

MINUTES
Town of North Wilkesboro
Board of Adjustment
Special Meeting at the Stone Center
August 22nd, 2019
6:00 p.m.

Members Present: Casey (Chair), Wilborn, Matthews, Staley, Hawn

Also Present: Kelly Coffey (High Country Council of Governments and former North Wilkesboro Interim Planner), Meredith Detsch (Planning Director of North Wilkesboro), Michael Parsons and Martha Nichols (Alternative members) and various staff members including the Fire Chief, Police Chief and former Interim Town Manager Ed Evans.

Chairwoman Casey called the meeting to order at 6:00 pm.

The Chair asked for a motion to dispense of the minutes of the meeting held on June 13th, 2019. Upon a motion by Matthews, second by Wilborn, and unanimous vote (5-0), the June 13, 2019 minutes were approved.

The Chair asked for a motion to dispense of the minutes of the last meeting, July 11th, 2019. Upon a motion by Matthews, second by Wilborn, and unanimous vote (5-0), the July 11th, 2019 minutes were approved.

The Chair asked for any additions or deletions to the agenda. There being none, Matthews moved to approve the agenda as submitted and Staley seconded it. The vote was called and it was approved unanimously, (5-0).

The Chair explained to the audience that the issue at hand before the board this evening was to evaluate the facts verses emotions. The Chair referenced the Zoning Ordinance and how the board would be upholding its regulations as well as the North Wilkesboro's Comprehensive Plan. The Chair explained that the Board of Adjustment is tasked to uphold the Town's Zoning Ordinance, the Comprehensive Plan and all laws per the Town. The purpose of tonight is to hear the evidence and consider the impacts of the variances on the property. She asked board members to state their name in order to determine a quorum. In addition to Casey, Hawn, Matthews, Staley, and Wilborn were present. Casey declared that a quorum was reached. Since the quorum had been made it was time to swear in all representatives that wished to speak. The Chair stated the Supreme Court has required that the board base its decisions only on testimony given under oath, so anyone expecting to testify must come forward and be sworn. Swearing in of all individuals that wish to speak including the following: Meredith Detsch the Planning Director, Kelly Coffey the former Interim Planning Director, Elizabeth and Dan Huffman, Brian Danner, Tara Handy, Perry Carlton, David Anderson, Gregory Paul, Tim Byrd, Carrie, Amanda Jolly, Kenneth Coles, Carmen Daecher, Chuck Elledse and David Henderson came forward to be sworn by placing their hands on the bible. The Chair asked "Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth so help you God?" All of the individuals stated "I do." The Chair reminded everyone that everything said tonight will be entered into evidence.

Coffey presented the variances and Conditional Use Permit application for the Catherine H. Barber Memorial Shelter to construct a homeless shelter at 108 Sparta Road on Parcel ID # 1403288. The property is zoned Highway Business and it is within the Corridor Overlay district. The first variance request was for the relevant provision of the ordinance that states in Article XI Section 19-1 that a homeless shelter shall not be located "within 250 linear feet from any residential use or residentially zoned property." The proposed homeless shelter site lies within 115 feet of a residence. The Catherine H. Barber Memorial Shelter is requesting a variance of 135 feet.

The second variance request was in regards to the relevant provision of the ordinance that states in Article XI Section 19-2 "A homeless shelter shall have access to a public sidewalk." No sidewalk exists in the vicinity. The Catherine H. Barber Memorial Shelter is requesting a variance to exempt the shelter from this requirement. Proper notice has been given through the posting of a Conditional Use Permit Notice on the property, and adjoining property owners have been mailed.

Article VI Section 6.7 of the zoning ordinance states that a Conditional Use Permit from the Board of Adjustment is required for the establishment of a homeless shelter. The Catherine H. Barber Memorial Shelter is requesting a Conditional Use Permit. This Conditional Use Permit cannot be granted without first being granted the two variances. Coffey also cited the Comprehensive Plan in relation to having the homeless shelter in harmony with the neighboring properties.

The former Interim Planning Director Coffey presented several exhibits into the record including A-N that are as follows:

- A- Variance applications submitted by the Catherine H. Barber Memorial Shelter
- B- Conditional Use Permit application by the Catherine H. Barber Memorial Shelter
- C- North Wilkesboro Zoning Ordinance Article 5.3 Definitions-Homeless Shelter and Article 11- Additional Conditions adopted in May 8th, 2018.
- D- Excerpt from North Wilkesboro Comprehensive Plan Goal 3.3 Encourage Diversity in Transportation Options and Availability
- E- Advertisement in Wilkes-Journal Patriot Friday August 9th
- F- Zoning Map of the proposed site for the Catherine H. Barber Memorial Shelter
- G- Applicant's submitted measurements, original
- H- Applicant's submitted measurements, enhanced
- I- Lisa (Chair) and Kelly's (Interim Planning Director) measurements
- J- Applicant's submitted site plan with topography
- K- Applicant's submitted floor plan of proposed building
- L- Applicant's submitted site plan with landscaping
- M- Applicant's submitted site plan with parking
- N- Additional pictures of the property with measurements shown to the adjacent house
(see attached exhibits for reference)

The Chair stated she would read off the order of the sign-up sheet and to come forward to present their case and stated that they may present any witness or other evidence in support of your statements. The first person called to speak was Elizabeth Huffman representing the Catherine H. Barber Memorial Shelter as the chair to their board. Huffman thanked Kelly Coffey for his assistance in this process as they have applied for a Conditional Use Permit at 108 Sparta Road to build a new homeless shelter.

Huffman explained their business model and that over 198 different people had visited the shelter and they have a manager on site. The new shelter will be able to serve more. The concerns of the neighbors brought up about trash, needles, and other issues is new information to the board of the Catherine H. Barber Memorial Shelter. Security cameras and the manager on site is making the area safer. They started to look to build in a few years ago and worked with the previous Planning Director Sam Hinnant to find a site that would be suitable for them to build on. This site was chosen since it was in the near vicinity of the existing shelter, cost effective for construction and near a church.

Dan Huffman was next to speak on behalf of the Catherine H. Barber Memorial Shelter. The map they acquired from North Wilkesboro Planning Department shows it is zoned appropriately to have a homeless shelter there. The adjoining property where the houses are also zoned Highway Business. After submitting the Conditional Use Permit on June 4th 2019 which included surveys and plans they were then informed they needed a variance to the Zoning Ordinance that was approved on May 8th 2018 that specifically addressed homeless shelters. The variance applications were submitted on June 18th. Huffman explained the applicants spent considerable amount of money and time to prepare these applications. They have offered to purchase the property at 108 Sparta Road. In the past six years since he has served on the board they have experienced one neighborhood complaint. Now with the new endeavor to build they have started to hear many more complaints including the increase in trash. Huffman further explained there is no proof the extra trash is from the homeless shelter residents as if you were to go up highway 18, there is considerable amount of trash seen. They have requested the Sheriff's Office to provide them the call reports from their current location and the report includes medical, traffic, disturbances, and the majority of these calls come from the homeless shelter manager for service,

medical, and suspicious persons. In the past five years the shelter has had on average one call per month. If they do have issues local law enforcement officers are called in. There is a limited number of building sites due to the zoning ordinance in 2018 concerning a new homeless shelter. In closing Huffman explained he is a North Wilkesboro resident in the Fairplains community including his mother and mother-in-law and honored to have a shelter to serve the North Wilkesboro community. His final fact is they have been in the Fairplains community and are needed in the Fairplains community.

The next person signed up to speak is Carmen Daecher. Daecher is one of the eleven board members for the Catherine H. Barber Memorial Shelter. They have a need for the homeless shelter and need a bigger center to support the need of the community. They all agree that a homeless shelter is needed in the community. The disagreement they are hearing tonight is the location of the existing and proposed shelter. The problems at hand will continue even if they go away. There is no other area in the county to support the homeless shelter. The resistance to their request shows they need to have stronger communication with the community to further their search. They believe a larger community center will ease the problems not exacerbate them. Currently as a non-profit they cannot support a 24/hr center right now. They are raising funds now to help build a new center. As Dan Huffman and Elizabeth Huffman already stated adequate land in the town is limited through zoning restrictions. They need access to food, clothing, water and sewer and cannot have this shelter just anywhere. They chose the property based on the desirability of the property with their needs. The Catherine H. Barber Memorial Shelter understands the process of the variances and see how the board will hear these items. Daecher further told the board if they are not successful tonight with their variance request they will continue to seek other locations. Chair Casey wanted to remind everyone the board's role in this hearing and that they will be looking at if they can grant a variance at this property. Mike Staley had a question for the past presenters. "How far along are they with the fundraising?" Elizabeth Huffman explained they have \$130,000.00 of the \$500,000.00 needed for the proposed shelter.

Chuck Elledse presented that one specific population of the homeless shelter are veterans and a good number of homeless are veterans. He quoted Deuteronomy from the bible. He has been a paramedic for the county and has seen addiction cross all social, economic and racial barriers. He stated an opinion that we are all one catastrophic event away from being homeless our self.

Amanda Jolly, wanted to wait for the other side to speak. Tim Byrd also would wait.

Brian Danner spoke next. Danner doesn't understand why the shelter cannot go where they are planning on putting it there. There are things that need to be worked out and they will. He further explained the homeless camps he has seen throughout the country in many states and notes it will not go away. He lives eight miles from the shelter and finds trash and syringes at the end of driveway and knows it is not a homeless person littering the roads. His wife takes food to the homeless shelter every Monday and meets the homeless people and treats them as family.

Tara Handy wanted to speak her personal experience with the homeless shelter. Her mother experienced homelessness. In January 2012 her mother was arrested for writing a bad check. When she was released she entered into a bad relationship and she personally grew up with her as an alcoholic. In 2012 when she was in abusive relationship she fled and since she was abusing alcohol she was turned away from numerous safe houses in the area. She had nowhere to go to be safe and the Catherine H. Barber Memorial Shelter took her in. She spent time there and one of the staff members invited her to a AA meeting and found her sobriety. She struggled to find a job and support herself. The staff at the shelter assisted her getting back on her feet. Now her mother has been sober for seven years and is a success story. She echoed the littering and trash problem throughout the county and how the shelter is not the problem.

David Anderson spoke next about the facts about the bible. He further explained the land belonged to God. The facts are the church and the homeless shelter are arguing. New testament cited with the message to help the people. He further explained the crowd was just like the bible verse he recited. The sheep on the left-hand side are helping people, the goats are on the right side not helping people. He further spoke on his experience in the military and how so many veterans are homeless. He further spoke his opinion about the land and the church. Gregory Paul spoke next and explained he recently moved here from New Jersey where he was a police officer. He stated homelessness is a problem nationwide. In New Jersey there was a very dense population and they

traveled throughout as there was so much transportation. He felt the shelter in Wilkes county will stay local. If they do not allow the shelter in that location the homeless will still be here and the problem will continue. He echoed the same concerns as the other speakers with trash being an issue throughout the county. He is in favor of the shelter because it is needed.

The Chair asked if anyone objects to the appellants request.

Tim Byrd spoke and pointed out that the community is not opposed to the shelter. His family has personally supported the Catherine H. Barber Memorial Shelter through the better part of two decades with low rate rental on their current property. His problem with the shelter is rather than bringing attention to the grandfather clause the Town Board decided to specifically recognize that the shelter does not meet the ordinance requirements, this is showcasing the importance and intent of the ordinance. Second is the timing of the adoption of the ordinance and he has the emails showing the discussions. The ordinances were adopted May 8th 2018 only after the Town was approached by the Catherine H. Barber Memorial Shelter. The ordinances should be applied in the strict manner as written as no other time will they be relevant as now. The distant is not 250 feet but rather 67.31 feet at last measurement by the Town. This is not a slight alteration of a few feet but almost $\frac{3}{4}$ of the required buffer. Regarding the issue of access, the shelter does not meet it, there is no sidewalk at all. After talking with town planners and others there is no plans to build a sidewalk in the area. Also, this variance is not unique to this property but is a standard within the community. The residents leaving the shelter in the morning are at risk as well as the motorist traveling on Highway 18 in the morning, it is a four-lane highway. He proposed two additional conditions- the shelter should have a staff member there at all times even when they are closed as it is unfair for the community to take on the burden of those homeless for twelve hours until they can get back into the shelter that evening. Condition number two should have a comprehensive protocol in place to deal with the homeless people seeking shelter for the homeless population on drugs or alcohol. Their current protocol is to send them away back into the community.

Perry Carlton spoke on behalf of Beulah Presbyterian church and explained they are not against the homeless shelter but against to people using their property for trash, electric, and etc. They are a small church and would be happy to have them come to the church. They are opposed to the proposal of the homeless shelter, not the homeless at all.

Amanda Jolly was called next and she stated the information had already been spoken.

Kenneth Coles stated they needed a new homeless shelter, but does it have to be there? He has been an officer in Wilkes County for many years. He further spoke that maybe communication is where everything went wrong. Possibly the board and the church could have met and discussed this before the media took it. He goes to the shelter regularly and assists. Beulah Presbyterian church opens its doors to everyone. They have a great relationship with the current shelter and supportive of the homeless shelter but does have concern over the size of the shelter. He explained their question if it has to go there and how it was misconstrued.

The Chair asked the secretary to summarize the findings in the case. Coffey summarized the following:
Elizabeth Huffman described the operations and never heard of the concerns until now. The shelter has been operating for 31 years.

Dan Huffman spoke about time being spent on researching the properties and only had one neighborhood complaint. There are limited number of sites available.

Carmen Daecher also on the board and spoke about the need for a larger facility. The community needs a homeless shelter. Location is limited per zoning. Question raised about fundraising and the homeless shelter has raised \$130,000.00 of the \$500,000.00 needed.

Chuck Elledse quoted Deuteronomy and that we are one event away from a catastrophic event that could leave us homeless. Homelessness is everywhere.

Brian Danner has seen homelessness around the country and noticed trash throughout the trash.

Terra Hamby spoke on a personal relationship using the shelter when her mother was turned away from other safe houses.

David Anderson spoke about the facts of the bible and how this is God's land and quoted a passage from the bible

Gregory Paul saw homelessness across the nation and in New Jersey the homeless is more transient with mass public transportation but here it is more limited. Trash was noted throughout the county again.

Tim Byrd is not opposed to the shelter but is to the distances submitted between the homeless shelter and residents as well as the lack of sidewalks. Tim spoke about the emails he received and how the Town put the restrictions with the ordinance in place after the Catherine H. Barber Memorial Shelter approached the Town to relocate. If the ordinances were written specifically for the Catherine H. Barber Memorial Shelter they should be strictly enforced.

Dan Huffman spoke that Mr. Byrd's testimony was inaccurate as it was the Hospitality House was the cause. The Chair reminded everyone this meeting was quasi-judicial and everyone would have the opportunity to speak.

Dan Huffman explained that he is on the Catherine H. Barber Memorial Shelter board and they didn't even start looking until June or July last year. They received a map and just started looking this year to build. The hospitality house did inquire to build in North Wilkesboro and had meetings about it which Dan Huffman attended.

Tim Byrd cannot dispute Dan Huffman's comments as he was not at the meetings regarding the Hospitality House but wanted to know why Catherine H. Barber Memorial Shelter has disregarded the ordinance.

Dan Huffman rebutted with they were asking for a variance here tonight. Lots of people ask for variances, he is a contractor and has done this before for clients. Huffman didn't realize they needed a variance until after he spoke with Kelly Coffey. The board reviews variances and he got a list from Meredith Detsch of the past year.

Tim Byrd spoke to Mr. Decker spoke how they support North Wilkesboro and Wilkesboro. He further stated he is not a licensed contractor but went to Wilkesboro and found they did not have any zoning restrictions in Wilkesboro. Byrd also further explained his understanding of the hardship requirements is you cannot create a hardship on yourself and then seek relief. He told Dan Huffman that he is a licensed general contractor and should have checked the ordinances.

Coffey continued the summary with Perry Carlton with Beulah Presbyterian Church is not opposed to the homeless shelter but is with the associated problems that come with it.

Amanda Jolly deferred since her points had already been stated.

Kenneth Coles with Beulah Presbyterian Church echoed similar concerns that Ms. Carlton said in regard to location.

Chair Casey asked for the reminder of what the board would be considering tonight and also asked Detsch to show the pictures. Coffey reread the ordinance requirements that it should not be closer than 250' from a residentially zoned property or residentially used property. The proposed homeless shelter has asked for a variance of 115 feet while staff found the measurements to be much closer to 70'. Chair Casey asked if anyone else had been out to measure the site. Chair Casey clarified the residents at question were not across the street but beside the proposed shelter. Chair Casey demonstrated to the audience what 70' was in the room, much closer than 250'. Clarification of the measurements was given to the board. Coffey stated the shortest distance was 67.31' and varied from 67' to 70'. Another house was 189', 224', 262', 292' and 92' to the church 261' across the road. The other relevant provision to the variance is the homeless shelter should have access to the sidewalk. Chair Casey restated the matter before the board tonight is whether the board will grant a variance based on the facts presented. The proposed homeless shelter's location in relationship to the residents and the sidewalk access. Chair Casey asked which variance would the board like to discuss first? Casey went through the four criteria.

1. *There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the article. This shall be construed to mean:*

- (a) The hardship results from the application of the requirements of the ordinance;*
- (b) The hardship is suffered by the applicant's property;*
- (c) The hardship is not the result of the applicant's own actions;*
- (d) The hardship is peculiar to the applicant's property.*

2. *That the variance is in harmony with the general purpose and intent of the Zoning Ordinance and preserves its spirit.*

3. That in granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

4. That the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum one that will make possible the reasonable use of land or structures.

Matthews would like to comment on the applicant's own actions and she felt they did do this by their own actions since they did not seek out all information. She realizes you go forward with projects but should have done more research on this property. The hardship resulted from their own action. Mike Staley explained the variances they normally hear are small measurements. Chair Casey explained with the hardship in relation to the application of the property she stated that usually the topography of the land is challenging is a valid hardship. Chair Casey went on to state with the table of uses in the Zoning Ordinance, Highway Business allows for a church, community center, health clinic and many other uses allowed. While homeless shelters are allowed there are they must first meet additional conditions. The hardship is not peculiar to this property. Variance is in harmony and intent of the ordinances and Matthews would say no, the community is not in harmony with the shelter and it is against the location for the general purpose and intent as well as the spirit. Mike Staley also spoke about the Comprehensive Plan with section 3.3.1 and it does not meet substantial justice of the public's safety. Chair Casey reinterpreted it back to the board and also spoke on the fourth hardship that this property cannot be utilized for anything else which does not apply in this case. Chair Casey entertained a motion and Matthews made a motion to deny the variance request by the Catherine H. Barber Memorial Shelter that would permit them relief from the conditions of 11.19-2 the shelter shall have access to a public sidewalk. Matthews stated further that denying them the variance of the public sidewalk request will preserve and secure the public safety and welfare of the public and in doing this justice is achieved. Staley seconded the motion. Chair Casey called for the vote and four members voted in favor of denial with one abstaining, the motion passed (4-1) Monica Hawn's abstention counted towards the majority of the vote. Chair Casey explained the variance failed so the Conditional Use Permit cannot be voted on since they do not meet the conditions of the Conditional Use Permit.

For the second variance the board discussed the distances, 11.19-1 Spacing. Chair Casey explained the second variance was for relief from the 250' measurement from any residentially zoned or used property. Wilborn asked to discuss the issues at hand. Chair Casey asked Wilborn if she wanted to allow them to build closer than 250'. They would need a variance of 180' verses the 115'. The hardship must meet all requirements as follows:

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the article. This shall be construed to mean:

(a) The hardship results from the application of the requirements of the ordinance;

(b) The hardship is suffered by the applicant's property;

(c) The hardship is not the result of the applicant's own actions;

(d) The hardship is peculiar to the applicant's property.

2. That the variance is in harmony with the general purpose and intent of the Zoning Ordinance and preserves its spirit.

3. That in granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

4. That the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum one that will make possible the reasonable use of land or structures.

Wilborn felt there was not another use for this property and the land cannot be used unless the board grants them a variance. Matthews stated she felt many other uses could go there besides the homeless shelter. Staley had concern with the distance and felt it was a lot compared to the previous variances the board has reviewed. Chair Casey went on to state the variance would not be in harmony with the intent of the ordinance and not preserve its spirit. Chair Casey asked the board if giving them a variance of 180' preserved the land owner's rights and Wilborn agreed it would. Would granting the variance assure that public safety and welfare would be

carried out asked Chair Casey. Reasonable use of land of structures was the other consideration and by not granting this variance would prohibit anything else going on the property. Chair Casey felt that the land could have numerous other uses as previously mentioned. Highway Business setback is 25' and there is plenty of room on the lot to build something else. Wilborn explained her reasoning and why she felt they should grant the variance because we need a homeless shelter. Chair Casey asked if there was any other discussion, hearing none she would entertain a motion. Wilborn made a motion to approve the variance for spacing, there was no second, so the motion died. Chair Casey entertained another motion and Staley made a motion to deny the variance and Matthews seconded the motion. Chair Casey called for the vote and Hawn felt conflicted to vote and abstained. The vote was 3 votes to deny the variance, 1 abstaining (Hawn) and Wilborn against the motion. Abstaining to vote would count towards the majority of the vote. Question of a quorum was asked since all members were present it was a quorum and the abstention counted towards the yes vote. The motion carried with 3-1 with Hawn abstaining. Chair Casey asked for a motion to adjourn and at 7:34 Matthews made a motion to adjourn and Staley seconded the motion. The motion passed 5-0.



Meredith Detsch, Planning Director
Board of Adjustment Secretary



Lisa Casey
Board of Adjustment Chair