



**Town of Weaverville
Zoning Board of Adjustment
Council Chambers
February 10, 2020, 7pm**

Agenda

1. Call to Order – Chairman Tycer Lewis.
2. Approval of the Agenda.
3. Approval of the Minutes from the October 28, 2019 Meeting of the Board.
4. Ratification of the Order Establishing the Board’s Action on a Previous Variance at 120 South Main Street.
5. Public Hearing Regarding a Variance Application for the Property Commonly Known as 284 North Main Street.
6. Consideration of a Motion Establishing a Ruling on the Aforementioned Variance Application.
7. Discussion Related to the Zoning Board of Adjustment Rules and Procedures.
8. Discussion Related to the Mandated Notices for Matters to be heard by the Zoning Board of Adjustment.
9. Any Other Business to Come Before the Board.
10. Adjournment.



**Zoning Board of Adjustment -
Summary of Procedures**

OVERVIEW OF ZONING BOARD OF ADJUSTMENT MATTERS – PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE

The Zoning Board of Adjustment almost exclusively does its work by making **QUASI-JUDICIAL** decisions on appeals from Zoning Administrator decisions, variance requests and applications for special use permits. Strict adherence to statutorily prescribed procedures before, during and after a hearing must be followed to ensure that constitutional due process rights of all parties are preserved. As rights are determined in these hearings it may be advisable for you to consult with an attorney on these matters.

PUBLIC NOTICE OF HEARING

The Town Staff must provide notice of the hearings.

MAILED NOTICE – Notice of hearings must be mailed to the applicant, the owner of the affected property, and owners of properties located within 500 feet of the property affected. Mailings are sent first class to addresses maintained by Buncombe County Tax Office and must be sent at least 10 days but not more than 25 days prior to the scheduled hearing.

POSTING OF PROPERTY – The property that is subject to an appeal, variance request or special use permit application must be prominently posted. This posting must be on the property affected or on an adjacent street or highway right of way and must also be done at least 10 days but not more than 25 days prior to the scheduled hearing.

PUBLICATION IN NEWSPAPER –The hearing must also be advertised in a newspaper of general circulation.

INTRODUCTION AT HEARING

The Chairman of the Zoning Board of Adjustment will provide an introduction prior to the start of the hearing in order to make sure that those in attendance understand the matter to be heard, who is allowed to participate, and a general overview of the procedural aspects of the hearing including the burden of proof and standards the Zoning Board of Adjustment must apply.

BURDEN OF PROOF - The person appealing a zoning administrator decision, or applying for a variance or special use permit has the burden of proving sufficient evidence for the Zoning Board of Adjustment to conclude that the applicable standards have been met. If insufficient evidence is presented, the application must be denied or the Zoning Board of Adjustment can continue the hearing to a later date to receive additional evidence. Once sufficient evidence has been presented that the standards have been met, the applicant is entitled to approval. If conflicting evidence is presented, the Board must determine which facts it believes are correct.

STANDARDS - The Town's zoning ordinance provides specific standards for the issuance of variances and special use permits. See separate Section on Standards.

BOARD DISCLOSURES AND RECUSALS

The Zoning Board of Adjustment must make sure that it is an impartial decision maker and that all communications with the Board on the matter prior to the hearing have been disclosed.

RECUSAL FOR BIAS/CONFLICT OF INTEREST - Prior to the opening of the hearing, the Chairman will inquire of the Board members if there is any reason that they could not be an impartial decision maker. If any member has a fixed opinion prior to the hearing, a close familial, business or other associational relationship with an affected person, or a direct or indirect financial interest in the outcome he or she should not participate in that hearing, deliberation or vote. Alternate members of the Zoning Board of Adjustment have been appointed to fill a seat in those situations. If there are members who express bias or conflict of interest then the recusals of those members would be appropriate.

OVERVIEW OF ZONING BOARD OF ADJUSTMENT MATTERS – PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE

OUTSIDE COMMUNICATION – The Chairman will also provide an opportunity for members of the Board to disclose any communication that has occurred prior to the hearing. Some incidental communication is common and hard to avoid. However, substantial communication that occurs outside of the hearing should be disclosed.

IDENTIFICATION OF PARTIES

Only those people who have a sufficient interest, or standing, in the outcome of matter before the Board are allowed to become a party and present evidence. Anyone that can show some “special damage,” or damage not common to all other persons who may oppose what is being requested, will have standing to contest the matter and will be a proper party. The following have standing:

- (1) Anyone that has an ownership interest in the property that is the subject of the hearing;
- (2) Anyone that has a leasehold interest in the property that is the subject of the hearing.
- (3) Anyone that has an interest in the property that is the subject of the hearing that has been created by an easement, restriction, or covenant.
- (4) Anyone that has an option or contract to purchase the property that is the subject of the hearing.
- (5) Anyone that is an applicant before the decision-making board.
- (6) Any other person who will suffer special damages as the result of the decision.
- (7) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual.
- (8) The Town if the Town believes that the Zoning Board of Adjustment made a decision that it believes is inconsistent with the proper interpretation of an ordinance adopted by Town Council.

OATH OF WITNESSES

State law requires that the Zoning Board of Adjustment’s decisions be based on testimony that is given under oath. The Chairman will ask that anyone wishing to testify at the hearing come forward to be sworn under oath before the hearing begins.

HEARING IS OPENED FOR THE PRESENTATION OF EVIDENCE

The hearing is conducted in order to determine the facts relevant to the matter before the Zoning Board of Adjustment. The decision of the Zoning Board of Adjustment must be made based on competent, material and substantial evidence in the record of the hearing. The Zoning Board of Adjustment’s scope is limited to applying facts to the standards set forth in the zoning ordinance. Any testimony as to unrelated matters is inappropriate and cannot be considered.

DOCUMENTARY EVIDENCE/EXHIBITS - Examples of documents that can be entered into evidence include: the application, staff reports, supporting documentation, documents from witnesses, maps, photographs, videos, studies.

FACTUAL TESTIMONY – Testimony about facts within the personal knowledge of a witness can be fully considered by the Zoning Board of Adjustment. Factual testimony should be limited to those facts which relate to the standards. The Zoning Board of Adjustment can only rely on opinions offered by qualified experts. The testimony of lay witnesses offering only opinions or conclusions is not considered as competent evidence on which the Board can basis its determination.

OPINION TESTIMONY BY QUALIFIED EXPERTS – Opinion testimony should be provided only by properly qualified experts. North Carolina law specifically prohibits the use of non-expert testimony on how the use of a property would affect property values, the increase in vehicular traffic resulting from the proposed development would pose a danger to public safety, or any other matters that a court would require expert testimony in court. Non-expert opinions on these technical matters are not considered to be competent evidence upon which a decision can be made.

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CROSS-EXAMINATION

In order to preserve constitutional rights, parties have the right to cross-exam or question all witnesses. Board members are also free to pose questions to anyone presenting evidence.

HEARING IS CLOSED AND BOARD DELIBERATION BEGINS

At the close of the hearing the Board then takes an opportunity to review the evidence in light of the standards that the Board must apply. The Board's review should focus on contested facts. Where conflicting evidence is presented, the Zoning Board of Adjustment has the responsibility of deciding how much weight to accord each piece of evidence. The Board also has the responsibility of determining credibility of witnesses. In its discussion the Board can consider conditions that might be imposed in order to bring the project into compliance with a standard.

VOTING

For most matters coming before the Zoning Board of Adjustment a simple majority vote is all that is needed. For variance applications, however, North Carolina law requires a super majority of at least 4/5.

WRITTEN DECISIONS

The Board's decision must be reduced to writing; however, this is usually done at a subsequent meeting. Prior to that it is permissible to issue a temporary order consistent with the Board's deliberations and vote. The written decision must determine any contested facts and apply the facts to the applicable standards. Staff drafts a written decision and presents it to the Board at the Board's next meeting for consideration and adoption.

APPEALS

Anyone "aggrieved" by a decision of the Zoning Board of Adjustment can appeal a decision by filing a petition for writ of certiorari with the Buncombe County Superior Court within 30 days of the mailing of the written decision or the filing of that decision with the Board's clerk or secretary, which is later. It is important to remember that the time is not measured from the date of the decision, but from the mailing of the written decision. It is also important to note that appeals are not heard by Town Council.

STANDARDS

The standards as adopted by the Town Council must be set forth in an unambiguous manner so that the Zoning Board of Adjustment can apply those standards to the facts of a particular case. This doesn't mean that the standards must all be objective standards, subjective standards (such as "general welfare" and "hardship") are permissible.

STANDARDS FOR SPECIAL USE PERMITS

- (1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- (2) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood.
- (3) The establishment of the special use will not impede the normal and 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

**OVERVIEW OF ZONING BOARD OF ADJUSTMENT MATTERS –
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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 shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the zoning board of adjustment.

STANDARDS FOR VARIANCES

- (1) Unnecessary hardship would result from the strict application of [the zoning ordinance].
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography; however, 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 a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner.
- (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.



**Agenda Item 3
Minutes**

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**

DRAFT



Agenda Item 4
Order- 120 South Main

**TOWN OF WEAVERVILLE
ZONING BOARD OF ADJUSTMENT**

**ORDER GRANTING
A VARIANCE**

APPLICANT: Hazel S. Reese (through Judy Williams, her Attorney-in-Fact)

PROPERTY LOCATION: 120 South Main Street, Weaverville, NC

PARCEL IDENTIFICATION NUMBERS: 9742-25-8178

The Zoning Board of Adjustment of the Town of Weaverville (hereinafter "Board") held a quasi-judicial evidentiary hearing (hereinafter "Hearing") on Monday, October 28, 2019, at 7 p.m. in Council Chambers at Town Hall at 30 South Main Street, Weaverville, on a request for a variance of the side yard setback.

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

Prior to the hearing the Board was polled as to 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 *ex parte* communication between the Board members on this matter was indicated. No objection to the Board members hearing the matter was noted by anyone in attendance.

At the hearing on October 28, 2019, Chairman Lewis presided. The Board acknowledged that the following had standing to participate in the hearing and were made parties to this matter:
Applicant/property owner Hazel Reese through her Attorney-in-Fact and their agent Tonya Gudger,

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:

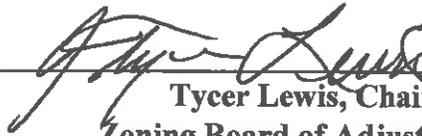
1. Documentary evidence was submitted and admitted into evidence without objection as follows:
 - a. A packet of information submitted to the Board in which the following items were included: Survey; Application for a Variance dated September 21, 2019; Affidavit of Publication and Affidavit of Mailing and Posting; said packet was submitted into evidence by James Eller as Exhibit 1.
 - b. A copy of the power of attorney signed by Hazel Searcy Reese which appoints Judy Louise Reese Williams as her attorney-in-fact was submitted into the record as Exhibit 2.

2. The following individuals were sworn in and gave testimony: James Eller and Tonya Gudger.
3. The Applicant owns the real property located at 120 South Main Street, which bears Buncombe County parcel identification number 9742-25-8178 and is zoned R-1 residential. The property contains a single family residence.
4. The property consists of Lots 5, 6, 26, and 27 of a subdivision that is shown on a plat recorded in 1920 in Map Book 1 at Page 14, and for tax purposes the lots were later combined into a single tax parcel.
5. The 1920's subdivision pre-dates the Town's zoning regulations and R-1 zoning. In their original configuration each lot is a pre-existing non-conforming lot in that the lot widths are narrower than the 100-foot minimum lot width required for R-1. The lot width for each of Lots 26 and 27 is approximately 54 feet. The applicant has requested a variance on the minimum lot width for Lots 26 and 27 to allow construction of single family residences on each of these two lots.
6. Without the requested variance these lots are not able to be used as a single family residence which is the primary purpose of the R-1 zoning district.
7. The requested variance will have a minimal impact on the neighboring properties as many of the properties were also pre-existing non-conforming lots that have single family residences constructed on them, with many having minimum lot widths of approximately 50 feet.
8. The Board further finds and concludes that:
 - a) an unnecessary hardship will result in the strict application of the Zoning Ordinance as the lot without the variance cannot be used for single family residential purposes, the primary use within an R-1 zoning district;
 - b) the hardship results from conditions that are peculiar to the property, including specifically the topography of the property, are not a result of personal circumstances, and did not result from action taken by the applicant or property owner;
 - c) the requested variance is consistent with the spirit, purpose and intent of the Zoning Ordinance as there are substantially similar pre-existing nonconforming lots in the immediate vicinity of the subject property;
 - d) the requested variance is not a request to permit a use of land, building or structure which is not permitted within a residential zoning district, nor does the variance concern a prohibited sign.

NOW THEREFORE, based upon the foregoing findings of fact and conclusions, the Zoning Board of Adjustment for the Town of Weaverville concludes that (1) it has jurisdiction to hear this variance request and (2) the request for a variance from the minimum lot width should be granted as the request meets the required findings of subsection 36-328(2)(a) – (f) of the Code of Ordinances of the Town of Weaverville.

IT IS, THEREFORE, ORDERED that the Applicant's request for a minimum lot width variance to allow construction of a single family residence on Lots 26 and 27 of the applicant's property is hereby granted.

ORDERED THIS the 28th day of October, 2019.



Tycer Lewis, Chairman
Zoning Board of Adjustment

ATTEST:



James W. Eller
Town Planner / Deputy Town Clerk



Agenda Item 5&6
Variance - 284 North Main

Town of Weaverville, North Carolina

Staff Report: Proposed Variance at 284 North Main

Prepared February, 2020

Sources: Town of Weaverville Code of Ordinances

Introduction to the Property

The subject parcel, commonly known as 284 North Main Street, consists of .38 acres as shown on Buncombe County tax records. The property may be found directly adjacent to the five points intersection and also in close proximity to the Weaverville Fire Department whose roofline is visible in the upper left hand corner of the following map. The plat of record is also attached hereto which shows the property being used as a filling station as early as 1932.



Question of Jurisdiction

Section 36-328(2) tasks the Zoning Board of Adjustment to consider requests for variances.

Nature of Variance Request

In December, 2019 staff received a zoning permit application which called for the razing of the existing gas pump canopy and replacement of same with a larger canopy. The existing canopy itself is a nonconforming structure based upon its location associated to the property line and within the requisite setback. This calls for us to consider Section 36-532 – Nonconforming Structures.

Sec. 36-532. - Nonconforming structures.

- (a) A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this article. A nonconformity must have been legal when it was established in order to receive nonconforming protection. A structure which is a violation of the zoning ordinance when it was established shall not ripen into a legitimate nonconformity.
- (b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures so long as no expansion of the nonconformity occurs as a result of such work.
- (c) Section 36-533 shall apply to all changes of use within a nonconforming structure, except that a nonconforming structure with a compatible use may not under any circumstances change its use to a nonconforming use.

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Prepared February, 2020

Sources: Town of Weaverville Code of Ordinances

- (d) Except as provided in this article, a nonconforming structure may be renovated, expanded, or enlarged, without bringing the nonconforming structure into conformity with these regulations, only if the applicable nonconformity is not increased and no new nonconformities are created. The following shall also apply:
- (1) Increases in nonconformities related to building height are not allowed;
 - (2) Increases in the square footage of a nonconforming structure within the setbacks of the zoning district in which the structure is located are not allowed. In considering whether an increase in square footage has been made or is proposed the zoning administrator is to take into consideration both horizontal expansion (i.e. increasing the building footprint within the setback) and vertical expansion (i.e. adding a second story to the portion of a structure within the setback).
- (e) Residential structures made nonconforming by a text amendment or map amendment which rezones the property to a zoning district which does not permit residential uses may be renovated, expanded, or enlarged so long as the dimensional and numerical development standards for the R-1 zoning district can be met. See section 36-533(c) for nonconforming residential uses.
- (f) A nonconforming structure cannot be moved unless it thereafter conforms to the standards of the zoning district in which it is located. If such a move is not possible but a relocation of the nonconforming structure is desired, then such relocation is permissible as long as the applicable nonconformity is lessened and no new nonconformities are created.
- (g) In the interest of public safety and health, structural alterations or remodeling of nonconforming structures which are required by any public law, and so ordered by a public officer in authority, shall be permitted.
- (h) Where a nonconforming structure is destroyed or damaged by fire, flood, wind, or other disaster, the structure may be repaired or restored to its original dimensions and conditions as long as a zoning permit for the repair or restoration is issued within 180 days of the date of the damage. Upon request, the board of adjustment is authorized to extend this period up to an additional 180 days if the applicant can present competent, substantial and material evidence showing good cause for such extension. Good cause could include, but is not limited to, delays related to estate administration, casualty insurance issues, or litigation concerning the property.

Based upon the foregoing, it is the opinion of staff that the proposal could not satisfy subparagraphs 36-352(b) nor 36-352(d)(2) due to the expansion of an existing nonconformity. Said nonconformity being additional square footage constructed within the sixty foot setback

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Prepared February, 2020

Sources: Town of Weaverville Code of Ordinances

established by the C-2 zoning district where the property is located. These limitations give rise to the proposed variance request to reduce the front yard setback applicable to the property in order to allow for the construction of the desired structure.

Previous Decisions / Similar Situations

Staff was unable to discover another variance request which proposed a setback reduction within the C-2 zoning district. Given that there are no prior decisions of the Board to deliberate, the two following situations related to properties directly adjacent to the five point intersection are submitted for your consideration.

- 1 Dula Springs: In January, 2020 a zoning permit was issued for construction related to the replacement of an existing gas station canopy which had been significantly damaged by a delivery vehicle. This gas station canopy is also a nonconforming structure but it was allowed to be replaced based upon the aforementioned 36-352(h) and the new structure proposing to occupy the same space showing no expansion of the footprint.
- 4 North Buncombe School Road: In April, 2018 a structure was discovered to have been illegally erected without a zoning permit from the town or any other subsequent permitting from Buncombe County Permits and Inspections. Said structure was also within the established setback. The property owner wished to apply for a variance to allow for the structure to remain, but staff dissuaded this due to the variance standard which establishes that any hardship present did not result from actions taken by the applicant. Working in conjunction with Fire Marshal Davis, the structure was eventually razed and removed from the property.

Variance Standards

Sec. 36-328. - Powers and duties.

The zoning board of adjustment shall have the following powers and duties:

- (2) *Granting of variances.* The zoning board of adjustment is authorized, to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of this chapter upon a showing of all of the following:
 - a. Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

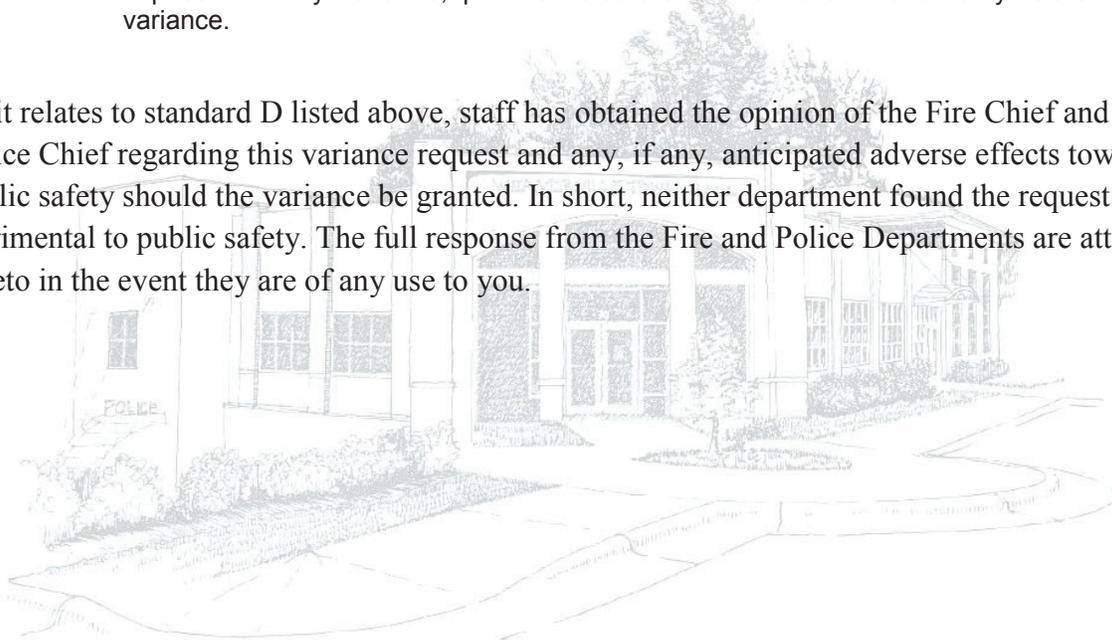
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- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c. 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.
- d. The requested variance is consistent with the spirit, purpose, and intent of this chapter such that **public safety is secured** and substantial justice is achieved.
- e. 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.
- f. The variance is not a request to permit a prohibited sign. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

As it relates to standard D listed above, staff has obtained the opinion of the Fire Chief and Police Chief regarding this variance request and any, if any, anticipated adverse effects toward public safety should the variance be granted. In short, neither department found the request detrimental to public safety. The full response from the Fire and Police Departments are attached hereto in the event they are of any use to you.



From: [Ted Williams](#)
To: [James Eller](#); [Ron Davis](#)
Cc: [Selena Coffey](#)
Subject: RE: 286 North Main Variance Request - Statement from Departments
Date: Monday, January 27, 2020 1:03:35 PM

James

Upon examination of the proposed request and after conferring with FM Davis we see no reason that this request would impact public safety in any way from a fire service delivery standpoint. The clearance height under the awning would be our major concern and the 15' 6" that is proposed is more than adequate for our apparatus to move safely. Please feel free to let me know should you need anything additionally and thank you for allowing us to weigh in on the request.

Ted Williams

Fire Chief

Weaverville Fire Department

(828)645-3500 ext. 1801

(828)484-7031 Direct

(828)658-9868 Fax

(828)545-2823 Cell

From: James Eller <jeller@weavervillenc.org>
Sent: Monday, January 27, 2020 8:38 AM
To: Ted Williams <twilliams@weavervillefd.org>; Ron Davis <rdavis@weavervillenc.org>
Cc: Selena Coffey <scoffey@weavervillenc.org>
Subject: 286 North Main Variance Request - Statement from Departments

Chief Williams and Davis,

Attached you will find a public notice advertising a public hearing before the Zoning Board of Adjustment on Monday, February 10 for a proposed variance on the property commonly known as 284 North Main. The reason I am sending is that the Town property where the Fire Department is located fell within my "notice bubble" for such hearings and anticipated questions from the Board related to public safety.

Also attached you will find a working version of the application in the event it is of any use to you. On page 4 of the application you will find the site plan illustrating the nature of the variance request. In short, they are attempting to raze the existing gas pump canopy and replace with a substantially larger one outlined in red. Of note is that the new canopy is proposed to go up to the property line rather than observe the 60 foot setback for the zoning district where the property is located. Hence

the variance request. In fairness to our applicant, it is also fair to acknowledge that said property line is a fair distance away from the five points intersection due to a considerable amount of right-of-way.

When considering a variance request, the Board must consider the following:

Granting of variances. The zoning board of adjustment is authorized, to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of this chapter upon a showing of all of the following:

- a. Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. 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 a variance.
- c. 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.
- d. The requested variance is consistent with the spirit, purpose, and intent of this chapter **such that public safety is secured** and substantial justice is achieved.
- e. 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.
- f. The variance is not a request to permit a prohibited sign.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

Given that the proposed variance is requesting zero lot line construction adjacent to one of the most traveled intersections in town, I find it likely that the Board will have questions about the proposed placement of the structure and whether or not that has any correlation to the safety of the general public and perhaps more specifically, the motoring public passing through the five points intersection.

In an attempt to save you a trip before the ZBA, unless of course you wish to be further bothered with my nonsense, it may be advisable to craft a statement from your respective departments related to this variance request and any, if any, anticipated adverse effects toward public safety should the variance be granted. If you wish to craft such a statement it would be entered into evidence for consideration of the Board by me during the proceeding.

Please feel free to contact me if you would like to discuss further.

James W. Eller
Planning Director
Town of Weaverville

From: [Ron Davis](#)
To: [James Eller](#)
Cc: [Selena Coffey](#); [Ted Williams](#)
Subject: RE: 286 North Main Variance Request - Statement from Departments
Date: Monday, January 27, 2020 12:22:20 PM

James,

After conducting a site survey combined with the information you have provided I would not anticipate any issues arising from this request. If I'm looking at the plan correctly it appears while the proposed canopy is larger, it also appears it will be move back somewhat, and parallel with the building itself. Also we do not have any historical data that would indicate the cover in it's current location has been an issue such as obscuring sightlines etc.

I also spoke to Chief Williams about the height of the structure, and it sounds like it would of a sufficient height to allow trucks to pass under it as well.

Please let me know if you need anything else.

Chief Ron Davis
Weaverville Police Department
30 South Main Street
Weaverville, NC 28787
828.645.5700 office

From: James Eller <jeller@weavervillenc.org>
Sent: Monday, January 27, 2020 8:38 AM
To: Ted Williams <twilliams@weavervillefd.org>; Ron Davis <rdavis@weavervillenc.org>
Cc: Selena Coffey <scoffey@weavervillenc.org>
Subject: 286 North Main Variance Request - Statement from Departments

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Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

Given that the proposed variance is requesting zero lot line construction adjacent to one of the most traveled intersections in town, I find it likely that the Board will have questions about the proposed placement of the structure and whether or not that has any correlation to the safety of the general public and perhaps more specifically, the motoring public passing through the five points intersection.

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Please feel free to contact me if you would like to discuss further.

James W. Eller
Planning Director
Town of Weaverville

TOWN OF WEAVERVILLE APPLICATION FOR A VARIANCE

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: \$250.00 + \$50.00 for each variance requested

General Notes:

- Applications for a variance are required to be submitted at least three weeks in advance of the next scheduled meeting of the Zoning Board of Adjustment to afford sufficient time for the legal advertising of the evidentiary hearing.
- Fees associated with the application cover the cost of legal advertising of the evidentiary hearing and are nonrefundable once submitted.
- Subsequent permit fees may be applicable dependent upon the type and scope of construction.
- The Zoning Board of Adjustment follows a quasi-judicial process when making a determination on an application for a variance. Strict adherence to statutorily prescribed procedures before, during and after a hearing must be followed to ensure that constitutional due process rights of all parties are preserved.
- A document providing an overview of Zoning Board of Adjustment matters can be furnished by staff at the request of the applicant.
- Each item listed in subsections A-F listed below must be addressed in order for an application to become complete and eligible for review by the Zoning Board of Adjustment.

A. Property Information

Address of Subject Property: 286 N Main Street Weaverville, NC 28787

PIN(s) of Subject Property: 974332079500000

B. Contact Information

Owner's Name: PATEL SUNIL K;PATEL REKHA S

Mailing Address: 83 RED MAPLE DR WEAVERVILLE, NC 28787

Telephone #: 919-525-2324

Email handymart3@yahoo.com

Primary Contact if Other Than Owner and Authorization to Represent

Owner: Professional Permits % Garry Potts

Mailing Address: 58171 Dragonfly Court Osceola IN 46561

Telephone #: 574-229-0635

Email gpotts@professionalpermits.com

C. Type of Submission

Describe the Variance

Requested: Petitioner desires to erect a 24'x84' fuel canopy with (1) "Exxon" sign on each 24' elevation where a 24'x24' canopy once stood. The new canopy will be constructed with a 0' setback where code requires 60' setback from the front property line along a Major Thoroughfare.

Provision of Ordinance Relevant to Variance Application Including Section Title, Section Number, Subsection Number or

Letter: Chapter 36 Article IV Sec. 36-106. - Table of dimensional requirements.

**TOWN OF WEAVERVILLE APPLICATION FOR
A VARIANCE**

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: \$250.00 + \$50.00 for each variance requested

D. Variance Burdon of Proof

The Zoning Board of Adjustment is authorized to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of Chapter 36 of the Code of Ordinances upon a showing of all of the following criteria. The burden of proof falls upon the applicant for each of the six standards listed below. Following each standard please indicate the facts you intend to demonstrate and the arguments you intend to make in support of the variance application. You may attach a separate page if necessary.

a. Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

The 60' front yard setback requirement will not allow for the existing building to meet the setback requirement due to the shape of the lot. The strict enforcement of this chapter does not allow for the use of the property as a gas station with a fuel canopy.

b. 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 a variance.

The hardship is a result of the location, size, and dimension of the parcel.

c. 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.

The hardship is not a result of any action taken by the applicant. The 24'x24' existing canopy was non-conforming as well due to the property layout and relation to property line.

d. The requested variance is consistent with the spirit, purpose, and intent of this chapter such that public safety is secured and substantial justice is achieved.

The variance relief is for an accessory structure that will be 15'-6" above grade. It will not cause the same visibility issues as if it were a building or residence with a full ground to roof wall. This request is the minimum relief necessary to allow enjoyment of the parcel enjoyed by other property owners in the jurisdiction.

e. 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.

No, the variance requested is for an allowed use for the C-2 zoned property.

f. The variance is not a request to permit a prohibited sign.

It is not to permit a prohibited sign.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

**TOWN OF WEAVERVILLE APPLICATION FOR
A VARIANCE**

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: \$250.00 + \$50.00 for each variance requested

E. List of Supporting Documents

Please provide an inventory of additional documentation submitted to the Board in support of the application. Such documentation should include a site plan with such information as the zoning administrator determines as needed for a full review of the application: 762 1of3.pdf; 762 2of3.pdf; 762 3of3.pdf; 2444E1.pdf; Exxon 2Di Logo box-EX-024093-016-Ex172260;
variance application

F. Certification

*I hereby certify that the information contained on this application is accurate to the best of my knowledge.

Signature of Owner: _____ Date: _____

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

OFFICE USE ONLY

Date Received: 12.31.19

Date of Public Hearing: 2.10.20

Staff

Comments: A full staff report is attached hereto.

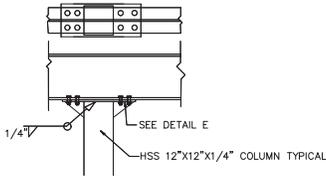
Fee: \$250 Date: 1.6.20

Decision: _____ Date: _____

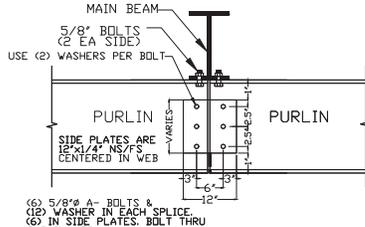
Approved with

Conditions: _____

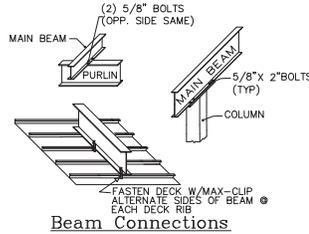
Signature of Zoning Administrator: James Eller



COLUMN-BEAM CONNECTION (A) NTS

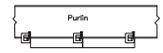


PURLIN WEB SPLICE DETAIL (H) NTS



Beam Connections

DECKING CONNECTION

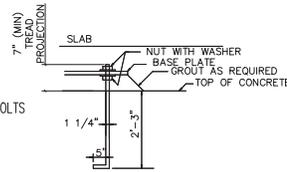


DECKING - 3" x 16" 20 GA. STEEL FASTENED BY MAX CLIPS SUPPLIED BY DECKING MANUFACTURER AT EACH PURLIN (16" O.C. MAX) DECKING WEIGHT = 2.25#/SQFT

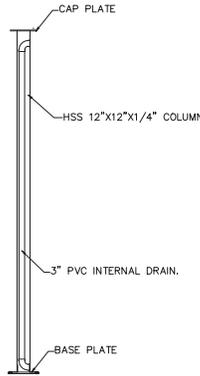
DECKING CONNECTION DETAIL (C) NTS



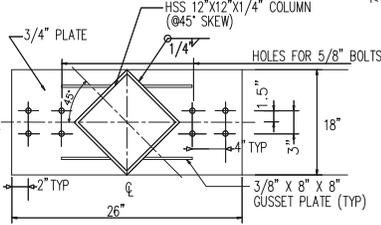
SECTION (F) NTS



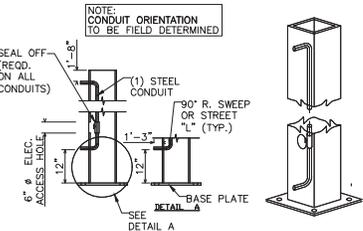
ANCHOR BOLT DETAIL (G) NTS



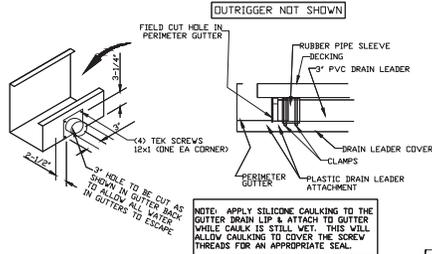
COLUMN DETAIL (B) NTS



CAP PLATE DETAIL (E) NTS



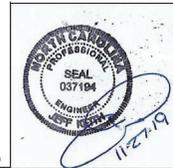
INTERNAL CONDUIT DETAIL (I) CONDUIT



GUTTER CONNECTION DETAILS

TYPICAL DETAILS

11/27/19



FRAMING SCHEDULE
COL. - SEE PLAN
BEAM - SEE PLAN
PURLIN - SEE PLAN

DESIGN LOADS: (PER ASCE 7-10 & IBC 2018)
RISK CATEGORY: II
USE GROUP: U
CONSTRUCTION TYPE: II-B
1603.1.1 FLOOR LIVE LOAD: N/A
1603.1.2 ROOF LIVE LOAD: 20 PSF
DEAD & COLLATERAL LOAD: 10 PSF
TOTAL ROOF DESIGN LOAD: 30 PSF
1603.1.3 ROOF SNOW LOAD:
SNOW LOAD COEF. (Cs) = 1.0
IMPORTANCE FACTOR (I) = 1.0
GROUND SNOW LOAD (Pg) = 15 PSF
FLAT ROOF SNOW LOAD (Pf) = 15 PSF

1603.1.4 WIND LOAD:
DESIGN WIND SPEED, Vult (3 SEC GUST): 115 MPH
NOMINAL DESIGN WIND SPEED, Vnom: 89 MPH
WIND EXPOSURE: C
INTERNAL PRESSURE COEFFICIENT (Cpi): 0.00
COMPONENTS AND CLADDING
DESIGN WIND PRESSURE (Pnet): 20.8 PSF
EARTHQUAKE LOAD DESIGN DATA
SEISMIC IMPORTANCE FACTOR (Ie): 1.0
MAPPED SPECTRAL RESPONSE ACCELERATIONS
Ss=0.313 g Srs=0.486 g
S1=0.109 g Sml=0.257 g

SITE CLASS "D"
SPECTRAL RESPONSE COEFFICIENTS
Sds=0.324 Sd1=0.171
SEISMIC DESIGN CATEGORY: C
BASIC SEISMIC FORCE RESISTING SYSTEM: CANTILEVERED COLUMN
RESPONSE MODIFICATION FACTOR (R): 1.25
SEISMIC RESPONSE COEFFICIENT (Cs): 2.51
EQUIVALENT LATERAL FORCE ANALYSIS PROCEDURE USED
DESIGN BASE SHEAR (V): 2.89 KIPS / COLUMN (MAX)
(SEISMIC DOES NOT CONTROL)

FOOTING DESIGN
CONSTRAINED CONDITION
LATERAL BEARING PRESSURE: 100 PSF/Ft
MAX. END BEARING PRESSURE: 1500 PSF
EXTEND FOOTING BELOW FROST LINE
CONCRETE: (PER ACI 318-11) - 3000 PSI STRENGTH (MIN)

BOLTS
BOLTS SHALL CONFORM TO ASTM A325 FOR STRUCTURAL STEEL CONNECTIONS. BOLTS SHALL BE TIGHTENED TO THE "SNUG-TIGHT CONDITION" PER AISC AND RCSC SPECIFICATIONS. THE "SNUG-TIGHT CONDITION" IS DEFINED AS THE TIGHTNESS REQUIRED TO BRING THE CONNECTED PILES INTO FIRM CONTACT. ONCE THE BOLTS ARE TIGHTENED SUFFICIENTLY TO PREVENT REMOVAL OF THE NUTS WITHOUT THE USE OF A WRENCH.

1. ERECTION OF STEEL STRUCTURE SHALL BE PERFORMED PER ALL AMERICAN INSTITUTE OF STEEL CONSTRUCTION (AISC) ERECTION PROVISIONS.
2. STRUCTURAL STEEL SHALL CONFORM TO:
Wide Flange Beams - ASTM A992, Grade 50, Fy = 50 KSI
Structural Angles and Channel - ASTM A36, Fy = 36 KSI
Structural Plate - ASTM A36, Fy = 36 KSI
Structural Tubing - ASTM A500, Grade B, Fy = 42 KSI (ROUND), Fy = 46 KSI (SQ / RECT)
Structural Pipe - ASTM A53, Grade B, Fy = 35 KSI
REBAR - ASTM A615, GRADE 60, Fy = 60 KSI
3. ALL STEEL FRAMING MEMBERS ARE TO BE PAINTED WITH A RED OXIDE PRIMER

WELDS
ALL WELDED CONNECTIONS SHALL BE IN ACCORDANCE WITH LATEST AWS SPECIFICATIONS, USING E70XX ELECTRODES. ALL WELDING SHALL BE PERFORMED BY AN AWS CERTIFIED WELDER.

ROOF PANELS
20 GA. ROLLED FORM STEEL DECKING INSTALLED W/ MAX CLIPS PER MFR. INSTRUCTIONS. U.N.O.

FOUNDATIONS
SEE FOOTING PLANS FOR DETAILS.
GROUT
Factory Package - ASTM 109
Non-Corrosive and Non-Staining
To be mixed with water for consistency suitable for application and 30 minute working time.
ALL WORK TO BE IN ACCORDANCE WITH THE 2018 NCBC

PHILLIPS ALUMINUM CO.
3032 POLKVILLE ROAD
(704) 487-7969 FAX (704) 487-1832

PREPARED FOR	SUNNY PATEL	
LOCATION	286 N. MAIN STREET WEAVERVILLE, NC 28787	
SCALE	DRAWING #	SHEET
NTS	762	2 OF 3

Cabinet Signs

Street Fighter Series

STREET FIGHTER POD™

A powerful pod module for side and return mount lighting.



SPECIFICATIONS	
Beam Angle	30° x 15°, Specialty Optic
Certifications	UL & cUL Recognized (SAM Manual), CE, RoHS
Dimensions	0.51" W x 1.231" x 0.41" H
Efficacy (lm/w)	83 lm/w
Fastening	Peel & stick / Mechanical screw hole
Input	12VDC
Intensity (TW)	110 lm/w mod (247.5 Lw/ft)
Max Mode (Series)	9.8 ft (3.0 m)
Operating Temp	-25° to +60°C
Packaging	19.5 ft (6 m) per bag or 430 ft (131 m) per case
Power	1.32W/mod (2.97W/ft)
Power Supply	F-LED 12VDC
Protection Grade	IP67
Run Footage	20 ft (6 m) mod/16W 1S
Spacing	2.25 mod/ft (fully stretched)
Warranty	5 Year Product / 5 Year Limited Labor

FEATURES	
• Unique focusing optical lens	
• Weather resistant IP67 rating	
• Fully illuminate the sign face from the side of the cabinet of box	
• Smart Packaging for easy installation. One bag equals one power supply	

WIRING DETAILS	
White/Red	Positive
White/Black	Negative

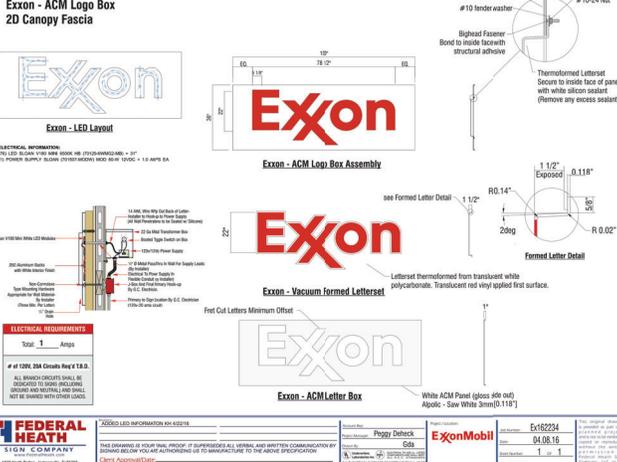
PRODUCT OPTIONS		
Color	CCT	Part Number
True White	7000K	PL-CP2-PO1-P-TW

www.p-led.com • 325-227-4577 • sales@p-led.com

REV02416



Exxon - ACM Logo Box 2D Canopy Fascia



Exxon - LED Layout

Exxon - ACM Logo Box Assembly

Exxon - Vacuum formed Letterset

Exxon - ACM Letter Box

ELECTRICAL INFORMATION:
 120V AC, 60Hz, 100W MAX BOX OR 170W MAX LETTER SET
 (1) POWER SUPPLY BULB DISTRIBUTION MOD REW 12VDC - 1.0 AMP 6A

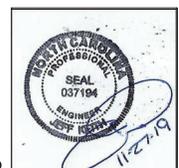
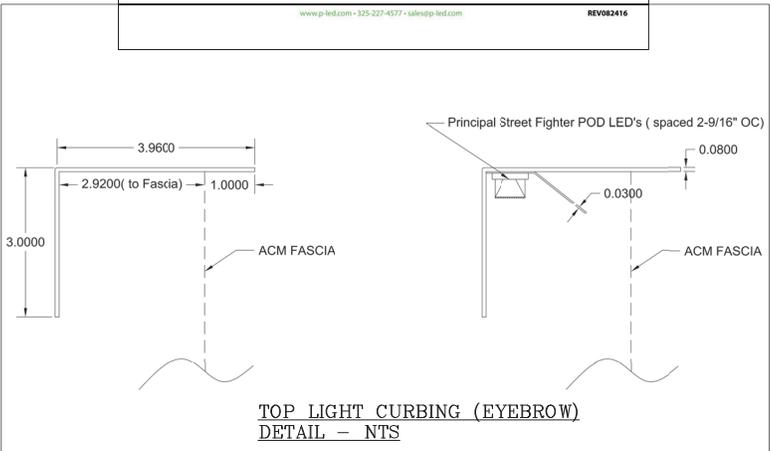
ELECTRICAL REQUIREMENTS
 Type: 1 Amp
 # of 120V, 60Hz Circuits Req'd T.E.D.
 # of 120V, 60Hz Circuits Req'd T.E.D.
 (1) 120V, 60Hz Circuit Req'd T.E.D.

FEDERAL HEALTH STEN COMPANY
 1800 Main Street, Asheville, NC 28806
 828.252.1000 • Fax: 828.252.1001

2025 LED SUPPLEMENTED EX-45124

Drawn By: Peggy Debeck
 Date: 04.08.16
 Scale: 1" = 1'
 Drawing Number: Ex162294

ALL WORK TO BE IN ACCORDANCE WITH THE 2018 NCBC



PHILLIPS ALUMINUM CO.
 3032 POKVILLE ROAD
 SHELBY, NORTH CAROLINA 28150
 (704) 487-7969 FAX (704) 487-1832

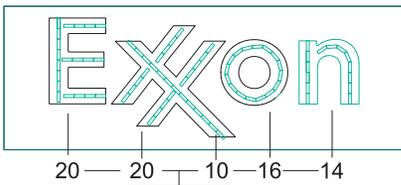
PREPARED FOR: SUNNY PATEL

LOCATION: 286 N. MAIN STREET WEAVERVILLE, NC 28787

SCALE: NTS DRAWING #: 762 SHEET: 3 OF 3

Exxon - ACM Logo Box 2DI Canopy Fascia - 1 1/2" Deep

EXXON Letter Area:
Squared Area - (30 1/2"x78 1/2") 16.6 sq.ft.
Actual Area of Letters - 6.4 sq.ft.

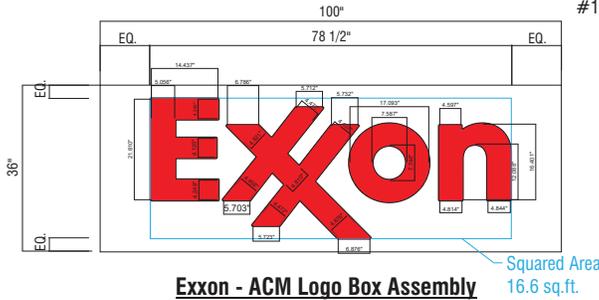
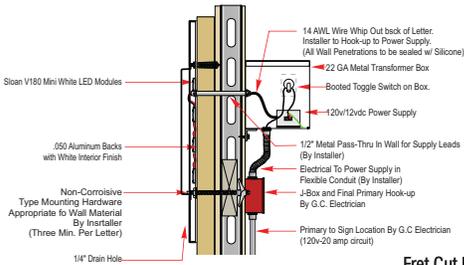


1 Power Supply = 80 MODS

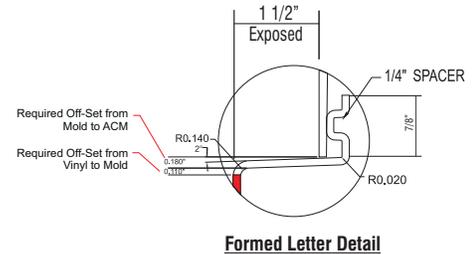
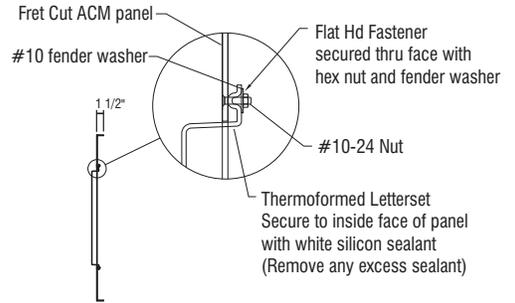
ELECTRICAL INFORMATION:

(80) LED PRINCIPAL (LDMW2PNW) MIDDLEWEIGHT WHT 5000K = 35.5'
(1) POWER SUPPLY PRINCIPAL (ELPSP060,U) 60W 12VDC = 0.7 AMPS E
(1) 20A / 120V CIRCUITS REQUIRED

TOTAL ELECTRICAL LOAD = 0.7 AMPS

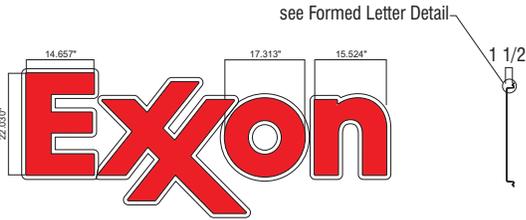


Exxon - ACM Logo Box Assembly
With VINYL GRAPHICS Dimensioned



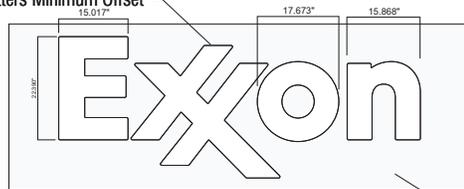
Formed Letter Detail

Letterset thermoformed from translucent white polycarbonate. Translucent red vinyl applied first surface.



Exxon - Vacuum Formed Letterset

Fret Cut Letters Minimum Offset



Exxon - ACM Letter Box

White ACM Panel (gloss side out)
Alpolic - Saw White 3mm [0.118"]

ELECTRICAL REQUIREMENTS

Total: 1 Amps

of 120V, 20A Circuits Req'd T.B.D.

ALL BRANCH CIRCUITS SHALL BE DEDICATED TO SIGNS (INCLUDING GROUND AND NEUTRAL) AND SHALL NOT BE SHARED WITH OTHER LOADS.

Revisions:

- R1: Adjust to approved dimensions...08.03.17
- R2: Check Sq.Ft. Adjust LED layout...03.06.18
- R3: Change to Principal LED s...11.15.18

THIS DRAWING IS YOUR FINAL PROOF. IT SUPERSEDES ALL VERBAL AND WRITTEN COMMUNICATION BY SIGNING BELOW YOU ARE AUTHORIZING US TO MANUFACTURE TO THE ABOVE SPECIFICATION

Client Approval/Date: _____

Colors Depicted In This Rendering May Not Match Actual Finished Materials. Refer To Product Samples For Exact Color Match.

Account Rep: Peggy Deheck
Project Manager: Gda

Drawn By: Gda
Underwriters Laboratories Inc. logo

Project / Location:

ExxonMobil

Job Number: Ex172260

Date: 03.29.17

Sheet Number: 1 Of 1

Design Number:

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(903) 589-2100 (800) 888-1327 Fax (903) 589-2101

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

Variance - Public Hearing
284 North Main Street, Buncombe County PIN 9743-32-0795

AFFIDAVIT OF MAILING AND POSTING

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 24th day of January, 2020, 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 284 North Main Street and that a Notice of Public Hearing, Exhibit A, was affixed to the reverse side of same.

This the 27th day of January, 2020.



James W. Eller

Sworn to and subscribed before me
this 27th day of January, 2020

Notary Public

My Commission Expires

[Notary Seal]

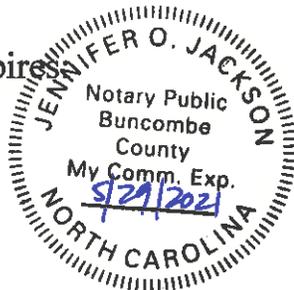


Exhibit A

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, February 10, 2020 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 Variance related to the front yard setbacks established by the C-2 Zoning District for a property bearing Buncombe County PIN#9743-32-0795, 284 North Main Street, Weaverville, NC.

If you would like additional information or to review the content related to the Public Hearing you may contact Planning Director and Deputy Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org.

Publication Dates: 1/29/20 and 2/5/20

Exhibit B

Carl Ricker
1300 Tunnel Rd.
Asheville, NC 28805

Cole TS Weaverville
5401 Virginia Way
Brentwood, TN 37027

US Postal Service
US Postal Service Fac Ser Office
Greensboro, NC 27498

Town of Weaverville
PO Box 338
Weaverville, NC 28787

State Employees Credit Union
PO Box 26807
Raleigh, NC 27611

Sunil Patel
83 Red Maple Dr.
Weaverville, NC 28787

Sandra Baley
1005 Sabal Ct.
Wilmington, NC 28409

Cedar Brook Properties
15 E Ridgeway Dr.
Weaverville, NC 28787

Willie Ogle
3495 Grapevine Rd.
Marshall, NC 28753

Brittany Doss
1225 Highland Ave. Apt. 4
Hendersonville, NC 28792

Sarah Barton
10 Clearview Ln.
Weaverville, NC 28787

Mountain Housing Opportunities
64 Clingman Ave. Ste. 101
Asheville, NC 28801

Todd Speidell
145 Cambridge Rd.
Asheville, NC 28804

Tri City Plaza
PO Box 36
Fountain Inn, SC 29644

WY Development 1
20 Tipton Ln.
Weaverville, NC 28787

Stephen Hartsell
50 Hawtree Ct.
Weaverville, NC 28787

Julie Nelson
PO Box 8941
Asheville, NC 28814

Enrique Varela
7 Wadell St.
Weaverville, NC 28787

Garden Springs Properties
PO Box 605
Weaverville, NC 28787

Paul Carielli
14 Dule Springs Rd. Unit 5
Weaverville, NC 28787

Kathy Tedone
250 Huey Rd.
Marshall, NC 28753

Katherann Steele
14 Dula Springs Rd.
Weaverville, NC 28787

Debra Docsa
PO Box 1575
Weaverville, NC 28787

Annette Williams
305 Kyfields
Weaverville, NC 28787

Benjamin Hall
344 Powder Horn Dr.
Marshall, NC 28753

Pamela Abernathy
21 Dula Springs Rd.
Weaverville, NC 28787

Jessica Kelly
18 Dula Springs Rd.
Weaverville, NC 28787

JCM Partners
PO Box 1566
Weaverville, NC 28787

Tracy Goen
704 E Watauga Ave.
Johnson City, TN 37601

James Head
PO Box 876
Weaverville, NC 28787

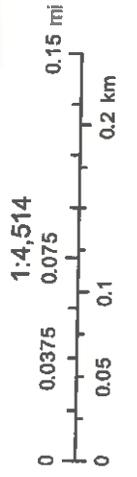
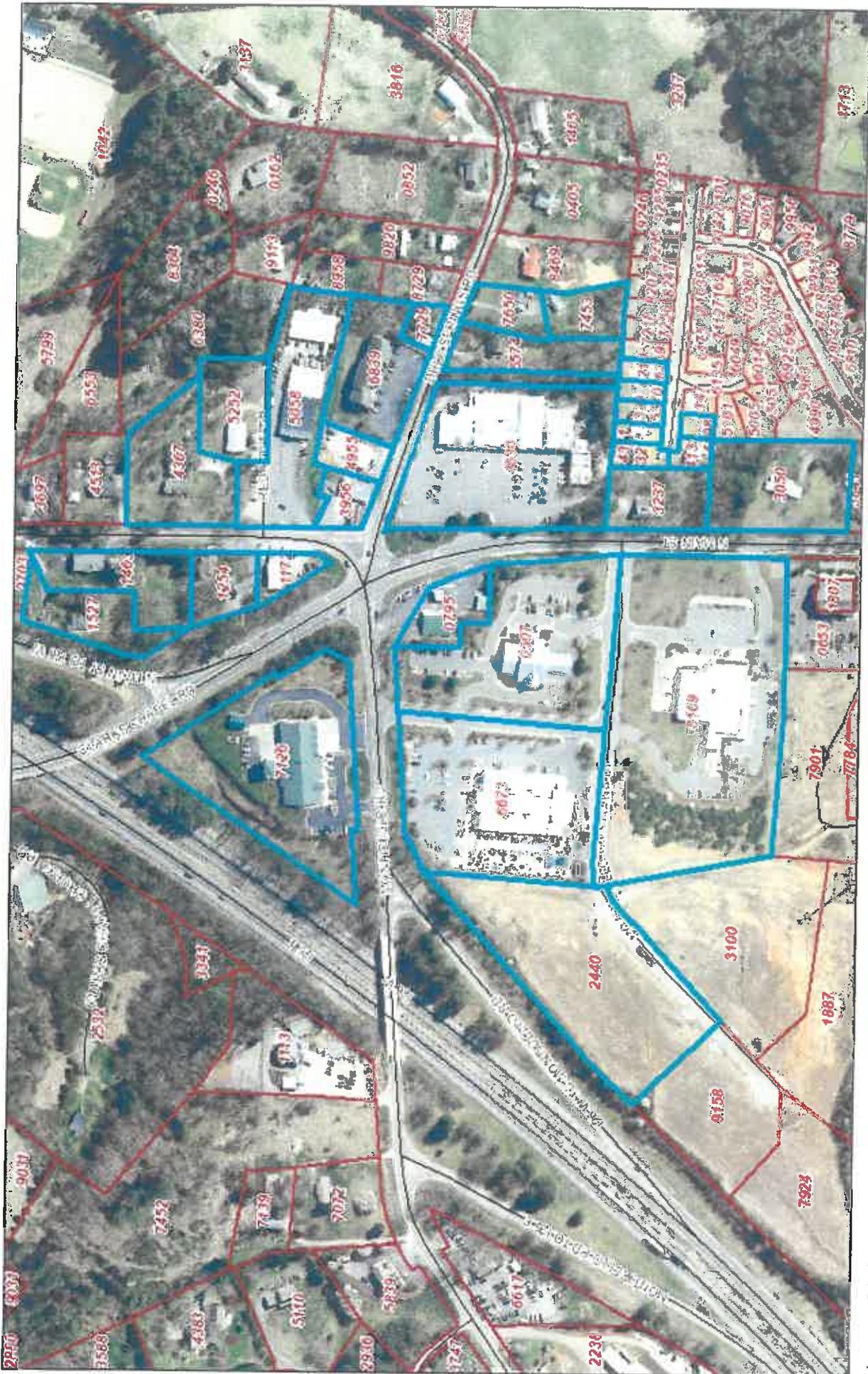
Andrea McKinney
26 N Buncombe School Rd.
Weaverville, NC 28787

Michael Boles
PO Box 61
Weaverville, NC 28787

Carolina Morance
PO Box 18135
Asheville, NC 28814

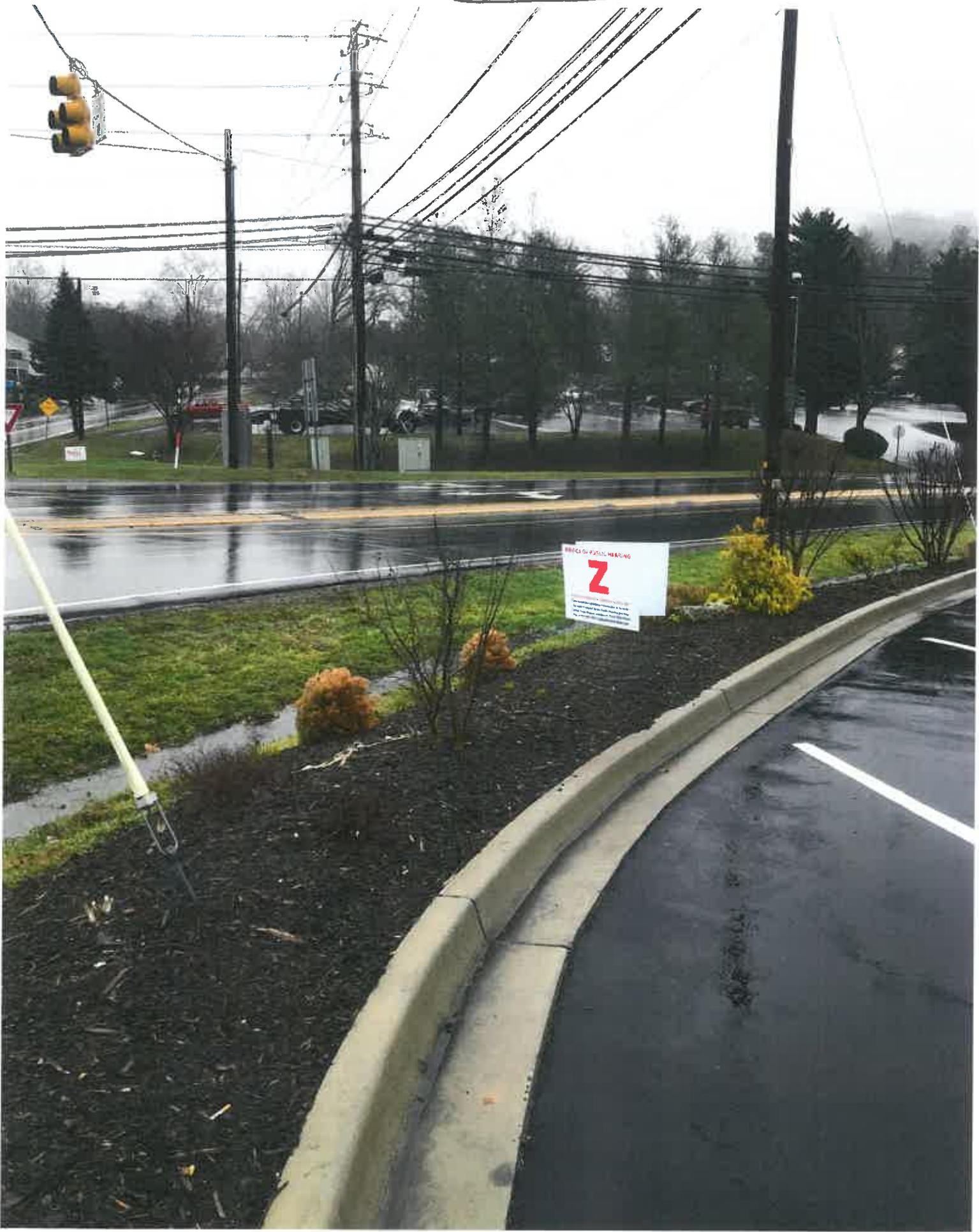
Gary Cole
PO Box 2587
Weaverville, NC 28787

Buncombe County



January 24, 2020

Exhibit e





Agenda Item 7
Rules and Procedures

Proposed Rules of Procedure for the Weaverville Board of Adjustment

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Section 1. General Rules – The function of the Board of Adjustment (referred to as the “Board” in these Rules of Procedure) is to hear and determine certain quasi-judicial matters under the development regulations and other ordinances of the Town of Weaverville. The Board shall be governed by the terms of Chapter 160A, Article 19, Part 3, of the General Statutes of North Carolina, or by Chapter 160D of the General Statutes of North Carolina beginning January 1, 2021, and by the Code of Ordinances adopted by the Town of Weaverville. The Board shall exercise such additional authority as may be given it under general law, special act and local ordinance. These rules of procedures are intended to supplement and explain procedural provisions and requirements set out in the applicable provisions of law and ordinance. These rules of procedure are adopted by the Board under authority as provided in Section 36-327 of the Town’s Code. All members of the Board shall thoroughly familiarize themselves with these laws. Where these rules conflict with such laws or ordinances, the laws or ordinances shall control.

Section 2. Officers and their Duties –

- (a) **Chair.** A Chair shall be elected by the full membership of the Board of Adjustment from among its regular members. His/her term shall be one year or until a successor is elected, beginning in September of each year , and he/she shall be

eligible for re-election. The Chair shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matters before the Board.

- (b) **Vice Chair.** A Vice-Chair shall be elected by the Board from among its regular members in the same manner and for the same term as the Chair. He/she shall serve as acting Chair in the Chair's absence, and at such times he/she shall have the same powers and duties as the Chair.
- (c) **Interim Chair.** In the event neither the Chair nor the Vice-Chair is available for a particular case or meeting, the Board shall elect one of its members to serve as Interim Chair for that case or meeting. At such times the Interim Chair shall have the same powers and duties as the Chair. Should the Chair or Vice-Chair arrive while an Interim Chair is presiding, the Interim Chair shall relinquish all duties with regard to presiding at the earliest point at which such transition may orderly proceed.
- (d) **Clerk.** The Clerk to the Board shall be the Deputy Town Clerk, as appointed by the Town Council. In the absence of the Deputy Town Clerk, the Town Clerk shall serve as the Clerk to the Board. In the absence of both the Town Clerk/Deputy Town Clerk, the Board may appoint a staff or Board member to serve in that capacity until such time as either the Town Clerk or Deputy Town Clerk is available. The Clerk shall not be entitled to vote on any matter.

The Clerk, subject to the direction of the Chair and the Board, shall keep all records, shall conduct all the correspondence of the Board, shall arrange for all public notices required to be given, shall notify the Board of pending meetings and their agendas, shall notify parties to cases before the Board of its decision on such cases, shall perform such tasks as the Chair shall assign, and shall generally supervise the clerical work of the Board. The Clerk shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted on by the Board, and all votes of members of the Board on any questions, indicating the names of members who are absent or fail to vote. The Clerk shall provide to every new member of the Board print or electronic copies of all relevant ordinances, the Board's Rules of Procedure, and such other educational materials deemed appropriate, shall arrange for an orientation for new members, and shall coordinate provision of continuing education for Board members.

Section 3. Members –

- (a) **Regular Members.** There shall be 5 regular members of the Board, each to be appointed by the Town Council. The term of membership shall be 3 years. Terms begin in September. A member shall continue to serve until a replacement member is appointed and takes office. Members shall be eligible for reappointment. To the extent feasible, the terms of members shall be staggered.

Vacancies shall be filled by appointment by the Town Council, with the appointee serving the balance of the replaced member's term. Regular members receiving notice of a meeting which they cannot attend or upon learning that they will be unable to participate in a particular case shall promptly give notice to the Clerk that they are unable to attend or to participate. The member shall, if feasible, provide that notice at least two working days prior to the date of the hearing.

- (b) **Alternate Members.** There shall be 2 alternate members of the Board, each appointed by the Town Council in the same manner as provided for regular members. Alternate members shall be encouraged to attend all meetings of the Board, but shall participate in hearing, deliberating, and deciding a case only when acting in the place of a regular member. On receiving notice that a regular member will not be participating, the Clerk shall, by the most expeditious means, notify an alternate member to attend. An alternate member shall be called upon by the Chair to participate in an individual case in the place of a member who is absent or has a conflict and is ineligible to participate in that case. Assignments shall be rotated between the alternate members. At any meeting or case upon which they are called upon to participate, alternate members shall have the same powers and duties as regular members. Alternate members who are present and participate in hearing an individual case shall continue to hear, deliberate and vote on that case at any subsequent meeting. Members of the Board of Adjustment present at the meeting, but not serving on the Board of Adjustment, shall step down from the Board seating area and remain in the audience or side tables until called back by the Chair. At no time shall more than 5 members participate officially in any meeting or hearing of the Board of Adjustment.

Section 4. Rules of Conduct for Members -

- (a) **Removal.** Members of the Board of Adjustment may be removed by Town Council for cause, including violation of the rules stated herein. The Chair shall report to the Town Council any violation of these rules of conduct. Where feasible, the Town Council shall notify a member being considered for removal of the reasons for removal and give that member an opportunity to respond.
- (b) **Attendance.** Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Any regular Board member who is absent for more than three consecutive regular meetings or more than half of the regular meetings in a calendar year shall lose his or her status as a Board member. **Remote participation in a Board meeting is not allowed.** Absence due to sickness, death in the immediate family, or other emergencies of similar nature shall be recognized as excused absences and shall not affect a member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence the member shall be replaced. The Clerk to the Board shall keep a record of attendance and shall provide

reasonable notice to any member who is in immediate risk of failing to meet these attendance requirements.

- (c) **Member Disclosures/Testimony.** Board members should disclose at the hearing any pertinent facts about a pending case of which they have personal knowledge prior to the hearing. Other than this type of disclosure, a board member seated for a hearing should not testify at that hearing. A Board member who is recused from a case should avoid testifying as a witness in that hearing if at all feasible.
- (d) **Conflicts of Interest, Impermissible Bias or Impartiality; Recusals.** Board members shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision-maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; **a close, familial, business, or other associational relationship with an affected person**; or a financial interest in the outcome of the matter. Board members shall endeavor to avoid the appearance of impropriety. A member with a potential bias or conflict of interest may consult with the Chair, the Clerk, or the Town Attorney regarding that potential conflict prior to the hearing. A Board member with a bias or conflict of interest shall declare that at the opening of the hearing on the matter and shall recuse himself or herself from all participation in hearing and deciding the case. If an objection is raised to a member's participation in a case by a party to that case or by another board member and that member does not recuse himself or herself, the remaining members of the Board shall by majority vote rule on the objection. When a member is recused, that member shall absent himself or herself from the hearing room for the duration of the board's hearing, deliberation, and vote on that matter and an alternate shall be called by the Chair to replace him/her. If no alternate is available, the seat shall be declared vacant for the purposes of the vote of the particular matter at issue.
- (e) **Ex Parte Communication.** Board members shall not discuss any quasi-judicial case with, or receive any information about a case from, any parties to the case, other board members, or from other interested persons outside the evidentiary hearing on that case. No Board member shall conduct an investigation or gather facts about the case outside the evidentiary hearing. **A Board member may visit the site of a pending case provided that visit is disclosed at the evidentiary hearing.** Board members may seek and receive general information about ordinance and planning provisions pertaining to the case from the Clerk, Town staff, or the Town Attorney, provided any factual queries regarding the pending case itself shall only be made in open session at the evidentiary hearing.
- (f) **Duty to Vote.** Board members shall not vote on the merits of any quasi-judicial matter unless the board member has either attended the evidentiary hearing on that matter or has thoroughly reviewed the full hearing record for that matter. No Board member shall be excused from voting except upon matters involving the consideration of his own financial or personal interest or the consideration

of his official conduct. In all other cases, a failure to vote by a member who is present at the meeting place or has withdrawn without being excused as provided in subparagraph (c) above, shall be recorded as an affirmative vote.

- (g) **Personal Opinions.** Members of the Board shall not express individual personal opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.

Section 5. Meetings

- (a) **Regular Meetings.** Regular meetings of the Board shall be held on the 2nd Monday of each month at 7:00 p.m. in the Council Chambers of Town Hall, provided that meetings may be held at any other convenient place in the Town if the Chair so directs before the meeting. The Clerk to the Board shall make the schedule of regular meetings available to the public and shall post a copy of the schedule on the Town website. Regular meetings and hearings may be rescheduled by the Chair if a scheduled meeting or hearing cannot be held because of a holiday, weather, lack of a quorum, or other unusual circumstance. Notice of a rescheduled or relocated meeting shall be provided in the same means as required for a special meeting. Regular meetings are subject to cancellation by the Chair if there is no business for the Board. When an evidentiary hearing will be conducted at a regular or special meeting, all required notices to the parties must be provided within the times set by state law and Town Code of Ordinances.
- (b) **Special Meetings.** Special meetings of the Board may be called at any time by the Chair in accordance with applicable provisions of the Open Meetings Law, North Carolina Gen. Stat. § 143-318.12. At least 48 hours' written notice of the time and place of a special meeting shall be given by the Clerk to the Board to each member of the Board and to each news organization and person requesting such notice. This notice may be provided by electronic mail. This notice shall also be posted on the Town website. Special meetings may be called by the Chair as necessary for Board training, work sessions, a heavy workload, or the conduct of Board business. When an evidentiary hearing will be conducted at a special meeting, all required notices to the parties must be provided within the times set by state law and Town Code of Ordinances.
- (c) **Cancellation of Meetings.** If there are no quasi-judicial cases to be heard or other business before the Board, if there is a weather emergency or similar situation, or if so many regular and alternate members indicate that they will not be able to attend that a quorum will not be available, the Chair may cancel a regular meeting by giving written and oral notice to all Board members. If feasible, notice of cancellation shall be made not less than 24 hours before the time set for the meeting. The Clerk to the Board shall post a notice of the meeting cancellation at the regular meeting location.

- (d) **Quorum.** A quorum of the Board, necessary to meet, shall consist of 3 members of the Board, but the Board shall not vote on any questions related to an appeal of a decision or a determination of the Zoning Administrator or an application for a variance or special use permit when fewer than 4 members of the Board are present. If fewer than 5 voting members of the Board are present, a party to a quasi-judicial matter may request that the hearing be continued until 5 voting members are present. Whenever during a meeting a quorum ceases to be present, if no objection is raised by a member of the Board, the Board may continue to hear evidence and debate but not vote on any action except to adjourn.
- (e) **Hearing Deferrals and Continuances.** Once a quasi-judicial case has been noticed for hearing, the Board generally expects the case to be heard at that time. An applicant may make a written request to delay consideration of a case to the next scheduled meeting, provided that the request is received at least 24 hours prior to the scheduled meeting. Except for good cause shown, if an applicant fails to appear at a meeting to prosecute his or her application, and the hearing has been continued one time before, the Board may dismiss the application for failure to prosecute. An application that has been dismissed may be resubmitted upon payment of applicable fees.
- (f) **Recessed Meetings.** A properly called regular or special meeting may be recessed to a time and place certain by a motion made and adopted in open session during the regular or special meeting. The motion shall state the date, time and place when the meeting will reconvene. No further notice need be given of such a recessed session of a properly called regular or special meeting.
- (g) **Voting.** All regular members shall vote on any issue unless they have disqualified themselves for one or more of the reasons state in Section 4(d). Alternate members shall vote on any issue for which they are seated in place of regular members unless they have disqualified themselves for one or more of the reasons stated in Section 4(d). The required vote to issue a variance shall be 4/5 of those members eligible to vote on the matter. If a motion to approve a variance does not receive the affirmative vote of 4/5 of those members eligible to vote, the variance shall be deemed denied. **When this occurs, members who did not cast an affirmative vote on granting the variance shall state for the record their rationale for casting a negative vote.** The required vote to decide any other quasi-judicial matter and any other matter before the Board shall be a simple majority of all members eligible to vote on the matter. The Chair votes as any other Board member.
- (h) **Conduct of Meetings.** All meetings shall be open to the public, except for closed sessions as allowed by law. By general consent of the Board, items may be considered out of order, however the general order of business at regular meetings shall be as follows:
- i. Call to order; roll call, announcements;

- ii. Action on minutes of previous meetings, including acceptance and correction;
 - iii. Evidentiary hearings, consideration, and determination of cases;
 - iv. Consideration of staff- or board-initiated matters;
 - v. Reports of committees or staff;
 - vi. New business;
 - vii. Adjournment.
- (i) **Agenda and Meeting Materials.** An agenda for each meeting and hearing shall be prepared by the Clerk to the Board and shall be distributed to all members of the Board, applicants with cases to be heard, and any other interested person who has made a written request to receive an agenda. **The agenda shall be distributed at least one week prior to regular meetings and at least two days prior to special meetings.** Written briefs, documents, letters, and staff reports may be submitted to the Board members by the Clerk to the Board prior to any evidentiary hearing, provided that any such material is also submitted to all parties to that case at the time they are submitted to Board members. Staff may establish reasonable deadlines for submission of any such material to be distributed prior to the hearing. Such materials shall be distributed at the same time the meeting agenda is distributed. Any such material shall be part of the hearing record and introduced as documentary evidence at the evidentiary hearing. Board members shall endeavor to review the materials prior to the hearing.
- (j) **Meeting Recordings.** The Clerk shall make audio or video recordings of each meeting and hearing. Electronic recordings that may be used to generate transcripts for judicial review as needed shall be made of each meeting and shall be held for safekeeping by the Clerk in accordance with record retention policies set by state law and Town policy. Any party to a quasi-judicial proceeding may request a verbatim transcript of the evidentiary hearing, with the cost of preparation of the transcript borne by the party making that request. Any person may make an audio or video recording of any Board hearing or meeting, provided it is done in a manner that does not disrupt the hearing or meeting.
- (k) **Oaths.** All witnesses presenting testimony in evidentiary hearings shall be sworn in. Oaths may be administered by the Chair or the Clerk to the Board, or any notary public present and available to do so. An affirmation may be made by any witness with a religious objection to swearing.
- (l) **Subpoenas.** Persons with standing on a quasi-judicial matter before the Board may make a written request to subpoena witnesses or to compel the production of evidence. The Chair shall issue subpoenas determined to be reasonable in nature and scope and not oppressive. The Chair shall rule on any objections or motions to quash subpoenas. The Chair's decisions on subpoenas may be appealed to the full Board.

Section 6. Appeals and Applications –

(a) Types of Appeals and Applications.

- (1) The Board shall hear and decide all appeals from final, binding written decisions or determinations made by the Zoning Administrator as provided in the Town Code of Ordinances and by state statutes.
- (2) The Board shall hear and decide petitions for variances from the zoning ordinance and other such ordinances as provided in the Town Code of Ordinances.
- (3) The Board shall hear and decide all special use permits, and amendments thereto, as provided in the Town Code of Ordinances.
- (4) The Board shall make interpretations of the Zoning Map, including disputed questions of zoning district boundary lines and similar questions that may arise from administration of the development regulations of the Town of Weaverville.
- (5) The Board shall also hear and decide all matters referred to it or upon which it is required to pass by the Town Code of Ordinances and any other matters assigned to it by ordinance or by law.

(b) Procedure for Filing Appeals and Applications.

- (1) An appeal of a decision or determination of the Zoning Administrator shall be filed with the Town Clerk or such other officer as designated by the Town Code of Ordinances. The notice of the appeal shall state the grounds for the appeal. No appeal shall be heard by the Board unless the appeal is filed within 30 days of written or constructive notice of the order or determination made by the Zoning Administrator.
- (2) Applications for variances and special use permits, or amendments thereto, shall be accompanied by a site plan of sufficient size and accuracy to enable the Board to see the precise location and size of the variance and/or nature and location of the special use permit being sought. Such application shall specifically state the type of variance or special use permit being sought. Upon submission of an application, the Zoning Administrator shall determine if these requirements are satisfied.
- (3) All appeals, applications, and any other matter coming before the Board shall be made upon the form for that purpose, if any.
- (4) All required information shall be complete and all required fees paid before an appeal, application, or other matter shall be considered as having been filed.
- (5) An applicant may withdraw any appeal, application, or other matter at any time prior to a Board decision on the matter. A withdrawal shall be made in writing. Upon withdrawal the case is closed. A new application and fee must be submitted if the application is renewed.

(c) Evidentiary Hearings.

- (1) *Time* – After receipt of an appeal, application, or other matter, the Clerk to the Board shall schedule the matter for hearing at the first available regular meeting or call for the scheduling of a special meeting scheduled **within 30 days from acceptance of a complete application.**
- (2) *Notice* – **The Board shall give notice of the evidentiary hearings on quasi-judicial cases by first-class mail to the person whose appeal or application is the subject of the hearing, to the owner of the affected property if the owner did not initiate the hearing, and to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice shall be posted in the mail at least 10 days but not more than 25 days prior to the date of the hearing. A notice of the hearing shall also be prominently posted on the property that is the subject of the hearing (or the adjacent street right-of-way) in this same time period.** The hearing notice shall include the location of the property subject to the hearing, the general nature of the matter being heard, and the date, time, and location of the hearing.

If a hearing is set for a given date and a quorum of the Board is not present, the hearing shall be continued until the next regular Board meeting by announcement by the Chair without further advertisement. In addition, the Board may, without further advertisement, continue a hearing to a date and time certain after the hearing has been called to order.

- (3) *Conduct of Evidentiary Hearing* – Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows:
 - (1) The Chair, or such person as the Chair may direct, shall give an opening statement regarding the nature of the hearing and the process that will be followed.
 - (2) The Chair shall poll all Board members participating in the case as to any *ex parte* communications, bias, or conflicts of interest. Issues of participation of board members in consideration of the case, or other jurisdictional issues shall be addressed.
 - (3) Issues of standing shall be addressed and parties to the matter shall be identified.
 - (4) Witnesses that may offer testimony are to be sworn in.
 - (5) The Chair or the staff shall provide a preliminary statement of the case, including a summary of the facts and relevant ordinance provisions.
 - (6) Staff shall present the application, supporting materials, staff report, evidence showing notice of the hearing, and any other written materials received and distributed prior to the hearing for introduction into the hearing record.

- (7) The applicant shall present evidence and argument in support of the application or appeal.
- (8) Parties opposed to the application, including staff from whom an appeal is being taken, may present evidence and argument.
- (9) Other persons may present relevant evidence.
- (10) Parties may present rebuttal evidence.
- (11) Closing statements or summaries may be made by parties to the case or by staff.
- (12) The Board shall deliberate on and make a determination of the case.

Witnesses may be called and factual evidence may be submitted. The Chair must recognize witnesses before they are heard and confirm that they are under oath. The Chair shall allow all witnesses to be heard but may limit testimony or evidence that is irrelevant, repetitive, incompetent, hearsay, or inadmissible opinion testimony. The Chair shall allow the parties to the case to make direct and cross-examination of witnesses and to present rebuttal evidence. The Chair may establish reasonable procedures to assure that is done in a fair, impartial, and efficient manner. Board members may ask questions of any witness.

The Board shall not be limited to consideration of such evidence as would be admissible in a court of law, but all decisions must be based on competent, material, and substantial evidence properly placed in the hearing record. Board members may view the premises outside of a meeting, but any key facts observed by members shall be disclosed at the hearing and made part of the record.

Upon completion of the presentation of evidence, Board members shall discuss the case among themselves in open session and may recall any witness to ask further questions and otherwise deliberate among themselves. Board members shall not discuss the case or give opinions on the evidence until initial presentation of the case is completed.

- (4) **Re-hearings** – An application for a rehearing may be made to the Board and shall contain evidence that there has been a substantial change in the facts or conditions of the case. The Board may decide to conduct a full evidentiary hearing to consider such application. The application for rehearing shall be denied by the Board if, from the record, it finds there has been no substantial change in facts or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as a new application.

(d) Decisions.

- (1) *Time* – Decisions by the Board shall be made in a reasonable time from the completion of the evidentiary hearing **but in no event later than 60 days from the conclusion of the hearing.**
- (2) *Motion and Voting* – Voting on an appeal, application, or other matter shall be in accordance with the provisions of Town Code and the General Statutes. A vote on a request for a variance, special use permit, or on an appeal of a staff determination shall be in the form of a motion to approve the request, and such motions shall require a second. A motion made to determine a quasi-judicial matter shall state specifically any conditions desired to be made a part of that decision and shall reference, if appropriate, any documents or maps submitted as a part of that application. Any such references made in the motion shall, if approved, be part of the record and decision in that case. The vote of each member shall be recorded. If a request or application is not approved, the members voting not to approve shall state for the record the factual findings and rationale that support their opposition.
- (3) *Form* – All decisions of the Board on quasi-judicial matters shall be reduced to writing as soon as practicable after the case is decided. The written decision shall reflect the Board's determination of disputed facts and the application of the pertinent standards to those facts. The written decision shall be signed by the Chair or other duly authorize member of the Board. After signature, the written decision shall be filed with the Clerk to the Board and delivered to the parties.
- (4) *Effective Date and Filing* – Decisions of the Board on quasi-judicial matters are effective upon filing the written decision with the Clerk to the Board and the delivery of the decision to the applicant, the property owner (if different from the applicant), and to any other person who filed a written request for a copy of the decision of the evidentiary hearing on the matter. The decision may be delivered by personal service, first-class mail, or electronic mail.
- (5) *Public Records of Decisions* – The decisions of the Board shall be a public record available for inspection at all reasonable times. All decisions shall be entered into the minutes of the Board. The Clerk to the Board shall maintain copies of all written decisions of the Board.

Section 8. Substantive Motions –

All Board action shall proceed by motion. Any member, including the Chair, may make a motion. A motion does require a second. A member may make only one motion at a time. A substantive motion is out of order while another substantive motion is pending.

The Chair shall state the motion and then open the floor to debate. The chair shall preside over the debate according to the following general principles:

- The maker of the motion is entitled to speak first;

- A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- To the extent possible, the debate shall alternate between proponents and opponents of the measure.

A motion shall be adopted by a majority of the votes cast when a quorum (as defined in Section 5(d)) is present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first. A motion that is defeated can be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

Section 9. Procedural Motions – In addition to substantive proposals, the Board shall utilize the usual and customary procedural motions consistent with the spirit of *Robert's Rules of Order Newly Revised* to provide for an orderly meeting. See [Appendix](#) for a list and description of some procedural motions. For questions regarding parliamentary procedures see Section 12.

Section 10. Report to Town Council – The Board, with the assistance of staff, shall prepare and submit to the Town Council a report of its activities on an annual or more frequent basis. Such report shall contain a description of the Board (its members, officers, attendance, and the number of meetings held) and a statement of the number and each type of case heard and a summary of the actions taken. The report may also include any other matters the Board deems appropriate for inclusion.

Section 11. Amendment of the Rules – These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment to the rules as one of the stated purposes of the meeting, unless a statute or rule of Town Council provides otherwise. Adoption of an amendment shall require an affirmative vote equal to a quorum of the Board. No amendment to the Rules shall be effective until Town Council has granted its approval.

Section 12. Reference to Robert's Rules of Order – The Board shall refer to the current edition of *Robert's Rules of Order Newly Revised* ("RONR"), to answer procedural questions not resolved in these rules, so long as RONR does not conflict with North Carolina law or with the spirit of these rules.

ADOPTED by the Board of Adjustment this the ____ day of _____, 2020.

ATTESTED BY:

Tycer Lewis, Chair

James Eller, Clerk to the Board

CONSENTED TO by Town Council this the ____ day of _____, 2020.

ATTESTED BY:

Allan P. Root, Mayor

Derek K. Huninghake, Town Clerk

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APPENDIX – PROCEDURAL MOTIONS

Unless otherwise noted, each motion described below is debatable, may be amended, and requires a majority vote of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted. In order of priority (if applicable), some procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the Board. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Motion 2. To Adjourn/Recess. This motion may be made only at the conclusion of action on a pending substantive matter; it may not interrupt deliberation on a pending matter. A motion to recess to a date, time and place certain shall also comply with the requirements of Section 5(e).

Motion 3. To Take a Brief Recess.

Motion 4. To Follow the Agenda. The motion must be made at the first reasonable opportunity or it is waived.

Motion 5. To Suspend the Rules. The board may not suspend provisions of the rules that state requirements impose by law on the board. For adoption, the motion requires an affirmative vote equal to a majority of the entire membership of the board. A majority is more than half.

Motion 6. To Divide a Complex Motion and Consider it by Paragraph. The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Motion 7. To Defer Consideration. The Board may defer a substantive motion for later consideration at an unspecified time. A substantive motion which has been deferred automatically expires 100 days after the deferral unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending and has not expired. A person who wishes to revisit the matter during that time must take action to revive consideration of the original motion, or else move to suspend the rules.

Motion 8. Motion for the Previous Question. To end debate and call for a vote on a motion, a Board member can move the previous question. The motion is not in order until there has been a full debate and every member has had an opportunity to speak at least once.

Motion 9. To Postpone to a Certain Time and Day. To delay action on a pending motion a motion to postpone to a certain time and day would be proper. If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules.

Motion 10. To Refer a Motion to a Committee. The Board may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days or more after the substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire Board, whether or not the committee has reported the matter to the Board.

Motion 11. To Amend. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote. Any amendment to a proposed order, policy, regulation, statement, resolution, or recommendation, shall be reduced to writing before the vote on the amendment.

Motion 12. To Revive Consideration. The Board may vote to revive consideration of any substantive motion earlier deferred by adoption of a motion to defer consider under [Motion 7](#). The motion is in order at any time within 100 days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires 100 days after the deferral unless a motion to revive consideration is adopted.

Motion 13. To Reconsider. The Board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

Motion 14. To Rescind or Repeal. The Board may vote to rescind action it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.



**Agenda Item 8
Mandated Notices**

Sec. 36-329. - Hearings and notices.

- (a) *Hearing* . The zoning board of adjustment shall hold a public hearing and enter a written decision on all matters upon which it is required to decide under this chapter. The public hearing shall be held within 30-days after receipt by the town clerk of an application for a special use permit or variance or a notice of appeal. The board shall follow quasi-judicial procedures when deciding appeals, requests for variances and requests for special use permits. The board shall decide the matter within 60-days after the conclusion of the hearing. Upon a hearing before the zoning board of adjustment, any party may appear in person, or by agent, or by an attorney.
- (b) *Notice* . Notice of the time and the place of the public hearing shall be published weekly for two consecutive weeks in a newspaper of general circulation in the town. The first weekly notice shall be published not less than ten days nor more than 25 days before the date fixed for the public hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included. Notice of hearings shall be mailed to the person or entity whose appeal, application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing and to all property owners within 500 feet of the property boundaries even if their property is not abutting. Notice to such persons or entities must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, a notice of hearing shall be prominently posted on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (c) *Oaths* . The chair of the board of adjustment or any member temporarily acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a class 1 misdemeanor.
- (d) *Subpoenas* . The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. § 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the general court of justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

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

Coates Canons Blog Posts

Mandated Notices in Land Development Regulations

Posted January 2014

Local governments make hundreds of decisions every day under local development regulations. Permits are issued or denied. Enforcement actions are initiated. Ordinance provisions are interpreted. Property is rezoned. Ordinances are amended.

When a local government is considering these, does it have to provide notice that a decision is pending and solicit comments? Once the decision is made, who has to be told about it?

Because many of these decisions have a significant impact on landowners, neighbors, and the community, state law requires the local government to provide notice and an opportunity to comment prior to some land use regulatory decisions. Since the time for appeals is limited for some types of decisions, state law also requires that written notice of those decisions be provided. These notices should provide sufficient information to alert a reasonable person as to the nature of the action involved, where and how they can get more information, and how they can offer comments or take needed action.

This post summarizes when state law requires that notices be provided. Individual local ordinances can add or expand upon these minimum requirements, but every city and county is required to at meet these state notice requirements.

This post sets out for each type of decision what triggers the notice requirement and the minimum amount and form of the notice required. These requirements are summarized by the table below:

<i>Type of Action</i>	<i>Type of Notice</i>	<i>Recipient</i>	<i>Timing</i>
Final Staff Determination	Personal service, email, or mail Posting by owner (optional)	Person requesting Property owner	When made
Hearing on Quasi-judicial Decision	Mail Post site	Applicant Property owner Abutting property owners	10 to 25 days prior to hearing
Quasi-judicial Decision	File with clerk Personal service, email, or mail	Applicant Property owner Others making written request prior to effective date	When made

Hearing on Ordinance Text Amendment	Newspaper Certified mail if near military base	Public Base commander	10 to 25 days prior to hearing
Hearing on Rezoning	Newspaper Mail Post site Personal service if not initiated by owner or government Certified mail if near military base	Property owner Adjacent property owner Base commander	10 to 25 days prior to hearing

Staff Determinations

For the most part there is no state mandate for prior notice of *pending* administrative decisions made by a local government staff. Since these decisions involve application of existing, objective standards rather than making policy choices, the need for and use of public input is very limited. Thus there is no public hearing required when an administrative staff member makes a decision on a building permit, a certificate of zoning compliance, a notice of violation, a preliminary or final plat, or similar ministerial decision by the staff. A few local ordinances may require notice to neighbors for these, but that is rare. For the most part these routine decisions are handled through direct communication between the applicant and the staff only. See this post by my colleague Rich Ducker for a discussion of additional aspects of the law on notice of administrative decisions.

When a staff member makes a *final, binding determination* under a zoning ordinance, the right of the person receiving the decision to make an appeal to the board of adjustment is triggered. State law requires the local government to provide written notice of the determination to the party who sought the determination, and to the owner of the property involved. G.S. 160A-388(b1)(2). The notice may be delivered by personal delivery, electronic mail, or first-class mail. Those persons then have 30 days from receipt of the written notice to file an appeal to the board of adjustment. Other persons who are directly affected by that determination have 30 days from the time they receive actual or constructive notice of the decision to file an appeal. There is no state requirement to send the notice to neighbors. State law gives the property owner the option of posting the site with a sign notifying neighbors that a determination has been made, which triggers the start of the neighbors’ time to make an appeal. G.S. 160A-388(b1)(4).

Another important variation arises with enforcement orders that require repairing, vacating, or demolishing residences that are unsafe for habitation under housing codes (G.S. 160A-443, -445). Notices to the owner by personal service or registered/certified mail and posting the property are required. There are similar statutory notice and hearing requirements for determinations regarding unsafe buildings (G.S. 153A-366 to -369; 160A-425 to 429).

Hearings on Pending Quasi-Judicial Zoning Decisions

When a local government board makes a quasi-judicial decision – deciding a special or conditional use permit application, a variance request, or an appeal of a staff determination – it must hold an evidentiary hearing. Prior to 2013, state law left it to local ordinances to determine what “reasonable

notice" of the hearing was to be provided. State law now sets a uniform standard for mandated notice of these hearings.

The local government holding the evidentiary hearing must provide both mailed and posted notice of the hearing. G.S. 160A-388(a2). A notice of the hearing must be mailed to the person who initiated the hearing, the owner of the affected property, and the owners of abutting properties. Some local ordinances expand the mailing requirement to the owners of all properties within a set distance of the affected property (typically those within 100 feet). The notice must be deposited in the mail at least 10 but not more than 25 days prior to the hearing. The local government must also post a notice of the hearing on the site involved. That sign has to be put up at least 10 but not more than 25 days prior to the hearing. There is no state mandate for publishing the notice of an evidentiary hearing in the newspaper, since the purpose of these hearings is to gather facts about a particular case, not to solicit public opinion about a pending policy choice. The notion here is that the interests of those most directly affected and who are most likely to have relevant evidence to offer are best served by mailed and posted notice, while newspaper publication is oriented more to the general public. Some local ordinances, however, do require published notice of these hearings.

The Open Meetings Law also applies to these hearings, so in addition to the specific requirements noted above, the notices required by that law must also be provided. G.S. 143-318.10. A copy of the regular meeting schedule must be filed in a central location and posted on the local government's web site (if it has one). A special meeting held outside the regular meeting schedule requires posting written notice of the meeting on the local government's principal bulletin board, posting notice on the local government's web site, and mailing a copy of the notice 48 hours in advance of the meeting to each person who has made a request for notification. Notice of an emergency meeting must be provided to the local news media.

Quasi-Judicial Zoning Decisions

Once a local government board makes a decision on a quasi-judicial matter, that decision must be reduced to writing. The written decision has to include the resolution of any contested facts and must apply the applicable standards to the facts of the case. Once signed by the board chair, the written decision must be filed with the clerk to the board. The decision must then be delivered to the applicant, the owner of the affected property, and to any person who has made a written request for a copy of the decision prior to the time the decision is filed with the clerk. The decision can be delivered by personal delivery, electronic mail, or by first-class mail. The person who delivers the decision is to certify that proper notice of the decision has been made. G.S. 160A-388(e2)(1). Persons affected by a quasi-judicial decision only have 30 days from the time this notice is provided to initiate judicial review (three days is added to the time notice is sent if that is done by first-class mail).

These statutes are directly applicable only to zoning decisions. A local government can make plat approval (or other development approval) quasi-judicial by including standards for approval that require judgment and discretion. If that is done, the notice required for zoning decisions provides a useful guide to the notice that should also be provided for those decisions.

Hearings on Pending Legislative Decisions

Whenever a local government adopts, amends, or repeals a development regulation, it must first hold a public hearing to solicit public comments. This applies to zoning, subdivision ordinances, housing codes, and any other development regulation. The requirement for a hearing on pending legislative decisions has been a feature of North Carolina statutes since the initial authorization to adopt zoning was

granted to the state's cities in 1923. The requirements for how notice of that hearing is to be provided have evolved over the decades.

Current law requires that notice of the hearing be published in a newspaper. G.S. 153A-323, 160A-364. This requirement applies to all development ordinances, not just zoning. It applies to subdivision ordinances, unified development ordinances, housing codes, and so forth. The notice must be published twice, with the first notice appearing at least 10 but not more than 25 days prior to the hearing (the date of publication is not included in this calculation, but the day of the hearing is). A few local governments have been given legislative authorization to substitute electronic notice for these published notices, but recent efforts to extend that option to all cities and counties have faced stiff opposition from newspapers. Notice of the hearing must also be sent by certified mail to the base commander if the proposed amendment affects permitted uses, major subdivisions, or tall structures within five miles of a military base.

If the ordinance amendment is a rezoning – an amendment of the zoning map – there are three additional notice requirements mandated. G.S. 153A-343, 160A-384. First, notice of the hearing must be mailed to the owner of each affected property and the owners of all abutting properties (it is fairly common for local governments to extend mailed notice to all those owning property within a set distance, such as within 100 feet, not just abutting owners). The notice must be deposited in the mail at least 10 but not more than 25 days prior to the hearing. Second, a sign notifying the public of the hearing must be posted on the site affected or the adjacent street right of way. State law does not specify the time of the posting, but many local governments use the same 10 to 25 day window required for the mailed notice. Third, if the rezoning was not requested by the owner of the affected property or by the local government involved, actual notice of the hearing must be provided to the property owner. This must be done in the same manner personal service is required in civil suits -- personal delivery, registered or certified mail, or delivery with signature confirmation. The person who requested the rezoning is responsible for making this actual notice to the owner. Also, notice of the hearing must be sent by certified mail to the base commander for any rezoning of land located within five miles of a military base.

Consequences of Failure to Provide Notice

All of the state statutory requirements noted above must be strictly followed. Any additional requirements included in local ordinances must also be strictly followed. The courts have held that these notice requirements are a vital part of land development regulations, providing essential notice to property owners, neighbors, and citizens as to proposed decisions. An ordinance amendment made without observing the notice requirements will be invalidated if challenged in court. The notices required for final decisions that have been made are critical for initiating appeal times, as well as for providing essential information to those affected by the actions taken. Failure to provide notice could be a basis for allowing a challenge beyond the time provided in the statutes. It is therefore essential that all of those administering development regulations know and follow these mandates.