

Town of Weaverville

Zoning Board of Adjustment
Minutes – Monday, October 9, 2017

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, October 9, 2017 in council chambers at Town Hall at 30 South Main Street, Weaverville.

Present: Vice Chairman Tycer Lewis, Board Members Paul Clauhs, Roger Parkin and Cynthia Wright, Town Attorney Jennifer Jackson and Planning Director James Eller. Absent: Chairman Jeff McKenna.

1. Call to Order

Vice Chairman Tycer Lewis called the meeting to order at 7:00pm.

Vice Chairman Lewis gave those in attendance a description of the quasi-judicial process to which the Zoning Board of Adjustment is bound which included the following.

Tonight the Zoning Board of Adjustment will holding 2 quasi-judicial hearings. The purpose of each quasi-judicial hearing is for the Zoning Board of Adjustment to hear and consider pertinent facts related to each request. The Board is required to comply with procedural rules much like those of a trial court and to provide for the constitutional right to due process such as proper notice of the meeting, an impartial decision maker, sworn testimony of witnesses, and an opportunity for parties to be heard by allowing direct examination and cross examination of witnesses.

The hearings that will be held tonight are formalized means of gathering evidence relevant to the issues that are before the Board tonight. This is not an opportunity for citizens to come and just speak their minds like in a public hearing on a legislative matter before Town Council. The Board's decisions can only be made based on competent, material and substantial evidence in the record of the respective hearings. "Competent" evidence is generally understood to mean that evidence which is legally admissible in a court of law. Competent evidence does not include the opinion testimony of lay witnesses as to any of the following:

- *Use of property in a particular way affecting the value of other property;*
- *Increase in vehicular traffic resulting from a proposed development posing a danger to the public safety;*
- *Matters about which only expert testimony would generally be admissible under rules of evidence applicable to trial courts.*

The burden is on the applicant to demonstrate that the application complies with the review and approval standards of the zoning ordinance. Once an application has been submitted and all evidence in support of the application has been presented, then the burden shifts to those who have standing to oppose the application to present evidence to the Board. Where conflicting evidence is presented the Board must determine the weight of the evidence and the credibility of witnesses. The Board can consider reasonable conditions that, if imposed, would bring a project into compliance with the standards set out in the zoning ordinance.

Generally the following will occur for each matter:

1. **OPENING OF HEARING AND INTRODUCTION** – The hearing will be opened and a brief introduction of the matter will be made in which the applicant, the property affected and the request are briefly identified.
2. **BOARD DISCLOSURES** - The Board will then discuss any potential bias or conflict of interest and make any adjustments to the Board’s membership for that particular matter. The Board will disclose the nature of any outside communication that has been received prior to the hearing on the matter.
3. **IDENTIFICATION OF PARTIES** - We will then go through a process to identify the relevant parties to the hearing. Only those people who have a sufficient interest, or standing, in the outcome of the matter before the Board are allowed to become a party and present evidence. Anyone that can show some “special damage” or damage not common to all other persons who may be opposed to the request, will have standing to be identified as a party.
4. **SWEARING IN OF WITNESSES** - Anyone thinking that they might wish to provide testimony during the hearing, even if not a party, will then be asked to come forward and take an oath to tell the truth during such testimony. This will be done as a group with all signing a sheet giving your name and address.
5. **STAFF PRESENTATION** – Staff will summarize the request, state the applicable standards, recite notice provided, state what materials were provided to the board in advance, and summarize the content of any staff analysis. In appeals of staff decisions, the staff person acts as a party to the case rather than in the typical role of staff to the board.
6. **APPLICANT TESTIMONY AND ARGUMENT** – The Applicant will present evidence and legal arguments in support of the request. Evidence and arguments must focus upon the applicable standards.
7. **TESTIMONY AND ARGUMENT OF OTHER PARTIES** – Other parties, in the order called on by the chair, will present evidence and legal arguments for or against the request. Evidence and arguments must focus upon the applicable standards.
8. **TESTIMONY OF OTHER FACTUAL WITNESSES** – Anyone wishing to provide factual testimony concerning the request will be provided an opportunity to do so. Factual testimony should be limited to how the project does or does not meet the standards. Testimony should be limited to facts and not personal preferences and opinions.
9. **RESPONSE** – Parties with standing will have an opportunity to offer rebuttal testimony and a closing argument. Responses should focus on legal arguments and new or clarifying evidence and avoid repetition of the evidence already presented.
10. **MOTION TO CONTINUE THE HEARING** - In some circumstances the board may decide to continue a hearing to a later meeting. This may be at the request of a party or on the board’s own motion.
11. **DELIBERATION** – The board will ask any final questions or offer any personal knowledge or additional facts relevant to the matter and then begins its deliberations. The hearing will remain open during deliberations so that the board may ask clarifying questions as needed. The board must make its decisions based on the competent, relevant and substantial evidence in the record and the application of those facts to the standards set out in the Town’s Code. The decision cannot be based on the personal preference of board members, but on the standards and the evidence.
12. **MOTION AND VOTE** – A motion to approve, approve with conditions, or deny the request will be made based on the board’s discussions and a vote will be taken.
13. **DECISION** - The Board will then discuss important facts relevant to its decision and direct Staff to prepare a written decision consistent with the Board’s discussion and vote. That written decision will be reviewed by the Board at its next meeting. The written decision will be provided to the applicant and other parties with a right to such notice. Parties have thirty days to appeal the decision.
14. **CLOSING OF HEARING** – The hearing will be closed and we will move on to the next matter.

2. Approval of the Minutes from the June 12, 2017 Meeting of the Board.

Mr. Clauhs motioned to approve the minutes as presented. Mr. Parkin seconded and all voted unanimously.

3. Public Hearing Regarding an Application for a Sidewalk Waiver Related to a Proposed Development Near the Intersection of Garrison Road and Merrimon Avenue. The Nature of Said Waiver is from the Sidewalk Construction Requirement of all New Multi-family or Commercial Uses.

Vice Chairman Lewis reviewed the procedure for the public hearing which included the following.

INTRODUCTION: Serota Mars Hill, LLC, through Wilder Wadford, has requested a waiver of the sidewalk requirement for its commercial project located near the intersection of Garrison Road and Merrimon Avenue and bears PIN 9732-80-8797 and 9732-90-0726

JURISDICTION: Sec. 36-24(c)(2) authorizes the BOA to consider a waiver of the sidewalk requirement for all new multi-family residential and/or commercial uses.

STANDARDS: Exceptions to the sidewalk requirement may be considered under the following circumstances:

1. If sidewalks are scheduled to be installed as part of a state or town project within 10 years, then the developer may pay a fee in lieu of construction equal to 100% of the full cost of the sidewalk as estimated by the Town's engineer
2. Where existing and future (based on the potential for development in the area) pedestrian volumes and/or vehicles volumes are so low that the level of conflict between vehicles and pedestrians walking on the street is minimal. This exception may not be used where road geometry creates sight distance problems.
3. Where the construction of sidewalks in the findings of fact by the BOA would create greater harm or danger to the pedestrians

Vice Chairman Lewis declared the public hearing open.

Vice Chairman Lewis also inquired of the Board if any member had any bias or had participated in any ex parte communication regarding the matter to be heard. No Board Member disclosed such a bias or action.

Vice Chairman Lewis asked which individuals wished to participate as parties to the matter before the Board. The Board acknowledged applicant Serota Mars Hill, LLC and Planning Director James Eller had standing to participate in the hearing, each were duly sworn and made parties to the matter. No other appearances or requests were made to be a party to this matter.

Mr. Eller described the nature of the application which called for a waiver of the sidewalk requirements applicable to all new multifamily and commercial development.

Mr. Eller submitted into evidence an affidavit of mailing as exhibit 1-A, an affidavit of posting as exhibit 1-B and an affidavit of publication as exhibit 1-C.

Mr. Eller also submitted a packet of information into evidence as exhibit 2. Said packet of information included a "Statement Regarding Sidewalk Waiver, Garrison Road", Section 36-24 entitled sidewalk requirements from the Code of Ordinances, a vicinity map and a site plan submitted by the applicant showing the proposed use of the property.

Mr. Eller testified that sidewalks do not exist on Merrimon Avenue or Garrison Road in the vicinity of the project and stated that there was no evidence of a sidewalk project occurring along same during the next ten years due to the terrain and lack of right-of-way.

Mr. Mercer, appearing on behalf of the owner and applicant, testified that if constructed as required by Section 36-24, the sidewalk would only be in front of the applicant's commercial development and would not connect to any other sidewalks. The construction of the sidewalk in front of the applicant's commercial development are not warranted and may actually cause greater harm or danger to the pedestrians on Garrison Road due to the abrupt beginning and ending of a required sidewalk.

Having heard all the evidence and heard the responses to all questions asked, Vice Chairman Lewis closed the evidentiary hearing.

4. Consideration of a Motion Establishing a Ruling on the Aforementioned Sidewalk Waiver.

Vice Chairman Lewis reviewed with the Board the question for deliberation: Does the record include competent, relevant and substantial evidence that the sidewalk construction requirement for commercial uses should be waived for the Stoney Knob Commercial development?

Based on the evidence presented and the arguments made Mr. Parkin motioned to approve the sidewalk waiver for the aforementioned property. Mr. Clauhs seconded and all voted unanimously.

5. Public Hearing Regarding an Application for a Six Month Extension of Time Related to the Start of Construction for the Project Commonly Known as Fairfield Inn ,Weaverville Subject to a Special Use Permit Originally Granted by the Zoning Board of Adjustment on Monday, September 12, 2016.

Vice Chairman Lewis reviewed the procedure for the public hearing which included the following.

INTRODUCTION: Blue Ridge Hospitality Ventures, LLC, is the developer of the Fairfield Inn and Suites by Marriott at 166 Weaver Boulevard, under a special use permit that was issued in September of 2016. The developer has requested a 6-month extension of the time period in which to complete their plans and permitting so that they can begin construction

JURISDICTION: Sec. 36-240(h)(2) authorizes the BOA to consider one 6-month extension of time for the start of construction on projects subject to special use permits

STANDARDS: Reasonable cause shown

Vice Chairman Lewis declared the public hearing open.

Vice Chairman Lewis also inquired of the Board if any member had any bias or had participated in any ex parte communication regarding the matter to be heard. No Board Member disclosed such a bias or action.

Vice Chairman Lewis asked which individuals wished to participate as parties to the matter before the Board. The Board acknowledged applicant Blue Ridge Hospitality Ventures, LLC and Planning Director James Eller had standing to participate in the hearing, each were duly sworn and made parties to the matter. No other appearances or requests were made to be a party to this matter.

Mr. Eller described the nature of the application which called for a six month extension for the start of construction on projects subject to a special use permit.

Mr. Eller submitted into evidence an affidavit of mailing as exhibit 1-A, an affidavit of posting as exhibit 1-B and an affidavit of publication as exhibit 1-C.

Mr. Eller also submitted a packet of information into evidence as exhibit 2. Said packet of information included a "Statement Regarding an Extension of Time for the Start of Construction for Projects Subject to an Existing Special Use Permit", Section 36-240 of the Code of Ordinances entitled Unified Business Development, a vicinity map, order granting a special use permit to the subject property on October 10, 2016 and a request for extension dated August 28, 2017.

Mr. Mercer, appearing on behalf of the owner and applicant, testified that the delay in construction was in parts due to the difficulty of the applicant in obtaining ownership of the property and the month's long process of obtaining certain permit from Buncombe County.

Having heard all the evidence and heard the responses to all questions asked, Vice Chairman Lewis closed the evidentiary hearing.

6. Consideration of a Motion Establishing a Ruling on the Aforementioned Application for a Six Month Extension of Time for a Project Subject to a Special Use Permit.

Vice Chairman Lewis reviewed with the Board the question for deliberation: Does the record include competent, relevant and substantial evidence that the developer of the Fairfield Inn and Suites by Marriott should be granted a 6-month extension on the deadline to begin construction?

Based on the evidence presented and the arguments made Mr. Clauhs motioned to approve requested six month extension of time related to the start of construction. Ms. Wright seconded and all voted unanimously.

7. Discussion Related to a Staff Request that the Board Consider the Elimination of a Previously Established Order.

Vice Chairman Lewis reviewed the procedure for the public hearing which included the following.

INTRODUCTION: The Town requests the repeal of an order dated August 10, 2015, which granted a variance on a proposed development that was never approved. The property is now owned by Shakamar Investment Group, LLC, is located on Reems Creek Road and bears PIN 9742-94-9526.

JURISDICTION: Sec. 36-328(2) provides BOA authority to grant variances.

STANDARD TO REPEAL: Did the BOA have jurisdiction on August 10, 2015, to grant the variance as requested?

Vice Chairman Lewis declared the public hearing open.

Vice Chairman Lewis also inquired of the Board if any member had any bias or had participated in any ex parte communication regarding the matter to be heard. No Board Member disclosed such a bias or action.

Vice Chairman Lewis asked which individuals wished to participate as parties to the matter before the Board. The Board acknowledged that current owner Shakamar Investments, LLC and Planning Director James Eller had standing to participate in the hearing, each were duly sworn and made parties to the matter. No other appearances or requests were made to be a party to this matter.

Mr. Eller submitted a packet of information into evidence as exhibit 2. Said packet of information included a "Statement Regarding a Proposed Elimination of an Existing Order of the Zoning Board of Adjustment", Order granting a variance dated August 10, 2015, Minutes from a Planning and Zoning Board meeting from September 1, 2015 and Session Law 2014-26.

Mr. Eller testified that on August 10, 2015 the Zoning Board of Adjustment held a quasi-judicial hearing and adopted an order granting three setback variances for a proposed major subdivision then known as Fox Ridge. Session Law 2014-26 dictated that the Town of Weaverville lost its extra territorial jurisdiction on July 1, 2014 and the property wasn't annexed into the municipal limits of the Town until August 21, 2017. Therefore the Zoning Board of Adjustment, at the time of the evidentiary hearing, did not have jurisdiction over the property

Having heard all the evidence and heard the responses to all questions asked, Vice Chairman Lewis closed the evidentiary hearing.

8. Consideration of a Motion Establishing a Ruling on the Aforementioned Elimination of a Previously Established Order.

Vice Chairman Lewis reviewed with the Board the question for deliberation: Does the record include competent, relevant and substantial evidence that the variance granted on August 10, 2015 for Village of Fox Ridge Subdivision should be repealed?

Based on the evidence presented and the arguments made Mr. Parkin motioned to repeal the aforementioned variance. Ms. Wright seconded and all voted unanimously.

9. Any Other Business to Come Before the Board.

There being no further business before the Board, Vice Chairman Lewis called for a motion to adjourn.

10. Adjournment.

Mr. Parkin motioned to adjourn. Mr. Clauhs seconded and all voted unanimously.

**Tycer Lewis, Vice Chairman
Zoning Board of Adjustment**

ATTEST:

**James W. Eller
Town Planner / Deputy Town Clerk**