

Town of Weaverville

Zoning Board of Adjustment
Minutes – Monday, October 28, 2019

The Zoning Board of Adjustment of the Town of Weaverville met for a specially called meeting at 7pm on Monday, October 28, 2019, in Council Chambers at Town Hall at 30 South Main Street, Weaverville.

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

1. Call to Order

Chair Tycer Lewis called the meeting to order at 7:00 pm 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 June 10, 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 Variance Application for the Property owned by Hazel Reese located at 120 South Main Street

Chair 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 request for a variance. 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.

Chair Lewis introduced the matter by stating that Hazel Reese is the owner of property located at 120 South Main Street (Buncombe County Parcel Identification Numbers of 9742-25-8178), which located in the R-1 Zoning District. Through her Attorney-in-Fact, Judy Williams, the property owner has applied for a minimum lot width variance. In accordance with North Carolina law and Code Section 36-328(2) the Board has the authority to hear and decide variances if the following can be found:

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.

Chair 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. No concerns were noted about the board hearing the matter were expressed.

Chair Lewis noted that the applicant/property owner, Hazel Reese, through her agent Tonya Gudger, had standing to participate in the hearing. 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, Tonya Gudger. Julie Nelson was sworn in but did not provide testimony.

Mr. Eller described the application and asked that the entire meeting packet, including the Survey; Application for a Variance dated September 21, 2019; Affidavit of Publication and Affidavit of Mailing and Posting, be accepted into the record as Exhibit 1. Attorney Jackson asked that a copy of the power of attorney signed by Hazel Searcy Reese which appoints Judy Louise Reese Williams as her attorney-in-fact be accepted into the as Exhibit 2. These exhibits were accepted into evidence without objection from any party.

Ms. Gudger appeared on behalf of the property owner and indicated that the application correctly described the request and justification for the variance and was available to answer any questions.

4. Ruling on a Variance Application for the Property owned by Hazel Reese located at 120 South Main Street

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

Mr. Eller asked if the Board was comfortable with him issuing permits prior to the signing of the order. There was consensus to do so. The Town Attorney asked if the Board wished to provide the Chair with the authority to sign the written order drafted in accordance with the vote and the facts in the record prior to the Board's next meeting. Board Member Parkin made a motion to authorize this and Board Member Clauhs seconded the motion. All voted and favor and the motion passed. Mr. Eller and Ms. Jackson indicated that they will prepare the written order for the Chair's review and signature with a hope of getting it signed and out to the property owner and her agent by the end of the week.

5. Other Business

Attorney Jackson discussed the Board's current Rules of Procedure that were adopted several years ago and a revised draft that she and Mr. Eller have been working on. A preliminary draft was distributed to the Board for review. By consensus Board Members are to provide comments, questions, and/or concerns to Mr. Eller and Ms. Jackson by the end of November so that they can put together a final draft for the Board's consideration in either December or January.

Mr. Eller reminded the Board that the Town's Volunteer Appreciation Dinner will be held on November 19th at 6pm at Town Hall and that RSVPs should be sent in not later than 5pm on November 11th.

Mr. Eller indicated that the Town will be conducting a Citizens' Academy beginning in January 2020 and encouraged anyone that hasn't taken it to do so in order to gain a more in depth understanding of governmental operations.

There was good discussion amongst the Board Members and staff on the mailed notice requirements for matters brought before the Board. The Town Code currently requires mailed notice to go to anyone residing or operating a business within 500 feet of the applicant's property. North Carolina only requires mailed notice to abutting property owners. Staff favors aligning the notice requirement for quasi-judicial matters with North

Carolina law. By consensus the Board Members decided to study the matter further and will take it up again at their next meeting in order to discuss whether they wish to submit a text amendment request to Town Council.

6. Adjournment

At approximately 7:40 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, Chair
Board of Adjustment**

ATTEST:



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