



**TOWN OF MIDWAY  
BOARD OF ADJUSTMENT MINUTES  
TUESDAY MAY 28, 2024**

**MINUTES OF MIDWAY BOARD OF ADJUSTMENT MEETING HELD ON TUESDAY, MAY 28, 2024  
AT 5:00 P.M. AT MIDWAY TOWN HALL, 426 GUMTREE ROAD, MIDWAY, NORTH CAROLINA**

**CALL TO ORDER**

Chair Charles Waddell called the meeting to order.

**DETERMINATION OF QUORUM**

Quorum was established. Board of Adjustment members present were Chair Charles Waddell, Vice-Chair Jamie Hester, Paula Hill, James Smith, Carl Tuttle, and Alternate Richard Miller.

Town Manager Tammy Michael, Deputy Clerk Ree Smith, Town Attorney Jim Lanik and Davidson County Zoning Officer Josh Tussey were present. Absent Town Clerk Linda Hunt.

**APPROVAL OF MINUTES**

On motion by Vice-Chair Jamie Hester, seconded by Board member James Smith, the Board voted unanimously to approve the April 30, 2024 minutes as presented.

**ADOPT AGENDA**

On motion by Board member James Smith, seconded by Board member Paula Hill, the Board voted unanimously to adopt the agenda as presented.

**PUBLIC ADDRESS**

There were none.

**REGULAR BUSINESS**

Davidson County Planning Officer Josh Tussey, Town Manager Tammy Michael, Dr. Chad Lakey, Neshe Sloan and Jason Faulkner were sworn in by Deputy Clerk Ree Smith.

Davidson County Zoning Officer Josh Tussey used a PowerPoint to illustrate the three (3) variance requests. Mr. Tussey stated the Board can vote on each one of the five factors relevant to the issuance of a variance and then vote to approve or disapprove the variance requests.

**REQUEST BY MIDWAY ANIMAL CLINIC FOR A VARIANCE TO THE TOWN OF MIDWAY ZONING ORDINANCE, SECTION 3.08(P)(2), CORE COMMERCIAL OVERLAY DISTRICT (CCOD), PERIMETER PARKING AREA, LANDSCAPING DESIGN GUIDELINES AND STANDARDS.**

Davidson County Zoning Officer Josh Tussey stated the Midway Animal Clinic is requesting a variance from Section 3.08 (P)(2), Perimeter Parking Area Landscaping. Design Guidelines and Standards, of the Core Commercial Overlay District (CCOD) in the Town of Midway Zoning Ordinance. Said section requires a low masonry wall at least three (3) feet high in combination with one (1) canopy tree or two (2) understory trees for each 50 feet perimeter frontage, with a minimum 0.5 points of landscaping per linear foot of parking lot perimeter. The Clinic is located on the east side of Old US Highway 52, approximately 1,620 feet north of the Hickory Tree Road intersection. Address of said property is 11336 Old US Highway 52.

Adjoining property owners were notified of the request for a variance by notice deposited in the mail on May 14, 2024.

Dr. Chad Lakey requested the masonry screening wall be replaced with landscaping. The Clinic has a very small, fenced area with grass, and it is not accessible from the parking lot. Dr. Lakey said this area is needed to walk hospitalized patients for collection of fecal and urine samples needed for appropriate diagnosis and treatment. Many of the Clinic's patients have medical issues and require access to areas for urination/defecation. Dr. Lakey said he believes with thoughtful design, the Clinic can achieve Midway's goals of aesthetics and functionality, while providing a better and necessary experience for their clients and patients.

Mr. Tussey reviewed the five factors relevant to the application for the variance with the Board to vote on each factor.

1. That the alleged hardships or practical difficulties are unique, and singular as regards the property of the person requesting that variance and are not those suffered in common with other property similarly located. Due to limited space on our lot, we are requesting the masonry screening wall be replaced with landscaping. This will give our patients more area to relieve themselves. It will also enable us to utilize this area to collect urine/fecal samples necessary for medical testing.

Staff Comment: The layout of the site does incorporate limited open space. The shape and size of the lot does not lend itself to reconfiguring the existing parking and building as previously approved. Replacing the masonry wall with landscaping area would be the most straightforward way to maximize the limited open space on this property.

On motion by Board member Paula Hill, seconded by Board member James Smith, the Board voted unanimously to approve the 1<sup>st</sup> Finding of Facts.

2. That the alleged hardships and practical difficulties, which will result from failure to grant variance, extend to the ability to use the land in question for any use in conformity with provisions of this ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return. We have a very small, fenced area of grass, not directly accessible from the parking lot. Without this variance, our patients will have limited access to natural areas to relieve themselves. We also need this area to walk hospitalized patients for collection of fecal and urine samples needed for appropriate diagnosis and treatment.

Staff Comment: Applicant's business model and services provided require them to have an open, natural area for patients to relieve themselves. This variance serves to allow more open space while preserving some screening by way of a landscaped buffer in place of a masonry wall.

On motion by Board member Paula Hill, seconded by Board member James Smith, the Board voted unanimously to approve the 2<sup>nd</sup> Finding of Facts.

3. That the variance, if allowed, will not substantially interfere with, or injure the rights of others whose property would be affected by allowance of the variance: The landscaping will be designed and installed in a professional manner. Neighboring properties will not be affected by granting this variance. We believe replacing the wall with landscaping will create a more cohesive appearance between our property and our neighbor to the north, which aligns with the intent of the CCOD.

Staff comment: Staff feels that the landscaping, as presented, would serve as an adequate replacement for the required masonry wall and will perform similarly.

On motion by Vice-Chair Jamie Hester, seconded by Board member Carl Tuttle, the Board voted unanimously to approve the 3<sup>rd</sup> Finding of Facts.

4. That the variance is in harmony with and serves the general intent and purpose of this ordinance: This landscaping will be aesthetically pleasing. It will also still provide visual relief from continuous hard street edge and provide more open space for our clients to walk their pets. The intent of the CCOD perimeter parking area landscaping will be upheld.

Staff comment: The Zoning Ordinance recognizes that strict adherence to regulations and standards can create difficult situations. A variance is appropriate in these cases where an alternative mechanism can provide similar performance to the intended result.

On motion by Board member James Smith, seconded by Board member Paula Hill, the Board voted unanimously to approve the 4<sup>th</sup> Finding of Facts.

5. That allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance. Our clients travel up to 45 minutes to our hospital. Many of our patients have medical issues and require access to areas for urination/defecation upon arrival. We believe with thoughtful design we can achieve Midway's goal of aesthetics and functionality, while providing a better and necessary experience for our clients and patients.

Staff comment: Without this variance, the applicant would be required to build a substantial masonry wall or berm along the entire parking perimeter. This would serve to hinder their ability to provide a needed open space for their patients.

On motion by Board member Carl Tuttle, seconded by Vice-Chair Jamie Hester, the Board voted unanimously to approve the 5<sup>th</sup> Finding of Facts.

#### Approval for the Variance to Midway Animal Clinic

On motion by Vice-Chair Jamie Hester, seconded by Board member James Smith the Board voted to unanimously to approve the request by Midway Animal Clinic for a variance to the Town of Midway Zoning Ordinance, Section 3.08(P)(2), Core Commercial Overlay District (CCOD), Perimeter Parking Area Landscaping, Design Guidelines and Standards for property zoned HC, Highway Commercial District. Said property is located on the east side of Old Hwy 52 approximately 1,620 feet north of the Hickory Tree Road intersection. Property is further described as Midway Township, Tax Map 12, Lot 58 containing 0.88 acre more or less.

#### **REQUEST BY NESHE SLOAN FOR VARIANCE TO THE SIDE YARD SETBACK IN A RS, LOW INTENSITY RESIDENTIAL DISTRICT**

Davidson County Zoning Officer Mr. Josh Tussey stated Neshe Sloan is requesting a five (5) foot variance to the side yard setback in a RS, Low Intensity Residential District as set forth in the Town of Midway Zoning Ordinance. The property is located on the east side of Shady Lane, approximately 210 feet southeast of Evergreen Drive intersection. Property address is 317 Shady Lane in Winston Salem, N.C.

Adjoining property owners were notified of the request for a variance by notice deposited in the mail on May 14, 2024.

Neshe Sloan stated she is requesting this five (5) foot variance for a ground level porch measuring 8'x 15' next to the addition they are building on the back of their house. The proposed addition cannot be moved over anymore because of the septic system and window on the existing structure. The porch will also be necessary to the addition for the mobility of her mother, who will be living in the addition. Ms. Sloan stated

the proposed porch will still be two feet away from the property line and will not interfere with or obstruct the neighbor's property. Ms. Sloan said the side yard is the most logical place to build because that side of the property would make it more accessible for her mother's medical concerns in the coming years.

Mr. Tussey stated even if Ms. Sloan's variance is approved, she will still have to get her septic system inspected and approved by the Health Department before construction can begin.

Mr. Tussey said he received a letter of support from Katy Sexton, a licensed broker with Sexton & Co. Homes of Real Broker, LLC, stating she believes the proposed addition will have no adverse effects on the surrounding values and may even contribute positively to the neighborhood's appeal.

Mr. Tussey reviewed the five factors relevant to the application for the variance with the Board to vote on each factor.

1. That the alleged hardships or practical difficulties are unique, and singular as regards the property of the person requesting that variance and are not those suffered in common with other property similarly located. We are requesting this variance for a ground level porch measuring 8' x 15' next to the addition that we are building on the back of our house. The proposed addition cannot be moved over anymore because of the septic system and window on the existing structure. The porch will also be necessary to the addition for the mobility of my mother, who will be living in the addition. The proposed porch will still be two feet away from the property line and does not interfere with or obstruct the neighbor's property.

Staff Comment: Due to the location of the existing home and septic system, as well as the area to be used for the septic expansion for the addition, the area that can be built is limited, creating a physical hardship on the property.

On motion by Board member James Smith, seconded by Vice-Chair Jamie Hester, the Board voted unanimously to approve the 1<sup>st</sup> Finding of Facts.

2. That the alleged hardships and practical difficulties, which will result from failure to grant variance, extend to the ability to use the land in question for any use in conformity with provisions of this ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return. We are requesting this variance for a ground level porch measuring 8' x 15' next to the addition that we are building on the back of our house. The proposed addition cannot be moved over anymore because of the septic system and window on the existing structure. The porch will also be necessary to the addition for the mobility of my mother, who will be living in the addition. The proposed porch will still be two feet away from the property line and does not interfere with or obstruct the neighbor's property.

Staff Comment: Applicant states that the addition of the deck will be used to provide an accessible entrance for her aging mother to access the addition that she will be living in.

On motion by Vice-Chair Jamie Hester, seconded by Board member Paula Hill, the Board voted unanimously to approve the 2<sup>nd</sup> Findings of Facts.

3. That the variance, if allowed, will not substantially interfere with, or injure the rights of others whose property would be affected by allowance of the variance: We are requesting this variance for a ground level porch measuring 8' x 15' next to the addition that we are building on the back of our house. The proposed addition cannot be moved over anymore because of the septic system and

window on the existing structure. The porch will also be necessary to the addition for the mobility of my mother, who will be living in the addition. The proposed porch will still be two feet away from the property line and does not interfere with or obstruct the neighbor's property.

Staff comment: Applicant has provided a letter from a real estate broker affirming maintenance of property values.

On motion by Board member Paula Hill, seconded by Board member James Smith, the Board voted unanimously to approve the 3<sup>rd</sup> Finding of Facts.

4. That the variance is in harmony with and serves the general intent and purpose of this ordinance: We are requesting this variance for a ground level porch measuring 8' x 15' next to the addition that we are building on the back of our house. The proposed addition cannot be moved over anymore because of the septic system and window on the existing structure. The porch will also be necessary to the addition for the mobility of my mother, who will be living in the addition. The proposed porch will still be two feet away from the property line and does not interfere with or obstruct the neighbor's property.

Staff comment: The Zoning Ordinance recognizes and allows for variances in cases where there is a unique physical hardship on a property. According to Davidson County tax records, the house was built in 1968 and the septic system appears to date from that same time period. As such the existing structure predates both the Town and County's zoning regulations.

On motion by Vice-Chair Jamie Hester, seconded by Board member Carl Tuttle, the Board voted unanimously to approve the 4<sup>th</sup> Finding of Facts.

5. That allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance. We are requesting this variance for a ground level porch measuring 8' x 15' next to the addition that we are building on the back of our house. The proposed addition cannot be moved over anymore because of the septic system and window on the existing structure. The porch will also be necessary to the addition for the mobility of my mother, who will be living in the addition. The proposed porch will still be two feet away from the property line and does not interfere with or obstruct the neighbor's property.

Staff comment: Without this variance, applicant will be unable to build a deck or porch providing exterior access to the proposed additional living space for her mother.

On motion by Board member James Smith, seconded by Vice-Chair Jamie Hester, the Board voted unanimously to approve the 5<sup>th</sup> Finding of Facts.

#### Approval for the Variance to Neshe Sloan

On motion by Vice-Chair Jamie Hester, seconded by Board member Carl Tuttle, the Board voted unanimously to approve the request by Neshe Sloan for a five (5) foot Variance to the side yard setback in a RS, Low Intensity Residential District. Property is located on the east side of Shady Lane approximately 210 feet southeast of the Evergreen Drive Intersection at the address 371 Shady Lane. Property is further described as Midway Township, Tax Map 14H, Lot 80 containing 0.47 acre more or less.

#### **REQUEST BY JASON FAULKNER FOR A 6-FOOT VARIANCE TO THE SIDE YARD SETBACK IN A RA-1, Rural Agricultural Zoning District.**

Davidson County Zoning Officer Josh Tussey stated Jason Faulkner is requesting a 6-foot variance to the side yard setback in a RA-1, Rural Agricultural Zoning District as set forth in the Town of Midway Zoning

Ordinance. The property is located on the east side of Mason Knoll Drive and a third of a mile from the Hickory Tree Road intersection. Property is also known as 468 Mason Knoll Drive.

Adjoining property owners were notified of the request for a variance by notice deposited in the mail on May 14, 2024.

Mr. Tussey said Mr. Faulkner is requesting to connect a guest house to the existing shop and has provided a site plan. The preexisting shop has been there for over 30 years. Mr. Tussey stated Mr. Faulkner wishes to put in an in-law suite which will meet all setbacks, but he wishes to use continuous roofline to utilize a carport that connects to the accessory building. Mr. Tussey stated Mr. Faulkner is requesting a 6-foot variance to allow the shop to stay in the same spot it legally sits in today. Mr. Tussey stated Mr. Faulkner has approximately 1.6 acres, which is enough to have two dwellings on.

Mr. Tussey stated he received a letter from Matt Hamm with Mantle Realty stating that attaching the guest house to this detached garage by covering the carport will increase the subject property value and tax base and should in fact help other properties in the area.

Mr. Jason Faulkner stated he has received permits that allow this building to be built. He said the shop was built in 1994 and has its own power meter. He just wants to connect the dwelling to the shop with a continuous roofline. Mr. Faulkner stated his family members, some of whom are disabled, may stay in the dwelling, and he would like to keep them out of the weather if needed.

Mr. Tussey reviewed the five factors relevant to the application for the variance with the Board to vote on each factor.

1. That the alleged hardships or practical difficulties are unique, and singular as regards the property of the person requesting that variance and are not those suffered in common with other property similarly located. New pool house and carport to be built attached to existing shop. This would change the use – new use requires full 10’ setback.

Staff Comment: There is a preexisting shop that has been there for over 30 years. The applicant wishes to put in an in-law suite which will meet all setbacks, but he wishes to use a continuous roofline to utilize a carport that connects to the accessory building. The shop will now be attached to a dwelling use so it would also need to meet the same setbacks. Mr. Faulkner’s family members that may stay in the dwelling at times are disabled and he would like to keep them out of the weather whenever needed. Mr. Faulkner is requesting a 6-foot variance to allow the shop to stay in the same spot it legally sits in today.

On motion by Board member Carl Tuttle, seconded by Vice-Chair Jamie Hester, the Board voted unanimously to approve the 1<sup>st</sup> Finding of Facts.

2. That the alleged hardships and practical difficulties, which will result from failure to grant variance, extend to the ability to use the land in question for any use in conformity with provisions of this ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return. Current plan was new pool house with covered carport. I will be unable to have continuous roof from shop, over carport to pool.

Staff Comment: Failure to grant variance Mr. Faulkner would be unable to utilize a carport and connect the dwelling to the shop with continuous roofline. This would also make it more difficult for members of Mr. Faulkner’s family to get in and out of the dwelling safely.

On motion by Board member James Smith, seconded by Board member Paula Hill, the Board voted to approve the 2<sup>nd</sup> Findings of Facts by a 3-1 split vote. Voting in favor were Paula Hill, James Smith and Carl Tuttle. Voting against was Jamie Hester.

3. That the variance, if allowed, will not substantially interfere with, or injure the rights of others whose property would be affected by allowance of the variance: Will not affect one neighbor to south.

Staff comment: Mr. Faulkner has produced a realtor letter from Matt Hamm with Mantle Realty stating this use should not hurt the value of other properties around it and should help it.

On motion by Vice-Chair Jamie Hester, seconded by Board member Paula Hill, the Board voted unanimously to approve the 3<sup>rd</sup> Finding of Facts.

4. That the variance is in harmony with and serves the general intent and purpose of this ordinance: I believe allowing this variance will not affect the use of the current shop. Not affect the easement as intended.

Staff comment: The ordinance allows for variance whenever unnecessary hardships may arise and specific properties. The accessory building is legally on the spot and can remain there. Applicant wishes to connect two roof lines to utilize an enclosed carport. To keep older members of his family safe from the weather whenever they utilize the suite.

On motion by Vice-Chair Jamie Hester, seconded by Board member Carl Tuttle, the Board voted unanimously to approve the 4<sup>th</sup> Finding of Facts.

5. That allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance. Variance would allow me to cover a parking area for my use and allow for easier construction of proposed building to be attached.

Staff comment: Staff feels this variance request will result in substantial justice being done and the variance is needed for safe accessibility to the dwelling for Mr. Faulkner's mother and in-laws.

On motion by Board member James Smith, seconded by Board member Carl Tuttle, the Board voted unanimously to approve the 5<sup>th</sup> Finding of Facts.

#### Approval for the Variance to Jason Faulkner

On motion by Board member James Smith, seconded by Board member Paula Hill, the Board voted unanimously to approve the request for the 6-foot variance to the side yard setback in a RA-1, Rural Agricultural Zoning District. Said property is located on the east side of Mason Knoll Drive and a third of a mile from Hickory Tree Road intersection. Property is also known as 468 Mason Knoll Drive. Said property is further described as Midway Township, Map Number 5H, Lot 21 containing 1.56 acres more or less.

#### OTHER BUSINESS

There were none.

**ADJOURNMENT**

On motion by Board member Paula Hill, seconded by Board member Carl Tuttle, the Board voted unanimously to adjourn the meeting at 6:15 p.m.

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Charles Waddell, Chair

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Ree Smith, Deputy Clerk