



**Town of Weaverville
Zoning Board of Adjustment
Council Chambers
May 7, 2018, 7pm**

Agenda

1. Call to Order – Chairman Jeff McKenna.
2. Oath of Office – Sylvia Valois.
3. Approval of the Minutes from the March 12, 2018 Meeting of the Board.
4. Public Hearing Regarding an Application to Appeal a Decision of the Zoning Administrator Related to a Nonconforming Use Established at 320 Merrimon Avenue.
5. Consideration of a Motion Establishing a Ruling on the Aforementioned Appeal.
6. Any Other Business to Come Before the Board.
7. Adjournment.

OATH OF OFFICE

I, **SYLVIA VALOIS**, do solemnly and sincerely swear that I will support the Constitution and laws of the United States;

that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof;

that I will endeavor to support, maintain and defend the Constitution and laws of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability;

and that I will faithfully discharge the duties of my office as a member of the Town of Weaverville Zoning Board of Adjustment, so help me God.

SYLVIA VALOIS

Sworn to and subscribed before me
this the 12th day of March, 2018.

JENNIFER O. JACKSON
Notary Public

My Commission Expires: 5/29/2021
Notary Seal Affixed

Town of Weaverville
Zoning Board of Adjustment
Minutes – March 12, 2018

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, March 12, 2018 in council chambers at Town Hall at 30 South Main Street, Weaverville.

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

1. Call to Order

Chairman Jeff McKenna called the meeting to order at 7:00pm.

2. Approval of the Minutes from the January 8 and February 12, 2018 Meetings of the Board.

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

3. Approval of an Order Denying a Variance from the Front Yard Setbacks Established by the R-2 Zoning District for the Property Commonly Known as 3 Penley Park Drive.

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

4. Any other Business to Come Before the Board.

- Mr. Eller reviewed revisions made to the application for a variance made at the request of the Board.
- Ms. Jackson noted that the Zoning Board of Adjustment Roster had been updated to reflect the recent appointment of Ms. Sylvia Valois as an alternate member of the Board.
- Mr. Eller provided the Board with additional information related to existing special use permits applicable to the developments commonly known as Northridge Commons and Fairfield Inn, Weaverville.
- Ms. Jackson noted that in the following months the rules of procedure applicable to the Board would be updated for the Board's consideration.

5. Adjournment.

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

**Jeff McKenna, Chairman
Zoning Board of Adjustment**

ATTEST:

James W. Eller
Town Planner / Deputy Town Clerk



**Agenda Items 4&5
Appeal of a Decision of the Zoning Administrator**

Notice of Violation

David Robinson
294 Reems Creek Road
Weaverville, NC 28787

Wednesday, March 28, 2018

RE: 320 Merrimon Avenue, Weaverville, NC 28787, PIN# 9732-80-7768
Attached: Two photos taken on Wednesday, March 28, 2018

To Whom It May Concern:

After assessing the situation on your property at 320 Merrimon Avenue as it relates to a mobile food vendor being removed from same, it is my belief and understanding that the reestablishment of such a use is not permissible under municipal ordinance. The following are sections of the ordinance used when reaching my determination for your review.

On Monday, March 19th, 2018 Town Council adopted an amended set of additional standards which must be found to be present in order for staff to permit the use of a mobile food vendor on a particular piece of property. Those standards are as follows.

Chapter 36, Article V Additional Use Standards, Sec. 36-130. – Mobile Food Vendors

- A. *No waste, wastewater or grease shall be distributed into the sanitary sewer system, stormwater system, or other public spaces.*
- B. *Mobile food vendors:*
 - 1. *shall be situated at least ten feet from all property lines, excepting those separating contiguous parcels under common ownership, and*
 - 2. *shall not encroach onto any street or sidewalk and*
 - 3. *shall not obstruct any loading zone or parking space made requisite by Article VII of Chapter 36.*
 - 4. *shall not create a sight line obstruction*
- C. *Mobile food vendors shall be located at least 150 feet from any primary residential structure located within the R-1, R-2 or R-3 Zoning District.*
- D. *Mobile food vendors shall not be located within ten feet of any fire hydrant.*
- E. *Hours of operation on site shall be consistent with the hours of operation of the principal building or use of the property on which the mobile food vendor is located but in no instance shall such hours exceed 7am to 11pm.*
- F. *In no instance shall a mobile food vendor be permitted to be the primary or principal use of a parcel of land.*

- G. *Each mobile food vendor shall supply at least one receptacle for waste which must be emptied regularly and removed upon conclusion of hours of operation. Municipal waste receptacles shall not be used.*
- H. *In addition to signage displayed directly on the vehicle, one sign attached to the ground, or menu board sign, which shall not exceed four feet in height or 8 square feet of surface area, is permitted. Such a sign shall be placed within ten feet of the mobile food unit and shall only be displayed during hours of operation.*
- I. *The sale of alcoholic beverages shall not be permitted by any mobile food vendor absent the issuance of the requisite special event permit.*
- J. *Mobile food vendors are only permitted on public property, including but not limited to any real property, parking spot or lot, or road or right-of-way under municipal or state control and ownership in conjunction with the issuance of a special event permit. Mobile food vendors operating in conjunction with a special event permit issued by the Town of Weaverville are not subject to these regulations but are governed by the conditions placed upon the permit for approval.*
- K. *Such a use is also subject to standards of the Buncombe County Health Department as it relates to the permitting, inspection and grading of all regulated food service establishments.*
- L. *A Zoning Permit is required for each parcel which proposes to establish a mobile food vendor. The fee for said permit may be found within the schedule of fees.*

Two standards of particular concern given the conditions present on the property are subparagraph F which establishes that a mobile food vendor shall not be the primary or principal use of a parcel of land and subparagraph L making the issuance of a zoning permit requisite for the establishment of a mobile food vendor. Given that there is no primary or principal use on the property no mobile food vendor may be permitted in association with same.

Another item of consideration is treating the previous mobile food vendor as a nonconforming use where we encounter the following language.

Chapter 36, Article I In General, Sec. 36-19 – Nonconforming Uses

Nonconforming land uses in a particular use district are declared by this chapter to be incompatible with the permitted uses in the particular use district involved. However, to avoid undue hardship, the lawful use of any land at the time of the enactment of this chapter, or at the time of any applicable amendment thereof, may be continued even though such use does not conform with the land use for that district. Such nonconforming use shall not be:

- (1) Changed to a nonconforming use of higher intensity, such as from a commercial use to an industrial use, but may be changed to a nonconforming use of a similar character.*

(2) Restarted after discontinuance of the use (regardless of whether the owner has an intention to resume the use or not or has or has not made any efforts to re-establish the use) for nine consecutive months, or in cases of the settlement of an estate, after one year.

(3) Reestablished or replaced with the same or similar use after relocation of the use from its specific site.

As you have seen, subparagraph 3 establishes that a nonconforming use shall not be reestablished or replaced with the same use after relocation of the use from the property.

It should be noted that as the property owner you are entitled to an appeal of a decision of the zoning administrator to the Zoning Board of Adjustment. In order to be eligible for an appeal, a notice of an appeal shall be filed with the Town Clerk within 30 days from receipt of this correspondence.

My apologies for being the bearer of bad news but please know that I am available to you to discuss this issue further or to explore other permissible uses of you property.

Sincerely,



James Eller
Planning Director
Town of Weaverville
828-645-7116
jeller@weavervillenc.org







Agenda Items 4&5

Appeal of a Decision of the Zoning Administrator

Section 36-19 Nonconforming Uses

Article V Additional Use Standards, Section 36-130 Mobile Food Vendors

Sec. 36-19. - Nonconforming uses.

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- (2) Restarted after discontinuance of the use (regardless of whether the owner has an intention to resume the use or not or has or has not made any efforts to re-establish the use) for nine consecutive months, or in cases of the settlement of an estate, after one year.
- (3) Reestablished or replaced with the same or similar use after relocation of the use from its specific site.

([Ord. of 8-21-2017\(1\)](#), § 1(Exh. A))



**Table of Uses
(Am. Ord. 3-19-18)**

Mobile Food Vendors, Permitted with Standards in C-1, C-2, I-1

Temporary Uses	R-1	R-2	R-3	R-12	C-1	C-2	I-1
Farmers Market	PS	PS	PS	PS	PS	PS	PS
Mobile Food Vendor	-	-	-	-	PS	PS	PS
Temporary Use	PS	PS	PS	PS	PS	PS	PS

Definition:

Mobile Food Vendor. Any mobile food unit, pushcart or motor vehicle, including all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle, which is purposed for the sale for consumption of food and beverages. The sale of alcoholic beverages shall not be permitted by any mobile food vender absent the issuance of the requisite special event permit.

Additional Standards:

Chapter 36, Article V Additional Use Standards, Sec. 36-130. – Mobile Food Vendors

- A. No waste, wastewater or grease shall be distributed into the sanitary sewer system, stormwater system, or other public spaces.
- B. Mobile food vendors:
 1. shall be situated at least ten feet from all property lines, excepting those separating contiguous parcels under common ownership, and
 2. shall not encroach onto any street or sidewalk and
 3. shall not obstruct any loading zone or parking space made requisite by Article VII of Chapter 36.
 4. shall not create a sight line obstruction
- C. Mobile food vendors shall be located at least 150 feet from any primary residential structure located within the R-1, R-2 or R-3 Zoning District.
- D. Mobile food vendors shall not be located within ten feet of any fire hydrant.
- E. Hours of operation on site shall be consistent with the hours of operation of the principal building or use of the property on which the mobile food vendor is located but in no instance shall such hours exceed 7am to 11pm.

- F. In no instance shall a mobile food vendor be permitted to be the primary or principal use of a parcel of land.
- G. Each mobile food vendor shall supply at least one receptacle for waste which must be emptied regularly and removed upon conclusion of hours of operation. Municipal waste receptacles shall not be used.
- H. In addition to signage displayed directly on the vehicle, one sign attached to the ground, or menu board sign, which shall not exceed four feet in height or 8 square feet of surface area, is permitted. Such a sign shall be placed within ten feet of the mobile food unit and shall only be displayed during hours of operation.
- I. The sale of alcoholic beverages shall not be permitted by any mobile food vendor absent the issuance of the requisite special event permit.
- J. Mobile food vendors are only permitted on public property, including but not limited to any real property, parking spot or lot, or road or right-of-way under municipal or state control and ownership in conjunction with the issuance of a special event permit. Mobile food vendors operating in conjunction with a special event permit issued by the Town of Weaverville are not subject to these regulations but are governed by the conditions placed upon the permit for approval.
- K. Such a use is also subject to standards of the Buncombe County Health Department as it relates to the permitting, inspection and grading of all regulated food service establishments.
- L. A Zoning Permit is required for each parcel which proposes to establish a mobile food vendor. The fee for said permit may be found within the schedule of fees.



Agenda Items 4&5

Appeal of a Decision of the Zoning Administrator

Application to Appeal a Decision of the Zoning Administrator

TOWN OF WEAVERVILLE APPLICATION TO APPEAL DECISION OF ZONING ADMINISTRATOR

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
 Application Fee: \$500.00

DATE APPLICATION SUBMITTED: 4/9/18

APPELLANT NAME: Southern Smoke BBQ
 Jeremiah McDaniel + Tracy Shenkin

APPELLANT PHONE: 941-735-8851

PROPERTY OWNER NAME:
 DAVID ROBINSON

PROPERTY OWNER PHONE:
 828-215-7610

PIN: 9732-80-7768

PROPERTY ADDRESS:
 320 Merrimon Avenue
 Weaverville, NC 28787

ZONING DISTRICT: C-2

DESCRIBE THE NATURE OF THE APPEAL: on 3/18/18 we (Southern Smoke BBQ) signed a lease to operate our food truck on the property located at 320 Merrimon Avenue. Thus commencing the use of that property for our food truck. Prior to signing the lease on the 18th of March a ~~truck~~ food truck had operated there for 5+ years. At no point did the previous lease holder or landlord experience any issues with the city of Weaverville. On or around 3/30/18 Mr. Robinson received a letter siting a new ordinance that was passed 2 days after we signed our lease stating that this property be used as a primary or principal use of a food truck. Due to the fact that the new ordinance had not been passed prior to our signing our lease, we feel as if we should be considered for a non conforming ~~use~~. Removal of our truck at this point would create undue hardship for us (Southern Smoke BBQ) as we have spent our life savings on this business and for Mr. Robinson as he would have to suffer a loss of income for leasing the property and the possibility of any legal matters that may arise from this decision.

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. This application must be filed with the Town Clerk.

Please indicate on the following line how you wish to receive a copy of the written order establishing a decision related to this application.

I certify that the above information is accurate and true.

Tracy Shenkin
 SIGNATURE OF APPELLANT

[Signature]

4/9/18
 DATE

David Robinson
 SIGNATURE OF PROPERTY OWNER

4/9/18
 DATE

OFFICE USE ONLY

FEE:	DATE PAID:	CHECK	CASH	CARD
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Agenda Items 4&5

Appeal of a Decision of the Zoning Administrator

University of North Carolina Publications on Nonconformities

April 20, 2017

Nonconformities

Virtually all zoning ordinances include provisions that allow continuation of existing development that is inconsistent with the terms of the new ordinance. Such developments are called nonconformities. Protections may extend to several types of nonconformities: a nonconforming use, a nonconforming lot, or a nonconforming structure.

A nonconformity must have been legal when it was initiated to receive protection. A use that was a zoning violation when it started does not ripen into a legitimate nonconformity no matter how long it has been there.

The burden is on the person claiming nonconformity to establish that it was in fact in existence and what its scope was when it became nonconforming. If there is a dispute as to when the nonconformity was established or what its scope is, the zoning administrator considers the evidence and makes a ruling on the question.

Most ordinances allow nonconformities to continue but to place limitations on them. The scope of these limitations varies with each ordinance. A typical restriction is that a nonconforming building cannot be enlarged, expanded, or extended. Expansion is usually defined to include additions to structures. It can also include improvements that increase or extend the commercial viability of a nonconforming use. Another limit is that a nonconforming use cannot be resumed if it has been abandoned or discontinued for a specified period (typically six to twelve months). There are often restrictions on repairs of nonconforming structures. Routine maintenance and minor repairs are usually allowed, but substantial repair or replacement is not. An ordinance with this type of restriction should carefully define the boundary between permissible repairs and impermissible replacement. The ordinance also often prohibits the owner from changing one nonconforming use to a different nonconforming use.

If there is any doubt as to whether a restriction applies, the courts resolve that doubt in favor of allowing the person to make continued use of the property as it exists.

In some limited circumstances, a local government can require nonconformity to be terminated (removed) or force the owner to bring the use into compliance with the ordinance.

If the nonconformity poses a threat to public health and safety, immediate termination is warranted. For example, a new regulation preventing signs that block sight lines at intersections may require all offending signs to be removed immediately to prevent accidents and protect public safety.

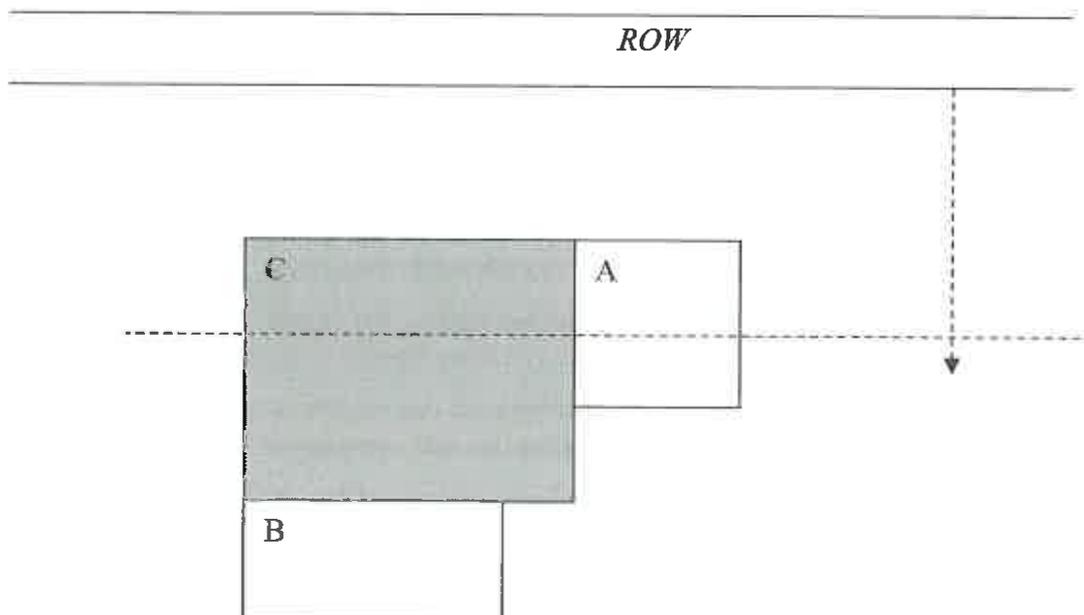
The practice of requiring inconsistent uses to be phased out or brought into compliance after a defined grace period is called *amortization* and is necessary to prevent the requirement to bring the nonconformity into compliance from being an unconstitutional taking of private property. The amortization period allowed must be reasonable in light of the owner's investment in the nonconformity, the income it generates, its salvage value, and the like.

Cases for Discussion: Nonconformities

1. Willie repaired cars in his backyard for years prior to enactment of zoning which does not allow such uses in his residential district. Which of the following could Willie do under your ordinance?
 - a. Build a garage to enclose the previously unenclosed area he works in?
 - b. Willie was called up for Army Reserve duty, spent 14 months away from home, and is now back and wants to restart his work.

2. Based on the ordinance provisions in your jurisdiction, with the following drawing, which of the proposed additions to the nonconforming structure (shaded area below) would be allowed with a road setback indicated by the dashed line?

- A – Building addition alongside of existing building
 B – Building addition along rear of existing building
 C – Add second story to existing building



Coates Canons Blog Posts

How Much Repair is Too Much Repair?

Posted February 2013

Hershel Greene runs a small animal hospital out on the edge of town. When the business first opened thirty years ago, he had a large billboard advertising the business installed out by the road. Herschel had been heavily involved with other pressing matters recently and the sign has fallen into considerable disrepair. Hershel had the local sign company come out to give him an estimate on fixing up the sign. They suggested that given the poor condition of the sign structure, he should consider scrapping it and replacing it with a modern sign. When Hershel called the city to ask about getting permits for a new sign, he was told that the city sign regulations that were adopted ten years ago no longer allow this type of billboard. The city staff then told him this was a “nonconforming” sign and that while he could fix it up some, replacement would not be allowed.

Can the city allow repairs but prohibit replacement of this sign?

Yes.

The first question is whether a new sign would be consistent with the city’s current sign regulations. In this case the answer is no. If there were no billboard already on the site, Hershel could not be issued a permit to erect one there.

But Hershel’s sign was lawfully put up before the sign regulation was adopted. In zoning terms this makes his sign a “nonconforming” sign. Nonconformities are those land uses, structures, or lots that were legal when established but that do not conform to the requirements of subsequently adopted regulations. While not required by state statute in North Carolina, virtually all zoning ordinances allow for the continuance of nonconformities. It is also very common for ordinances to strictly limit these nonconformities.

The concept of limiting improvements of nonconformities has a long heritage in North Carolina law. Early development regulations allowed nonconformities to remain but included restrictions designed to phase out the nonconformities through obsolescence. For example, in 1913 the court upheld a Lincolnton ordinance prohibiting the installation of metal roofs on wooden buildings in the fire district. The court acknowledged that a metal roof would provide greater protection from fire but also noted that it would prolong the life of a nonconforming wooden building and thus could be prohibited. State v. Lawing, 164 N.C. 492, 80 S.E. 69 (1913).

In Elizabeth City v. Aydlett, 201 N.C. 602, 161 S.E. 78 (1931), the landmark case upholding zoning in North Carolina, the court recognized the necessity of allowing the continuance of nonconforming uses if zoning was to work legally, politically, and practically. The court noted, “Unless the theory of nonconforming uses is practically applied it will be well-nigh impossible to zone the cities and towns of the State.” The court emphasized that zoning involves a balancing of the future needs of the public against the rights of the individual with a prior nonconforming use.

The vast majority of zoning ordinances now substantially restrict nonconformities to encourage eventual compliance with the ordinance. Typical restrictions are those prohibiting (1) the expansion or enlargement of nonconformities; (2) the repair or replacement of a nonconforming structure; (3) a change in a nonconforming use; and (4) the resumption of a nonconforming use if it is abandoned or discontinued for a specified period. Some ordinances also require certain nonconformities to come into compliance after a specified grace period. The courts have consistently upheld these limitations,

provided they are stated clearly. If there is any doubt about the application of a particular restriction, that doubt is resolved in favor of the landowner.

A typical limitation, and the one confronting Hershel, is a provision that allows “repairs” but prohibits “replacement.” The basis for this distinction is discussed in Appalachian Poster Advertising Co. v. Zoning Board of Adjustment, 52 N.C. App. 266, 278 S.E.2d 321 (1981). In this case the sign owner replaced two adjacent nonconforming billboards with a single new billboard that was placed where the two smaller signs had previously been located. The court noted that nonconforming uses are not favored by the law and that

[h]ere a new structure was substituted for an old one. If it is proper to do this once it will be proper to do it again and thus the life of the nonconforming structure will be indefinitely prolonged, and the whole purpose of the zoning ordinance will be defeated ... [T]he right to make repairs has generally been limited to such as are merely routine or ordinary and which would not result in the extension of the normal life of the structure, and the replacement of a structure which has become unusable from natural deterioration has been held not permissible.

A key question then becomes defining the threshold between permissible repairs and impermissible replacement. In Whiteco Outdoor Advertising v. Johnston County Board of Adjustment, 132 N.C. App. 465, 513 S.E.2d 70 (1999), the issue was the application a limitation prohibiting repairs to nonconformities that exceed 50 percent of their value (without specifying in this section of the ordinance whether the “value” referred to original or present value). The court affirmed the staff’s denial of approval for replacement based on a determination that the cost of repairs would exceed 50 percent of the original cost of erecting the signs. In Appalachian Outdoor Advertising, Inc. v. Town of Boone Board of Adjustment, 128 N.C. App. 137, 493 S.E.2d 789 (1997), review denied, 347 N.C. 572, 498 S.E.2d 375 (1998), however, the court held approval of the proposed sign improvements was improperly denied. The sign company proposed to substantially repair and modernize two signs that had been severely damaged in a winter storm. The town prohibited the work as “reconstruction” of a nonconforming sign. On appeal, however, the court ruled that since the billboard had been damaged but not destroyed, the proposed work was repair rather than reconstruction. As the ordinance allowed repair up to 50 percent of the market value of a structure, the court ruled the work permissible.

So what does all of this mean for Herschel? It means he can fix up and retain his old sign. But since the sign is inconsistent with current regulations, he is limited to making only the amount of repairs allowed by the ordinance and he cannot replace the sign with a new one.

There are also important implications for cities and counties that apply this type of limitation. The government needs to think carefully about how it want to balance the interests of landowners who must comply with the current regulations with the rights of those who put up signs some time ago in a completely lawful fashion. It must consider the impacts of the nonconformity on the interests protected by the current regulation. The government also needs to give particular attention to the details of implementation of these policy choices, particularly in defining exactly where the boundary is between repair and replacement. The ordinance needs to provide clear guidance to the staff and landowners as to how that is calculated. For example, if repairs are limited to those costing no more than 50 percent of the value of the nonconforming structure, is that 50 percent of the original construction cost, the replacement cost, the current market value, the tax assessed value, or something else? The ordinance needs to say so that Herschel, his neighbors, the zoning officer, and the public can know just what repairs are legal and when those repairs edge into impermissible replacement.

What Do You Mean I Can't Start Up My Business Again?

Posted April 2013

Rick Grimes is a sheriff's deputy residing in a crossroads community out in the county. For a number of years he has supplemented his income with a small business repairing RVs. He usually has three or four old RVs parked in his back yard where he fixes them on nights and weekends. A few years ago the county extended zoning to Rick's community. His home was placed in a single-family residential zoning district that does not allow commercial uses such as his RV repair operation. But the county zoning staff told him when zoning was adopted that he could continue his backyard business since he had all required permits and was in operation prior to adoption of the ordinance.

About eight months ago Rick was seriously injured in the line of duty. He spent two months in the hospital. After an additional few months of rehab he was able to return to work. Given his lack of stamina, however, he put his moonlighting RV repair work aside.

Rick is now feeling much better and recently decided to restart his RV repair business. He mentioned this in passing to the county planner in the courthouse parking lot yesterday as they were leaving work. She told Rick there might be space to open his business in an abandoned state prison the county had recently acquired and was converting to a small business incubator and start-up industrial park.

Rick, his meager savings already depleted by his hospitalization and recovery expenses, thanked her for the tip, but quickly said he preferred to pick up the work in his backyard. She reminded him that while his neighbors had been very supportive during his recovery, there had been complaints before he got hurt about all the "junk" piled up in his yard. Some of the neighbors might well not welcome the reappearance of a half dozen broken-down RVs in his backyard. She told Rick that re-starting the work at his home might not be allowed under the county zoning.

Could it possibly be true that Rick cannot resume his backyard business?

Well, it depends.

Nonconformities

The first question is whether Rick's business qualifies as a lawful "nonconformity" under the county zoning. Nonconformities are those land uses, structures, or lots that were legal when established but that do not conform to the requirements of subsequently adopted regulations.

How an ordinance deals with nonconformities poses an important policy choice for local governments. The ordinance has to balance several legitimate interests. One interest is that of the landowner who did nothing wrong in creating what is now a nonconformity. There is the interest of the neighbors in receiving the benefits of the protections offered by the ordinance's current restrictions. Another interest is that of the community in having everyone abide by the same rules. Those crafting the ordinance should give careful thought as to how these interests should be balanced. The benefits to the neighbors and community from uniform compliance with current regulations have to be considered in conjunction with the burden on the owner of the nonconformity.

While not required by state statute in North Carolina, virtually all zoning ordinances allow for the continuance of nonconformities. In this instance, the county ordinance does allow for continuation of nonconformities. Since Rick's repair business pre-dates the application of county zoning restrictions to his property it was at the time of his injury a lawful nonconformity.

Virtually all ordinances, however, strictly limit nonconformities. An earlier **blog post** explored how these limits apply to proposed repair or replacement of a nonconformity. Rick's situation raises a second common limit on nonconformities. Zoning ordinances typically provide that nonconforming use status is lost if that use is inactive for a specified period, often six months or a year. After that, whatever use is resumed must comply with the zoning ordinance in effect at the time of resumption. The courts have upheld such limits on nonconformities, noting there is a legitimate governmental interest in eventually phasing out nonconformities. Williams v. Town of Spencer, 129 N.C. App. 828, 500 S.E.2d 473 (1998).

Limits Based on Inactivity

Assume the county ordinance provides that nonconforming use status is lost if there is a six month period of inactivity. Did Rick's RV repair business lose its lawful nonconforming status because it has been closed for the last eight months?

Whether this limit applies to Rick depends on the precise wording of the county ordinance. Different results may obtain depending upon whether the term used is abandonment, cessation of use, or discontinuance. Unless more specific definitions are provided in the ordinance, the courts have interpreted *abandonment* to mean that the use has stopped and that there is no intent to restart it in the future and *discontinuance* to simply mean that the use is not active, regardless of any intent to resume. The cases also explore just what is a *cessation of use*. This can involve an examination of situations where the work stops for repairs, securing new tenants, or there is inactivity but an ability to restart it on short notice is retained. Of course in all of the cases the courts are examining a specific ordinance and attempting to discern the underlying intent of the board that adopted it, as well as applying it to a particular set of facts.

The choice of which term to use is to some degree based on how the local government chooses to strike the balance noted above. Using "abandon" is most protective of the interests of the owner as it provides the nonconforming protection is not lost unless the owner intends to give it up. By contrast, using "discontinued" may speed removal of incompatible uses that harm the neighbors and community.

Abandonment

In many respects use of the term "abandonment" is the easiest of these terms to apply. When an ordinance uses the term "abandonment," this introduces an element of intent on the part of the owner. In Forsyth County v. Shelton, 74 N.C. App. 674, 329 S.E.2d 730, *review denied*, 314 N.C. 328, 333 S.E.2d 484 (1985), the ordinance provided that nonconforming status was lost if the use was abandoned, abandonment being defined as "the voluntary discontinuance of a use, when accompanied by an intent not to reestablish such use." The case involved a nonconforming commercial recreation facility in a residential zoning district. After the owner became ill, there was an extended period during which the facility was not open to the public. For a time the property was leased to others who ran the facility. It was then used for several years only by family and friends of the owner. The defendant contended that there had been no abandonment of the use, citing several grounds—among them, the physical facilities had remained in place even if they were not actually in commercial use, illness had made the cessation of use involuntary, some recreational use had always been made of the property, and there had always been an intent to reopen. The court however found sufficient evidence to conclude that there was an intent to forgo use of the property as a commercial recreation business, thus losing its nonconforming status.

So in our case, if the county ordinance says nonconforming use status is lost if the use is abandoned, Rick would have a good case for being allowed to resume operations in his backyard. He would need to meet with the planner and show her evidence that he was out of operation due to his

injuries, but that he had no intent to permanently close his business. This could include indicators such as retention of his tools, keeping the repair materials he had on hand, and the like.

Discontinuance or Cessation of Use

If on the other hand the county ordinance uses ‘discontinued’ or ‘cessation of use’ rather than ‘abandonment,’ Rick may have a problem if he really wants to resume work in his backyard rather than relocating.

A typical case upholding a limit on resumption of a discontinued nonconformity is Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, *review denied*, 338 N.C. 309, 451 S.E.2d 635 (1994). Under the town’s zoning ordinance, nonconforming status was lost if the nonconforming activity was discontinued for a consecutive period of 180 days or was discontinued for any period of time without a present intention of resuming that activity. The landowner had offered topless dancing on the site on an occasional basis from 1983 through 1989, the frequency ranging from once a week at times to once every two to three months. In 1990 the zoning ordinance was amended to remove adult entertainment from the zoning district involved. The court held that because adult entertainment had not been offered on site for a period of eleven months at the time the restriction was enacted, no valid nonconforming use was present. Likewise, in CG & T Corp. v. Board of Adjustment of Wilmington, 105 N.C. App. 32, 411 S.E.2d 655 (1992), a case involving an inactive oil refinery where oil storage continued while the refinery was inactive, the court ruled that as defined in the ordinance, the term “discontinue” was not synonymous with the term “abandon” because intent was not a factor to be considered in the discontinuance of a use. The court upheld a determination that the facility’s use as an oil refinery had been discontinued, whereas its use as an oil storage terminal had been maintained.

In Rick’s case, RV repair work was discontinued in the backyard for eight months. His intentions to resume do not matter, as this is just a factual question of whether or not any of the repair work continued at his home during the time in question. So if the ordinance used this terminology, it is probably time for Rick to take a close look at the old prison site or some other appropriately zoned location for his business.

The issue gets a bit more complicated if the term used in the county ordinance is “cessation of use.” Flowerree v. City of Concord, 93 N.C. App. 483, 378 S.E.2d 188 (1989), illustrates the complexities this creates. The plaintiff owned a nonconforming duplex in a single-family zoning district. After tenants moved out and the units could not be leased, the owner took them off the market and renovated both units. Since the units were vacant for more than the time period allowed in the ordinance, the city contended there has been a cessation of use as a duplex. The court however held that occupancy alone could not be used to determine the use. As long as the owner was making an attempt to use the property as a duplex (as evidenced by advertisements and renovations), there was no cessation of use as a matter of law. In Diggs v. City of Wilson, 25 N.C. App. 464, 213 S.E.2d 443 (1975), the court similarly held a restaurant closed for renovations over a thirteen-month period had not been discontinued. Rick could also point to Southern Equipment Co. v. Winstead, 80 N.C. App., 342 S.E.2d 524 (1986), a case involving a nonconforming concrete-mixing facility. Because of a business slump the plant was out of operation for more than six months, but it was maintained throughout the period and could have resumed operation very quickly if any business materialized. The court held that even though no work was done on site, the use had not ceased. But here Rick had not stopped for renovations or repair. While he was incapacitated to a degree he could not have resumed RV repair work at any point during the six months limit for cessation of use. So it is not clear these cases will help his cause.

Conclusion

Whether Rick can resume this work at his home or must relocate his business depends on the exact wording of the ordinance and the details of his situation. In our case it is clear that Rick's RV repair business was not abandoned as he had no intent to permanently close it. But the use may well have been discontinued or even ceased to be used. So before he resumes his business, he needs to carefully review the exact language in the ordinance and go by the planner's office for a detailed review of his circumstances.

If he is fortunate, the ordinance will clearly spell out the intent of the local government on just what type of inactivity will result in loss of nonconforming use status. Does the inactivity require an intent not to resume? What about inactivity due to illness, bankruptcy or other financial difficulty? It is helpful if the intent of the requirements are spelled out in the ordinance rather than leaving this to guess work by the zoning administrator, the land owner, and the courts. As the cases noted above illustrate, this can be done, but there is no substitute for clarity in the ordinance itself.

Rick's Café Experiences Growing Pains

Posted May 2013

A small restaurant on the edge of town has been in operation for many years. Rick's Cafe Carolinian was built in the 1940's by Vic and Ilsa Laszlo at a time when the surrounding land was only woods and fields. Residential subdivisions gradually grew up around their business. When the town adopted zoning in the 1970s, this entire area was zoned for residential use.

The café is now owned by Vic and Ilsa's grandson Sam. While the business has been stable over the years, Sam believes it needs to be substantially modernized to remain viable. He would like to do the following. First, he would like to build a modest addition to the side of the building to expand the café's small bar area. This would allow Sam to add the piano bar of his dreams. Second, he would like to convert a large unused back room into extra seating space for the café. This room has only been used for storage for decades. Some say that Sam's grandparents used this back room for an illicit gaming operation in the café's early days, but that is another story. Now, with some modest renovations, it could add 30% more seating space, helping to pay off the loans he needs to take out for his renovations. Finally, he would like to completely replace the building's wiring, plumbing, and heating/air conditioning systems, and while he is at it, replace all of his kitchen equipment with modern appliances. He knows this will cost a good deal, but he wants to make the building comfortable, more functional, and bring it up to modern code standards.

Sam ran these ideas by some of his regular Friday evening bar customers as several of them were builders and contractors knowledgeable about such things. One of the regulars happened to be Hank Strasser, a retired builder who is now the town zoning officer. Hank agreed that Sam's plans would be a great improvement for the café, but immediately saw a red flag. The building housing Rick's is structurally sound and meets all of the town standards regarding setbacks and the like. But the cafe is not allowed in this zoning district since the land is zoned for residential rather than commercial uses. Hank told Sam that he could always seek a rezoning, but that would be a long shot in this situation. The neighbors had vigorously opposed several prior proposals to rezone parcels for commercial use and the town's new land use plan calls for the entire area to stay predominately low density residential. Hank explained that since Rick's was a nonconforming use, the ordinance prohibits enlargement or expansion. "What, pray tell," says Sam, "does that mean for my plans to improve the café?"

The answers are not as certain as one might think, especially if the town ordinance only has the typical brief provisions regulating nonconformities. There are important policy implications to consider when framing limits on nonconformities, balancing the interests of the landowner, the neighbors, and the community. A local government should carefully consider these implications and make clear, explicit policy choices when the restrictions are adopted.

The general law on limiting nonconformities is fairly straightforward. If a land use, structure, or lot was lawful when created, the ordinance making it nonconforming is generally applied prospectively only. Preexisting conditions are allowed to continue. A common restriction on nonconformities though is that they not be expanded or enlarged. The courts have readily accepted that concept. The court noted over three decades ago that while zoning ordinances are "in derogation of the right of private property" and should be construed in favor of free use of property, "our courts have nevertheless limited the expansion of nonconforming uses with a view toward their eventual elimination." Atkins v. Zoning Board of Adjustment, 53 N.C. App. 723, 729, 281 S.E.2d 756, 759. More recently the court observed, "Prohibition of the expansion of a nonconforming use is lawful and consistent with good zoning

practices.” Huntington Properties, LLC v. Currituck County, 153 N.C. App. 218, 223, 569 S.E.2d 695, 699 (2002).

Sam has proposed three things: (1) a structural addition to enlarge his existing bar area; (2) an expansion of seating space within the building; and (3) an extensive renovation of fixtures within the building. Assume in our case the town’s ordinance has a typical provision on nonconformities, such as, “A nonconforming use or structure may not be enlarged or expanded.” Assume also that the ordinance and does not further define those terms. Would any of these be a prohibited enlargement or expansion of Rick’s Cafe?

1. Addition to Structure Housing Nonconforming Use

The first question is whether Sam can add space to the building in order to expand his bar area.

Most ordinances prohibit increasing the size of a nonconforming building. These limits are clearly applicable when it is the structure itself that is nonconforming, such as a building that sits in a setback area. But in our case the structure housing the café is not in itself nonconforming. It is the commercial use of the structure that cannot be enlarged or expanded according to the ordinance. The question is whether a conforming structure can be expanded within the dimensional limits of the ordinance if it houses a nonconforming use.

Several cases have upheld limits on additions to structures that house nonconforming uses. Construction of a new pilot’s lounge and airplane-storage building at a nonconforming airport in a residential district was prohibited in City of Brevard v. Ritter, 14 N.C. App. 207, 188 S.E.2d 41 (1972). The construction of a storage building to enclose a previously open storage area was held to be an unlawful enlargement of a nonconforming use in Cannon v. Zoning Board of Adjustment, 65 N.C. App. 44, 308 S.E.2d 735 (1983). The court upheld prohibiting construction of a four-story parking structure to replace a surface parking lot at a nonconforming hotel in Four Seasons Management Services, Inc. v. Town of Wrightsville Beach, 205 N.C. App. 456, 695 S.E.2d 456 (2010).

This is an area in which careful wording in a zoning ordinance is needed to clearly establish the governing board’s intention. If the intent is to prohibit any structural additions to a building housing a nonconforming use, that limitation should be specified in the ordinance so folks like Sam and his neighbors will not have to go to court to find out the scope of the restriction.

2. Intensification of Nonconforming Use

What about Sam’s proposal to convert a storage room into additional seating capacity for his café?

The majority rule nationally is that an increase in volume or intensity of a nonconforming use is generally not presumed to be prohibited. Several North Carolina cases have held an intensification of a nonconforming use within the footprint of the existing nonconformity is permissible unless expressly prohibited. In Stegall v. Zoning Board of Adjustment, 87 N.C. App. 359, 361 S.E.2d 309 (1987), *review denied*, 321 N.C. 480, 364 S.E.2d 671 (1988), the court allowed the owner of a nonconforming cemetery that contained only in-ground burial plots to add an above-ground mausoleum. The court ruled the mausoleum would be not an expansion of the nonconforming use but an intensification that was allowed by the terms of the ordinance. Similarly, the court in Stokes County v. Pack, 91 N.C. App. 616, 372 S.E.2d 726 (1988), *review denied*, 324 N.C. 117, 377 S.E.2d 246 (1989), allowed additional vehicles to be brought into a nonconforming salvage yard provided they only occupied the space actually being used for junk storage when the ordinance was adopted. In Clark v. Richardson, 24 N.C. App. 556, 211 S.E.2d 530 (1975), the court held that the enclosure of a porch on a nonconforming grocery store did not constitute enlargement or extension of the nonconformity.

Under this rationale, Sam's proposal to add seats within the existing building housing his nonconforming café could be viewed as a permissible intensification rather than an impermissible expansion of a nonconforming use.

Other cases have, however, upheld limits on increasing the scale of nonconforming uses even where that did not involve use of a larger footprint. In Kirkpatrick v. Village Council of Pinehurst, 138 N.C. App. 79, 530 S.E.2d 338 (2000), the petitioner owned a nonconforming campground for recreational vehicles. The ordinance provided that nonconforming uses must not be "enlarged or increased, nor shall any non-conforming use be extended to occupy a greater area of land" than occupied at the time it became nonconforming. The court held that this provision not only precluded expansion of the campground to portions of the parcel beyond the area originally occupied, it also precluded renovations that would add additional campsites within the portion of the site already being used. The court applied a similar analysis in Huntington Properties, LLC v. Currituck County, 153 N.C. App. 218, 569 S.E.2d 695 (2002), to find that only the spaces within a nonconforming mobile home park that were actually in use (as opposed the number of permitted spaces) constituted the existing nonconformity and that expansion beyond that number of spaces could be prohibited. If expressly stated in the ordinance, the courts will also uphold a prohibition on the expansion of space allocated to a nonconforming use within the same building. Fantasy World, Inc. v. Greensboro Board of Adjustment 128 N.C. App. 703, 496 S.E.2d 825, *review denied*, 348 N.C. 496, 510 S.E.2d 382 (1998).

Whether Sam's conversion of the storage room would be allowed then depends on the exact terms of the ordinance, not upon some general principle of state law. Clarity in the ordinance language defining impermissible expansion of a nonconformity is again the critical factor. If increases in the intensity of use are intended to be included within the prohibited expansion of a nonconformity, the terms of the ordinance must clearly include that restriction.

3. Modernization of Structure Housing Nonconforming Use

What about Sam's proposal to upgrade his electrical, plumbing, and HVAC systems and to improve his kitchen equipment?

The general rule is that improvements required to maintain compliance with other laws are not a prohibited enlargement or expansion of a nonconformity. In re O'Neal, 243 N.C. 714, 92 S.E.2d 189 (1956), is the leading North Carolina case on this point. The petitioners had a nonconforming nursing home (an institutional use not permitted in the applicable residential zoning district). They needed to replace the existing frame building with a modern fireproof building in order to comply with updated building code requirements. The court interpreted the ordinance to allow reconstruction in order to comply with the building code, provided that the new building was limited to the same scale in terms of numbers of patients served. The court in MNC Holdings, LLC v. Town of Matthews, ___ N.C. App. ___, 735 S.E.2d 364 (2012), recently applied this concept to hold that alterations to a nonconforming medical waste incinerator, which was located in a residential zoning district, made to comply with environmental laws were permitted since the ordinance allowed alterations "when required by law."

So to the extent Sam's modernizations are needed to bring the café building up to code, they would almost certainly be allowed. The courts are particularly sympathetic when the owner is required by law to make the improvements.

His kitchen upgrades would probably be allowed as well, as long as they are not so extensive as to trigger the limits on repair versus replacement discussed in an earlier [blog post](#). But he should be aware that some cases have held it is not permissible to modernize equipment for a nonconforming use if that would result in a substantial increase in the impacts of the nonconforming use. In Malloy v. Zoning

Board of Adjustment, 155 N.C. App. 628, 632, 573 S.E.2d 760, 763 (2002), the court held it would be an unlawful expansion if a nonconforming welding and gas supply business replaced a liquid oxygen storage tank with a substantially larger tank because that would increase the scope of the nonconforming business by allowing additional and faster service to its customers. Similarly, in APAC-Atlantic, Inc. v. City of Salisbury, 210 N.C. App. 668, 709 S.E.2d 390 (2011), the court upheld a determination that modernizing a nonconforming asphalt plant in ways that would allow a significant increase in its capacity and lower its operating costs was a change in the scope of the use and an impermissible enlargement.

Some courts might view Sam's kitchen proposal as a permissible intensification of the use. Other courts may view it as an impermissible enlargement. This is once again a point on which ordinance clarity can avoid confusion and litigation.

So what are the lessons for local governments? The main one is that clarity and specificity in drafting provisions regarding limits on nonconformities is essential. It would be nice if the ordinance could simply and only say "No enlargement or expansion of a nonconforming use or structure is allowed." There is great merit in such a clear, brief, and plain directive. But reality is too complex for such a simple directive. It leaves unanswered several critical questions that will invariably arise.

The prudent local government will anticipate these common situations, deliberate the policy to be applied to them, and explicitly provide the answers in the ordinance itself. As time goes by, that extra work will make implementation of the ordinance simpler and fairer for all concerned, and will not force the courts to divine unstated intentions about the scope of limits on expanding nonconformities.



**Agenda Items 4&5
Appeal of a Decision of the Zoning Administrator**

Affidavits

**TOWN OF WEAVERVILLE
REGARDING THE MATTER OF:**

Southern Smoke BBQ
Appeal of an Administrative Decision
320 Merrimon Avenue

AFFIDAVIT OF POSTING

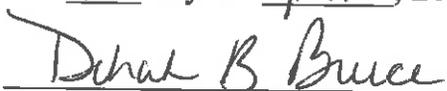
Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 25th day of April, 2018, I posted the attached Notice of Public Hearing Sign, Exhibit A, on the property commonly known as 320 Merrimon Avenue, PIN:9732-80-7768 and that a Notice of Public Hearing, Exhibit B, was affixed to the reverse side of same.

This the 25 day of April, 2018.



James W. Eller

Sworn to and subscribed before me
this 25th day of April, 2018



Notary Public

My Commission Expires: 3-27-2021

[Notary Seal]





Exhibit B

NOTICE OF PUBLIC HEARING

Public Notice is hereby given that the Town of Weaverville Zoning Board of Adjustment will hold a Public Hearing, following quasi-judicial procedures, on Monday, May 7, 2018 at 7:00p.m., or at such time as the Board reaches the matter. 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 to appeal a decision of the Zoning Administrator related to nonconforming uses and the additional standards placed upon the use of mobile food vendors within the C-2 Zoning District on the property commonly known as 320 Merrimon Avenue, PIN: 9732-80-7768.

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.

**TOWN OF WEAVERVILLE
REGARDING THE MATTER OF:**

Southern Smoke BBQ
Appeal of an Administrative Decision
320 Merrimon Avenue

AFFIDAVIT OF MAILING

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 25th day of April, 2018, I mailed the attached Notice (Exhibit A) to all of the persons listed on the attached Exhibit B and that said mailing was accomplished by putting the Notice in envelopes, with postage pre-paid, addressed to all persons shown and at the addresses reflected on the attached Exhibit B, and that said envelopes were deposited in a U.S. Mail Box under the exclusive control of the U.S. Postal Service.

This the 25 day of April, 2018.



James W. Eller

Sworn to and subscribed before me
this 25th day of April, 2018



Notary Public

My Commission Expires: 3-27-2021

[Notary Seal]



Exhibit A

NOTICE OF PUBLIC HEARING

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Exhibit B

Joe Allman
3 Stoney Knob Hts.
Weaverville, NC 28787

Jones Family Properties
210 Brevard Rd.
Asheville, NC 28806

Albert Radford
331 Heather Ct.
Asheville, NC 28804

Roy Masters
PO Box 8311
Asheville, NC 28814

Tracy Murphy
3 Forest Ridge Dr.
Arden, NC 28704

Gus Dermas
63 Gibson Rd.
Asheville, NC 28804

Charlotte Leonard
20 Young Rd.
Weaverville, NC 28787

Betty Robinson
PO Box 602
Weaverville, NC 28787

Conrad Realty
PO Box 695
Weaverville, NC 28787

Jeffrey Stevens
18 Hillcrest Dr.
Weaverville, NC 28787

David Robinson
294 Reems Creek Rd.
Weaverville, NC 28787

Serota Mars Hill
PO Box 187
Weaverville, NC 28787

Jody Peterson-Smith
332 Heather Ct.
Asheville, NC 28804

Clay Pennington
338 Heather Ct.
Asheville, NC 28804

Patricia Gill
202 Newstock Rd.
Asheville, NC 28804

Morningside Partners of Pinehurst
2552 Ballantrae Cir.
Cumming, GA 30041

James Rhodes
16 Stoney Knob Hts.
Weaverville, NC 28787

Holly Ogden
35 Stoney Knob Rd.
Weaverville, NC 28787

Carolyn Rice
117 Stoney Knob Rd.
Weaverville, NC 28787

Boyds Union Chapel Church
PO Box 2089
Weaverville, NC 28787

Charles Kiser
PO Box 2510
Weaverville, NC 28787

Leonard Hollifield
42 Stoney Knob Rd.
Weaverville, NC 28787

Jeff Garrison
5657 Cadwell Ct.
Norcross, GA 30092

TAG Properties
PO Box 706
Weaverville, NC 28787

William Robinson
PO Box 445
Weaverville, NC 28787

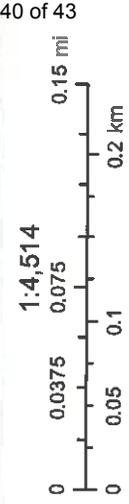
Glamer Worley
21 Ponder Worley Dr.
Weaverville, NC 28787

OWNER	ADDRESS	CITYNAME	STATE	ZIPCODE
ALLMAN JOE N;ALLMAN SUSAN C	3 STONEY KNOB HTS	WEAVERVILLE	NC	28787
JONES FAMILY PROPERTIES LLC	210 BREVARD RD	ASHEVILLE	NC	28806
RADFORD ALBERT H;RADFORD FRANCYS	331 HEATHER CT	ASHEVILLE	NC	28804
MASTERS ROY E JR	PO BOX 8311	ASHEVILLE	NC	28814
MURPHY TRACY J	3 FOREST RIDGE DR	ARDEN	NC	28704
DERMAS GUS J;DERMAS MINNIE G	63 GIBSON RD	ASHEVILLE	NC	28804
LEONARD CHARLOTTE	20 YOUNG RD	WEAVERVILLE	NC	28787
ROBINSON BETTY JO S	PO BOX 602	WEAVERVILLE	NC	28787
CONRAD REALTY OF WEAVERVILLE INC	PO BOX 695	WEAVERVILLE	NC	28787
STEVENS JEFFREY A;STEVENS JANICE M	18 HILLCREST DR	WEAVERVILLE	NC	28787
ROBERSON DAVID R;ROBERSON CYNTHIA P	294 REEMS CREEK RD	WEAVERVILLE	NC	28787
ROBERSON DAVID R;ROBERSON CYNTHIA P	294 REEMS CREEK RD	WEAVERVILLE	NC	28787
STEVENS JEFFREY A;STEVENS JANICE M	18 HILLCREST DR	WEAVERVILLE	NC	28787
ROBERSON DAVID R;ROBERSON CYNTHIA P	294 REEMS CREEK RD	WEAVERVILLE	NC	28787
FOX DANIEL W;FOX LELA	31 STONEY KNOB RD	WEAVERVILLE	NC	28787
FOX DANIEL W;FOX LELA	31 STONEY KNOB RD	WEAVERVILLE	NC	28787
SEROTA MARS HILL LLC	PO BOX 187	WEAVERVILLE	NC	28787
ROBERSON DAVID R;ROBERSON CYNTHIA P	294 REEMS CREEK RD	WEAVERVILLE	NC	28787
PETERSON SMITH JODY	332 HEATHER CT	ASHEVILLE	NC	28804
PENNINGTON CLAY;ALLISON JOYCE M	338 HEATHER CT	ASHEVILLE	NC	28804
GILL PATRICIA ROSE	202 NEWSTOCK RD	ASHEVILLE	NC	28804
MORNINGSIDE PARTNERS OF PINEHURST	CHRIS KLIROS 2552 BALLANTRAE CIR	CUMMING	GA	30041
CONRAD REALTY OF WEAVERVILLE INC	PO BOX 695	WEAVERVILLE	NC	28787
CONRAD REALTY OF WEAVERVILLE INC	PO BOX 695	WEAVERVILLE	NC	28787
JAMES RHODES TRUST ANGELA FRYE RHODES	16 STONEY KNOB HTS	WEAVERVILLE	NC	28787

OGDEN HOLLY R	35 STONEY KNOB RD	WEAVERVILLE	NC	28787
SEROTA MARS HILL LLC	PO BOX 187	WEAVERVILLE	NC	28787
RICE CAROLYN L	117 STONEY KNOB RD	WEAVERVILLE	NC	28787
BOYDS UNION CHAPEL CHURCH	PO BOX 2089	WEAVERVILLE	NC	28787
CHARLES L KISER LIVING TRUST	PO Box 2510	Weaverville	NC	28787
HOLLIFIELD LEONARD J; HOLLIFIELD AMY	42 STONEY KNOB RD	WEAVERVILLE	NC	28787
JEFF GARRISON TRUST LISA GARRISON TRUST	5657 CADWELL CT	NORCROSS	GA	30092
CHARLES L KISER LIVING TRUST	PO Box 2510	Weaverville	NC	28787
TAG PROPERTIES ASHEVILLE LLC	PO Box 706	Weaverville	NC	28787
ROBINSON WILLIAM DALE	PO BOX 445	WEAVERVILLE	NC	28787
BOYDS UNION CHAPEL CHURCH	PO BOX 2089	WEAVERVILLE	NC	28787
WORLEY GLAMER; WORLEY GLENNA	21 PONDER WORLEY DR	WEAVERVILLE	NC	28787

30

Buncombe County



From: Heather Berry
To: [James W. Eller](mailto:James.W.Eller)
Subject: Re: Fwd: Weaverville Public Notice
Date: Monday, April 23, 2018 10:37:32 AM

Good Morning,

Make sure to add this email: legals@thetribunepapers.com to your contacts for legal notices.

Thanks James!

Heather

Publication Cost: \$58.87

Publication Dates: 4/26 5/3

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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.

(WCNXXXX) 4/26 5/3

End of Proof

On 4/20/2018 1:47 PM, Heather Berry wrote:

----- Forwarded message -----

From: **James W. Eller** <JEller@weavervillenc.org>

Date: Fri, Apr 20, 2018 at 1:05 PM

Subject: Weaverville Public Notice

To: Heather Berry <editorwtll@gmail.com>

Cc: Jennifer Jackson <jjackson@weavervillenc.org>, Derek Huninghake <DHuninghake@weavervillenc.org>

Heather,

Attached you will find a public notice for a hearing to be held before the Zoning Board of Adjustment on Monday, May 7. Please run next week and the following and let me know if you need anything further. Thank you.

James W. Eller

Planning Director

Town of Weaverville

--

Thank you for your time and consideration in this matter; it is greatly appreciated.

Sincerely,
Heather Berry
Tribune Papers
Legals Department
828-513-0171
828-275-4129
legals@thetribunepapers.com

Please note

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