

Town of Weaverville

Zoning Board of Adjustment
Minutes – Monday, October 8, 2018

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, October 8, 2018, in Council Chambers at Town Hall at 30 South Main Street, Weaverville.

Present: Vice Chairman Tycer Lewis, Board Members Paul Clauhs, Roger Parkin, Cynthia Wright and Sylvia Valois, Town Attorney Jennifer Jackson and Planning Director James Eller. Absent: none.

1. Call to Order

Vice-Chairman Tycer Lewis called the meeting to order at 7:00pm and welcomed those in attendance to the meeting. The board members and staff introduced themselves.

2. Election of Officers

Vice-Chairman Lewis noted that this was the board's first meeting since Jeff McKenna's resignation and indicated that it would be proper for the Board to take some steps in organizing itself by electing a chair and vice chair from its regular members.

Board Member Wright made a motion to appoint Tycer Lewis as the board's chairman. The motion was seconded by Board Member Valois. All voted in favor and the motion carried. Board Member Parkin made a motion to appoint Cynthia Wright as the board's vice chairman. The motion was seconded by Board member Clauhs. All voted in favor and the motion carried. Both Lewis and Wright were congratulated and thanked in advance for their leadership of the board.

3. Approval/Adjustment of the Agenda

Chairman Lewis indicated that the agenda and an overview of board of adjustment procedures were located on the table by the door.

Items 6 and 7 on the printed agenda concern an application for an amendment to the Special Use Permit governing Creekside Village but the applicant has asked that the matter be withdrawn from consideration. Board Member Parkin made the motion to approve the agenda with the removal of items 6 and 7. Board Member Valois seconded the motion and all voted in favor of the motion.

4. Overview of Requested Amendment to Creekside Village Special Use Permit

Chairman Lewis asked, since there were some members of the public at the meeting concerning the Creekside Village matter if James Eller wished to briefly address the group. Mr. Eller indicated that Serrus Creekside had submitted an application to amend the special use permit which governs the property commonly known as Creekside Village and said application had been notice accordingly for the requisite public hearing before the

Zoning Board of Adjustment. However, Serrus Creekside has contacted staff in the interim requesting that the application be pulled from consideration at this time. Therefore, as indicated by the aforementioned adjustment to the previously established agenda, this item is no longer eligible for the Board's consideration unless a subsequent application is submitted.

5. Approval of Minutes

Board Member Clauhs made a motion to approve the minutes from the June 11, 2018, meeting of the Board as presented. Board Member Parkin seconded the motion and all voted in favor of approving the minutes.

6. Evidentiary Hearing on Variance Application for 30 North College Street

Chairman Lewis asked Attorney Jackson to provide an overview on how quasi-judicial hearings work. The following were Attorney Jackson's statements:

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

The Board is asked to make a quasi-judicial decision which is like a court decision in several important ways. It requires the Board to use its judgment in applying general laws to a particular land use situation while ensuring the constitutional due process rights of all parties.

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

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

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

Kerry and Jo Ann Stanley are the owners of an improved lot having an address of 30 North College Street and a Buncombe County Parcel Identification Number of 9742-17-5961. The Stanleys have requested a variance of the side yard setback in order to replace and enlarge a nonconforming structure that is currently located within the side yard setback. Town Code Sec. 36-328(2) authorizes the BOA to grant variances when hardships would result from carrying out the strict letter of the terms of the zoning ordinance. Variances require a 4/5 vote of the board. The standards for variances are as follows:

1. Unnecessary hardship would result from the strict application of the zoning ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. 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 the variance.
3. 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.
4. The requested variance is consistent with the spirit, purpose, and intent of the zoning ordinance such that public safety is secured and substantial justice is achieved.
5. 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.
6. The variance is not a request to permit a prohibited sign.

Chairman Lewis declared the hearing open and began by polling the board members to see whether or not any members had conflicts of interest or bias that might disqualify them from serving on the Board during the hearing. None were reported. Concerning *ex parte* communication Chairman Tyler Lewis indicated that he had engaged in some limited conversation with the applicant, Kerry Stanley, but that such conversation would not influence his decision in the matter. No concerns about this *ex parte* communication were expressed and no objection to Chairman Lewis' participation in the hearing was made.

James Eller noted that he was within the notice area for this matter but that he was able to participate in the hearing without any bias toward the application. No objection to Mr. Eller's participation was noted from either the applicant or the Board.

Chairman Lewis noted that the applicant/property owners, Kerry and Jo Ann Stanley had standing to participate in the hearing, as did James Eller on behalf of the Town. No one else expressed a desire to be made a party to the proceeding.

The following individuals were sworn in and gave testimony: James Eller, Kerry Stanley, professional engineer Marvin Mercer, architect Joshua Pettler, and Walter Plodkin.

Mr. Eller described the application and asked that the following exhibits be entered into evidence:

Exhibit 1 - A packet of information submitted to the Board in which the following items were included: Application for a Variance dated August 7, 2018, with supplemental pages; a site plan submitted by the applicant showing existing frame garage and proposed location of enlarged garage; letter from

neighbors (McDowell) supporting application; photographs of the site and the existing garage; affidavit of posting; affidavit of mailing.

Exhibits 2a and 2b - In the absence of an affidavit of publication that has not yet been received, the Weaverville Tribune for 27 September 2018 and 4 October 2018 which contained the legal advertisements for the hearing.

Exhibit 3 – A letter from neighbors (Stroud) was entered into evidence by Stanley as Exhibit 3.

Concerning Exhibit 3, the Town Attorney advised that since Mr. Stroud was not in attendance his letter would be considered hearsay under the Rules of Evidence that apply in court. Attorney Jackson noted that the Rules of Evidence do not strictly apply to the Board but that the Board should be cautioned against putting too much weight on this piece of evidence since doing so deprives the parties of an opportunity to cross-examine Mr. Stroud on his statements. This also applies to the letter from Mr. and Mrs. McDowell that was included in Exhibit 1.

Kerry Stanley asked that a revised site plan and elevation be substituted for the documents included in Exhibit 1 and those were accepted as Exhibit 4a and 4b, respectively.

All exhibits were accepted into evidence without objection from any party.

Testimony from Kerry Stanley supported his application materials and provided evidence that he and his wife are the owners of the real property located at 30 North College Street, which bears Buncombe County parcel identification number 9742-17-5961 and is zoned R-1 residential. The property contains a single family residence and an existing dilapidated garage that was constructed in approximately 1933. The existing garage was constructed in an area that is now designated as the side yard. The garage is dilapidated and in need of replacement. Since the applicant must replace the garage they wish to use the opportunity to enlarge the original footprint.

Marvin Mercer and Joshua Pettler reviewed the revised site plan (Exhibit 4a) which shows a slightly modified location of the proposed new and enlarged garage from the original site plan included in Exhibit 1. The proposed location of the garage shown on Exhibit 4a shows that only approximately 60 square feet are to be added within the side yard setback and that area is currently within the existing driveway. This change lessens the degree of nonconformity within the side yard setback by decreasing the size of the new area within the side yard setback. The proposed garage shown on Exhibit 4a is as far out of the side yard setback as possible taking into consideration the following: (a) topography of the property that limits the placement of the driveway and the usage of the backyard, (b) the desire to save a large white oak tree, (c) the desire to avoid obstruction of access to the backyard by the occupants of the single family residence if the garage were to be located more internally on the property, (d) difficulty in exiting vehicles from the property should the garage be located more internally on the property, and (e) significant increases in construction costs associated with locating the garage more internally on the property.

Walter Plodkin, a neighbor living at 42 Church Street, testified in support of the request by stating that he believes that the request is reasonable and will maintain, if not enhance, the neighborhood. Letters from other

neighbors that indicated support for the variance were put into evidence but those letters were not given any weight as similar evidence was presented through the testimony of Mr. Plodkin.

Based on the evidence presented the board indicated that it was inclined to find that the requested encroachment into the side yard setback will have a minimal impact on the neighboring properties and that unnecessary hardship will result in a strict interpretation of the ordinance, the hardship results from conditions peculiar to the property, and the variance is consistent with the spirit, purpose and intent of the ordinance.

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

7. Ruling on Variance Application for 30 North College Street

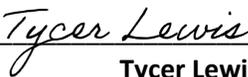
Based on the documentary and testimonial evidence presented during the hearing, Board Member Parkin made the motion to approve the variance request as reflected on the revised site plan (Exhibit 4a) based on considerable hardship in locating the detached garage within the backyard and to authorize staff to issue a zoning permit consistent with the variance prior to adoption of the written decision. Staff was asked to bring back the written decision for consideration at the board's next meeting.

8. Other Business

Staff advised that Town Council is considering Code Amendments that will more comprehensively address nonconformities within the Town. This is relevant since the board previously requested some amendments to tighten up this section of the Code as two appeals that the board has recently heard were related to the interpretation of the nonconforming use language.

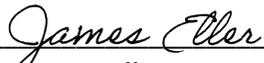
9. Adjournment

At approximately 8 pm, Board Member Clauhs made a motion to adjourn, which was seconded by Board Member Parkin. All voted in favor and the meeting was adjourned.



**Tycer Lewis, Chairman
Board of Adjustment**

ATTEST:



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