

Town of Weaverville

Zoning Board of Adjustment  
Minutes – Monday, June 10, 2019

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, June 10, 2019, in Council Chambers at Town Hall at 30 South Main Street, Weaverville.

Present: Vice Chair Cynthia Wright, Board Members Paul Clauhs, Roger Parkin, and Sylvia Valois, Town Attorney Jennifer Jackson and Planning Director James Eller. Absent: Chair Tycer Lewis, Alternate member Gene Knoefel, and Alternate Member Bob Pace.

**1. Call to Order**

In the absence of Chairman Tycer Lewis, Vice Chair Cynthia Wright called the meeting to order at 7:00pm and welcomed those in attendance to the meeting. The board members and staff introduced themselves.

**2. Approval of Minutes**

Board Member Clauhs made a motion to approve the minutes from the May 13, 2019, meeting of the Board as presented. Board Member Parkin seconded the motion and all voted in favor of approving the minutes.

**3. Evidentiary Hearing on a Request for a Sidewalk Waiver for the Property owned by MRS Land Development, LLC, located at 320 Merrimon Avenue**

Vice Chair Wright 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 request for a waiver of the sidewalk requirement. 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.

Vice Chair Wright introduced the matter by stating that MRS Land Development, LLC, is the owner of property located at 320 Merrimon Avenue (Buncombe County Parcel Identification Numbers of 9732-80-6733 and 9732-80-7768), which located in the C-2 Zoning District and is being developed for commercial use. Section 36-24(b) requires the construction of sidewalks for all new construction and development except for single family dwellings and duplexes. In accordance with Section 36-24(c)(2) the property owner has requested a waiver from this sidewalk requirement. This Code section grants the Board with authority to hear and decide on sidewalk waiver requests under the following circumstances:

The establishment, maintenance, or operations of the special use (as amended) will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

1. If sidewalks are scheduled to be installed as part of a state or town project within 10 years, then the developer may pay a fee in lieu of construction equal to 100% of the full cost of the sidewalk as estimated by the Town’s engineer
2. Where existing and future (based on the potential for development in the area) pedestrian volumes and/or vehicles volumes are so low that the level of conflict between vehicles and pedestrians walking on the street is minimal. This exception may not be used where road geometry creates sight distance problems
3. Where the construction of sidewalks in the findings of fact by the BOA would create greater harm or danger to the pedestrians.

Vice Chair Wright 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. No board member indicated that they had had any *ex parte* communication with the applicant. No concerns were noted about the board hearing the matter were expressed.

Vice Chair Wright noted that the applicant/property owner, MRS Land Development, LLC, through it member manager Mike Schoeppler, 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, Mike Schoeppler as the representative for MRS Land Development, LLC, and Earl Valois.

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

Exhibit 1-A – Affidavit of Mailing and Posting

Exhibit 1-B – Affidavit of Publication

Exhibit 2 – The entire meeting packet, including specifically the Affidavit of Mailing and Posting; Staff Report prepared by James Eller addressing the application, jurisdiction, precedent, and other matters; and a vicinity map.

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

Mr. Schoeppler gave a brief overview of his request and offered to answer any questions that the Board might have. Mr. Eller reviewed the application and noted specifically that the Applicant owns the property located at 320 Merrimon Avenue bearing Buncombe County Parcel Identification Numbers 9732-80-6733 and 9732-80-7768 and zoned C-2, and that sidewalks are required for all new commercial development. Under Town Code Section 36-24(c), Applicant has requested a waiver of the sidewalk requirement and the Board has jurisdiction to consider the request. Sidewalks do not exist on Merrimon Avenue at or near the intersection of Garrison Road or on Garrison Road at or near the intersection of Merrimon Avenue. Mr. Eller indicated that he was unaware of any plans for sidewalks along Merrimon Avenue or Garrison Road within the next 10 years. Mr. Eller also indicated that the closest sidewalk to the Applicant's property is approximately 0.4 miles away at Creekside Village so, if required and constructed, the sidewalk would only be in front of the Applicant's commercial development and is not likely to connect to any other sidewalks. It was noted that foot traffic along Merrimon Road is very minimal so the conflict between vehicles and pedestrians is not likely to occur on Garrison Road or Merrimon Avenue. Mr. Eller stated his opinion that the construction of the sidewalk in front of the applicant's commercial development may actually cause greater harm or danger to the pedestrians on Merrimon Avenue and Garrison Road due to the abrupt beginning and ending of a sidewalk.

The Applicant plans to open an office on the property but is allowed to use the property for any use permitted in the C-2 zoning district.

While not a party and not a witness called by either party to the proceeding, Earl Valois made comments that suggested that sidewalks should be required for safe ingress and egress, especially in emergency situations. Mr. Eller indicated that the NC Building Code and the NC Fire Code governs those issues. Zoning regulations do require on-site parking for all commercial uses within the C-2 district.

#### **4. Ruling on Request for a Sidewalk Waiver for the Property owned by MRS Land Development, LLC, located at 320 Merrimon Avenue**

Having heard all the evidence and heard the responses to all questions asked, Vice Chair Wright asked if the Board had a motion concerning the matter. Based on the documentary and testimonial evidence presented during the hearing, Board Member Parkin made the motion to approve the requested sidewalk waiver. Board Member Clauhs seconded the motion and all voted in favor of approving the waiver.

The Town Attorney indicated that she had a draft written order for the Board to consider and reviewed the same with the Board including specifically the draft findings of fact. Board Member Clauhs made a motion to adopt the order as presented by the Town Attorney, Board Member Parkin seconded the motion, and all board members voted to adopt the written order.

**5. Approval of Written Order for Special Use Permit Amendment for 16 Monticello Village Drive**

Board Member Clauhs made a motion to approve the proposed written order amending the special use permit for 16 Monticello Village Drive that was heard and decided by the Board at its May 13, 2019, meeting. Board Member Valois seconded the motion. All voted in favor and the order was adopted.

**6. Other Business - None**

**7. Adjournment**

At approximately 7:25 pm, Board Member Parkin made a motion to adjourn, which was seconded by Board Member Clauhs. All voted in favor and the meeting was adjourned.

  
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**Tyker Lewis, Chair  
Board of Adjustment**

**ATTEST:**

  
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**James W. Eller  
Planning Director / Deputy Town Clerk**