



**Town of Weaverville  
Zoning Board of Adjustment  
Monday, June 12, 2017  
Council Chambers**

**Agenda**

1. Call to Order – Chairman Al Root.
2. Approval of the Minutes from the May 8, 2017 meeting of the Zoning Board of Adjustment.
3. Approval of an Order Granting a Request for a Variance for an Unaddressed Parcel on West Street.
4. Approval of an Order Granting a Request for a Variance for the Property Commonly Known as 11 Lakeshore Drive.
5. Any Other Business to Come Before the Board.
6. Adjournment.



**Agenda Item 2**  
**Minutes from the May 8, 2017 Meeting of the Board**

Town of Weaverville

Zoning Board of Adjustment  
Minutes – Monday, May 8, 2017

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, May 8, 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 Roger Parkin, Town Attorney Jennifer Jackson and Town Planner James Eller.

**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. 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.**

Mr. Eller briefly described the application including the applicant, the location of the property and the nature of the variance being requested.

Ms. Wright motioned to enter the public hearing. Mr. Clauhs seconded and all voted unanimously.

The Board, upon question by the Chairman, reported no conflicts of interest or ex parte communication.

Mr. Eller, on behalf of the Town and Ms. Dorsey, the applicant were identified as parties to the matter and sworn in. Shana Brookshire and Lori Nelson were identified as possible witnesses and were also sworn in.

Mr. Eller presented the following items which were entered into evidence for consideration:

Exhibit 1-A: affidavit of posting, Exhibit 1-B: affidavit of mailing and Exhibit 1-C: affidavit of publication showing that the public hearing has been duly advertised. Exhibit 2: a packet of information submitted to the Board in which the following items were included. Section 36-328 – Powers and Duties of the Zoning Board of Adjustment; Section 36-21 – Nonconforming lots of record; Section 36-106 – Table of dimensional requirements; a statement prepared by staff addressing the question of jurisdiction and precedents related to the requested variance; the variance application; a map of the property from the Buncombe County GIS and the plat of the property recorded in 1910.

Mr. Eller identified the property as an unaddressed lot on West Street known by the parcel identification number 9742-25-3578 and which is shown as Lot 44 on the plat of the Lands of E.F. Vandiver recorded in Plat Book 154 at Page 56, Buncombe County Registry, in 1910, well before the Town's adoption of zoning regulations.

Mr. Eller explained that the lots in this old subdivision do not meet the minimum lot width or minimum lot area of the Town's zoning regulations and the Applicant is requesting a variance of these minimums in order to place a single-family residence on the lot. The nonconforming lot of record is more than 20% nonconforming with the minimum lot area and minimum lot width established by the R-1 Zoning District, which puts the jurisdiction of the variance before the Zoning Board of Adjustment.

Chairman Root asked Ms. Dorsey if she had any questions for Mr. Eller and she denied.

Ms. Dorsey testified to the Board that the property was under contract to be sold contingent on the issuance of a variance to make the lot buildable. Mr. Lewis spoke to Ms. Dorsey to ensure that the setback regulations placed upon the property were understood. Mr. Root asked Ms. Dorsey if all three nonconforming lots under her ownership were purchased simultaneously and she confirmed.

Ms. Dorsey called upon Ms. Brookshire to testify as a witness. Ms. Brookshire testified that she was the real estate agent for the property and was assisting the applicant in the proposed sale. She noted that an additional home on West Street would add and not detract from the neighboring property values. Mr. Eller had no questions related to Ms. Brookshire's testimony.

Ms. Dorsey called upon Ms. Nelson to testify as a witness. Ms. Nelson testified that she was the real estate agent of a proposed buyer of the property in question. She noted that her clients proposed purchase of the property was contingent upon the issuance of a variance to make the lot buildable. Mr. Eller had no questions related to Ms. Nelson's testimony.

Chairman Root asked Mr. Eller if there were any precedents related to variances granted to nonconforming lots of record. Mr. Eller identified 124 and 126 South Main Street which were recorded in 1920 and had achieved variances related to minimum lot area and minimum lot width from the Zoning Board of Adjustment in July of 2013.

The Applicant confirmed that there was an adequate buildable footprint without modifications to the standard front, rear and side setbacks.

Ms. Jackson noted to the Board the standards which must be considered when reviewing a variance application.

Mr. Lewis motioned to exit the public hearing. Mr. Clauhs seconded and all voted unanimously.

### **3. Consideration of a Motion Establishing a Ruling on the Aforementioned Application for a Variance.**

There being consensus among the Board members that the variance met all of the required findings for the granting of a variance, Mr. Lewis motioned to approve the variances requested from the minimum lot area and minimum lot width with the condition that the setback requirements of the R-1 Zoning District are still observed. Ms. Wright seconded and all voted unanimously.

### **4. Public Hearing on 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.**

Mr. Eller briefly described the application including the applicant, the location of the property and the nature of the variance being requested.

Mr. Clauhs motioned to enter the public hearing. Mr. Lewis seconded and all voted unanimously.

The Board, upon question by the Chairman, reported no ex parte communication. Mr. Lewis identified a possible conflict of interest due to the proximity of property under his ownership to that of the applicant. Chairman Root asked if Mr. Lewis had a fixed opinion on the matter due to the location of the property and Mr. Lewis denied. There was no objection to Mr. Lewis participation in this matter.

Mr. Eller, on behalf of the Town and Mr. Morris, the applicant were identified as parties to the matter and sworn in. No other possible witnesses were identified.

Mr. Eller presented the following items which were entered into evidence for consideration:

Exhibit 1-A: affidavit of posting, Exhibit 1-B: affidavit of mailing and Exhibit 1-C: affidavit of publication showing that the public hearing has been duly advertised. Exhibit 2: a packet of information submitted to the Board in which the following items were included. Section 36-5 definitions, specifically setback and yard, front; Section 36-106 Table of dimensional requirements; the variance application and a map of the property from the Buncombe County GIS.

Mr. Eller indicate that the Applicant owns the property located at 11 Lakeshore Drive known by the parcel identification number 9742-25-3578 and which is approximately 5.5 acres containing a single-family residence that is placed well back from the Lakeshore Drive. The Applicant is requesting a variance to allow him to place an accessory structure, specifically a residential garage, at a location on the property near the terminus of the present driveway, which would be located in front of the Applicant's residence. The Zoning Ordinance contains a front yard use limitation that does not allow the placement of any structure in front of the primary structure on any given lot. Based upon the size of the property, the location of the home and the aforementioned yard use limitations the applicant would lose approximately 1.85 acres of his property for the purpose of placing an accessory structure. The placement of the residential garage as requested would still be conforming to the setback standards established.

Chairman Root asked Mr. Morris if he had any questions for Mr. Eller and he denied.

Mr. Morris testified to his house was constructed well before the Town's adoption of zoning regulations and that the restrictions placed upon his property which result in 1.85 acres of unusable land constituted an undue hardship, the hardship results from conditions peculiar to the property and that said hardship is not a result of any action he has taken. Mr. Morris indicated that the garage would not be a commercial garage but a residential garage.

There being no further questions or testimony offered, Mr. Lewis motioned to exit the public hearing. Mr. Clauhs seconded and all voted unanimously.

##### **5. Consideration of a Motion Establishing a Ruling on the Aforementioned Application for a Variance.**

The Board's consensus being that the findings required for all variances had been met, Ms. Wright motioned to approve the variance requested from the yard use limitations to permit the applicant to construct a residential garage on a portion of the property near the terminus of the present driveway, which is in front of the Applicant's residence. Mr. McKenna seconded and all voted unanimously.

**6. Any Other Business to Come Before the Board.**

No further business was discussed.

**7. Adjournment.**

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

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

**ATTEST:**

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



**Agenda Item 3&4**  
**Orders Reflecting the Ruling of the Board from May 8, 2017**

TOWN OF WEAVERVILLE  
ZONING BOARD OF ADJUSTMENT

ORDER GRANTING  
REQUEST FOR A VARIANCE

Applicant: Aimee Dorsey

Property Location: Unaddressed West St. Weaverville, NC

Parcel Identification Number: 9742-25-3578

The Zoning Board of Adjustment (hereinafter as Board) of the Town of Weaverville held a Public Hearing on Monday, May 8, 2017, at 7p.m. in council chambers at Town Hall at 30 South Main Street, Weaverville on a request for a variance from the minimum lot area and minimum lot width established by the R-1 Zoning District for a nonconforming lot of record commonly known as an unaddressed parcel on West Street, PIN: 9742-25-3578.

A quorum of the Board was present with Chairman Al Root, Board Members Paul Clauhs, Tycer Lewis, Jeff McKenna and Cynthia Wright, and Alternate Roger Parkin in attendance. Town Attorney Jennifer Jackson and Town Planner James Eller were also present.

The Public 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 paper of record.

At the Public Hearing on May 8, 2017 Chairman Root presided and reviewed the procedure for the hearing on the requested variances. The Board acknowledged that the following individuals had standing to participate in the hearing and made parties to this matter: Applicant Aimee Dorsey and Town Planner James Eller.

The Zoning 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, find as fact and conclude as follows:

1. Documentary evidence was submitted and admitted into evidence without objection as follows:
  - a. an affidavit of mailing, an affidavit of posting and an affidavit of publication was submitted into evidence by James Eller as Exhibit 1-A, 1-B and 1-C.
  - b. a packet of information submitted to the Board in which the following items were included: Section 36-328 – Powers and Duties of the Zoning Board of Adjustment; Section 36-21 – Nonconforming lots of record; Section 36-106 – Table of dimensional requirements; a statement prepared by staff addressing the question of jurisdiction and precedents related to the requested variance; the variance application; a map of the property from the Buncombe County GIS and the plat of the property.
2. The Applicant owns a nonconforming lot of record located at an unaddressed location on West Street known by the parcel identification number 9742-25-3578 and which is shown as Lot 44 on the plat of the Lands of E.F. Vandiver recorded in Plat Book 154 at Page 56, Buncombe County Registry, in 1910, well before the Town's adoption of zoning regulations.
3. Applicant was requesting a modification of the minimum lot area and minimum lot width but not any modification to the setback standards established by the R-1 Zoning District.

4. The nonconforming lot of record is more than 20% nonconforming with the minimum lot area and minimum lot width established by the R-1 Zoning District, which puts the jurisdiction of the variance before the Zoning Board of Adjustment.
5. The Applicant has a buildable footprint on the lot of 30 feet in width while also conforming to the setback standards established by the R-1 Zoning District.
6. In addition to the applicant and the Town Planner, Ms. Shana Brookshire and Ms. Lori Nelson also provided testimony to the Board.
7. The Board further finds and concludes that:
  - a) an unnecessary hardship will result in the strict application of the Zoning Ordinance as the lot without the variance cannot be used for single family residential purposes, the primary use within an R-1 zoning district;
  - b) the hardship results from conditions that pre-date the adoption of the Town's zoning regulations, are not a result of personal circumstances, and did not result from action taken by the applicant or property owner;
  - c) the requested variance is consistent with the spirit, purpose and intent of the Zoning Ordinance;
  - d) the requested variance is not a request to permit a use of land, building or structure which is not permitted within the R-1 zoning district, nor does the variance concern a prohibited sign.

NOW THEREFORE, based upon the foregoing findings of fact and conclusions, the Zoning Board of Adjustment for the Town of Weaverville concludes that (1) it has jurisdiction to hear this variance request and (2) the request for variances from the minimum lot area and minimum lot width established by the R-1 Zoning District on a nonconforming lot of record as requested should be granted as the request meets the required findings of subsection 36-328(2)(a) – (f) of the Code of Ordinances of the Town of Weaverville.

IT IS, THEREFORE, ORDERED that the application for a request for a variance from the minimum lot area and minimum lot width established by the R-1 Zoning District as requested by the Applicant is hereby granted.

Effective as of the 12<sup>th</sup> day of June, 2017.

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

**ATTEST:**

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

TOWN OF WEAVERVILLE  
ZONING BOARD OF ADJUSTMENT

ORDER GRANTING  
REQUEST FOR A VARIANCE

Applicant: Mark Morris

Property Location: 11 Lakeshore Drive Weaverville, NC

Parcel Identification Number: 9742-16-0551

The Zoning Board of Adjustment (hereinafter as Board) of the Town of Weaverville held a Public Hearing on Monday, May 8, 2017, at 7p.m. in council chambers at Town Hall at 30 South Main Street, Weaverville on a request for a variance from the yard use limitations established by the R-2 Zoning District for a property commonly known as 11 Lakeshore Drive.

A quorum of the Board was present with Chairman Al Root, Board Members Paul Clauhs, Tycer Lewis, Jeff McKenna and Cynthia Wright, and Alternate Roger Parkin in attendance. Town Attorney Jennifer Jackson and Town Planner James Eller were also present.

The Public 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 paper of record.

At the Public Hearing on May 8, 2017 Chairman Root presided and reviewed the procedure for the hearing on the requested variances. The Board acknowledged that the following individuals had standing to participate in the hearing and made parties to this matter: Applicant and property owner Mark Morris and Town Planner James Eller.

The Zoning 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, find as fact and conclude as follows:

1. Documentary evidence was submitted and admitted into evidence as follows:
  - a. an affidavit of mailing, an affidavit of posting and an affidavit of publication was submitted into evidence by James Eller as Exhibit 1-A, 1-B and 1-C.
  - b. a packet of information submitted to the Board as Exhibit 2 in which the following items were included. Section 36-5 definitions, specifically setback and yard, front; Section 36-106 Table of dimensional requirements; the variance application and a map of the property from the Buncombe County GIS.
2. The Applicant owns the property located at 11 Lakeshore Drive known by the parcel identification number 9742-25-3578 and which is approximately 5.5 acres containing a single-family residence that was constructed well before the Town's adoption of zoning regulations and placed well back from the Lakeshore Drive.
3. Applicant is requesting a variance to allow him to place an accessory structure, specifically a residential garage, at a location on the property near the terminus of the present driveway, which would be located in front of the Applicant's residence.

4. The Zoning Ordinance contains a front yard use limitation that does not allow the placement of any structure in front of the primary structure on any given lot.
5. Based upon the size of the property, the location of the home and the aforementioned yard use limitations the applicant would lose approximately 1.85 acres of his property for the purpose of placing an accessory structure.
6. The loss of use of approximately 1.85 acres of Applicant's property is an undue hardship.
7. The placement of the residential garage as request would still be conforming to the setback standards established.
8. The applicant and Town Planner proved testimony to the Board.
9. The Board further finds and concludes that:
  - a) the hardship results from conditions that pre-date the adoption of the Town's zoning regulations, are not a result of personal circumstances, and did not result from action taken by the applicant or property owner;
  - c) the requested variance is consistent with the spirit, purpose and intent of the Zoning Ordinance;
  - d) the requested variance is not a request to permit a use of land, building or structure which is not permitted within the R-1 zoning district, nor does the variance concern a prohibited sign.

NOW THEREFORE, based upon the foregoing findings of fact and conclusions, the Zoning Board of Adjustment for the Town of Weaverville concludes that the request for variance from the yard use limitations established by the R-2 Zoning District as requested should be granted as the request meets the required findings of subsection 36-328(2)(a) – (f) of the Code of Ordinances of the Town of Weaverville.

IT IS, THEREFORE, ORDERED that the application for a request for a variance from the yard use limitations established by the R-2 Zoning District as requested by the Applicant is hereby granted.

Effective as of the 12<sup>th</sup> day of June, 2017.

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

**ATTEST:**

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