



**Town of Weaverville  
Zoning Board of Adjustment  
Monday, May 8, 2017  
Council Chambers**

**Agenda**

1. Call to Order – Chairman Al Root.
2. Public Hearing Regarding an Application for a Variance on an Unaddressed Parcel on West Street, PIN: 9742-25-3578. The Nature of Said Variance is from the Minimum Lot Area and Minimum Lot Width Established by the Zoning Code on a Nonconforming Lot of Record.
3. Consideration of a Motion Establishing a Ruling on the Aforementioned Application for a Variance.
4. Public Hearing Regarding an Application for a Variance on the Property Commonly Known as 11 Lakeshore Drive, PIN: 9742-16-0551. The Nature of Said Variance is from the Setback and Yard Use Limitations Established by the Zoning Code.
5. Consideration of a Motion Establishing a Ruling on the Aforementioned Application for a Variance.
6. Any Other Business to Come Before the Board.
7. Adjournment.



**Agenda Items 2-5**  
**Sec. 36-328 Powers and Duties (2) Granting of Variances**

**Sec. 36-328. - Powers and duties.**

The zoning board of adjustment shall have the following powers and duties:

- (1) *Granting of special use permits.* The zoning board of adjustment is authorized to grant special use permits where authorized in a particular use district upon deciding that the request complies with applicable standards and procedures in this chapter. Reasonable and appropriate conditions may be imposed upon any special use approved.
- (2) *Granting of variances.* The zoning board of adjustment is authorized, to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of this chapter upon a showing of all of the following:
  - a. Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - d. The requested variance is consistent with the spirit, purpose, and intent of this chapter such that public safety is secured and substantial justice is achieved.
  - e. The variance is not a request to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.
  - f. The variance is not a request to permit a prohibited sign. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
- (3) *Appeals.* The zoning board of adjustment is authorized to hear and decide appeals of decisions of administrative officials charged with enforcement of this chapter. "Decision" includes any final and binding order, requirement or determination of such officials.
  - a. Any person who has standing under G.S. § 160A-393(d) or the town may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.
  - b. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
  - c. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
  - d. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the property owner or applicant. Verification of the posting shall be provided to the official who made the decision. Posting of signs shall not be required.

- e. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- f. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- g. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
- h. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.
- i. When hearing an appeal pursuant to G.S. § 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. § 160A-393(k).
- j. The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

(Ord. of 6-19-1978, Art. XVI, § 1630; Ord. of 3-16-98; Ord. of 11-18-2013, § 1)



**Agenda Items 2-3  
West Street Variance**

Attached you will find the following documentation for your consideration related to the West Street Variance Application:

- Section 36-21: Nonconforming lots of record and Section 36-106: Table of dimensional requirements.
- Statement from staff including the jurisdiction of the Zoning Board of Adjustment and precedents related to this matter.
- Executed Variance Application.
- Map from the Buncombe County GIS noting the Location of the property and recorded plat.

**Sec. 36-21.** - Nonconforming lots of record.

In the event that the owner of a lot of record in any particular use district owned such lot of record at the time of the adoption of this chapter or any applicable amendment thereto and neither he nor a successor in title to such lot of record own sufficient land contiguous to such lot to enable them to conform to the minimum lot size requirements of this chapter, or is unable to meet street access requirements of this Code, the owner or successor in title to such lot may, nevertheless, use such lot as a building site, provided that the current owner obtains a zoning permit or variance in accordance with the following provisions:

- (1) Where the lot area and lot width are not more than 20 percent below the minimum standards specified in this chapter, and all other dimensional requirements are otherwise complied with, the zoning administrator is authorized to issue a zoning permit.
- (2) Where the lot area and lot width are more than 20 percent below the minimum standards specified in this chapter or other dimensional requirements cannot be met, the board of adjustment is authorized to consider requests for variances of such dimensions as shall conform as closely as possible to the required dimensions.
- (3) There must be a maintenance agreement with reference to such private street duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina providing for the continuing maintenance of such "private" street in all weather conditions and setting forth the party or parties responsible for such maintenance.

(Ord. of 6-19-1978, Art. V, § 17-564; Ord. of 9-15-2008, § 1(e))

## Sec. 36-106. - Table of dimensional requirements.

Zoning District	R-1	R-2	R-12	R-3	C-1	C-2	I-1
Minimum Lot Area (sq. ft.)	10,000 <sup>2,7</sup>	7,500 <sub>1,2,3,4,7</sub>	7,500 <sup>4,7,8</sup>	5,445 <sub>1,2,3,4,7</sub>	None	None	None
Minimum Lot Width (ft.)	100	75	75	75	None	50	None
Minimum Front Yard (ft.) (from edge of property line or right-of-way whichever is greater)	30	30	30	30 <sup>*</sup>	0	0	0
Major Thoroughfare	30	30	30 <sup>5</sup>	30	None	60	35 <sup>5</sup>
Minor Thoroughfare	30	30	30 <sup>5</sup>	30	None	25 <sup>5</sup>	
with parking in front						60	
without parking in front						40	
Minimum Side Yard (ft.)							
Abutting Residential District	10	10 <sup>6</sup>	10 <sup>6</sup>	10 <sup>6</sup>	None	30	40

Abutting Commercial or Industrial District	10	10 <sup>6</sup>	10 <sup>6</sup>	10 <sup>6</sup>	None	None	40
Minimum Rear Yard (ft.)							
Abutting Residential District	10	10 <sup>6</sup>	10 <sup>6</sup>	10 <sup>6</sup>	None	30	40
Abutting Commercial or Industrial District	10	10 <sup>6</sup>	10 <sup>6</sup>	10 <sup>6</sup>	None	None	40

See dimensional notes in section 36-107.

(Ord. of 6-19-1978, Art. VIII; Ord. of 9-15-2008, § 1(s) ; Ord. of 5-16-2016(1), § 4)



## **Statement Regarding Dorsey Variance, West Street**

### **Question of Jurisdiction:**

**Section 36-21 Nonconforming lot of record (2) authorizes the Zoning Board of Adjustment to consider requests for variances on nonconforming lots of record where the lot area and lot width are more than 20% below the standards specified for the zoning district in which the property is located.**

**This lot was recorded in 1910, therefore predating the adoption of the Zoning Ordinance of the Town (you may notice the Grove Park Railroad Line running along what is now Merrimon Avenue). The lot is comprised of 7,500 sq. ft. (10,000 sq. ft. required) and bearing a lot width of 50 feet ( 100 feet required).**

**Based upon the aforementioned variables it is my understanding that the Zoning Board of Adjustment is duly authorized to consider the application for a variance for this property.**

### **Precedents:**

**A similarly situated property is located around the corner on South Main Street. 124 and 126 South Main Street were also nonconforming lots of record (recorded in 1920) due to lot area and lot width. In July, 2013 the Zoning Board of Adjustment adopted an order granting the variance.**

**TOWN OF WEAVERVILLE APPLICATION FOR  
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787  
(828) 484-7013 --- fax (828) 645-4776 --- [tgupton@weavervillenc.org](mailto:tgupton@weavervillenc.org)  
**Application Fee: \$250.00 + \$50.00 for each variance requested**

OWNER/APPLICANT NAME: *Aimee Dorsey* APPLICATION DATE: *4-19-17*  
PHONE NUMBER: *828-606-5641* MAILING ADDRESS: *304 Cricklewood Square  
Apt B  
Asheville, NC 28804*  
NATURE OF THE VARIANCE(S): *Non-Conforming Lot Does not  
meet minimum lot area or*  
PROPERTY ADDRESS: *West St lot width*  
PIN: *9742253578* LOT AREA (acres): *.18*  
ZONING DISTRICT: *R2*

APPLICATION IS NOT COMPLETE WITHOUT A GENERAL SITE PLAN.

The Zoning Board of Adjustment is authorized to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of Chapter 36 of the Code of Ordinances upon a showing of all of the following:

- a. Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- d. The requested variance is consistent with the spirit, purpose, and intent of this chapter such that public safety is secured and substantial justice is achieved.
- e. The variance is not a request to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.
- f. The variance is not a request to permit a prohibited sign.

**Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.**

**TOWN OF WEAVERVILLE APPLICATION FOR  
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787  
 (828) 484-7013 --- fax (828) 645-4776 --- [tgupton@weavervillenc.org](mailto:tgupton@weavervillenc.org)  
**Application Fee: \$250.00 + \$50.00 for each variance requested**

**It is the applicant's responsibility to obtain a copy of the Town of Weaverville Zoning Ordinance and to be fully aware of the regulations detailed therein.**

Application has been reviewed with the applicant.

<i>Aimee Dorsey</i>	4-19-17
SIGNATURE OF APPLICANT	DATE
<i>[Signature]</i>	4.24.17
SIGNATURE OF ZONING ADMINISTRATOR	DATE

OFFICE USE ONLY			
FEE: \$ 350 <sup>00</sup>	DATE PAID: 4/19/17	<input checked="" type="checkbox"/>	CHECK # 1007 CASH
DATES OF PUBLIC NOTICE ADVERTISED: 4.24.17 and 5.1.17		DATE OF PUBLIC HEARING: 5.8.17	
ZBA DECISION: <input type="checkbox"/> APPROVED		<input type="checkbox"/> DISAPPROVED DATE:	
<input type="checkbox"/> APPROVED WITH CONDITIONS:			



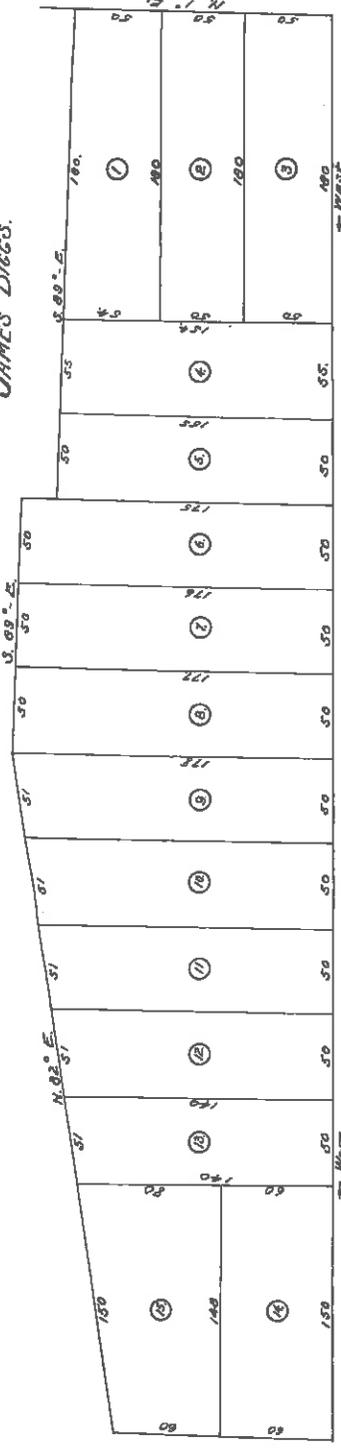
154/56

154 56

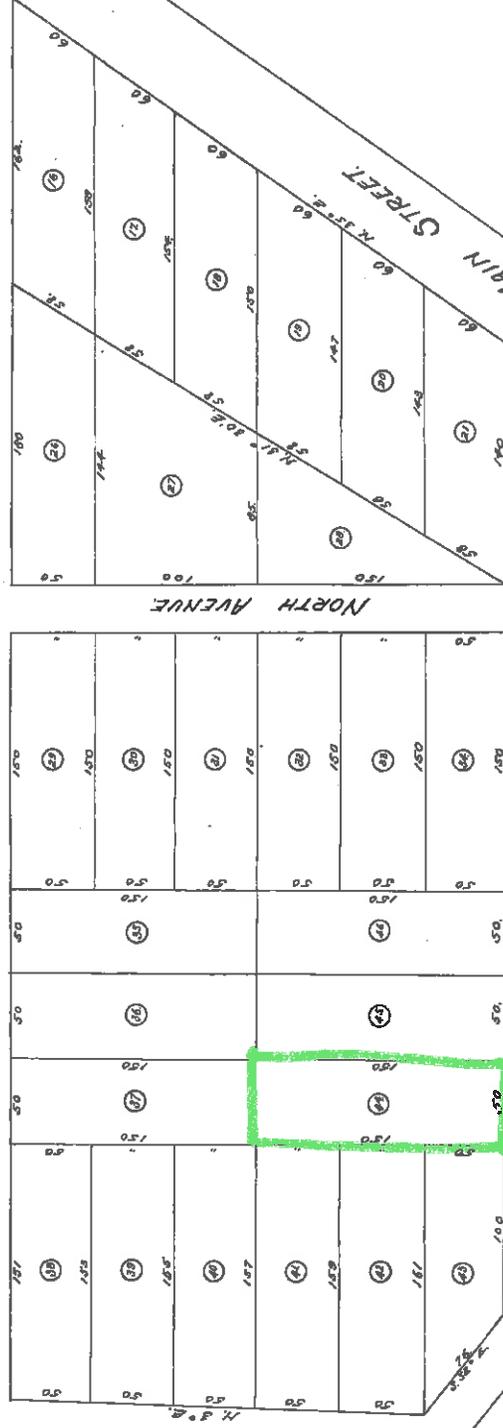
C. C. BROWN.

JAMES BIGGS.

GROVE PARK Electric R.R. Station.



PARK AVE.



NORTH AVENUE

MAIN STREET

WEST AVE.

Reems Ct. Road.



LANDS OF  
**E. F. VANDIVER,**  
 WEAVERVILLE, N. C.

U. S. Reagon, Surveyor

Scale 30'-1" = 1"





**Agenda Items 4-5  
Lakeshore Drive Variance**

Attached you will find the following documentation for your consideration related to the Lakeshore Drive Variance Application:

- Portion of Section 36-5: Definitions and Section 36-106: Table of dimensional requirements.
- (No similar statement from staff is including as the jurisdiction of the Zoning Board of Adjustment is clear and a precedent for a similar variance was not found.)
- Executed Variance Application.
- Map from the Buncombe County GIS noting the Location of the property and an additional map showing the area of the property which must not be built upon due to setback and yard use limitations.

**Sec. 36-57:** Definition of specific words and terms.

**Setback** means:

- (1) The required minimum horizontal distance between the building line and the related front, side, or rear property line.
- (2) For the sign regulations found in article VIII of this chapter, setback shall mean the horizontal distance between the leading face of the curb of a street and the closest point of a sign or sign structure on such lot. Where there is no curb, the measurement shall be made from the edge of the pavement.

**Yard, front.** An open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street and front line of the building, projected to the side lines of the lot.

## Sec. 36-106. - Table of dimensional requirements.

Zoning District	R-1	R-2	R-12	R-3	C-1	C-2	I-1
Minimum Lot Area (sq. ft.)	10,000 <sup>2,7</sup>	7,500 <sub>1,2,3,4,7</sub>	7,500 <sup>4,7,8</sup>	5,445 <sub>1,2,3,4,7</sub>	None	None	None
Minimum Lot Width (ft.)	100	75	75	75	None	50	None
Minimum Front Yard (ft.) (from edge of property line or right-of-way whichever is greater)	30	30	30	30 <sup>*</sup>	0	0	0
Major Thoroughfare	30	30	30 <sup>5</sup>	30	None	60	35 <sup>5</sup>
Minor Thoroughfare	30	30	30 <sup>5</sup>	30	None	25 <sup>5</sup>	
with parking in front						60	
without parking in front						40	
Minimum Side Yard (ft.)							
Abutting Residential District	10	10 <sup>6</sup>	10 <sup>6</sup>	10 <sup>6</sup>	None	30	40

Abutting Commercial or Industrial District	10	10 <sup>6</sup>	10 <sup>6</sup>	10 <sup>6</sup>	None	None	40
Minimum Rear Yard (ft.)							
Abutting Residential District	10	10 <sup>6</sup>	10 <sup>6</sup>	10 <sup>6</sup>	None	30	40
Abutting Commercial or Industrial District	10	10 <sup>6</sup>	10 <sup>6</sup>	10 <sup>6</sup>	None	None	40

See dimensional notes in section 36-107.

(Ord. of 6-19-1978, Art. VIII; Ord. of 9-15-2008, § 1(s); Ord. of 5-16-2016(1), § 4)

**TOWN OF WEAVERVILLE APPLICATION FOR  
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787  
(828) 484-7002--- fax (828) 645-4776 --- [jeller@weavervillenc.org](mailto:jeller@weavervillenc.org)  
Application Fee: \$250.00 + \$50.00 for each variance requested

OWNER/APPLICANT NAME: *Mark Morris* APPLICATION DATE: *4.24.17*  
PHONE NUMBER: *828.712.0923* MAILING ADDRESS: *323.17*  
NATURE OF THE VARIANCE(S): *Yard use limitation Weaverville NC*  
PROPERTY ADDRESS: *11 Lakeshore Drive* *28787*  
PIN: *9742160551* LOT AREA (acres): *5.51*  
ZONING DISTRICT: *R2*

The Zoning Board of Adjustment is authorized to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of Chapter 36 of the Code of Ordinances upon a showing of all of the following:

- a. Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- d. The requested variance is consistent with the spirit, purpose, and intent of this chapter such that public safety is secured and substantial justice is achieved.
- e. The variance is not a request to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.
- f. The variance is not a request to permit a prohibited sign.

**Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.**

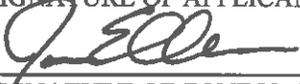
**TOWN OF WEAVERVILLE APPLICATION FOR  
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787  
 (828) 484-7002 --- fax (828) 645-4776 --- [jeller@weavervillenc.org](mailto:jeller@weavervillenc.org)  
**Application Fee: \$250.00 + \$50.00 for each variance requested**

**It is the applicant's responsibility to obtain a copy of the Town of Weaverville Zoning Ordinance and to be fully aware of the regulations detailed therein.**

**Application has been reviewed with the applicant.**

SIGNATURE OF APPLICANT



DATE

3.23.17

SIGNATURE OF ZONING ADMINISTRATOR



DATE

4.24.17

**OFFICE USE ONLY**

FEE: \$ 250      DATE PAID: 4.24.17       CHECK       CASH

DATES OF PUBLIC NOTICE ADVERTISED: 4.26.17 and 5.3.17      DATE OF PUBLIC HEARING: ~~4.27.17~~ 5.8.17

ZBA DECISION:       APPROVED       DISAPPROVED      DATE:

APPROVED WITH CONDITIONS:



