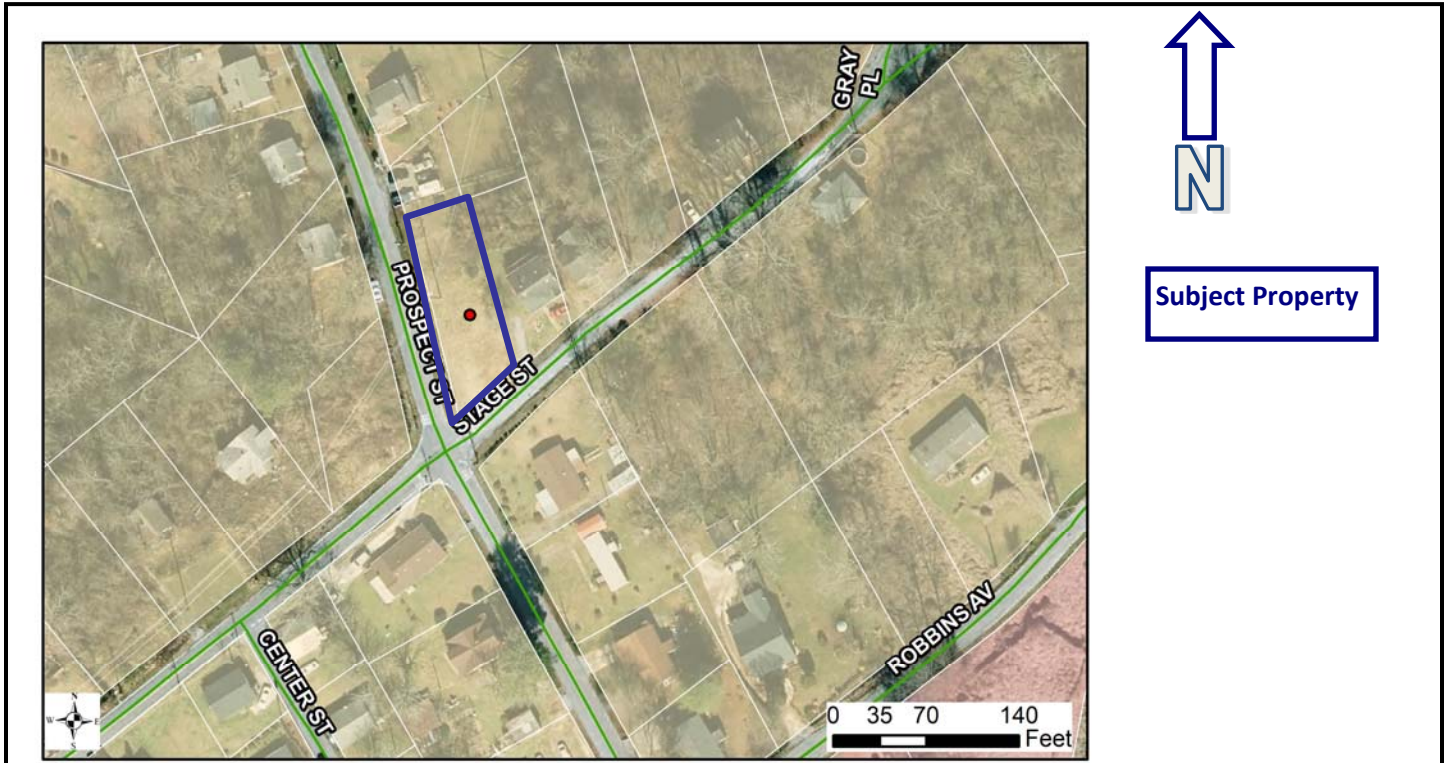
Staff Recommendation:

Approval of the requested variance. See draft findings, page 5.

Public Comment: Notices were mailed to adjacent property owners on January 13 2023. A sign was posted on the subject property advertising the evidentiary hearing on January 13, 2023.

*****This request is quasi-judicial. You should not discuss this case with decision makers outside of the scheduled hearing*****

ZONING MAP



BACKGROUND

Intent of Variances

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment **must** allow for a variance from the ordinance standards creating the hardship, when specific factors are found to be true (see Sec 1332 in the Lenoir Zoning Ordinance for specific standards).

Subject and Surrounding Properties

The .17 AC (7,405 SF) subject property is located in the West End neighborhood and is zoned R-6 (Multi-family residential). It is located at the northeast corner of Stage Street and Prospect Street and is a corner lot. There was a house on the property that has been demolished in the last decade. The lot is currently owned by a financial institution called Partners for Payment Relief and is under contract by the applicant, James Goines.

All of the surrounding properties are in the same R-6 zone. There is a mix of site built and manufactured homes in the vicinity. The West End neighborhood is adjacent to Downtown Lenoir, and can also be accessed from Creekway Drive.

Intent of the Zoning District

R - 6 Residential (Multi-family) District is intended to establish and preserve areas of land within the city for medium and high density residences, including single family, doublewide manufactured homes, duplexes, townhomes, multi-family developments, and other compatible uses at appropriate densities. Higher density multi-family developments are allowed as special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

STAFF ANALYSIS

Relevant Ordinances

Section 800, Table A: Zoning District Regulations requires a 25 ft. street side yard setback for new development within the R-6 zoning district.

Standards	Residential Districts					
	R-R Rural Residential	R-20 Low Density Single Family	R-15 Single Family	R-12 Single Family	R-9 Mixed Density Residential	R-6 High Density Residential
Minimum Lot Area (in sq. ft.):						
Residential Uses (1-family)	(1)	(1)	15,000	12,000	9,000	6,000
Residential Uses (2+ family)	(1)	(1)			15,000	9,000
Non-Residential Uses	20,000	20,000	20,000	18,000		9,000
Minimum Lot Width (measured at building line)		60 ft.	60 ft.	60 ft.	50 ft. (1-family) 60 ft. (all other uses)	40 ft. (1-family) 50 ft. (all other uses)
Minimum Street Frontage (2)	25 ft. (8)	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.
Principal Building Setback(11):						
Front yard	40ft	40ft	40ft	40ft	35ft	35ft
Side yard (3)	15ft (4)	15ft (4)	15ft (4)	12ft (4)	12ft (4)	10ft (4)
Street side yard	25ft	25ft	25ft	25ft	25ft	25ft
Rear yard (3)	35ft	35ft	35ft	30ft	25ft (4)	25ft (4)

Applicant’s Request

The applicant is seeking to develop a three-unit bungalow court on the property. The front setback, according to the Special Front Yard in Developed Areas ordinance in Sec 710 of the Zoning Code is 18’. The street side setback is 25’. The rear yard is required to be 25’, and the interior side setback is 10’. The lot is an average of 50 feet wide. With these setbacks, the buildable area is 14’ wide. The applicant is seeking to reduce the street side yard setback from 25’ to 10’ to accommodate three residential units and associated parking.

Street Side Setbacks

At 7,405 SF, the lot exceeds the minimum lot size standard of 6,000 SF, however, at 59’ wide, this lot is quite narrow for a corner lot. Lenoir’s zoning ordinance, like most zoning codes, prescribes two kinds of side setbacks: interior side yard setbacks and street side yard setbacks. Street side yard setbacks usually range from the full depth of the required front yard setback to about half the depth. This extra space adjacent to side streets helps preserve sight lines around intersections, gives consistency to the block face where there are reverse-corner or key-hole lots, and ensures space for sidewalks, buried utilities, or future ROW expansions. Most modern subdivisions make corner lots larger than interior lots to accommodate for this additional setback, but this lot was created before zoning was adopted.

STAFF ANALYSIS, CONT.

Special Front Yard Setbacks and Historic Neighborhoods

Like the plat, the original development of this lot and the lots in the surrounding neighborhood occurred before Lenoir’s zoning ordinance was adopted. The original home on this property was built about 9’ average from the street side property line and about 5’ average from the interior property line (see photo to the right). Neighboring properties to the east on Stage Street and to the north on Prospect Street are also non-conforming.

Sec. 710 of the Lenoir Zoning Ordinance allows for automatic setback relief for front yard setbacks — applying instead the average setback of the developed lots located within one hundred (100) feet on each side, within the same block and zoning district and fronting on the same street as the subject property. However, this same rule doesn’t apply to street yard setbacks — meaning that on the subject property, a 25’ street yard setback on this reverse-corner lot actually exceeds both the required and the existing front yard setbacks on the block face (see photo below).



Above: Caldwell County GIS aerial photography from 2010 shows the original home on this property.
 Below: Homes with nonconforming side setbacks.



STAFF ANALYSIS, CONT.



Sec. 708 Visibility at Street Intersections

A sight triangle is the triangular area formed by joining points (with a straight line) on the center lines of intersecting streets 80' feet long, where there shall be no obstruction to vision by structures or signs or grade or foliage between a height of three (3) feet and height of ten (10) feet.

Sec. 710 Special Front Yard Requirements in Developed Areas

This code reduces the front setback of the subject property to the average of the front yard lengths within 100' of the subject property on the same street, provided that the reduction is not less than half of the district's required front yard. The applicable front setback is 18'.

Buildable area without variance
 Additional buildable area with variance

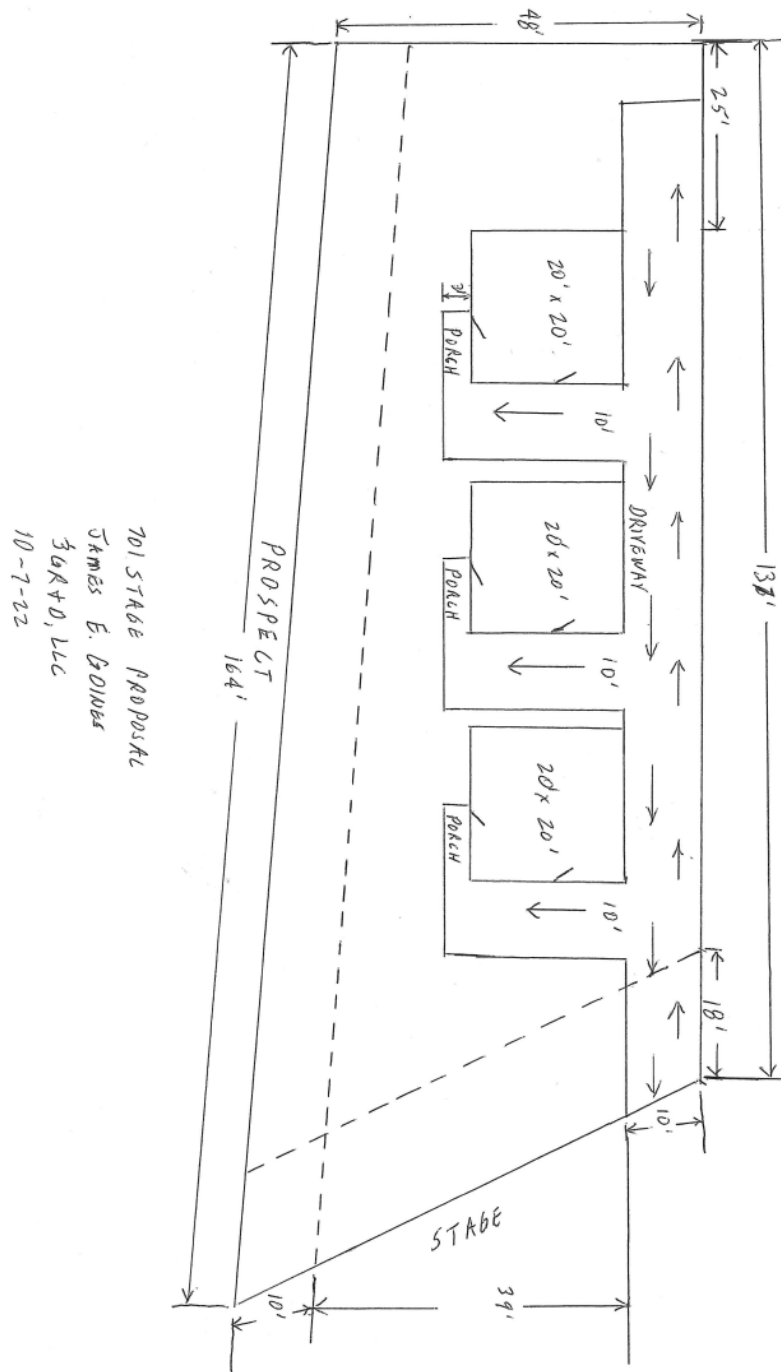
Duke Energy Distribution Lines

There are Duke Energy distribution lines overhead on this site. One pole is located about 100' deep into the parcel and about 10' from the right of way. It is anchored with guy wires that extend about 12'-15' from the base of the pole. A right-of-way exists around all Duke Energy utilities, although planning staff has not been able to locate an easement document. Duke has a service and installation process wherein the property owner or developer can request a site visit with a Duke engineer. It will be a condition of development for this applicant to meet with a Duke engineer to discuss his development plans and the restrictions posed by the power lines right-of-way.

STAFF ANALYSIS, CONT.

Bungalow Courts

Bungalow Courts are a permitted use in R-6. Zoning standards like rear, front, and side yard setbacks are applied to the exterior yards of the development site rather than to individual bungalows. The applicant proposes three 20' x 20' bungalows, facing Prospect Street, each with a 10' wide parking area and accessed from a 10' driveway along the eastern side property line. As proposed, the footprints encroach into the utility easement, and the site plan will likely have to be significantly altered prior to approval. It is included in this report as information.



DRAFT FINDINGS

No variance shall be approved unless a 4/5 majority of the Board of Adjustment finds that:

1. An unnecessary hardship is created from the strict application of the ordinance.

Staff Response: This lot is difficult to develop due to the width of the buildable area. The strict application of the street side and interior side setbacks in R-6 create a narrow building envelope for this property, which is an unnecessary hardship for any viable use on the property.

2. The unnecessary hardship is peculiar to the property.

Staff Response: Although this lot meets minimum size standards, it is narrow for a corner lot that must meet larger street side setbacks than neighboring properties. Due to this lot's corner location, the 25' street side yard setback applies and creates a narrow building envelope. This development as proposed, could fit on neighboring lots that have two 10' side setbacks. The particular location of this lot at the street corner create an unnecessary hardship.

3. The hardship is not self-created.

Staff Response: This lot was recorded prior to the Lenoir Zoning Code, and the applicant only recently put lot under contract.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff Response: The requested variance would allow for the redevelopment of a property that currently has limited viable use. The proposed project would create three residences in the appropriate zoning district that allows for a mix of housing types. The variance still allows for a the standard 10' side setbacks for non-corner lots and would be able to meet all other development standards. Since this lot has been a residence before, resuming residential uses on this property would not cause immediate disturbance.

By granting the variance, substantial justice is achieved by allowing viable infill in West End, a neighborhood dealing with a significant number of vacant homes in disrepair. Reducing the required setback allows infill to match the existing development patterns with small homes located close to the street.

RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of the variance based on the findings above as well as the following condition:

1. The applicant must arrange with Duke Energy's Service and Installation department to meet with a Duke engineer on the subject property to discuss his development plans and the restrictions posed by the power lines right-of-way.

WAKEFIELD TERRACE SUBDIVISION

Plat Reference—Book 2, Page 106



Deed Reference—Book 2049, Page 1432

Beginning on an angle iron on the north right of way of Stage Street, said Beginning Point being the same as the southeast corner of Lot #1 and the southwest corner of Lot #2 of Wakefield Subdivision, Section 1, a plat of which is recorded at Plat Book 2, Page 106, Caldwell County Registry; thence from the Point of Beginning and with the north right of way of Stage Street, South 50 degrees 24 minutes 30 seconds West 56.50 feet to a 1/2 inch iron pipe on the north right of way of Stage Street and the east right of way of Prospect Street; thence with the east right of way of Prospect Street, North 16 degrees 59 West 170.23 feet to a 1/2 inch iron pipe, a corner with that property belonging to Harry L. Taylor, a deed of which is recorded in Book 569, Page 324, Caldwell County Registry; thence with the Taylor Property, North 74 degrees East, passing a 1/2 inch iron pipe on line at a distance of 2.61 feet, and continuing 43.39 feet, for a total distance along this bearing of 46.00 feet to a 1/2 inch iron pipe, a new corner; thence a new line, South 20 degrees 17 minutes 15 seconds East 147.00 feet to a 1.2 inch iron pipe on the north right of way of Stage Street, South 50 degrees 24 minutes 30 seconds West 2.50 feet to the Point of Beginning, containing 0.18 acres, by coordinates, more or less. As surveyed by Western Carolina Surveyors, P.A.; T.R. Bishop, RLS, the 19th day of July, 1990, and being their Job # 5001.

Being a part of Lot #1 and a part of Lot #2 of Wakefield Subdivision, Section I, a plat of which is recorded in Plat Book 2, Page 106, Caldwell County Registry. ~

SITE PHOTOS



Above: View of property from Stage St

Below: View of property from Prospect St



SURROUNDING AREA



Above: Stage Street facing east

Below: Prospect Street facing south



APPLICANT'S RESPONSE TO VARIANCE STANDARDS

Variance Justification

An unnecessary hardship is created from the strict application of the ordinance. Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant must show *unnecessary* hardship, that is greater than a mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. The hardship must come from the application of the ordinance. *Note: Prior to 2013, the City of Lenoir held that a hardship did not meet this standard unless the applicant showed no reasonable use of the property without the variance. This strict standard is no longer allowed under state statutes.*

PROPOSED 10' SETBACK ON PROSPECT ST VS ORDINANCE OF 25 FT WILL USE ~~OF~~ USE OF PROPERTY

The unnecessary hardship is peculiar to the property. The hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from the location of the property, size or shape of the lot, or topography or water features on the site. Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances.

THE SHAPE OF PROPERTY HAS LIMITED USAGE BECAUSE OF SETBACKS

The Hardship is not self-created. The hardship must not result from actions taken by the applicant or property owner. Ignorance of the law is a self-created hardship — variances requested due to the owner's failure to obtain appropriate building and zoning permits prior to construction will not be approved. However, purchasing a property with knowledge that circumstances exist that may justify the granting of a variance is not considered a self-created hardship.

THIS HARDSHIP WAS NOT CREATED BY APPLICANT NOR CURRENT PROPERTY OWNER

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Where an ordinance expresses a clear intent, the variance cannot subvert that intent. The variance cannot harm public safety, even if the request meets the "unnecessary hardship" test. And the Board must ensure that substantial justice is achieved in the issuance of each variance — the board will consider issues of fairness for the community, neighbors, and prior applicants in their decisions.

THIS REQUEST IS WITHIN SPIRIT OF ORDINANCE DUE TO CURRENT HOMES ON PROSPECT ST

