



**Town of Weaverville  
Zoning Board of Adjustment  
Council Chambers  
June 10, 2019, 7pm**

**Agenda**

1. Call to Order – Chairman Tycer Lewis.
2. Approval of the Minutes from the May 13, 2019 Meeting of the Board.
3. Approval of an Order Reflective of a Decision of the Board Related to a Special Use Permit Amendment for the Property Commonly Known as 16 Monticello Village Drive.
4. Public Hearing Regarding a Proposed Sidewalk Waiver for the Property Commonly Known as 320 Merrimon Avenue.
5. Consideration of a Motion Establishing a Ruling on the Aforementioned Sidewalk Waiver.
6. Any Other Business to Come Before the Board.
7. Adjournment.



**Agenda Item 2  
Minutes**

Town of Weaverville

Zoning Board of Adjustment  
Minutes – Monday, May 13, 2019

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, January 14, 2019, in Council Chambers at Town Hall at 30 South Main Street, Weaverville.

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

**1. Call to Order**

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. Approval of Minutes**

Board Member Clauhs made a motion to approve the minutes from the January 14, 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 an Application for an Amendment to an Existing Special Use Permit Applicable to the Property owned by Monticello Development, LLC at 16 Monticello Village Drive**

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 an application to amend a special use permit. 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.

Chairman Lewis introduced the matter by stating that Monticello Development, LLC, is the owner of approximately 5.47 acres at 16 Monticello Village Drive (Buncombe County Parcel Identification Numbers of 9743-21-7812 and 9743-31-0653), and, through its Member Manager P. Andrew Walker, has requested an amendment to the special use permit that is in place for this commercial development. They are seeking to amend the site plan in order to reconfigure the size, number and location of office buildings and parking lots. Town Code Sec. 36-328(1) authorizes the BOA to grant amendments to special use permits. The standards for special use permits are as follows:

1. 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.
2. The special use (as amended) will not be injurious to the use or enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish or impair property values within the neighborhood.
3. The establishment of the special use (as amended) will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the district.
4. The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or with the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.
5. Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being, or will be provided.
6. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
7. The special use (as amended) shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by the board of adjustment.

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. No board member indicated that they had had any *ex parte* communication with the applicant; however all of the board members indicated that they had been in the Ingles store. No concerns were noted about the board hearing the matter were expressed.

Chairman Lewis noted that the applicant/property owner, Monticello Development, LLC, 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, Warren Sugg of Civil Design Concepts as the representative for Monticello Development, LLC.

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

Exhibit 1-A – Affidavit of Mailing

Exhibit 1-B – Affidavit of Posting

Exhibit 1-C – Affidavit of Publication

Exhibit 2 – The entire meeting packet, including specifically the application, revised site plan and elevations, Mr. Eller’s staff report, the Board of Adjustment Order adopted November 15, 2006, and the conceptual plan that was reviewed and mentioned in the 2006 Order..

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

Mr. Eller reviewed the application and noted specifically that the property is zoned C-2 commercial but that it is subject to a special use permit that was issued in 2006 for a unified business development. Mr. Eller indicated that he is of the opinion that the changes requested by the applicant would be consistent with the special use standards and the previously issued special use permit.

Documentary evidence included the application materials and provided evidence that Monticello Development, LLC, is the owner of the real property located at 16 Monticello Village Drive, which bears Parcel Identification Number 9743-21-7812 and 9743-31-0653, and is located with the Town’s C-2 zoning district. Consistent with the original conceptual plan, a unified business development consisting of up to 7 mixed use buildings and up to 45 residential dwelling units were approved for the property. There are currently two mixed use buildings that have been constructed in accordance with the approved unified business development. The requested amendment would allow a reconfiguration of the size, number, and location of the mixed use or commercial/retail/office buildings, and the associated parking lots.

The proposed site plan and amendment calls for building #5 (as shown on the conceptual plan) to be enlarged, buildings #3 and #4 to be eliminated and used for additional parking, and building #6 to be slightly relocated and slightly enlarged. It is unclear whether these improvements will leave any room for any additional development on the property. Building #5 is proposed as a commercial/office building, not a mixed use building, and is shaded in gray on the site plan. Building #6 is marked as “future building” and shown in white.

Based on the evidence presented the board indicated that it was inclined to find that the requested amendment meets all of the standards applicable to special use permits. The board was further indicated that it was inclined to substitute the site plan and elevations as the new conceptual plan for this property.

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

**4. Ruling on the Application to Amend an Existing Special Use Permit – Monticello Development, LLC**

Based on the documentary and testimonial evidence presented during the hearing, Board Member Valois made the motion to approve the requested amendment. Board Member Clauhs seconded the motion and all voted in favor of approving the requested amendment. There was further discussion by the Board and consensus reached that the zoning administrator has authority to approve further reconfigurations on the property if they are consistent with the new conceptual plan.

The Town Attorney will draft a written order for the Board to consider at its next meeting. The Board authorized the zoning administrator to go ahead and issue a zoning permit in advance of the approval of the written order as long as it is consistent with the action taken at the meeting.

**5. Other Business - None**

**6. Adjournment**

At approximately 7:30 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.

---

**Tycer Lewis, Chairman  
Board of Adjustment**

**ATTEST:**

---

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



**Agenda Item 3**  
**Order – Monticello Village Drive**

**TOWN OF WEAVERVILLE  
ZONING BOARD OF ADJUSTMENT**

**ORDER AMENDING  
SPECIAL USE PERMIT**

**APPLICANT:** Monticello Development, LLC

**PROPERTY LOCATION:** 16 Monticello Village Drive, NC

**PARCEL IDENTIFICATION NUMBER:** 9743-21-7812 and 9743-31-0653

The Zoning Board of Adjustment of the Town of Weaverville (hereinafter “Board”) held a quasi-judicial evidentiary hearing (hereinafter “Hearing”) on Monday, May 13, 2019, at 7 p.m. in Council Chambers at Town Hall at 30 South Main Street, Weaverville, on a request for an amendment to the special use permit issued in November of 2006 for the commercial development known as Monticello Village, in order to re-configure the layout of some of the buildings and parking lots.

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

The 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 Hearing on May 13, 2019, Chairman Lewis presided and the Town Attorney reviewed the procedure for the Hearing on the requested amendment. The Board acknowledged that the following individuals had standing to participate in the Hearing and made parties to this matter: Applicant/Owner Monticello Development, LLC, and Town Planner/Zoning Administrator James Eller. No one else appeared and requested to be made a party to this matter.

No objection was made to any member of the board hearing this requested amendment.

The Zoning Board of Adjustment for the Town of Weaverville, after having held the Hearing in this matter and having considered all the evidence and arguments presented at the hearing, finds as fact and concludes 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 were submitted into evidence by James Eller as Exhibit 1-A, 1-B and 1-C.
  - b. The board’s full agenda packet for the May 13, 2019 meeting was submitted into evidence by James Eller as Exhibit 2, including specifically the application, revised site plan and elevations, Mr. Eller’s staff report, the Board of Adjustment Order adopted November 15, 2006, and the conceptual plan that was reviewed and mentioned in the 2006 Order.

2. Mr. Eller in his testimony summarized the request.
3. On behalf of the Applicant/Owner, Warren Sugg from Civil Design Concepts, appeared and gave testimony which was consistent with and in support of the application.
4. The Applicant owns the property located at 16 Weaver Village Drive which bears Parcel Identification Number 9743-21-7812 and 9743-31-0653, and is located with the Town's C-2 zoning district.
5. Consistent with the original conceptual plan, a unified business development consisting of up to 7 mixed use buildings and up to 45 residential dwelling units were approved for the property. There are currently two mixed use buildings that have been constructed in accordance with the approved unified business development.
6. The requested amendment would allow a reconfiguration of the size, number, and location of the mixed use or commercial/retail/office buildings, and the associated parking lots.
7. The proposed site plan and amendment calls for building #5 (as shown on the conceptual plan) to be enlarged, buildings #3 and #4 to be eliminated and used for additional parking, and building #6 to be slightly relocated and slightly enlarged. It is unclear whether these improvements will leave any room for any additional development on the property. Building #5 is proposed as a commercial/office building, not a mixed use building, and is shaded in gray on the site plan. Building #6 is marked as "future building" and shown in white.
8. Section 36-328(1) provides the Board of Adjustment with authority to amend previously granted special use permits.
9. The Board hereby finds that the reconfiguration as shown on the proposed site plan does not conflict with the original findings from 2006 and that the standards for the issuance or amendment to a special use permit have been met.
10. The Board further finds that the proposed site plan should be considered as the new conceptual plan for the unified business development.

**NOW THEREFORE**, based upon the foregoing findings of fact and conclusions, the Zoning Board of Adjustment for the Town of Weaverville concludes (1) that it has jurisdiction to hear this application for amendment to a special use permit; (2) that the matter was properly noticed; and (3) that the request for the amendment should be granted.

**IT IS, THEREFORE, ORDERED** that the Applicant's request to reconfigure the size, number and location of office buildings and parking lots, including those shown as future development, is hereby granted as long as the improvements are consistent with the site plan and elevations attached hereto. Professional services and warehousing and distribution with interior storage is specifically allowed for the building approved with this order. This special use permit is also

amended to provide that any building may be mixed use in nature or entirely of a commercial/retail/office nature. All other conditions contained within the special use permit issued in 2006 shall continue in full force and effect.

**IT IS FURTHER ORDERED** as follows:

The site plan and elevations that are attached hereto shall be considered the new conceptual plan. Any reconfigurations that are found by the Zoning Administrator to be consistent with the new conceptual plan are permissible and do not require an amendment to the underlying special use permit. Changes from a mixed use building to a building that is entirely commercial/retail/office in nature is consistent with the new conceptual plan. A building that is entirely residential in nature, regardless of the number of units, however, is not permissible without an amendment to the special use permit. Specific uses are allowable as long as they are commercial, retail or office in nature. If the Zoning Administrator makes any decisions pertaining to the special use permit, the Zoning Administrator is hereby ordered to post the property in accordance with the procedures set forth in NCGS 160A-388(b1)(4) in order to provide notice concerning his or her decision to the area. It is noted that appeals from Zoning Administrator decisions will be heard by the Board of Adjustment in accordance with Section 36-328(3) of the Weaverville Town Code of Ordinances.

**ORDERED THIS** the 13th day of May, 2019.

---

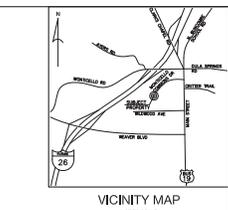
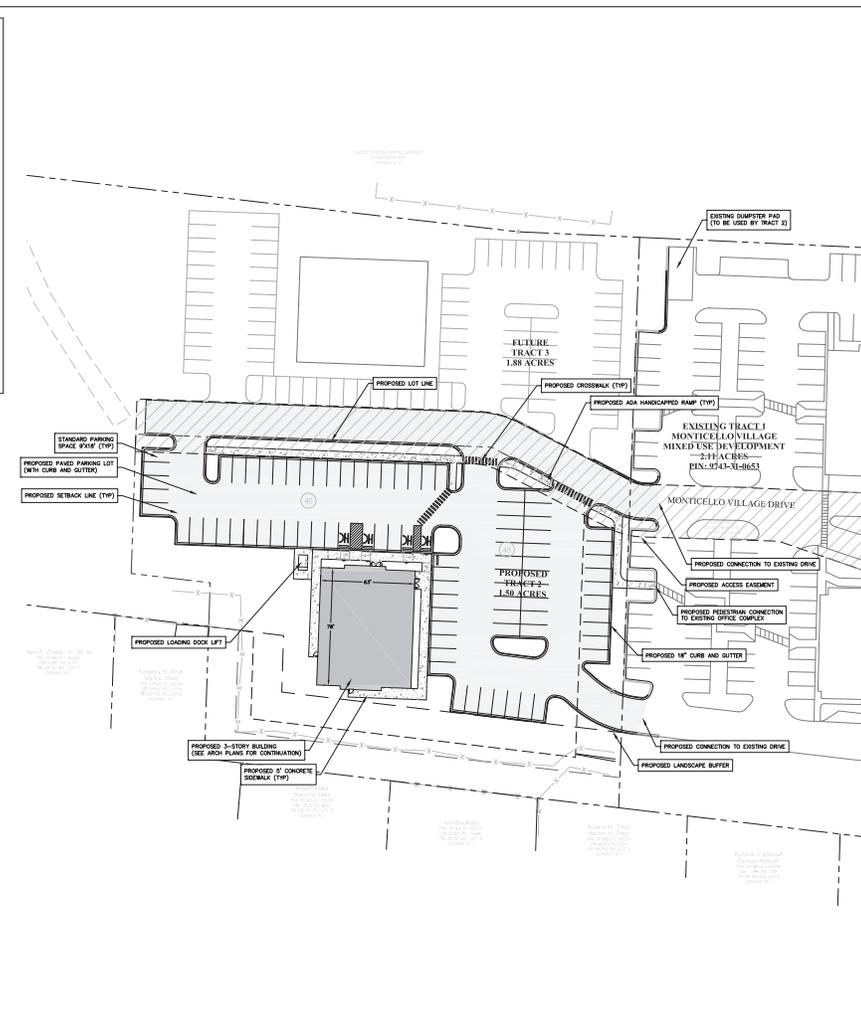
**Tycer Lewis, Chairman  
Zoning Board of Adjustment**

**ATTEST:**

---

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

- NOTES**
1. ALL SITEWORK SHALL BE IN ACCORDANCE WITH ALL LOCAL, STATE AND NATIONAL REGULATORY STANDARDS AND ALL REQUIREMENTS IN THE PROJECT TECHNICAL SPECIFICATIONS.
  2. SINGLE-PHASE CONSTRUCTION.
  3. ALL WORK MUST BE PERFORMED BY A NORTH CAROLINA LICENSED CONTRACTOR.
  4. CONTRACTOR IS RESPONSIBLE FOR LOCATING AND VERIFYING THE EXISTING LOCATION AND ELEVATION FOR ALL UTILITIES PRIOR TO CONSTRUCTION AND TO NOTIFY BUREAU OF ANY CONFLICTS OR DISCREPANCIES. THE LOCATION OF SOME UTILITIES SHOWN ON THE PLANS HAVE BEEN APPROXIMATE. ALL BUREAU UTILITIES HAVE NOT BEEN SHOWN ON THE PLANS AND IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THEIR LOCATION PRIOR TO CONSTRUCTION.
  5. CONTRACTOR SHALL PROTECT EXISTING SITE FEATURES (SHOWN TO REMAIN) AND NEWLY COMPLETED WORK DURING CONSTRUCTION. ANY DAMAGE INCURRED DURING OR RESULTING FROM CONSTRUCTION ACTIVITY IS THE RESPONSIBILITY OF THE CONTRACTOR AND IS TO BE REPAIRED IN ACCORDANCE WITH APPLICABLE STANDARDS OF APPROPRIATE AGENCIES AT THE CONTRACTOR'S EXPENSE.
  6. THE CONTRACTOR IS TO NOTIFY ALL UTILITIES COMPANIES AT LEAST 72 HOURS BEFORE CONSTRUCTION ACTIVITY IS TO BEGIN. THE CONTRACTOR SHALL NOTIFY SLOTT AT 14-HRS-30-PM OR BY 72 HOURS BEFORE CONSTRUCTION BEGINS.
  7. SIDEWALKS SHALL BE CONSTRUCTED IN ORDER TO PROVIDE POSITIVE DRAINAGE AWAY FROM ALL STRUCTURES. A MAXIMUM OF 2% SLOPE CROSSWALK LONGITUDINAL SLOPE IS PERMITTED. A MAXIMUM OF 1.5% PER FOOT SIDEWALK/CROSSWALK CROSS SLOPE IS PERMITTED. ANY SIDEWALK/CROSSWALK INSTALLED WITH A STEEPER SLOPE SHALL BE REMOVED AND REPLACED AT CONTRACTOR'S EXPENSE.
  8. ALL RAIN LISTED ARE FROM FACE OF CURB UNLESS OTHERWISE NOTED. ALL PARKING LOT TRADE ARE 0' UNLESS OTHERWISE NOTED.
  9. ALL ROAD/PARKING LOT IMPROVEMENTS, STRIPING AND SIGNAGE SHALL BE IN ACCORDANCE WITH THE LATEST MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). CONTRACTOR MAY USE A PAVEMENT SUITABLE FOR ASPHALT APPLICATION IN LIEU OF TERRAZZO WITH PRIOR APPROVAL FROM THE ENGINEER.
  10. CURB END TREATMENT TO BE APPLIED TO ALL CURB ENDS. REFER TO CURB END TREATMENT DETAIL.
  11. PROPOSED ROADS TO BE PRIVATE TOWN OF WEAVERVILLE IS NOT RESPONSIBLE FOR ANY ROAD MAINTENANCE.



**DEVELOPMENT DATA**

**OWNER/DEVELOPER:** MONTICELLO DEVELOPMENT, LLC  
 1300 TAMM RD  
 ASHEVILLE, NC 28805  
 (813) 298-3408

**CONTACT:** DAN JAYSON, CONCEPTS, P.A.  
 4000 W. 20th ST  
 WARRIOR, NC 27688  
 (813) 438-1295

**ARCHITECT:** FOWLER ARCHITECTS, P.A.  
 351 W. MAIN ST  
 ASHEVILLE, NC 28801  
 (813) 255-8585

**PROJECT DATA**

**PARCEL:** 0743-21-785, 0743-21-083  
**ADDRESS:** MONTICELLO COMMERCE DR  
**DEED BOOK/PAGE:** 4300/7076  
**TOTAL AREA:** 5.4 ACRES  
**ZONING:** C-2

**TRACT B PROJECT DATA**

**SETBACKS:** 30'  
**SECS:** 30' (ABUTTING RESIDENTIAL)  
 0' (ABUTTING COMMERCIAL)  
**REAR:** 30' (ABUTTING COMMERCIAL)  
**DEVELOPED AREA:** 1.60 AC

**PARKING CALCULATIONS:**

**VEHICLE:**  
**PROFESSIONAL SERVICES:** 1/200 SF (TOTAL 15,084 SF)  
**MANUFACTURING/STORAGE:** 1/200 SF (TOTAL 2,450 SF)

**PROFESSIONAL SERVICES SPACES:** 78  
**MANUFACTURING/STORAGE SPACES:** 12  
**TOTAL SPACES PROVIDED:** 90

**HANDICAPPED SPACES:** 4  
**SPACES REQUIRED:** 4  
**SPACES PROVIDED:** 4

**BUILDING DATA:**  
**BUILDING 1:** DESCRIPTION: 3-STOREY  
 AREA: 15,034 SF

**LANDSCAPE REQUIREMENTS:** SEE LOT1 LANDSCAPE PLAN

**811**  
 Know what's below.  
 Call before you dig.

**NORTH**

**SITE PLAN**  
**GRAPHIC SCALE**  
 1 inch = 30 ft

**MONTICELLO OFFICE**

**SHEET C201**

**CDC**  
 CONCEPTS  
 DAN JAYSON  
 ARCHITECTS

**DATE:** 11/17/2024  
**BY:** [Signature]

**SCALE:** 1/8" = 1'-0"

**PROJECT NO.:** 24-001  
**TOWN PERMIT NO.:** 24-001

**DATE:** 11/17/2024  
**NO.:** 1  
**DATE:** 11/17/2024  
**NO.:** 1

**811**  
 Know what's below.  
 Call before you dig.

**NORTH**

**SITE PLAN**  
**GRAPHIC SCALE**  
 1 inch = 30 ft

**MONTICELLO OFFICE**

**SHEET C201**

# DD-Elev1

Front Elev



**1** North East Corner View



**Agenda Items 4&5**  
**Sidewalk Waiver – 320 Merrimon Avenue**

**ZONING BOARD OF ADJUSTMENT  
MEETING SHEET FOR JUNE 10, 2019**

**REQUEST FOR A SIDEWALK WAIVER**

**INTRODUCTION:** 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.

**JURISDICTION:** Sec. 36-24(c)(2) authorizes the Board to consider a waiver of the sidewalk requirement

**STANDARDS:** Exceptions to the sidewalk requirement may be considered under the following circumstances:

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

**QUESTION FOR DELIBERATION:** Does the record include competent, relevant and substantial evidence that the sidewalk construction requirement for commercial uses should be waived for the property located at 320 Merrimon Avenue?

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

MRS Land Development, LLC  
Sidewalk Waiver Request - Public Hearing  
320 Merrimon Avenue, Buncombe County PIN 9732-80-7768; 9732-80-6733

**AFFIDAVIT OF MAILING AND POSTING**

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 29th day of May, 2019, I:

1. Mailed the attached Notice of Public Hearing, attached as 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; and
2. Posted the attached Notice of Public Hearing Sign(s), Exhibit C, at the location commonly known as 16 Monticello Village Drive and that a Notice of Public Hearing, Exhibit A, was affixed to the reverse side of same.

This the 29<sup>th</sup> day of May, 2019.

  
\_\_\_\_\_  
James W. Eller

Sworn to and subscribed before me  
this 29 day of May, 2019

\_\_\_\_\_  
Notary Public

My Commission Expires: 5/29/2021

[Notary Seal]

Z:\Administration\Land Development\Affidavit of Mailing and Posting - ZBA.doc



Edw. A

## **NOTICE OF PUBLIC HEARING**

Public Notice is hereby given that the Town of Weaverville Zoning Board of Adjustment will hold a Public Hearing on Monday, June 10, 2019 at 7:00p.m. 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 for a sidewalk waiver related to a proposed development at the intersection of Garrison Road and Merrimon Avenue commonly known as 320 Merrimon Avenue. The nature of said waiver is from the sidewalk construction requirement of all new multi-family or commercial uses.

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](mailto:jeller@weavervillenc.org).

Publication Dates: 5-31-19 and 6-7-19

OWNER	ADDRESS	CITYNAME	STATE	ZIPCODE
ALLMAN JOE N;ALLMAN SUSAN C	3 STONEY KNOB HTS	WEAVERVILLE	NC	28787
CHARLES L KISER LIVING TRUST	PO BOX 2510	WEAVERVILLE	NC	28787
<del>CHARLES L KISER LIVING TRUST</del>	<del>PO BOX 2510</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
CONRAD REALTY OF WEAVERVILLE INC	PO BOX 695	WEAVERVILLE	NC	28787
<del>CONRAD REALTY OF WEAVERVILLE INC</del>	<del>PO BOX 695</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
<del>CONRAD REALTY OF WEAVERVILLE INC</del>	<del>PO BOX 695</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
CRAYTON JEFFREY N;CRAYTON MELANYE M	455 CREEKSIDE DR	ASHEVILLE	NC	28804
DERMAS GUS J;DERMAS MINNIE G	63 GIBSON RD	ASHEVILLE	NC	28804
EGGERS KENNETH;EGGERS BRITTANY;PATON DAWN E;	42 STONEY KNOB RD	WEAVERVILLE	NC	28787
FOX DANIEL W;FOX LELA	31 STONEY KNOB RD	WEAVERVILLE	NC	28787
<del>FOX DANIEL W;FOX LELA</del>	<del>31 STONEY KNOB RD</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
GILL PATRICIA ROSE	202 NEWSTOCK RD	ASHEVILLE	NC	28804
HEATHER HOLDINGS LLC	825 MERRIMON AVE # 309	ASHEVILLE	NC	28804
HUDSON JOHN E III;HUDSON ANN MARIE T M	17 JUPITER HILLS DR	WEAVERVILLE	NC	28787
JEFF GARRISON TRUST LISA GARRISON TRUST	5657 CADWELL CT	NORCROSS	GA	30092
JONES FAMILY PROPERTIES LLC	210 BREVARD RD	ASHEVILLE	NC	28806
LEONARD CHARLOTTE	29 BEAR FOOT DR	WEAVERVILLE	NC	28787
MASTERS ROY E JR	PO BOX 8311	ASHEVILLE	NC	28814
MORNINGSIDE PARTNERS OF PINEHURST	199 Lake Timicau Ln	Deweese Island	SC	29451
MRS LAND DEVELOPMENT LLC	42 WEAVER ROAD	WEAVERVILLE	NC	28787
<del>MRS LAND DEVELOPMENT LLC</del>	<del>42 WEAVER ROAD</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
<del>MRS LAND DEVELOPMENT LLC</del>	<del>42 WEAVER ROAD</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
<del>MRS LAND DEVELOPMENT LLC</del>	<del>42 WEAVER ROAD</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
MURPHY TRACY J	3 FOREST RIDGE DR	ARDEN	NC	28704
NORMAN HUGH L	328 HEATHER CT	ASHEVILLE	NC	28804
OGDEN HOLLY R	35 STONEY KNOB RD	WEAVERVILLE	NC	28787

Exhibit B

14

PENNINGTON CLAY;ALLISON JOYCE M	338 HEATHER CT	ASHEVILLE	NC	28804
PETERSON-SMITH JODY	332 HEATHER CT	ASHEVILLE	NC	28804
RADFORD ALBERT H;RADFORD FRANCYS	331 HEATHER CT	ASHEVILLE	NC	28804
RICE CAROLYN L	117 STONEY KNOB RD	WEAVERVILLE	NC	28787
<del>RICE CAROLYN L</del>	<del>117 STONEY KNOB RD</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
ROBINSON BETTY JO S	PO BOX 602	WEAVERVILLE	NC	28787
ROGERS A CRAIG	525 NEW LEICESTER HWY	ASHEVILLE	NC	28806
ROGERS A CRAIG;ROGERS LYNDA M	401 HAWKWOOD LN	LEICESTER	NC	28748
SCRUGGS PAULA KAY	16 W BAIRD MOUNTAIN RD	ASHEVILLE	NC	28804
SEROTA MARS HILL LLC	19 Arlington St Ste 1	Asheville	NC	28801
<del>SEROTA MARS HILL LLC</del>	<del>19 Arlington St Ste 1</del>	<del>Asheville</del>	<del>NC</del>	<del>28801</del>
SHOOK JACK B;SHOOK MARIE S	9 STONEY KNOB HTS	WEAVERVILLE	NC	28787
STEVENS JEFFREY A;STEVENS JANICE M	18 HILLCREST DR	WEAVERVILLE	NC	28787
<del>STEVENS JEFFREY A;STEVENS JANICE M</del>	<del>18 HILLCREST DR</del>	<del>WEAVERVILLE</del>	<del>NC</del>	<del>28787</del>
TAG PROPERTIES ASHEVILLE LLC	PO BOX 706	WEAVERVILLE	NC	28787
WORLEY GLAMER;WORLEY GLENNA	21 PONDER WORLEY DR	WEAVERVILLE	NC	28787

(13)

$$A + 13 = [32]$$

# Buncombe County



May 29, 2019

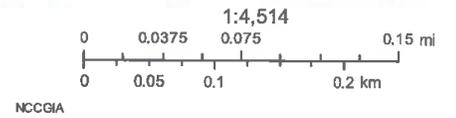


Exhibit C



Town of Weaverville, North Carolina  
**Staff Report: Sidewalk Waiver**  
**320 Merrimon Avenue**

Prepared June 2019

Sources: Town of Weaverville Code of Ordinances

Question of Jurisdiction:

**Section 36-24(c)(2) authorizes the Zoning Board of Adjustment to consider a waiver of the sidewalk requirement for all new multi-family and commercial uses. Staff is in receipt of a zoning permit application which calls for the placement of a building to be used for commercial purposes on two parcels at the intersection of Garrison and Merrimon.**

**The property owner has requested such a waiver based upon the conditions the Zoning Board of Adjustment are to consider found in Section 36-24(d)(2,3).**

Sec. 36-24. - Sidewalk requirements.

- (a) *Purpose.* The purpose of this section is to ensure that applicants for new construction and renovations, additions, and/or expansions to existing structures consider the need for sidewalks as part of the proposed development and to establish requirements for the construction of sidewalks. While the town recognizes its need to maintain sidewalks and to construct sidewalks to meet the needs of the general population, project applicants may be required to participate in the construction of sidewalks to meet the pedestrian needs of the citizens of the town. The town also recognizes that in certain cases, sidewalks may not be needed or their construction may not be feasible.
- (b) *Sidewalks required.* Sidewalks shall be required for all new construction and development except for: (1) single family dwellings, and (2) duplexes.

Sidewalks shall be constructed along all street frontages of the lot for which the development is proposed. All sidewalks shall be constructed to a minimum of five feet in width in accordance with the standards set forth in the Town of Weaverville Standard Specifications and Details Manual. Sidewalk rehabilitation shall be required for the types of development projects identified above where the existing sidewalk has been determined by the department of public works to be dilapidated.

- (c) *Waiver of requirement.*
- (1) *Waiver of requirement.* For additions to existing residential neighborhoods without sidewalks where sidewalks would not be in character with the existing neighborhood, the town manager is authorized to waive the requirement for sidewalks.
- (2) *Waiver of requirement by the board of adjustments.* In certain instances, the construction of a sidewalk may not be warranted or feasible. In these circumstances, the board of adjustments may waive the requirement that a sidewalk be constructed provided that certain conditions exist.
- (d) *Exceptions.* Exceptions may be considered by the board of adjustment under the following circumstances:
- (1) If sidewalks are scheduled to be installed as part of a state or town project within ten years, then the developer may pay a fee in lieu of construction equal to 100 percent 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 vehicle 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

Town of Weaverville, North Carolina  
**Staff Report: Sidewalk Waiver**  
**320 Merrimon Avenue**

Prepared June 2019

Sources: Town of Weaverville Code of Ordinances

geometry creates sight distance problems. (An example of where this exception could be met is on a dead-end street that has little existing or future development.)

- (3) Where the construction of sidewalks in the findings of fact by the Weaverville Board of Adjustment would create greater harm or danger to the pedestrians.

Requests for an exception to the requirement that sidewalks be constructed shall be made to the town zoning administrator on a form provided by the town.

**Previous Decisions:**

On the night of October 9, 2017 the Zoning Board of Adjustment heard a similar request from an adjacent property owner. Under considerably similar circumstances the Board found competent, relevant and substantial evidence to waive the sidewalk requirement in that there were no sidewalks planned in the immediate vicinity and that the sidewalk, if constructed, would not provide any connectivity with the nearest sidewalk roughly .4 miles away. Via a unanimous vote the Board waived the sidewalk requirement.

Excerpt from the Aforementioned October, 2017 Meeting of the Board:

Public Hearing Regarding an Application for a Sidewalk Waiver Related to a Proposed Development Near the Intersection of Garrison Road and Merrimon Avenue. The Nature of Said Waiver is from the Sidewalk Construction Requirement of all New Multi-family or Commercial Uses.

Vice Chairman Lewis reviewed the procedure for the public hearing which included the following.

INTRODUCTION: Serota Mars Hill, LLC, through Wilder Wadford, has requested a waiver of the sidewalk requirement for its commercial project located near the intersection of Garrison Road and Merrimon Avenue and bears PIN 9732-80-8797 and 9732-90-0726

JURISDICTION: Sec. 36-24(c)(2) authorizes the BOA to consider a waiver of the sidewalk requirement for all new multi-family residential and/or commercial uses.

STANDARDS: Exceptions to the sidewalk requirement may be considered under the following circumstances:

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.

Town of Weaverville, North Carolina  
**Staff Report: Sidewalk Waiver**  
**320 Merrimon Avenue**

Prepared June 2019

Sources: Town of Weaverville Code of Ordinances

3. Where the construction of sidewalks in the findings of fact by the BOA would create greater harm or danger to the pedestrians

Vice Chairman Lewis declared the public hearing open.

Vice Chairman Lewis also inquired of the Board if any member had any bias or had participated in any ex parte communication regarding the matter to be heard. No Board Member disclosed such a bias or action.

Vice Chairman Lewis asked which individuals wished to participate as parties to the matter before the Board. The Board acknowledged applicant Serota Mars Hill, LLC and Planning Director James Eller had standing to participate in the hearing, each were duly sworn and made parties to the matter. No other appearances or requests were made to be a party to this matter.

Mr. Eller described the nature of the application which called for a waiver of the sidewalk requirements applicable to all new multifamily and commercial development.

Mr. Eller submitted into evidence an affidavit of mailing as exhibit 1-A, an affidavit of posting as exhibit 1-B and an affidavit of publication as exhibit 1-C.

Mr. Eller also submitted a packet of information into evidence as exhibit 2. Said packet of information included a "Statement Regarding Sidewalk Waiver, Garrison Road", Section 36-24 entitled sidewalk requirements from the Code of Ordinances, a vicinity map and a site plan submitted by the applicant showing the proposed use of the property.

Mr. Eller testified that sidewalks do not exist on Merrimon Avenue or Garrison Road in the vicinity of the project and stated that there was no evidence of a sidewalk project occurring along same during the next ten years due to the terrain and lack of right-of-way.

Mr. Mercer, appearing on behalf of the owner and applicant, testified that if constructed as required by Section 36-24, the sidewalk would only be in front of the applicant's commercial development and would not connect to any other sidewalks. The construction of the sidewalk in front of the applicant's commercial development are not warranted and may actually cause greater harm or danger to the pedestrians on Garrison Road due to the abrupt beginning and ending of a required sidewalk.

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

Consideration of a Motion Establishing a Ruling on the Aforementioned Sidewalk Waiver.

Vice Chairman Lewis reviewed with the Board the question for deliberation: Does the record include competent, relevant and substantial evidence that the sidewalk construction requirement for commercial uses should be waived for the Stoney Knob Commercial development?

Town of Weaverville, North Carolina  
**Staff Report: Sidewalk Waiver**  
**320 Merrimon Avenue**

Prepared June 2019

Sources: Town of Weaverville Code of Ordinances

Based on the evidence presented and the arguments made Mr. Parkin motioned to approve the sidewalk waiver for the aforementioned property. Mr. Clauhs seconded and all voted unanimously.



# Buncombe County



June 5, 2019

