



**Town of Weaverville
Zoning Board of Adjustment
Monday, October 9, 2017
7pm, Council Chambers**

Agenda

1. Call to Order – Chairman Jeff McKenna
2. Approval of the Minutes from the June 12, 2017 Meeting of the Board.
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.
4. Consideration of a Motion Establishing a Ruling on the Aforementioned Sidewalk Waiver.
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 Fairfiled Inn, Weaverville Subject to Special Use Permit Originally Granted by the Zoning Board of Adjustment on Monday September 12, 2016.
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.
7. Discussion Related to a Staff Request that the Board Consider the Elimination of a Previously Established Order of the Zoning Board of Adjustment.
8. Consideration of a Motion Establishing a Ruling on the Aforementioned Elimination of a Previously Established Order.
9. Any Other Business to Come Before the Board.
10. Adjournment.



Agenda Item 2
Minutes from the June 12, 2017 Meeting of the Board

Town of Weaverville

Zoning Board of Adjustment
Minutes – Monday, June 12, 2017

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, June 12, 2017 in council chambers at Town Hall at 30 South Main Street, Weaverville.

Present: Chairman Al Root, Board Members Paul Clauhs, Tycer Lewis, Jeff McKenna and Cynthia Wright, Alternate Member Jan Rector, Town Attorney Jennifer Jackson and Town Planner James Eller. Absent: Alternate Member Roger Parkin.

1. Call to Order

Chairman Al Root called the meeting to order at 7:00pm.

Chairman Root gave those in attendance a description of the quasi-judicial process to which the Zoning Board of Adjustment is bound and read for the record the standards applied to situations where variances are requested.

2. Approval of the Minutes from the May 8, 2017 meeting of the Zoning Board of Adjustment.

Mr. Lewis motioned to approve the minutes as presented. Mr. McKenna seconded and all voted unanimously.

3. Approval of an Order Granting a Request for a Variance for an unaddressed Parcel on West Street.

Mr. Clauhs motioned to approve the order as presented. Mr. Lewis seconded and all voted unanimously.

4. Approval of an Order Granting a Request for a Variance for the Property Commonly Known as 11 Lakeshore Drive.

Mr. McKenna motioned to approve the order as presented. Mr. Lewis seconded and all voted unanimously.

5. Any Other Business to Come Before the Board.

Chairman Root noted that he would be resigning from the Board at the conclusion of the present meeting in consideration of his intent to file his candidacy for Mayor.

Mr. Lewis motioned to appoint present Vice Chairman Mr. McKenna to Chairman. Ms. Wright seconded and all voted unanimously.

Mr. Clauhs motioned to appoint Mr. Lewis as Vice-Chairman. Ms. Wright seconded and all voted unanimously.

6. Adjournment.

Mr. Lewis motioned to adjourn. Mr. Lewis seconded and all voted unanimously.

**Al Root, Chairman
Zoning Board of Adjustment**

ATTEST:

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



Agenda Items 3&4
Proposed Sidewalk Waiver, Garrison Road

NOTICE OF PUBLIC HEARING

Public Notice is hereby given that the Town of Weaverville Zoning Board of Adjustment will hold a Public Hearing on Monday, October 9, 2017 at 7:00p.m. This meeting will occur within Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC to consider the following item:

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.

If you would like additional information or to review the content related to the Public Hearing you may contact Town Planner and Deputy Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org.

Publication Dates: 9-27-2017 and 10-4-2017



Statement Regarding Sidewalk Waiver, Garrison Road

Question of Jurisdiction:

Section 36-24(c)(2) authorizes the Zoning Board of Adjustment to consider a waiver of the sidewalk requirement for all new multi-family and commercial uses. Staff is in receipt of a zoning permit application which calls for the placement of two 9,000 sq. ft. mixed use buildings on two parcels in the vicinity of the intersection of Garrison and Merrimon. As a development with both multi-family and commercial uses, a sidewalk is required by ordinance on the portion of the property directly adjacent to Garrison Road.

The property owners, and their representatives, have requested such a waiver based upon the conditions the Zoning Board of Adjustment are to consider found in Section 36-24(d)(2,3).

Precedents:

In 2012 the Zoning Board of Adjustment heard a request for a sidewalk waiver from a representative of the development commonly known as Weaver Village and directly adjacent to Weaver Boulevard. Said development was permitted as a Conditional Zoning District by Town Council in 2008 and plans submitted and approved showed a sidewalk running the entire length of the property. The Zoning Board of Adjustment found against the applicant and issued an order regarding same.

For Your Consideration:

The two aforementioned properties do have some significant differences. The first being the amount of traffic experienced on the road(s) accessing the properties and surrounding sidewalk infrastructure. If the present applicant is required to build a sidewalk, there would be little to no pedestrian traffic in the immediate or surrounding area given the heavy flow of vehicular traffic along Merrimon Avenue and the nearest sidewalk connection found nearly half a mile to the north at Creekside Village.

Sec. 36-24. - Sidewalk requirements.

- (a) *Purpose.* The purpose of this section is to ensure that applicants for new construction and renovations, additions, and/or expansions to existing structures consider the need for sidewalks as part of the proposed development and to establish requirements for the construction of sidewalks. While the town recognizes its need to maintain sidewalks and to construct sidewalks to meet the needs of the general population, project applicants may be required to participate in the construction of sidewalks to meet the pedestrian needs of the citizens of the town. The town also recognizes that in certain cases, sidewalks may not be needed or their construction may not be feasible.
- (b) *Sidewalks required.* Sidewalks shall be required for all new construction and for renovations, additions and/or expansions to existing structures which fall into one of the following categories:
- (1) All new multifamily residential development;
 - (2) All new office, institutional, and commercial development; and
 - (3) All renovations to multi-family residential development, office, institutional, and commercial, existing structures where the cost of the renovation exceeds 50 percent of the assessed value, as determined by the Buncombe County Tax Office, of the structure for which the renovation is proposed.
 - (4) All additions or expansions to multi-family residential development, office, institutional, commercial, and industrial development existing structures where the addition or expansion results in an increase of more than 50 percent in the gross floor area of the structure and/or the gross floor area of the addition or expansion is more than 40,000 square feet.

Sidewalks shall be constructed along all street frontages of the lot for which the development is proposed. All sidewalks shall be constructed to a minimum of five feet in width in accordance with the standards set forth in the Town of Weaverville Standard Specifications and Details Manual. Sidewalk rehabilitation shall be required for the types of development projects identified above where the existing sidewalk has been determined by the department of public works to be dilapidated.

(c) *Waiver of requirement.*

- (1) *Waiver of requirement.* For additions to existing residential neighborhoods without sidewalks where sidewalks would not be in character with the existing neighborhood, the town manager is authorized to waive the requirement for sidewalks.
- (2) *Waiver of requirement by the board of adjustments.* In certain instances, the construction of a sidewalk may not be warranted or feasible. In these circumstances, the board of adjustments may waive the requirement that a sidewalk be constructed provided that certain conditions exist.

(d) *Exceptions.* Exceptions may be considered by the board of adjustment under the following circumstances:

- (1) If sidewalks are scheduled to be installed as part of a state or town project within ten years, then the developer may pay a fee in lieu of construction equal to 100 percent 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 vehicle 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. (An example of where this exception could be met is on a dead-end street that has little existing or future development.)
- (3) Where the construction of sidewalks in the findings of fact by the Weaverville Board of Adjustment would create greater harm or danger to the pedestrians.

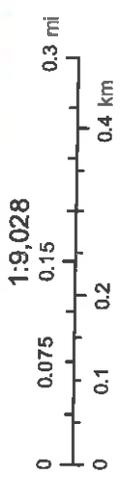
Requests for an exception to the requirement that sidewalks be constructed shall be made to the town zoning administrator on a form provided by the town.

(Ord. of 10-19-1999; Ord. of 9-15-2008, § 1(g))

Buncombe County



September 13, 2017





Agenda Items 5&6

Extension of Time to Start Construction for a Project Subject to an Existing Special Use Permit

NOTICE OF PUBLIC HEARING

Public Notice is hereby given that the Town of Weaverville Zoning Board of Adjustment will hold a Public Hearing on Monday, October 9, 2017 at 7:00p.m. This meeting will occur within Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC to consider the following item:

An application for a for a Six Month Extension of Time Related to the Start of Construction for the Project Commonly Known as Fairfiled Inn, Weaverville Subject to Special Use Permit Originally Granted by the Zoning Board of Adjustment on Monday September 12, 2016.

If you would like additional information or to review the content related to the Public Hearing you may contact Town Planner and Deputy Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org

Publication Dates: 9-27-2017 and 10-4-2017



Statement Regarding an Extension of Time for the Start of Construction for a Project Subject to an Existing Special Use Permit

Question of Jurisdiction:

Section 36-240(h)(2) authorizes the Zoning Board of Adjustment to consider one six month extension of time for the start of construction on projects subject to Special Use Permits. Staff is in receipt of such a request related to the project commonly known as Fairfield Inn, Weaverville.

Sec. 36-240. - Unified business development.

- (a) *Intent.* To establish additional criteria and guidelines for unified business developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot not subdivided into the customary streets and lots and which lot may or may not be so subdivided. These developments are subject to additional design criteria due to the significant impact they are likely to have on surrounding property, traffic patterns, and the physical environment of the area.
- (b) *Applicability.* These regulations shall apply to all business developments with one or more business structures located on a parcel of land. Developments meeting either of the following criteria shall be subject to regulation under this section:
- (1) One or more buildings on the lot or plot, at least one of the buildings containing of 10,000 square feet or more; and
 - (2) Two or more principal buildings located on a parcel of land not customarily subdivided into individual lots.
- (c) *Requirements.*
- (1) No unified business development shall contain less than two acres.
 - (2) Such a development shall abut a major existing thoroughfare or collector street maintained by the state department of transportation or the town and shall have direct access thereto.
 - (3) Points on ingress and egress shall be located a sufficient distance from highway intersections to minimize traffic hazard, inconvenience and congestion. Furthermore, each development shall have a minimum of two such access points to facilitate the safe flow of traffic.
 - a. Minimum pavement width for two-way streets: 24 feet, or 18 feet, provided usable, all weather shoulders are provided on each side of the 18-foot pavement to effect an overall usable minimum width of 24 feet.
 - b. Minimum pavement width for one-way streets: 12 feet.
 - (4) The number, width and location of all curb cuts shall be such as to minimize traffic hazards, inconvenience, and congestion.
 - (5) Parking areas and loading spaces shall be provided in accordance with article VII of this chapter, and all traffic lanes shall be clearly marked. Paved parking areas may be constructed for the individual business units to within ten feet of the front of the unit and may be flush with the side of any unit.
 - (6) Storm drainage and sanitary sewerage shall be provided, as approved by the town and by the Metropolitan Sewerage District, respectively, and in accordance with the regulations set forth in this Code or other applicable regulations.
- (d) *General plan.* Each application shall be accompanied by a general site plan, drawn neatly and to scale, showing:
- (1)

Property lines, street and other public right-of-way lines, public utility easements, and rights-of-way.

- (2) Topography of the site, showing five-foot contours and true elevations.
 - (3) Location and approximate size of all existing and proposed buildings and structures within the site and ownership of all properties within 500 feet of the site boundaries.
 - (4) All proposed points of ingress and egress together with the proposed pattern of internal traffic circulation and parking areas.
 - (5) All proposed provisions for stormwater collection and disposal, including both natural and manmade features, and the proposed treatment of ground cover, slopes, banks and ditches.
 - (6) Proposed connections with the town water shall have a commitment letter from the town and sewer systems shall have a sewer system allocation approval from the Metropolitan Sewerage District and proposed locations of trash or garbage bulk containers shall be shown on the plans.
 - (7) Landscaping shall be provided and must comply with article VI of this chapter. The landscaping plan required by article VI shall be submitted for approval to the zoning board of adjustment, as well as the site plan.
 - (8) Each site and landscaping plan shall be accompanied by a statement that an erosion control plan has been submitted to the North Carolina Department of Environment and Natural Resources (DENR) or its successor.
 - (9) The zoning board of adjustment may require other matters to be incorporated into the special use which are for the protection of the public health, safety, welfare and convenience.
- (e) *Area requirements.* Area and building requirements shall be the same as for the district in which the unified business district is to be located.
- (f) *Sign requirements.* See section 36-80(d)(3) and article VIII.
- (g) *Buffering requirements.* If the property adjoins a lot zoned residential, the owner or lessee of the unified business development shall be responsible for providing a 20-foot buffer as defined in section 36-5 of this chapter along the side or rear lines where the property adjoins said residential district. This buffer shall be in place before beginning construction on any structure.
- (h) *Subsequent performance.*
- (1) *Detailed plans.* Within six months of the approval of the application and general plan, the applicant shall file detailed plans for review by the zoning administrator showing the details of the proposed development as fully as possible and including elevations and perspectives of proposed construction. If the applicant later wishes to change any of the details of the proposed development, further detailed plans shall be filed for review by the zoning administrator. No building permit for the proposed development, or any part thereof, shall be issued until the zoning administrator has determined that the pertinent detailed plans are in accordance with the application and general plans as approved by the zoning board of adjustment.

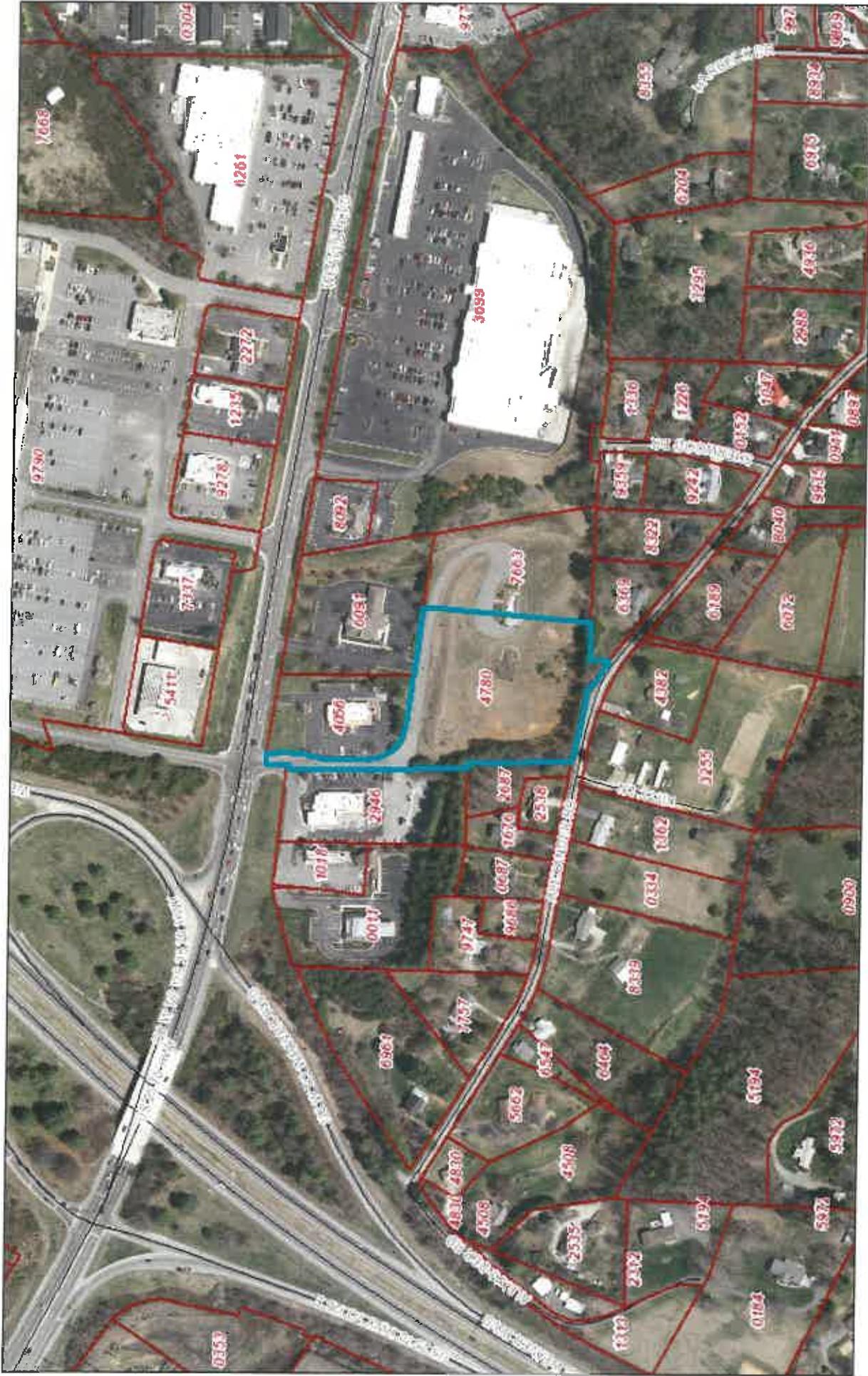
(2)

Construction. If construction or improvements have not begun within 12 months of the date of approval of the detailed plans, the special use permit shall become null and void. One six-month extension may be granted by the zoning board of adjustment when reasonable cause is shown but an application for the extension must be filed prior to the end of the initial 12-month period. No building shall be occupied until a detailed report showing the outcome of construction is submitted by the applicant to the zoning administrator and the administrator has certified that all requirements of this section have been met.

- (3) *[Extension of time limit.]* Projects that have approved detailed plans as of May 1, 2009, but on which there has not been a start of construction will have an additional 24 months (36 months total) from the date of approval of the detailed plans to the start of construction. If there has not been start of construction prior to the expiration of the approved time period, the special use permit shall become null and void. Developers with approved plans must file a request for the additional extension of time with the Weaverville Zoning Administrator prior to the end of the initial 12-month period.

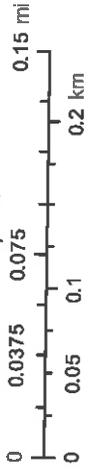
(Ord. of 6-19-1978, Art. XIII, § 17-1320; Ord. of 9-15-2008, § 1(u)—(w); Ord. of 4-20-2009, § 1; Ord. of 11-18-2013, § 2)

Buncombe County



September 13, 2017

1:4,514



**TOWN OF WEAVERVILLE
STATE OF NORTH CAROLINA**

**SPECIAL USE PERMIT
UNIFIED BUSINESS DEVELOPMENT**

IN THE MATTER OF:

**APPLICANT: BLUE RIDGE HOSPITALITY VENTURE, LLC
PROPERTY LOCATION: 2.5+/- ACRES AT 166 WEAVER BLVD, WEAVERVILLE, NC, 28787
PARCEL IDENTIFICATION NUMBER: 9742-09-6618**

The Zoning Board of Adjustment (hereinafter as Board) of the Town of Weaverville held a Quasi-Judicial Evidentiary Hearing on Monday, September 12, 2016, at 7p.m. in Council Chambers at Town Hall at 30 South Main Street, Weaverville, North Carolina, on an application for a special use permit to allow a unified business development for a 103 room, 4-story hotel.

A quorum of the Board was present with Chairman Al Root, Vice-Chairman Jeff McKenna, Board Members Paul Clauhs, Cynthia Wright, Tycer Lewis and Alternates Jan Rector and Roger Parkin each in attendance. Town Attorney Jennifer Jackson, Fire Marshal Jayson Harwood, and Town Planner & Code Enforcement Officer James Eller were also present.

The Quasi-Judicial Evidentiary Hearing was held after notice of the meeting had been mailed to property owners within five hundred feet of the subject property, notice of the meeting was posted on the subject property and notice of the meeting was duly advertised in a newspaper having general circulation.

At the Quasi-Judicial Evidentiary Hearing on September 12, 2016, Chairman Root presided and reviewed the procedure for the hearing on the special use request. Chairman Root inquired of the Board members whether anyone had any conflicts of interest, potential bias or outside communication concerning this project. None were noted.

The Board acknowledged without objection that the following individuals had standing to participate in the hearing and were made parties to this matter:

Planner/Zoning Administrator James Eller;
Applicant Blue Ridge Hospitality Venture, LLC, which has a contract to purchase the property;
Deborah Shelton who resides at 46 Alexander Road; and
Kelly Terry who resides at 39 Alexander Road.

The following were sworn in as potential witnesses: James Eller, Jayson Harwood, Marvin Mercer, Bob Hodges, John Sandman (?), Bernie Edwards, Deborah Shelton and Kelly Terry.

Documentary evidence was submitted and admitted into evidence without objection as follows:

- Exhibit A-1 – Affidavit of Publication
- Exhibit A-2 – Affidavit of Posting
- Exhibit A-3 – Affidavit of Mailing
- Exhibit B-1 – Application for Unified Business Development and Checklist
- Exhibit B-2 – MSD Allocation Approval
- Exhibit B-3 – Real Estate Sales Agreement
- Exhibit B-4 – Complete set of Plans (Sheets C-1 through C-4)
- Exhibit C – Aerial Image of Site and neighboring properties
- Exhibit D-1 through D-4 – Photographs of the Site

James Eller introduced the project and the Applicant, through its manager and engineer, reviewed the project and the plans and answered questions.

Deborah Shelton indicated that she was concerned about people coming and going through a hole in the fence, potential for light and noise pollution since it is a 24-hour business, adequate buffering, cutting of a bank and existing trees, outdoor amenities which would increase the noise. Kelly Terry expressed concerns about adequate buffering and screening, how lighting will affect her property, and whether the hotel expects to have lots of tractor trailers staying as guests.

Based on the documentary and testimonial evidence provided at the Evidentiary Hearing the Board makes the following FINDINGS OF FACT and CONCLUSIONS:

1. This matter was properly noticed in accordance with North Carolina law and Town Code.
2. The proposed unified business development is for a Fairfield Inn to be located at 166 Weaver Boulevard and consisting of a 103-room, 4-story hotel with rooms accessible internally, onsite security provided, no outside amenities such as pools, 121 parking spaces provided, access to Weaver Boulevard via an existing road intersecting with DOT road Weaver Boulevard at an intersection having dedicated turning lanes and a traffic light.
3. The lighting plan for the project will be developed by the applicant in consultation with Duke Energy and will to the greatest extent possible keep the light directed downward.
4. The proposed unified business development has been designed and planned in accordance with Town Code and, except for those matters specifically addressed herein, meets the standards set out in Town Code §§ 36-240 and 36-238.
5. The applicant has been working with the Town's Public Works Director on water allocation for this project. It was originally expected that a 2-inch water meter and allocation request would be sufficient and fall under the authority of the Public Works Director. Just prior to the September 12th Zoning Board of Adjustment meeting it was discovered that a 3-inch meter and allocation were necessary and requires approval by Town Council. The applicant has, therefore, not yet secured water meter and allocation approval from the Town of Weaverville for this project but intends to request the same at Town Council's next regularly scheduled meeting on September 19, 2016, and understands that the project cannot be approved without a condition requiring the approval of a water meter and allocation from the Town Council of Weaverville.
6. It was admitted by the applicant's engineer that this project would trigger the threshold calling for a traffic impact study for the project. However, due to the property's direct access to existing roads with dedicated turning lanes and a traffic light the Board finds that there is no purpose in having a traffic impact study conducted for this project as the remedies to handle the flow of traffic generated by the project are already in place.
7. The applicant's plans currently show two driveways/access roads, one to the East and one to the West of the hotel footprint, which provide a means of ingress and egress to a road that will be used to access Weaver Boulevard at a traffic light and to a right-of-way to access Weaver Boulevard through the SunTrust Bank parking lot. The Board finds that should the applicant wish to eliminate the driveway shown on the western side of the hotel and move the footprint of the building westward by up to 20 feet the project will still be in compliance with the standards set forth in §§ 36-240 and 36-238 as long as access to the hotel from the intersection at the traffic light on Weaver Boulevard between McDonalds and Bojangles is provided.
8. As this project abuts a residential district with several residences located just beyond the project boundaries it is necessary that the owner of the property install, repair and maintain in serviceable condition a fence which will serve to separate the property on which the hotel will be located from those residential properties along Alexander Road.

9. A 20-foot wide landscaped buffer is adequate if the buffer area is planted with sufficient vegetation selected from the Town's approved list found in Article 6 of Chapter 36 of Town Code. It is noted that the applicant agreed to provide taller and more prolific plantings within the 20-foot buffer.

NOW THEREFORE, based upon the foregoing findings and conclusions, the Zoning Board of Adjustment for the Town of Weaverville hereby waives the requirement for presentation of a traffic impact study and concludes that the application for a special use permit should be granted subject to certain conditions.

IT IS, THEREFORE, ORDERED that the application for the special use permit submitted by Blue Ridge Hospitality Venture, LLC, and shown on Exhibit B-4, a copy of which is attached hereto and incorporated herein, is hereby approved and the special use permit for the project is GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. Weaverville Town Council approval of a 3-inch water meter and water allocation sufficient for the project;
2. Repair and/or installation of a fence to separate the project from Alexander Road and maintenance of that fence in a serviceable condition;
3. Installation and maintenance of a 20-foot wide landscape buffer along all portions of the property which abut a residential zoning district and the planting of that buffer area with plants and trees that meet or exceed, in height and/or density, those required by Article 6 of Chapter 36 of Town Code;
4. The width of all access road(s) must be at least 20 feet to meet Fire Code; and
5. If blasting of rock on the property is necessary, the applicant/owner/developer must provide all properties entitled to notice of this hearing with notice of the date and time of such blasting at least two weeks in advance.

An alternate plan in which the western driveway/access road is eliminated and the building footprint is moved westward by not more than 20 feet is also hereby GRANTED subject to the same conditions noted above and subject to the provision of a revised plan to the Town's Zoning Administrator.

Effective as of the 10th day of October, 2016.

Al Root, Chairman
Zoning Board of Adjustment

ATTEST:

James W. Eller
Town Planner / Deputy Town Clerk

8/28/17

Mr. James Eller
Planning and Code Enforcement Officer
30 S. Main St.
PO Box 338
Weaverville, NC 28787

Mr. Eller:

As you recall, Site Plan and Zoning was approved for Blue Ridge Hospitality Ventures, LLC to develop a Fairfield Inn and Suites by Marriott at 166 Weaver Boulevard in Weaverville in September of 2016. We are asking that you extend the Site Plan and Zoning Permit for another six (6) months to allow for the completion of our plans and permitting.

Mr. Marvin Mercer, PE is currently obtaining approval and permits for our Storm water and Sedimentation and Erosion Control plans. Mr. Bob Haynes is reviewing our building plans for permitting later this Fall/Winter. Hopefully we will be in a position to begin site work later this year.

We appreciate any consideration you may give us. As previously stated, we are looking forward to being part of your community with our Project.

Thank you.



John Sandlin

President

☎ 910-256-4841 ☎ 910-352-5911

📍 107 Stokley Drive Suite 100 Wilmington, NC 28403

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Agenda Items 7&8
Proposed Elimination of an Existing Order



Statement Regarding a Proposed Elimination of an Existing Order of the Zoning Board of Adjustment

In 2015 Town Council granted a water line extension to an unaddressed parcel on Reems Creek Road, then known as Village at Fox Ridge, in conjunction with a voluntary annexation. In July, 2017 staff was contacted by the new property owner who wished to declare vested rights for a 22 unit single family home major subdivision combined with the voluntary annexation petition.

It is staff's position that vested rights were not eligible to be claimed as the major subdivision had not been officially recommended to Town Council by the Planning and Zoning Board or heard in any capacity by Town Council, variances had been granted by the Zoning Board of Adjustment on lots which did not exist and the Town had no jurisdiction over the property at that time.

While not party to these conversations, to the best of my knowledge, here is what occurred:

- In 2015 Town Council granted a waterline extension in conjunction with a voluntary annexation. At that time no voluntary annexation petition filled with the Town Clerk and therefore no petition was considered.**
- On August 10, 2015 the Zoning Board of Adjustment adopted an order granting a variance related to the front yard setback requirements established by the desired R-2 zoning district for three lots within a proposed major subdivision. This is not permissible under North Carolina law as variances may not be granted to parcels of land which do not exist. This action also significantly blurred the line between quasi-judicial and administrative actions.**
- On September 1, 2015 the Planning and Zoning Board was asked to consider and offer a recommendation to Town Council on a major subdivision in which three of the lots did not meeting the dimensional requirements established by the Zoning Ordinance. A motion to table the consideration of the proposed subdivision was made and approved. At this point the project disappears and does not reemerge until July, 2017. The Planning and Zoning Board and Town Council may not consider subdivision approval, as this is an administrative decision, unless all the qualifications of the ordinance are met. As evidenced by the three aforementioned variances, this was not the case.**
- Lastly, and coming full circle, the North Carolina General Assembly removed the Town of Weaverville's authority to exercise its Zoning Ordinance outside of municipal borders effective via a local act on July 1, 2014. Given that the voluntary annexation had not occurred, the Town of Weaverville had no authority to act in any way related to the proposed development of the property.**

Having met with the new property owner and their representatives, the decision has been made to once again proceed with the project as a major subdivision rather than a conditional zoning district. Staff is in possession of a major subdivision application in which the number of lots has been reduced from 22 to 21 and the resultant lots, upon initial review, have be crafted in accordance with the dimensional requirements of the R-2 Zoning District.

On Monday, August 21, 2017 Town Council adopted a voluntary annexation petition for the property and granted an initial zoning for same as R-2.

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT

ORDER GRANTING
REQUEST FOR A VARIANCE

Applicant: Russ Robertson

Property Location: Village at Fox Ridge Subdivision, located off Reems Creek Rd.

Parcel Identification Number: 9742-94-9526 Zoning District: R-2

The Board of Adjustment for the Town of Weaverville held a public hearing on August 10, 2015, at 7:00 p.m. in the Council Chambers for the Town of Weaverville at 30 South Main Street in Weaverville, North Carolina, on a request from Russ Robertson for a variance reducing the required 30-foot setback on Lots 9, 15 and 16 of the Village at Fox Ridge Subdivision, pursuant to Section 36-328(2) of the Code of Ordinances of the Town of Weaverville, on property zoned R-2. A quorum of the Board of Adjustment was present, including Chairman Al Root, and Board Members Warren Alcorn, Paul Clauhs, Jeff McKenna and Cynthia Wright.

The public hearing was held after notice of the meeting was mailed to all persons owning property within the required 200-foot area surrounding the property described in the application. No objections about the notice were raised.

The Board of Adjustment for the Town of Weaverville, after having held a public hearing in this matter and having considered all the evidence and arguments presented at the hearing, finds as follows:

1. Documentary evidence was submitted and admitted into evidence, as follows:
 - a. A copy of the Application for a Variance to Chapter 36 of the Weaverville Zoning Ordinance from the Applicant, dated July 24, 2015, admitted as Town's Exhibit "1".
 - b. A copy of the preliminary site plan for the Village at Fox Ridge Subdivision, drafted by Mercer Design Group, P.C., depicting all lots, including the Lots 9, 15, and 16, admitted as Applicant's Exhibit "2".
2. According to testimony from Marvin Mercer from the Mercer Design Group, P.C., duly sworn, the development consists of 22 lots on eight (8) acres, which is less than half of the number of lots that can be developed pursuant to Zoning Ordinance. Currently, all of the lots in the site plan meet the zoning requirements except for Lots 9, 15, and 16. The property is zoned R-2.
3. Based on Exhibit 2 and testimony from Mr. Mercer, due to the topography and zoning restrictions, Lots 15 and 16 have two (2) street-front property lines. Each lot has one (1) street-front property line that accommodates the required 30-foot setback and one (1) street-front property line that can only accommodate a 15-foot setback, which cannot be approved by the Planning and Zoning Board without a variance.
4. Based on Exhibit 2 and testimony from Mr. Mercer, due to topography and zoning restrictions, Lot 9 has only one (1) street-front property line, but does not have the depth

due to street requirements to accommodate a 30-foot setback, which cannot be approved by the Planning and Zoning Board without a variance. As depicted on Exhibit 2, the site plan currently calls for a 20-foot setback for Lot 9's street-front line.

5. Based on further testimony from Mr. Mercer, he believes that the current site plan, depicted in Exhibit 2, could be modified in such a way as to allow for a 30-foot driveway and/or entranceway on the east side of Lot 9.

6 Pursuant to subsection 36-328(2)(a), an unnecessary hardship would result from the strict application of the setback requirement due to the nature of the topography and other zoning restrictions, such that Applicant would lose the benefit of all three (3) lots in question.

7. Pursuant to subsection 36-328(2)(b), the hardship results from the topography, location, and size of the property.

8. Pursuant to subsection 36-328(2)(c), the hardship did not result from actions taken by the applicant or the property owner, to the contrary, the hardship results from the nature of the topography, location and size of the property.

9. Pursuant to subsection 36-328(2)(d), the requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinances such that public safety is secured and substantial justice is achieved.

10. Pursuant to subsection 36-328(2)(e), the variance is not requested to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.

11. Pursuant to subsection 36-328(2)(f), the variance is not a request to permit a prohibited sign.

NOW, THEREFORE, based upon the foregoing findings of fact, the Board of Adjustment of the Town of Weaverville concludes the following:

1. A variance reducing the setback requirement from 30 feet to 15 feet on the northern street-front line of Lot 15 as depicted on Exhibit 2, is hereby granted on the condition that any subdivision plats, deeds, covenants and/or restrictions encumbering Lot 15 shall require that the driveway and/or front entranceway for such Lot 15 be located on the western street-front line of Lot 15 which shall accommodate the 30-foot setback as required by the Zoning Ordinance; and
2. A variance reducing the setback requirement from 30 feet to 15 feet on the northern street-front line of Lot 16 as depicted on Exhibit 2, is hereby granted on condition that any subdivision plats, deeds, covenants and/or restrictions encumbering Lot 16 shall require that the driveway and/or front entranceway for such Lot 16 be located on the eastern street-front line of Lot 16 which shall accommodate the 30-foot setback as required by the Zoning Ordinance; and
3. A variance reducing the setback requirement from 30 feet to 20 feet on the southern street-front line of Lot 9 as depicted on Exhibit 2, is hereby granted on the condition

that the property line between Lot 9 and Lot 10 be redrawn in such a way as to allow for a 30-foot driveway and/or front entranceway on the eastern line of Lot 9 and that any subdivision plats, deeds, covenants and/or restrictions encumbering Lot 9 shall require that the driveway and/or front entranceway for such Lot 9 be located on the eastern line of Lot 9.

IT IS, THEREFORE, ORDERED.

Effective as of the 10th day of August, 2015.

TOWN OF WEAVERVILLE ZONING BOARD
OF ADJUSTMENT

By: Al Root
Al Root, Chairman

Sherry Shields
Board Clerk

TOWN OF WEAVERVILLE
PLANNING & ZONING BOARD
Minutes - September 1, 2015

The Town of Weaverville Planning and Zoning Board met on September 1, 2015 at 5:45 P.M. in the Conference Room, at 30 South Main Street.

Present: Chair Doug Theroux, Board members Catherine Cordell, Gary Burge, Tyker Lewis, Leslie Osborne, and Terry Dawson, arriving late. Attorney Rebecca Reinhardt, Town Manager Selena Coffey, Interim Town Manager Mike Morgan, and Shelby Shields.

Visitors: Council Member Gene Knoefel, Bobby McMahan, Michael Schoeppler, Marvin Mercer, Russ Roberson, and Barbara Dawson.

Mr. Theroux called the meeting to order. He introduced Selena Coffey, the new Town Manager, and recognized Mike Morgan and Gene Knoefel.

Ms. Osborne, alternate, will serve as a regular member in the absence of Terry Dawson.

Approval of Minutes:

The motion to approve the Minutes, of August 4, 2015, as corrected, was made by Mr. Lewis, seconded by Ms. Osborne, and unanimously approved.

Mr. Dawson arrived late, and resumed his position on the Board. Ms. Osborne will serve as alternate.

Review of Major Subdivision for John Rewak/Mike Schoeppler:

Bobby McMahan, Surveyor, explained that Mr. Schoeppler and Mr. Rewak are requesting preliminary approval of the subdivision of 33.67 acres to be subdivided into three (3) lots; the one for consideration is 2.25 acres. The other two (2) lots are 15.71 acres each, and both exempt from the Subdivision Ordinance since they each consists of ten (10) acres. Each lot has the required 35 foot public road frontage on Longstreet Court in Hamburg Estates. All the lots will be served by the Town of Weaverville water system. The property is not served by MSD and will require a septic system.

The lot in question, 19A is 2.25 acres will be served by the Town's water system, and has the required 35 foot road frontage on a Town maintained street. Since public sewer is not available a permit will be require from Buncombe County for a septic system.

There were questions of the proposed private right of way stated on the 2.25 acre lot. After a brief discussion, Ms. Reinhardt stated that typically it would be referred to as a private driveway. Mr. McMahan agreed and stated that the wording would be changed.

After further discussion, Mr. Lewis made the motion to table this request until next month, with

the recommendations that all the required utilities, public water and public gas, plus elevations, and change the wording from road to private driveway be shown to the final plat. Also obtain a septic permit from Buncombe County for the 2.24 acre lot (19-A). The motion was seconded by Mr. Burge.

Ms. Osborne asked if "in the past haven't we approved something with the requirement that it is done for the Council meeting"? Mr. Theroux stated that has been done in the past, but we are not going to do that anymore, I feel that the full Board should see the final plats.

The motion was unanimously approved to table the request from Mr. Schoeppler and Mr. Rewak for preliminary approve of the subdivision on Longstreet Drive, Hamburg Estates.

Review of Major Subdivision - Village for Fox Ridge:

Mr. Mercer, Mercer Design Group, stated that Russ Roberson has requested the subdivision of eight (8) acres, located outside the Town Limits, on Reems Creek Road. The property is zoned R-2 by Buncombe Country, but the subdivision is done according to the Town of Weaverville requirement for R-2. Mr. Roberson has requested water service from the Town of Weaverville, and was granted water service subject to the property being annexed when the subdivision has met all the requirements of the Zoning Board of Adjustment and Planning and Zoning Board. The Zoning Board of Adjustment granted a variance on set-back requirements to Lot # 9, Lot # 15, and Lot # 16. Mr. Mercer explained the need for the variances and the conditions in which the ZBA granted the variances. A driveway permit has been secured from NC DOT.

Mr. Theroux stated that there is no plat, by definition in the Ordinance, on the subdivision.

Mr. Mercer stated that he, as the engineer, does not prepare the plats, the surveyor does that. What he has done is a site plan, showing the set-back lines, acreage, and frontages, the three key components. Unfortunately, the key elements required on a plat couldn't be done. When he found that he had to have a full plat, Mr. McMahan could not get the plat done in time. Mr. Mercer further stated that he had created a title block on the site plan, putting all the information that he could. He stated the purpose of doing this was to hopefully move forward, and get Planning and Zoning to recommend approval, even if conditions, before going to Council. He felt the preliminary plat should be more of a concept plan, rather than requiring all that is on a final plat, to be on the preliminary..

Mr. Mercer explained a small strip of land along Reems Creek Road borders Mr. Roberson's property, which Mr. Roberson is in the process of purchasing at this time. The strip of property is mostly DOT right-of-way, and at the edge of the storm water pond, and has no effect on the subdivision other than the strip being a part of the whole subdivision once the purchase is completed. It will still remain as DOT right-of-way.

Again, Mr. Mercer stated that he felt that there needed to be some changes made to the Subdivision Ordinance, pertaining to the check list on the requirements for preliminary and final plats. He further stated that if he followed everything that the check list asks for, he would be in direct conflict with his Board. Mr. McMahan stated that he would be in conflict also.

There are some things in the list that are ahead of themselves.

Mr. Theroux stated that he can't disagree, having been on that side of the table, and is for going forward to make some changes to the Ordinance. But, this is the Ordinance that the Board has to live with now. There was a lengthy discussion on the requirements of a preliminary vs final check list, and the need for revisions to the Ordinance. Mr. Theroux recommended that, if the Board is going to do this, then bring in an engineer and surveyor for their input, instead of the Board trying to write the Ordinance, since it doesn't have the expertise.

Mr. Lewis made the motion to send it forward to the Council, with the conditions that the plat meets the requirement for the preliminary plat required. The motion died for lack of a second.

There was a lengthy discussion on ways to move forward with amending the Ordinance.

After further discussion, Mr. Burge made the motion to table the request for Village at Fox Ridge, requested by Russ Roberson until it meets all the requirements of the Ordinance. The motion was seconded by Mr. Dawson, and approved by a vote of 4 -1. Mr. Lewis cast the opposing vote.

Ms. Cordell asked Mr. Theroux if he would present the problem with the Subdivision Ordinance to Town Council, and ask them what their recommendation of what they want the Board to do to simplify the preliminary plat process, so the developer doesn't have to spend the same kind of money that a final plat requires.

There was further discussion on the subdivision process. Mr. McMahan and Mr. Mercer, both, offered their expertise in helping to amend the process the application requires in Section 25-83, when applying for a major subdivision.

There being no further business, the motion was made by Ms. Cordell, seconded by Mr. Burge, and unanimously approved to adjourn the meeting.


Shelby Shields Board Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2014-26
HOUSE BILL 531

AN ACT TO AMEND THE EXTRATERRITORIAL JURISDICTION AUTHORITY OF THE TOWN OF WEAVERVILLE, TO MAKE A SIMILAR TECHNICAL CORRECTION AS TO THE CITY OF ASHEVILLE, TO ALLOW THE COUNTY OF BUNCOMBE TO ZONE CERTAIN DONUT HOLES, TO REPEAL THE BUNCOMBE COUNTY CULTURE AND RECREATION AUTHORITY, AND TO ALLOW THE BOARD OF COMMISSIONERS OF HENDERSON COUNTY TO STANDARDIZE THE CEILING ON FIRE DISTRICT TAXES IN HENDERSON COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-360 is amended by adding a new subsection to read:

"(n) The Town of Weaverville shall have no authority to exercise any power under this section outside its corporate limits."

SECTION 1.(b) Upon relinquishment of the jurisdiction over an area that the Town of Weaverville is regulating under Article 19 of Chapter 160A of the General Statutes, the city regulations and powers of enforcement shall remain in effect until (i) Buncombe County has adopted the regulation or (ii) a period of 120 days has elapsed following the effective date of this section, whichever is sooner. During this period, Buncombe County may hold hearings and take other measures that may be required in order to adopt county regulations for the area.

SECTION 1.(c) This section applies to the Town of Weaverville only.

SECTION 2. G.S. 160A-360(m), as it applies to the City of Asheville under S.L. 2013-30, reads as rewritten:

"(m) The City of Asheville shall have no authority to exercise any power under this section-section outside its corporate limits."

SECTION 3.(a) G.S. 153A-342(d) reads as rewritten:

"(d) A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. ~~A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory.~~ A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated."

SECTION 3.(b) This section applies to the County of Buncombe only.

SECTION 4. S.L. 2013-262 is repealed.

SECTION 5.(a) G.S. 69-25.1 reads as rewritten:

"§ 69-25.1. **Election to be held upon petition of voters.**

Upon the petition of thirty-five percent (35%) of the resident freeholders living in an area lying outside the corporate limits of any city or town, which area is described in the petition and designated as " _____ Fire District," the board of

(Here insert name)

county commissioners of the county shall call an election in said district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation of property, for the purpose of providing fire protection in said district. The county tax office shall be responsible for checking the freeholder status of those individuals signing the petition and confirming the location of the property owned by those individuals. Unless specifically excluded by other law, the provisions of Chapter 163 of the General Statutes concerning petitions for referenda and elections shall apply. If the voters reject



the special tax under the first paragraph of this section, then no new election may be held under the first paragraph of this section within two years on the question of levying and collecting a special tax under the first paragraph of this section in that district, or in any proposed district which includes a majority of the land within the district in which the tax was rejected.

~~The Board of Commissioners of a county may, by ordinance applicable to~~ Upon the petition of thirty five percent (35%) of the resident freeholders living in an area which has previously been established as a fire protection district and in which there has been authorized by a vote of the people a special tax not exceeding ten cents (10¢) on the one hundred dollars (\$100.00) valuation of property within the area, ~~the board of county commissioners shall call an election in said area for the purpose of submitting to the qualified voters therein the question of increasing the~~ increase the maximum allowable special tax for fire protection within said district from ten cents (10¢) on the one hundred dollars (\$100.00) valuation to fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation on all taxable property within such district. Elections on the question of increasing the allowable tax rate for fire protection shall not be held within the same district at intervals less than two years."

SECTION 5.(b) G.S. 69-25.4(a) reads as rewritten:

"§ 69-25.4. Tax to be levied and used for furnishing fire protection.

(a) If a majority of the qualified voters voting at said election vote in favor of levying and collecting a tax in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in said district in such amount as it may deem necessary, not exceeding ten cents (10¢) on the one hundred dollars (\$100.00) valuation of property in said district from year to year, and shall keep the same as a separate and special fund, to be used only for furnishing fire protection within said district, as provided in G.S. 69-25.5.

~~Provided, that if a majority of the qualified voters voting at such elections vote in favor of levying and collecting a tax in such district, or vote in favor of increasing the tax limit in said district, Upon adoption of an ordinance pursuant to G.S. 69-25.1, then the board of county commissioners is authorized and directed to levy and collect a tax in such districts in such amount as it may deem necessary, not exceeding fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation of property in said district from year to year."~~

SECTION 5.(c) This section applies to Henderson County only.

SECTION 6. Section 1 of this act becomes effective July 1, 2014. Section 2 of this act is effective on and after April 17, 2013. Section 4 of this act becomes effective June 30, 2014. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 2014.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives