

CITY OF GASTONIA
ZONING BOARD OF ADJUSTMENT
December 5th, 2024, Minutes

The regular meeting of the Zoning Board of Adjustment was held on Thursday, December 5th, 2024, at 9:00 a.m. in the Council Chamber at City Hall, 181 S South Street, Gastonia, NC.

Board Members present: Chair J. Lee Taylor, Jr, Vice-Chair Bill Marino, Shaun Jones, Michael Dickson, and James Nebo.

Board Members absent: None.

Staff present: Jason Putnam, Charles Graham, Sushil Nepal, Chrystal Howard, and Rebeca Mintz.

Chair J. Lee Taylor called the Board of Adjustment meeting to order.

Roll Call

Five Board Members were recognized, and no one received calls or contacts.

Item I: Approval of October 24th, 2024 Minutes

James Nebo moved to approve the October 24, 2024, minutes as presented, and Michael Dickson seconded the motion. The motion was unanimously approved (5-0).

Because of the quasi-judicial nature of these hearings, North Carolina law requires anyone who speaks before the board and offers evidence to swear in. Mrs. Mintz administered the oath to the speakers.

Item II: Public Hearing PLVAR202400523 – Pervis and Kimberly Johnson –

722 Forestbrook Dr. The applicant has submitted a variance request to reduce setbacks for the addition to the primary structure.

Chair J. Lee Taylor recognized Zoning Administrator Jason Putnam for a staff presentation.

Mr. Putnam stated that Mr. Lynch submitted a variance request for 722 Forest Book Drive. This request pertains to the side setback, specifically on the left side of the property. The parcel is zoned RS-12 (Residential) and has a 12-foot side setback. The Unified Development Ordinance allows the administrator to grant a minor modification of up to 1 ft, reducing the setback from 12 ft to 11 ft. Mr. Putnam stated that a minor modification, a reduction in the one-foot side setback, was granted. The plot plan submitted by the applicant depicted an initial sketch indicating an 11-foot side setback on the left side of the property (agenda page 10), and it was approved on review. A copy of the zoning permit was displayed (agenda pages 11 and 12). Mr. Putnam stated that the zoning permit was approved and included specific notes regarding the left-side setback. Mr. Putnam shared the notes from the zoning permit description and conditions section, including that a maximum one-foot encroachment had been approved, a sealed foundation survey was required, and any encroachment greater than one foot into the side yard would be non-conforming and a violation. Also, as part of our zoning permit approval process, the city mandates an as-built survey of the foundation to ensure that new additions and new structures comply with setback standards for each zoning district. The foundation survey was displayed (agenda page 13). The as-built foundation survey was submitted for review, and the city discovered the structure was 9 ft. – 4 in. from the property line to the foundation wall, encroaching an amount exceeding 1 ft. – 6 in. despite the administrative variance of a one-foot minor modification. The city zoning office failed the foundation survey inspection due to this encroachment. Mr. Putnam explained the process for a foundation survey inspection, which involves the applicant submitting the request, staff review, and, if approved, issuance of a letter of approval that allows the project to continue. In this case, the construction was built. The applicant requests a variance to allow the structure to remain in its current location.

Mr. Dickson asked Mr. Putnam how far the construction was at the time of the foundation survey or inspection. What stage did that occur in? Mr. Putnam responded that they typically go out on the final inspection. The foundation survey inspection in CityView is called a Foundation Survey Inspection and reviews the foundation survey. The applicant submitted the survey, and the staff reviewed the form to determine whether it complied with the setbacks; in this case, it did not.

Mr. Dickson asked Mr. Putnam, "Was there a footing inspection or any other additional inspections where there was actually a physical person on site?" Mr. Putnam stated that the county will conduct the footing inspections, but they won't check for setbacks, which is why we must require this sealed survey to ensure it meets our setback requirements.

Chair J. Lee Taylor was trying to understand the timeline for when the foundation survey was submitted and when the structure was completed, referring to page 13, which states the date was November 20, 2023. Still, he didn't know if it was the final foundation survey. Mr. Putnam responded that it was supposed to be the foundation survey, showing a revision on September 16th, 2024, for the new addition. Chair J. Lee Taylor said it was done on November 20, 2023. Around this time, someone was notified that the foundation survey failed. Mr. Putnam said, "Correct." Chair J. Lee Taylor said no corrections were made after that time to align with the allowed procedures.

Mr. Putnam stated right. When we notified the applicant that we could not approve the foundation survey inspection, Mr. Lynch began inquiring about the variance process. Mr. Putnam noted that the city doesn't get involved with the county's records and inspections. He doesn't know when the other stuff got completed; we're just worried about where the foundation is because that's where we would measure the setback, and in this case, it didn't meet the standard. Regarding the timeline for when the walls were up and the siding was put on, he doesn't know. Chair J. Lee Taylor said we don't know when it was completed.

Mr. Nebo asked Mr. Putnam. You're saying that on page 12, you indicate the garage should be 19 by 22 or smaller. This is a decision made based on your already knowing the setback. Are you saying the garage can be no more than 19 by 22, and that information was conveyed to the builder? Mr. Putnam responded that "yes", that would have been a note, and that it's on the actual permit issued to the applicant or the contractor. Mr. Nebo asked if the garage was not the size, then.

Mr. Putnam stated that the survey shows the garage to be 19.5 feet wide and 22.4 feet deep. So, it exceeds the 19 by 22, but the city doesn't require a survey initially; the original site plan lines you're seeing are from GIS and aren't 100% accurate. That's why we can't use GIS to determine if the setbacks are being met. We need that survey so they can stake the corners and determine precisely where the property line is. When we receive the initial application, we review it and, if it meets the requirements, we approve it. We don't know what those measurements are; we're not going out into the field to inspect everything at the very beginning; that's not really something we would ever do. We leave that up to the applicant or the contractor to ensure there is enough room to build what the applicant or the homeowner wants. We typically conduct the foundation survey early in the process, before anything is completed. Mr. Putnam stated that sometimes the surveyors are backed up, and the contractors must work within their timeline, but usually it stops at some point. Then, the foundation survey will be sent in so we can issue a foundation survey letter. Then the project can continue from there to finish.

Chair J. Lee Taylor stated that, in his previous career working with builders, a foundation survey and stakeout would be required before construction even began, or at least a survey would be required, or someone would be asked to come out and stakeout the appropriate corners so that they would not exceed any setbacks.

Mr. Putnam responded that since the county took over building inspections a couple of years ago, we have been requiring this foundation survey as built. The foundation would typically be in place, and the surveyor would survey from it.

Chair J. Lee Taylor said he was referring to the surveyor coming out and staking it in the first tier, where the property lines are. So, you won't exceed it. Mr. Putnam said that would not necessarily be required, but it would probably be a good idea when you have minimal, tight space to work with. In this case, there's minimal space on the left side to accommodate the size increase. Since the homeowner wanted it there, it would have been, in his opinion, a good idea to go ahead and stake it to see if everything would fit where he wanted it.

Chair J. Lee Taylor recognized Mr. Michael Lynch, 16515 Woolwine Rd, Charlotte, NC 28278, as the applicant. They stated that they had conducted a survey. They came out, surveyed, and staked the property on the side. We measured, he said, based on where the stake was; we thought they were within the setbacks. He made a mistake. Obviously, it was off a little bit. He said he passed final inspections with Gaston County for this permit in April, and he didn't even realize that he didn't meet the setback until July or August 2024. Somewhere in that timeframe, three or four months later, it was still showing as an open permit on the City of Gastonia portal. He called the zoning department to ask why the permit was still open, and then he found out they weren't within the setback requirements. He stated that another surveyor came out in September after it had been completed, showing the exact setbacks.

Mr. Nebo asked Jason Putnam. He was just curious as to how we got to this point. Mr. Putnam responded that some of the inspections that Mr. Lynch is referring to are Gaston County building inspections. The County performs the footings, foundation, framing, electrical, plumbing, and any inspections needed. The zoning department only needs the foundation survey; we review it, confirm it complies, write a letter stating that the foundation survey and the setbacks comply, and close the zoning permit. The applicant can upload the letter to their county portal. The county is supposed to be at a stopping point until they get that letter from us.

Mr. Putnam stated that he cannot speak for the Gaston County building inspection department about how they conduct their process; in zoning, we're just concerned with what is allowed for use. And then, does it meet the setbacks? In this case, we didn't meet our setbacks.

Mr. Nebo told Mr. Putnam, "You recognize that after it was finished, it didn't meet the setbacks." Chair J. Lee Taylor said, "Well, we don't know if it was finished. It was after the foundation was in." It should be surveyed before the rest of the structure is built. You've got the footings; you have a concrete block, and the wall built to the property line should be at that stage when the foundation survey is done.

Mr. Lynch, the applicant, stated that he surveyed it in the very beginning before he did the footings just to make sure that they had the proper setbacks; however, he probably should have done another survey at the foundation level to make sure it meets the setback requirements, rather than continuing to build, thinking that we were. Mr. Dickson stated that the survey that showed you were over the setback line did not occur until the end, and the structure was complete.

Mr. Lynch, the applicant, also stated that when he received the final inspection, Gaston County and the City were in the process of merging, so there wasn't much communication. I think the ball got dropped, and he didn't even know about it for four or five months later. I believe communication between the County and the City could have been better and might have helped eliminate some of these problems.

Mr. Jones asked Mr. Lynch, "Can you help me by giving me a timeframe here regarding when the concrete pad was poured, at what stage, and on what date?" Mr. Lynch responded that it would have been right after the footings were poured and got the footing inspection. They would have poured the footings with the concrete pad at the same time. Shaun Jones asked again about the date on that. Mr. Lynch responded that he did not have the date and that I would have to find it for him.

Mr. Jones wants to understand a timeline: the concrete is poured, and the framing is done. Are you saying all of this was done, including the framing and the garage, before November 8th, 2023? Mr. Lynch responded, "No. We started the job in 2023, around November."

Mr. Jones said that because I'm looking at a land survey from Mr. Daniel Wooten, which shows 9.4 feet. Mr. Lynch said that the survey was done after it was constructed.

Mr. Jones asked again whether the construction would be completed by November 8, 2023. This garage was completed a year ago. Mr. Lynch said the Mr. Wooten Survey was done before they started the job, and he would have started the garage after that survey. Shaun Jones responded because it does show a 9.4 setback. Mr. Lynch said yes, but that was after it was built.

Mr. Jason Putnam said that this iteration of the survey is a revised version of the original prepared by Mr. Lynch, as it shows the new addition from revision 9/16/24. The original survey didn't have that new addition labeled on it at that point. Mr. Dickson stated that the date is 9/16/24. Mr. Lynch responded that this was when he had to have the additional survey done after it was completed. They've had two surveys.

Mr. Dickson said the confusion lies in the dates. When did the contractor find out? It was after the construction, but the dates don't align with that. Mr. Lynch said, "Yes, Sir. The one you're looking at is September 2024, but they finished in April, six months later. That's when he realized he was not within the setbacks, and they did another survey."

Chair J. Lee Taylor asked Mr. Lynch, "When did you start construction?" "When did you end construction?" Mr. Lynch responded that I started in November and December, and he finished in April.

Chair J. Lee Taylor asked whether everyone understood that the original date for this, as stated at the very top of the survey on page 13, was November 8th, but that was when he initially received the survey. Then, if you come down below his signature, up in that top right-hand corner, you see revision 9-16-24 to show new additions after building. So that is to show when the building. When the building was put in, they basically changed the numbers. They added 9.4, showing it encroached on the setback.

Mr. Jones said he would like to see the original survey conducted on November 8th, 2023, because this is confusing. I'm not used to reading surveys, but basically, what I'm looking at is a survey that has indeed been revised for 9-16-2024; or should I be looking at something different from the original survey conducted on November 8th, 2023? I don't know because I don't see them before and after.

Chair J. Lee Taylor stated that, so far, the testimony is that the original survey was done by marking off the boundary and the area where he could build, and somewhere in there, they did not meet that setback in the construction process. I don't know if the stakes got moved, but somehow, in that process between November 8th and the finished construction in April, that's where your problem is. The driveway met that corner. It was a space larger than it should have been. Mr. Lynch said he did not do the driveway; the homeowner did it. Mr. Jones asked if the driveway was done before or after the addition. Mr. Lynch responded after they finished the garage, which had already been built.

Chair J. Lee Taylor asked the staff if the driveway was subject to the setback. Mr. Putnam responded that the driveway does not need to meet the setback, only the structure.

Mr. Dickson had a question for Assistant City Attorney, Mr. Graham, and he said, "When I went back and looked at the plat of this, the original setback and side setback for Forestbrook are five feet, and that shows on the plat for this. When I look through Forestbrook at other houses, some look like they're built on, if not over, property lines. I have a real question about where zoning usurps the power or the priority of the plat. You know, the plot's supposed to run with the property, and that would put us at a five-foot setback, so what's the precedent for that?" Mr. Graham responded that he had not looked at the plat you looked at, but from my experience, those five feet are not setbacks. They're drainage and utility easements. After reviewing the plat, he said those five-foot easements are reserved along all interior side lot lines. Ten-foot easement reserved along all rear lot lines. So, those are the utility easements. Those are not the setbacks. The drawing only shows the front setbacks. The side and rear setbacks are not shown. So, zoning requires the reservation of easements. The setbacks are required by zoning. To answer your question specifically, the applicable zoning setback would be the ordinance in effect at the time, which I believe is RS-12. Okay. RS-12 would have been these 12 feet.

Mr. Dickson asked if it would have been in the county at the time of development, wouldn't it? RS-12 is a relatively new zoning for the city of Gastonia. Mr. Graham responded that RS-12 was one of the oldest zonings. We're actually moving away from RS-12 now to allow more density. But back when this was done, county and city zoning mainly were For residential neighborhoods, RS-12. You had some RS-8, and then there may have been an RS-6 spotted around, but I don't recall much of that. The numbers changed by ordinance, but the square footage would have been 12,000, probably for RS-1. Then they were later changed to RS-12 to match the square footage and make it more straightforward for everybody. That started when the county first adopted the unified development ordinance. Then the cities, Gastonia in particular, adopted the same thing the county did, with a few changes. So that's when you went from R-1, R-2, and R-3 to RS-12, RS-8, and RS-6. But the utility easements were always 5 and 10, still are.

Mr. Dickson commented that it struck me when I looked at GIS, and I know, just being back to Mr. Putnam, GIS is not something you can measure to any degree of accuracy. But it appears many of these homes were built Very close to the lot line, if not over it. It was almost like that's just the way Forestbrook was.

Mr. Graham agreed that we may find other encroachments. The ordinance and the process for granting a variance are addressed. He can offer this as part of the legal advice he provides when he sees where they're struggling. He struggled with the same things when we contracted with the county for building inspections. There was extensive internal discussion, and he helped draft the agreements. The county will take over building inspections. So, the county's inspections you're hearing about today are to determine whether the footings, foundations, walls, and electrical and plumbing systems meet the state building code. They do not focus on just one thing.

The city had in-house building inspectors, but it seemed more efficient to have the county handle all inspections, since it did so for all other cities in the county. So we were trying to figure out how to marry up what we used to do internally. How do we ensure zoning is proper and the building code is appropriate, since they're two different things? So that's where we came up with issuing the zoning permits, a copy of which you have in this packet. And the building is supposed to start with the city; get your zoning permit.

That is provided to the homeowner, builder, or whoever uploads it to the county to get their building inspections. If the county doesn't have the zoning, they're not supposed to do the inspections or pass the inspections until they get the zoning from the city. In this instance, what's supposed to be happening is the original zoning permit you have, which calls out all these things and requires a foundation survey. Once that's done, the county will schedule the building inspections for when the foundation is pulled. The county would inspect the foundation. If the foundation inspection shows the foundation meets the building code, it will pass the inspection.

The builders can then begin the vertical build. According to our zoning permit, before the vertical build goes through, the foundation survey as-built must be submitted to the city and approved. And then, when that is uploaded to the county and the county inspects the vertical build, everybody knows everything is okay. We all anticipated there might be some communication issues. The surveyor stated where the foundation was supposed to go, but that wasn't the purpose of the foundation survey. The foundation survey was conducted on that revision date, 9/16/24, and submitted to the city at that time.

The city doesn't know where the vertical build started, but once the survey was found, the foundation's zoning failed, and that information would have been passed on to the county. But somewhere in here, the vertical build occurred and was inspected, and now, without reference to the zoning.

Mr. Dickson said that everyone believed that they were complying. Mr. Graham responded It appears that based on the testimony, I think that's an accurate reflection of the testimony. Chair J. Lee Taylor said, we don't have the surveyor here to talk to them about what they did and didn't do. Mr. Jones said that for the county to speak to them, it is essential to have the county here to testify about when the building permit was issued. Mr. Graham told him that if you would like to hear that information, he would have to ask the staff to arrange that for him and continue the meeting.

Mr. Jones added that the survey is confusing because it has a revision that clearly shows the garage is not where it is supposed to be. Chair J. Lee Taylor said that what they can do is continue and ask for the original survey that was dated November 8th, but they still have an issue with the timeline; we cannot take into consideration, to my understanding, any other houses that are or look like they're built over the line. All we can do is talk about this situation; if we continue and get that survey back, will it tell us what happened to the stakes or why it's over? Who did it? Who built it over, and where did the mistake occur? He states that he doesn't think they will find an answer even if the surveyor or the county is present. One thing he is worried about is what this will set as precedent. If somebody else comes along and has the same or a similar situation, what does that do to their situation? Does it become something that you've set a precedent right or not? He asks the staff or the legal counsel about the 12-foot setback; how long does that go back? Mr. Graham responded that he doesn't have an exact date, but all these UDOs were adopted in the late 90s or early 2000s, so they've been around for a while. He also added that everybody's recollection will be a little fuzzy at that point. There will be definite dates for when inspections were done. Still, he suspects, based on the experience, that the original survey will show the house and the driveway, but not the new addition, and that all the revision did was add the latest addition to what was already there. That doesn't change the fact that we are still struggling with the timeline; where did the error occur, and is it now just miscommunication? The intent of what was set up for this process to work is that, if the foundation surveys require it, you do that before you build vertically, right? That way, you know, at that point, before you put additional money into a vertical build, you can check whether your foundation needs to be redone because it meets the building code. In this case, if it doesn't, it would violate the setback.

Mr. Dickson stated that the additional information will not change where we are today; it may give you a timeline, but the builder made mistakes, and there was miscommunication between the city and the county. Things that should have been stopped at the right point were not. He thinks there are too many gray areas, and the City might need to change the way it does its process moving forward.

Chair J. Lee Taylor asked Mr. Graham what this does to precedent down the road for a similar situation. Or could somebody be going through this right now? It could be the same situation or similar, but it could be two or five years down the road. If this board were looking at it, we're not supposed to consider that.

Mr. Graham responded No; the ordinances direct you not to consider the citation of other similar occurrences. So, as far as precedent for a variance, and a variance is a particular procedure under the ordinance, it's less precedent than it is otherwise. Can you affirmatively confirm that all the criteria in 5.14.5 are met? He continued reading and explaining the variance requirements to the board. Based on the facts you've heard today, you have to be able to determine that A, B, C, and D all exist in this case. If anyone does not exist, you're not supposed to grant them. And so, if you need additional facts to make those determinations, that's where a continuance comes in, and you try to get those facts. You certainly can proceed if you think you have sufficient facts to make your motion, either for or against the variance based on these criteria.

Mr. Jones stated that reading the construction development zoning permit clearly states concerns about the proposed sideyard setback. They did get a one-foot variance, but they encroached anyway. He wondered why the homeowner didn't consider putting the garage in front of or behind the home rather than risk building it right up to the setback.

Chair J. Lee Taylor responded that it comes down to the property owner's preference and aesthetics. The only thing that might come into play is if it was an action the surveyor took or if the survey was wrong. Shaun Jones said the ordinance stated that the applicant or the property owner. Chair J. Lee Taylor responded, "Yes, but what if the mistake was made by somebody else?" He is sure the surveyor would say they surveyed it properly.

Mr. Dixon stated that he would add to C that the lack of communication between the city, the community, and the county may have caused the hardship. They also share some culpability for the hardship the applicant and the property owner believed was within those setbacks, as clear from testimony that they had planned on 22 feet and, when they found out that was going to be the case, changed it to a location they believed met those setbacks.

Mr. Jones added that's what makes that measure even more critical at that point, knowing that you are on the line, you must make sure you double-check your work, and this doesn't give me enough information to assume that. We're not here to assume. I keep going back to the survey. I need to see the original. At this point, if it were evident that you only had 9.4 feet on November 8th, 2023, that would mean you can't build there. Because with this revision, you know that wasn't evident in 2023.

Chair J. Lee Taylor called Mr. Lynch to explain the survey to them again. The 2023 survey was done before any building was done, so they come out, they stake the property, and then you pull from that property line to your footing to get the setback. That's how we got the setback. So, the other survey you're looking at wasn't done until 2024 because I didn't realize we were within the setback until I got with Jason. I got notified because my permit wasn't going away in Gaston County. Usually, your permit screen disappears when everything's complete. Well, it didn't disappear. It stayed there for six months. So then I called. I finally figured it out, and Jason and I talked, and he helped me get to where we are now. But we never intentionally built the 9.6. Obviously, He thought we were within the setbacks.

Mr. Jones asked Mr. Lynch, When a surveyor comes out, you tell him that you're going to build a garage, right? "No". We didn't tell him we were going to do anything. He comes out and surveys the property, showing you where the boundaries are on the line. Shaun Jones asked if they could only stake four corners. Mr. Lynch responded that they staked the side yard as well, right beside where we were pulling the garage. Shaun Jones asked, so he did stake? Mr. Lynch's response was, "He did".

There was a stake straight across from the side of the garage, and we pulled a tape measure to the center of the footing. Shaun Jones asked Mr. Lynch, but there's no physical evidence, correct? There are no pictures. The surveyor doesn't take pictures. There are no pictures of a measuring tape from that stake to where you're about to build. Mr. Lynch said yes, he probably has pictures he can find for him. Shaun Jones stated it could help his case if the surveyor had mismarked a stake. Mr. Lynch responded that the surveyor would not have done that; he said he had never built that close to the line. It's hard to pull the center of the footing. You've got a footing that's 12 inches wide. The building sits in the center of the footing. He was pulling from the center of the footing, and it ended up a foot and a half short of where we were supposed to be. Mr. Lynch also said it should be a

process in which the city provides a sealed survey inspection once the foundation is in place. They require you then, so you don't end up with a contractor here after it's already built. And you know that it was within the zoning regulations at that time, based on the survey.

Mr. Nebo stated that some approval is needed; if it is not, the builder should be able to proceed, and it should only come after the county has approved zoning, because the builder was able to start before zoning indicated that his measurements would encroach on the lines.

Chair J. Lee Taylor recognized Assistant Planning Director Mr. Gates. He stated that after listening to the testimony of both staff and the applicant, he wanted to make sure the board understood the process. Before construction, before getting a building permit, the building permit cannot be issued until the zoning permit is uploaded to the Gaston County portal. As you guys have read and heard testimony, the clearly stated setback is 11 feet.

He also wanted to show the board that on the county website, on the screen where it is located online, it clearly states: "A foundation survey approval letter and a copy of the foundation survey itself will be uploaded to the framing inspection requested via Portal Service. As Mr. Graham explained, the way the county system works is that during the county permitting process, the permit is issued, inspections are scheduled, and then the contractor goes through the steps: foundation, framing, and so on. The system, and what the applicant accurately described, is, 'Hey, I did not get a CO; it did not close out that's because the system does have a fail-safe; it allows a final inspection that the contractor goes at their own risk, saying, 'You have this box that has to be checked during this process for us to hand over and close out ultimately, so there is a fail-safe, and that's kind of how we ended up here.

We have reviewed an application with the city, and the zoning permit process was completed. It gets passed on to Gaston County, the applicant pulls his permit, does his construction, and then realizes, essentially after the fact, that the survey was over the line. But that survey is typically done before the vertical construction; the process worked, the communication happened, the city did what it was required to do, and then once the applicant submitted the survey, which is in your application, showing it over, the city did its job, it reviewed it. It failed, and that was communicated back. The problem we're having right now is that it typically happens shortly after the building permit is issued. Again, the system worked; the failsafe was in place, and it did what it was supposed to do.

The process is posted online; it's on Gaston County's website and documented there. That process started on January 1st, 2023, roughly 9 or 10 months after this project started. This project came to us after January 3rd, and we issued the zoning permit in October, so ten months, almost eleven months after the requirement went into effect. So I want to make that information available as well. I'd be happy to answer any other questions about processes or anything else.

Mr. Jones asked Mr. Gates whether the initial survey was conducted after the application. Mr. Gates responded, "Yes, as Mr. Putnam explained, you have the site plan, the GIS sheet; at the initial onset, the city does not require a survey; the idea is they know essentially where they want it to go, and so the foundation survey is a check and balance. You say you're going to build 11 feet, and then that foundation survey is the check to ensure that what you're creating and what you put on your permit match up.

A lot of times, it's just a way to get the project up and going, they both say. They also discuss hiring surveyors and the contractor's desired start date. They want to get the project started and know the foundation survey will be needed. If they choose to move forward, it's a risk that the homeowner takes by not having an exact survey and having the proposed project surveyed before it.

Again, the property was surveyed, but the proposed footprint was not added to the survey before the application was submitted, which is why we have the GIS, I'll say, non-scale version, versus the actual stamp-certified survey that came months afterwards.

Mr. Dixon. He stated that he had been waiting 8 months for a surveyor and that what Mr. Lynch did was normal. Mr. Gates responded, "Yes." This is a typical practice: we have the failure safe and the certified foundation survey. The city recognized that this had been an issue in the past, and he thinks the county echoed that, which is why all the cities within Gaston County follow this process to hopefully not get to this point. We don't want the homeowners to realize they're so many feet over a property line. So we attempted to put in the fail-safe to ensure that didn't happen.

Chair J. Lee Taylor stated that Mr. Lynch got a survey on the front, and after that was done, that line was breached or encroached upon, went over, and the testimony. The testimony is that it was an error and did not meet the setback.

We must decide if this is A, B, C, or D that Mr. Graham just talked about, that the hardship did not result from actions taken by the applicant or the property owner. The Hardships on B, hardships from personal circumstances, and hardships from conditions, common neighborhoods, or the general public may not be the basis for granting a variance. They need to follow that format and make sure we state the hardships and that they did not result from actions taken by the applicant, the owner, or anything related to them.

It has to be something geographic with the property, or there's no other way to use the land, but there's still some gray area in which the applicant or the property owner takes that action. We'll make sure it didn't cause this. In this situation, we heard testimony that an error had been made. So, is that an action? It would have been nice if the property owner had been here; a few things could still be tweaked between the city and the county. There are many things they could improve. I hope that, through this process, the staff will look back and make sure it is the best process. And if anything needs to be added, I understand the failsafe; it caught it on the back end. But on the front end, can we do anything to prevent it? But he doesn't know that they can, because there's a situation in which the homeowner and the builder must make decisions and do things based on the information they have. And people can cause errors. Can we consider that error to approve of this?

Mr. Dickson, I'd like to make a motion to approve the building application. I do believe that it would create an unnecessary hardship resulting from the strict application of this ordinance, and the hardship resulting from this is peculiar to this property and the situation created from the hardship is not taken directly by the applicant or the property owner, but a cascading of events of mistake, error, miscommunication between the city and the county; I think should be in place for the city to go back and maybe correct this situation for future things. I also believe that a request for a variance is consistent with the spirit of the ordinance and that safety is secured. Also, it still provides very reasonable distances, as seen in other zoning areas where setbacks are five feet from rooftop to rooftop. I don't believe we're creating any fire hazard or anything detrimental to public health, safety, and welfare. Board Member James Nebo seconded that motion as it stands.

Mr. Jones stated that you should deny the variance because the hardship resulted from the applicant's actions. He is a contractor; he's held in high regard. It's essential to make sure you measure 9.5 feet or 11 feet. That's critical in a situation where you're right next to the setback, and he knew that going into it, it's the contractor's responsibility to oversee that entire process as much as I'd like to forgive. It's not my position to forgive a mistake. We're supposed to follow these guidelines, and I don't see where it checks off the allowance.

Mr. Marino commented that Mr. Jones made a point that he absolutely agrees with, but he also agrees with what Mr. Dixon said. Both have a point, and I still think there is a communication gap; when he did a zoning permit, everything was checked out, measured twice, and billed once. That's what they did on mine, but that didn't happen here. We got that difference in measurement.

Chair J. Lee Taylor stated they needed to move to a motion and asked Mr. Graham if it was just appropriately stated. Mr. Graham said the motion was sufficient, but he wanted to point out to the board that a variance requires a super majority, and it will take four of you to vote in favor of this motion if it fails.

Chair J. Lee Taylor asked the board to please raise their right hand if they were all in favor of the motion made by Mr. Dixon and seconded by Mr. Nebo. The board approved the motion to approve the variance. (4-1) Shaun Jones opposed.

Item III: Other Business or Announcements

Mr. Putnam informed the board that no application has been submitted for January 23, 2025, so far, and there are still a few weeks left before the deadline, so we may or may not have a meeting in January. We're not sure yet, but we'll let you know. I want to announce that we have a new planning director, Sushil Nepal, who started this past Monday.

Chair J. Lee Taylor wanted to ask the board members whether it was okay for staff to bring their Agendas (and extra copies) on the day of the meeting, since all the information is emailed to them beforehand, or whether they could print it from home. The board members said they agreed.

There being no other business, Chair J. Lee Taylor moved to adjourn the meeting. Board Member Mr. Jones seconded the motion, which was unanimously approved. The meeting was adjourned at 10:39 a.m.

Respectfully Submitted:

Rebeca Mintz, Planning Technician,

Zoning Board of Adjustment
City of Gastonia, NC

Chairman, J. Lee Taylor

Zoning Board of Adjustment
City of Gastonia, NC