



**Town of Weaverville  
Zoning Board of Adjustment  
Fire Department Training Room, 3 Monticello Road  
October 12, 2020, 7pm**

- **Attendance by the general public may be limited and social distancing and face coverings during this meeting may be required in compliance with applicable Governor's executive orders.**

**Agenda**

1. Call to Order – Chair Tycer Lewis.
2. Election of Officers.
3. Approval of the Agenda.
4. Approval of the Minutes from the February 10, 2020 Meeting of the Board.
5. Approval of the Order Establishing the Board's Action on a Variance Approved on February 10, 2020 for the Property Commonly Known as 286 North Main Street.
6. Evidentiary Hearing Regarding a Proposed Special Use Permit Amendment for the Property Commonly Known as 39 Fairfield Approach Drive.
7. Consideration of a Motion Establishing a Ruling on the Aforementioned Proposed Special Use Permit Amendment Application.
8. Any Other Business to Come Before the Board.
  - Updated Board Roster.
9. Adjournment.

## 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.

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### 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.

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### 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.

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### 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.

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### 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.

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### 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.

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### 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.

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

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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.

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### **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.

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### **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.

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### **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.

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### **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.

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### **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 – PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE**

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.

**TOWN OF WEAVERVILLE**  
**ZONING BOARD OF ADJUSTMENT AGENDA ITEM**

**Date of Meeting:** Monday, October 12, 2020  
**Subject:** Election of Officers  
**Presenter:** Planning Director / Town Attorney  
**Attachments:** None

**Description:**

Municipal ordinance currently calls for an annual election of officers for the Board as per the following Sec. 36-327.

*Sec. 36-327. - Proceedings.*

*The zoning board of adjustment shall elect a chairman and a vice chairman from its members who shall serve for one year or until reelected or until their successors are elected. The board shall appoint a secretary, who may be a municipal officer, an employee of the town, or a member of the zoning board of adjustment. The board shall adopt rules and by-laws in accordance with the provisions of this chapter and G.S. Ch. 160A, Art. 19. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the vice chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the board shall be open to the public.*

Staff is willing and prepared to continue serving as secretary should this be the consensus of the Board.

**Action Requested:**

Staff is requesting action related to the annual election of officers as stated. Action may be taken via a motion to the specific appointment and simple majority vote of the Board.

**TOWN OF WEAVERVILLE**  
**ZONING BOARD OF ADJUSTMENT AGENDA ITEM**

**Date of Meeting:** Monday, October 12, 2020

**Subject:** Minutes

**Presenter:** Planning Director / Town Attorney

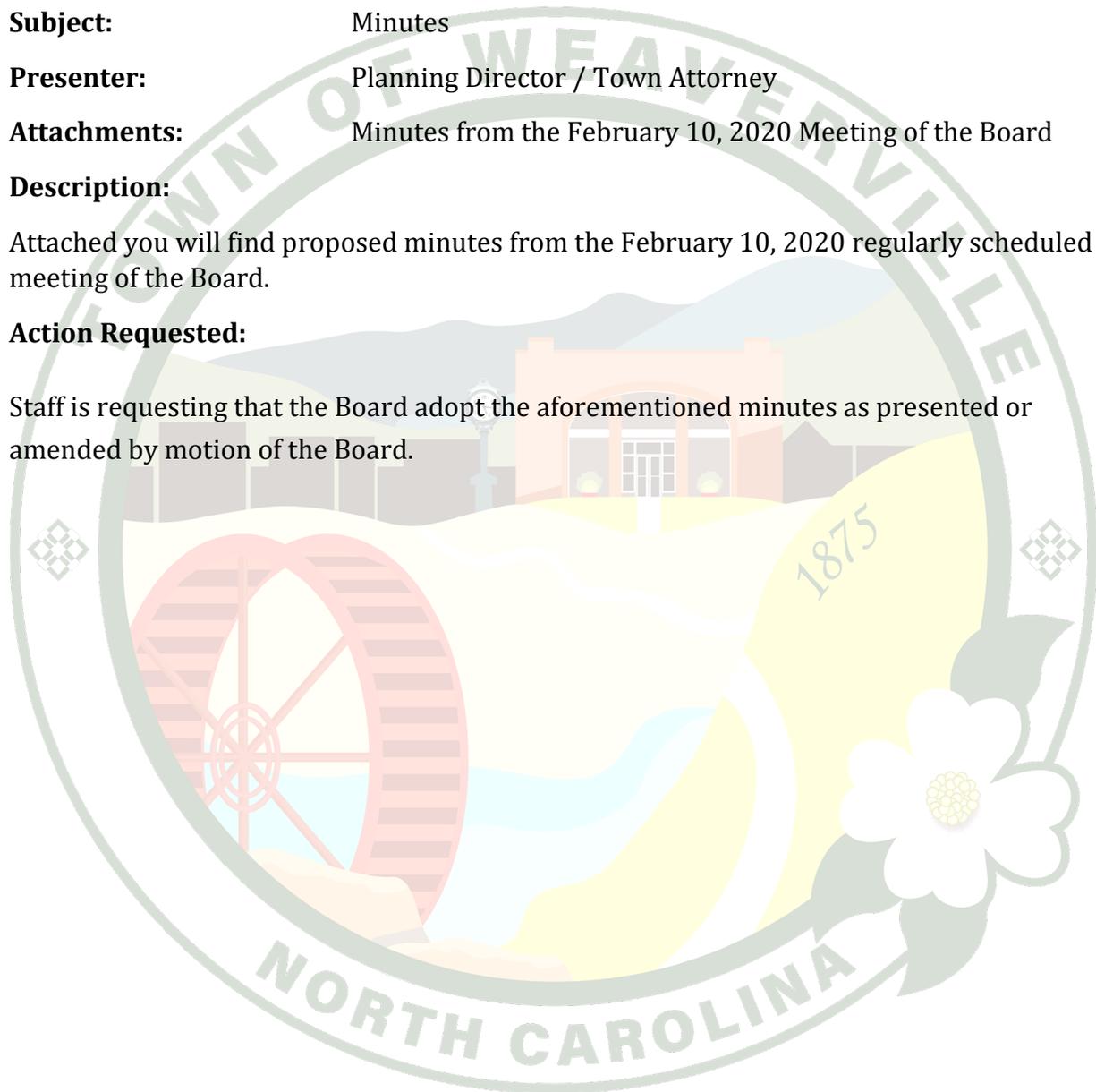
**Attachments:** Minutes from the February 10, 2020 Meeting of the Board

**Description:**

Attached you will find proposed minutes from the February 10, 2020 regularly scheduled meeting of the Board.

**Action Requested:**

Staff is requesting that the Board adopt the aforementioned minutes as presented or amended by motion of the Board.



Town of Weaverville

Board of Adjustment

Minutes – Monday, February 10, 2020

The Board of Adjustment of the Town of Weaverville met for its regular meeting at 7pm on Monday, February 10, 2020, 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 Member Bob Pace; Town Attorney Jennifer Jackson and Planning Director James Eller. Alternate Member Gene Knoefel was absent.

**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/ Adjustment to the Agenda**

Board Member Valois made a motion to approve the agenda as presented. Board Member Wright seconded the motion and all voted in favor of the motion.

**3. Approval of Minutes**

Board Member Clauhs made a motion to approve the minutes from the October 28, 2019, meeting of the Board as presented. Board Member Wright seconded the motion and all voted in favor of approving the minutes.

**4. Ratification of Order Granting a Variance for 120 South Main Street**

Board Member Clauhs made a motion to ratify the Order Granting the Variance for 120 South Main Street. Board Member Parkin seconded the motion and all voted in favor of the ratification of the Order.

**5. Evidentiary Hearing on a Variance Application for 284 North Main Street**

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

In government there are 4 types of decisions: legislative or policy making decisions that are made by the governing body such as Town Council, advisory decisions that are typically made by the planning board or other advisory committees to help the governing body with its decisions, administrative or non-discretionary decisions that are typically made when staff carries out directives, and lastly, quasi-judicial decisions. Many North Carolina counties and cities, including the Town of Weaverville, rely on their Boards of Adjustment to hear and decide quasi-judicial matters. In carrying out this role the Board of Adjustment reviews and makes decisions involving the application of ordinance policies to

individual situations. Examples include variances, waivers, special-use permits, appeals of administrative decisions, and interpretations. These decisions involve two key elements—the finding of facts regarding the specific proposal and the exercise of judgment and discretion in applying predetermined policies to the situation.

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 Sunil K. Patel and Rekha S. Patel are the owners of property located at 284 North Main Street (Buncombe County Parcel Identification Number 9743-32-0795), which is located in the C-2 Zoning District. Through their agent, Gary Potts, the property owner has applied for a front set back 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 about the board hearing the matter were expressed.

Chair Lewis noted that the applicants/property owners, Mr. and Mrs. Patel, through their agent Gary Potts, 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, Gary Potts, and Sunil Patel

Mr. Eller described the application and asked that the portion of the agenda packet concerning the variance application be admitted into evidence as Exhibit 1-A, including the following: Staff Report, recorded plat, email correspondence from Fire Chief Ted Williams, email correspondence from Police Chief Ron Davis, variance application dated January 6, 2020 (with site plans and other design details), affidavit of mailing and posting. Mr. Eller also presented an affidavit of publication and asked that it be admitted as Exhibit 1-B. Exhibits 1-A and 1-B were accepted into evidence without objection from any party.

Gary Potts 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. Through the testimony of Mr. Potts and Mr. Patel it was determined that the shape and topography of the lot would prevent the use of the property as a gas fueling station with a canopy within the setbacks. The 24' by 24' existing canopy was nonconforming at the time of annexation and is still nonconforming. None of the existing buildings could be built on the lot due to the current setbacks. The canopy is old and in disrepair and is at risk of falling during a wind storm. The canopy cannot be repair but must be replaced. The new canopy as proposed would be safer and more accessible and would accommodate a better flow of traffic, possibly easing traffic on the adjoining roads. The proposed new canopy will be safer than the existing one-pole canopy, and even an exact replacement, as the new canopy has been designed with two poles and, therefore, more structural support. The property owner would experience a hardship if the variance is not granted in that they cannot make normal use of the property as a gas station like other gas stations in the area since the standard is to provide fueling canopies. The C-2 zoning district was found to have been established "in order to promote current and future development of businesses which are required to serve the needs of residents of the town with convenience shopping, goods and services." The variance requested is consistent with the spirit and

intent of the C-2 zoning as it encourages the convenience of obtaining fuel. While the proposed canopy is a larger canopy it appears to lessen the nonconformity in that the canopy has been moved more internally on the site. The requested variance will have a minimal impact on the neighboring properties as the proposed canopy will be more interior than the existing one and will provide a safer and more efficient flow of traffic.

## **6. Ruling on a Variance Application for 284 North 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 Valois made the motion to approve the requested variance. Board Member Clauhs seconded the motion. Noting that variances require a 4/5 affirmative vote, with a vote of 4 for and 1 against, the motion passed and the variance was granted.

Mr. Eller and Ms. Jackson indicated that they will prepare the written order and will present it to the Board at its next meeting which is scheduled for March 9, 2020.

## **7. Continued Discussion on Board's Rules of Procedure**

Attorney Jackson reviewed with the Board the comments that she received from Board members and the few changes that were made. After the Board discussed the proposed rules, Board Member Valois made a motion to approve the Rules of Procedure as with the amendments as discussed. Board Member Parkin seconded the Motion. After further discussion on the motion, all voted in favor of the motion and the Rules of Procedure were adopted.

Attorney Jackson indicated that she would send them up to Town Council for review and consent at Town Council's next meeting on February 24, 2020.

## **8. Continued Discussion on Mandated Notice**

There was continued 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 unanimous consensus the Board is in favor of amending the notice requirements to conform to the statute. Staff will submit this request for a text amendment at an appropriate time.

## **9. Other Business**

Planner Eller and Attorney Jackson informed the Board that they are working on a comprehensive review of the Town's land development regulations in order to comply with the new land development statutes that will be known as 160D. These changes will be accomplished by text amendments through the normal procedures, including Planning and Zoning Board review and public hearing prior to Town Council adoption. Most of the changes are technical in nature (changing statutory references). As far as the Board is concerned, it is largely business as usual, but some of these changes may slightly affect the way in which the Board does its work.

**10. Adjournment**

At approximately 8:45 pm, Board Member Clauhs made a motion to adjourn, which was seconded by Board Member Wright All voted in favor and the meeting was adjourned.

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**Tyler Lewis, Chair  
Board of Adjustment**

**ATTEST:**

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

DRAFT

**TOWN OF WEAVERVILLE**  
**ZONING BOARD OF ADJUSTMENT AGENDA ITEM**

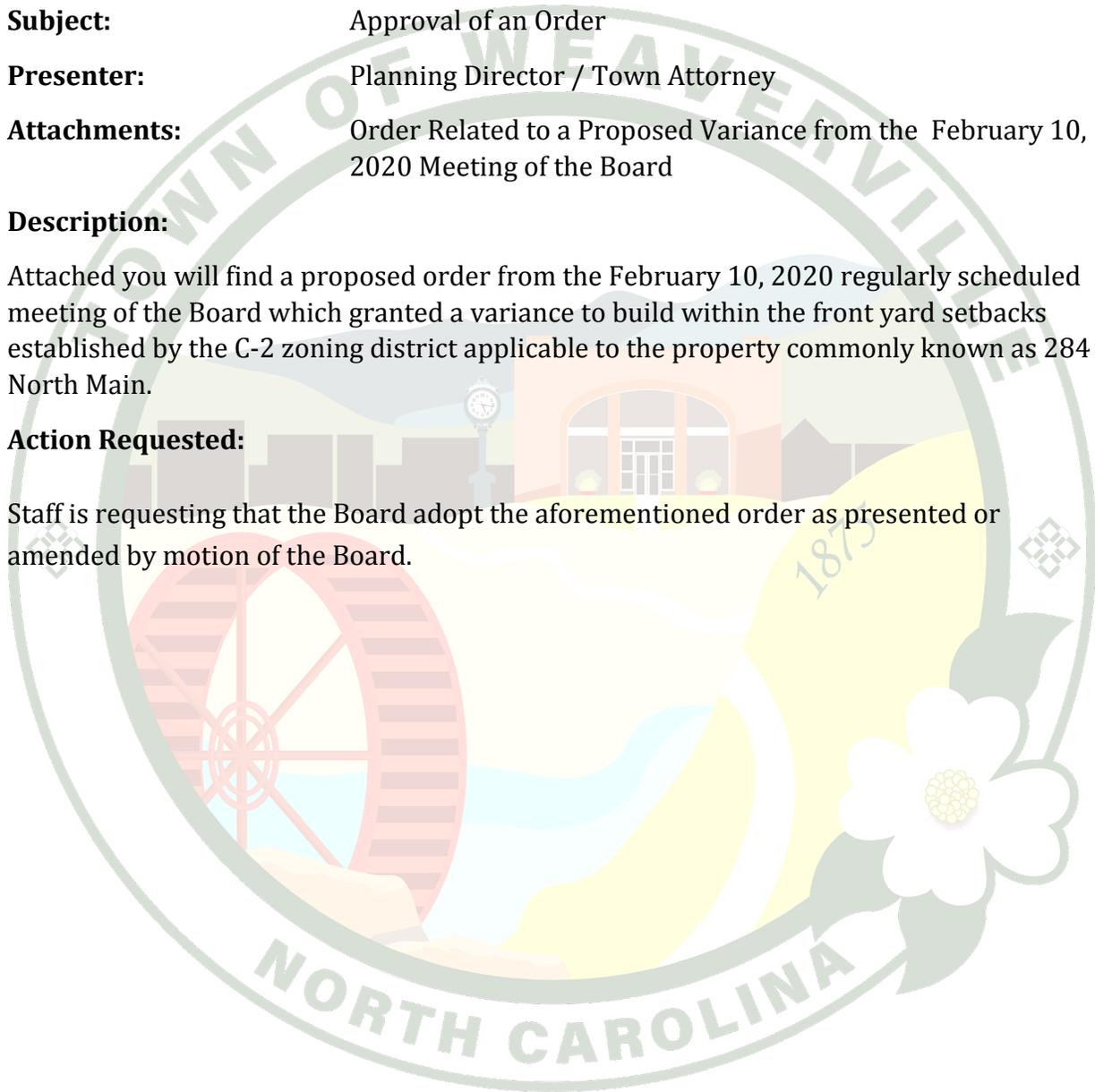
**Date of Meeting:** Monday, October 12, 2020  
**Subject:** Approval of an Order  
**Presenter:** Planning Director / Town Attorney  
**Attachments:** Order Related to a Proposed Variance from the February 10, 2020 Meeting of the Board

**Description:**

Attached you will find a proposed order from the February 10, 2020 regularly scheduled meeting of the Board which granted a variance to build within the front yard setbacks established by the C-2 zoning district applicable to the property commonly known as 284 North Main.

**Action Requested:**

Staff is requesting that the Board adopt the aforementioned order as presented or amended by motion of the Board.



**TOWN OF WEAVERVILLE  
BOARD OF ADJUSTMENT**

**ORDER GRANTING A VARIANCE**

**APPLICANT:** Sunil K. Patel and Rehka S. Patel

**PROPERTY LOCATION:** 286 North Main Street, Weaverville, NC

**PARCEL IDENTIFICATION NUMBERS:** 9743-32-0795

The Board of Adjustment of the Town of Weaverville (hereinafter "Board") held a quasi-judicial evidentiary hearing (hereinafter "Hearing") on Monday, February 10, 2020, at 7 p.m. in Council Chambers at Town Hall at 30 South Main Street, Weaverville, on a request for a variance of a 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 February 10, 2020, 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 Sunil Patel.

The 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: Staff Report, recorded plat, email correspondence from Fire Chief Ted Williams, email correspondence from Police Chief Ron Davis, variance application dated January 6, 2020 (with site plans and other design details), and affidavit of mailing and posting. Survey; Application for a Variance dated; Affidavit of Publication and Affidavit of Mailing and Posting; said packet was submitted into evidence by James Eller as Exhibit 1-A.
  - b. Affidavit of Publication as Exhibit 1-B.

2. The following individuals were sworn in and gave testimony: James Eller, Gary Potts and Sunil Patel.
3. The Applicant Patel owns the real property located at 286 North Main Street, which bears Buncombe County parcel identification number 9743-32-0795 and is zoned C-2 residential.
4. The existing gas fueling station and fueling canopy has been located on the property since prior to the property's annexation into the Town and all buildings located on the property are nonconforming in that they are located within the standard C-2 setbacks. The 24' by 24' existing canopy was nonconforming at the time of annexation and is still nonconforming. None of the existing buildings could be built on the lot today due to the current setbacks.
5. The canopy is old, in disrepair, and at risk of falling during a wind storm. The canopy cannot be repair but must be replaced. The new canopy as proposed would be safer and more accessible and would accommodate a better flow of traffic, possibly easing traffic on the adjoining roads.
6. The property owner would experience a hardship if the variance is not granted in that they cannot make normal use of the property as a gas station like other gas stations in the area since the commercial standard is to provide fueling canopies.
7. The C-2 zoning district was established "in order to promote current and future development of businesses which are required to serve the needs of residents of the town with convenience shopping, goods and services." The variance requested is consistent with the spirit and intent of the C-2 zoning as it encourages the convenience of obtaining fuel.
8. While the proposed canopy is a larger canopy it appears to lessen the nonconformity in that the canopy has been moved more internally on the site.
9. The proposed new canopy will be safer than the existing one-pole canopy, and even an exact replacement, as the new canopy has been designed with two poles and, therefore, more structural support.
10. The requested variance will have a minimal impact on the neighboring properties as the proposed canopy will be more interior than the existing one and will provide a safer and more efficient flow of traffic.
11. The Board further finds and concludes that:
  - a) an unnecessary hardship will result in the strict application of the Zoning Ordinance;
  - b) the hardship results from conditions that are peculiar to the property, including specifically the size and shape 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 the variance will allow for convenience shopping which is a stated goal of the C-2 zoning district;

- 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 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 setbacks 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 setback variance to allow construction of a fueling canopy consistent with the attached site plan is hereby granted.

**ORDERED THIS** the 10th day of February, 2020.

**WRITTEN DECISION** adopted this the 12th day of October, 2020

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**Tycer Lewis, Chairman  
Board of Adjustment**

**ATTEST:**

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

**TOWN OF WEAVERVILLE**  
**ZONING BOARD OF ADJUSTMENT AGENDA ITEM**

**Date of Meeting:** Monday, October 12, 2020

**Subject:** Public Hearing – Special Use Permit Amendment

**Presenter:** Planning Director / Applicant, FFC Limited Partnership

**Attachments:** Public Notice; Staff Report; Special Use Permit Application and Supporting Documents; Affidavit of Mailing and Posting

**Description:**

**REQUEST TO AMEND A SPECIAL USE PERMIT**

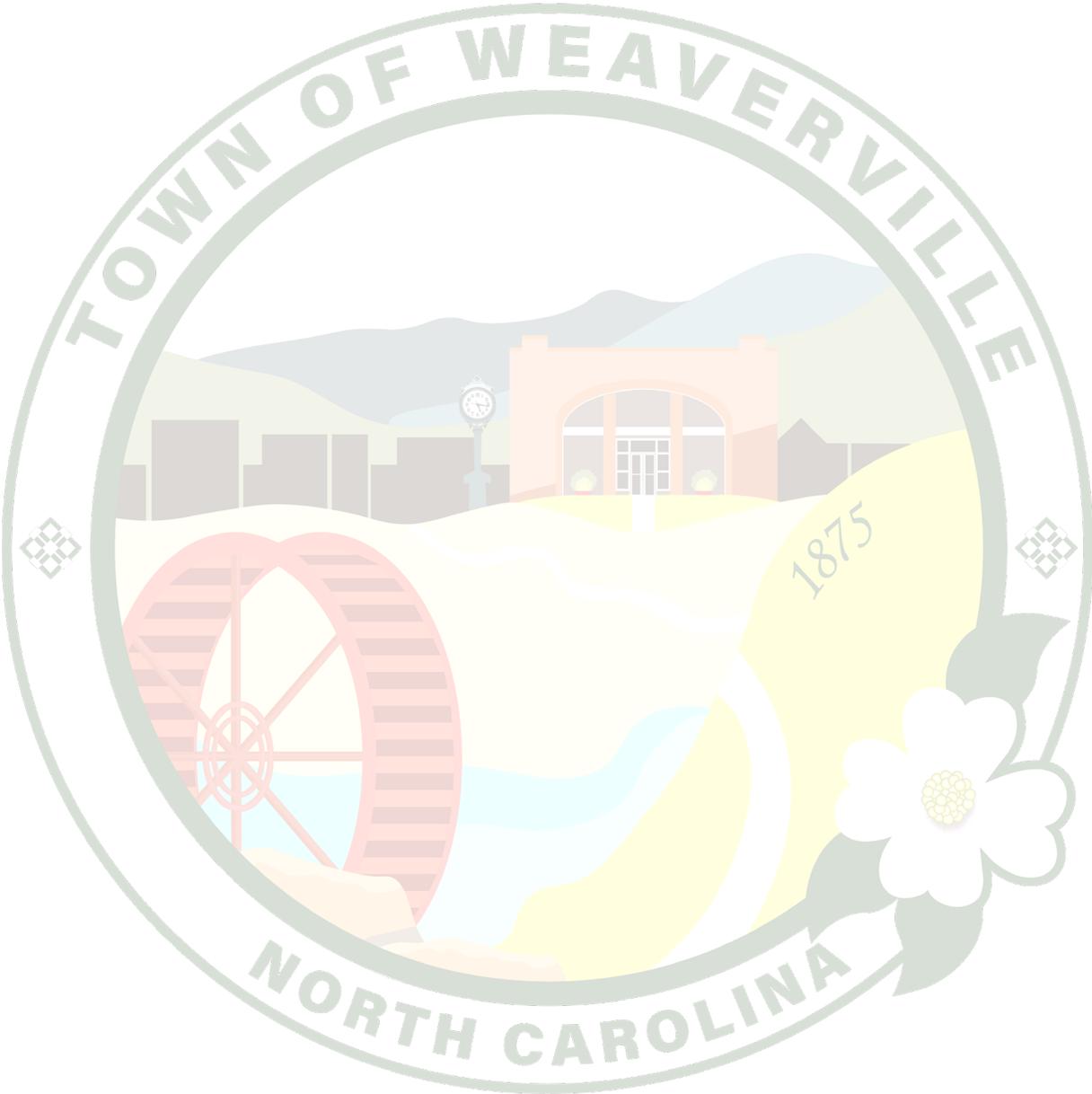
**INTRODUCTION:** BH2 Partners, LLC, is the owner of approximately 1.8 acres at 39 Fairfield Approach Drive (Buncombe County Parcel Identification Numbers of 9742-09-7663), and, through its agent, FFC Limited Partnership, has requested an amendment to the special use permit in order to obtain development approval on the undeveloped parcel subject to the existing special use permit. The proposed development is for a restaurant with a drive-thru, which is a permitted use in the underlying C-2 zoning district.

**JURISDICTION:** Sec. 36-328(1) authorizes the BOA to review and approve an amendment to an existing special use permit if all the requirements for a special use permit can still be met.

**STANDARDS FOR SPECIAL USE PERMITS:**

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

**QUESTION FOR DELIBERATION:** Does the record include competent, relevant and substantial evidence that the amendment to the special use permit requested by the property owner meets the standards and should therefore be granted?



## **NOTICE OF PUBLIC HEARING**

Public Notice is hereby given that the Town of Weaverville Board of Adjustment will hold a Public Hearing following quasi-judicial procedures on Monday, October 12, 2020 at 7:00p.m. This meeting will occur within the Fire Department training room located at 1 Monticello Road, Weaverville, NC to consider the following item:

An application to amend an existing special use permit for Fairfield Inn, Weaverville specific to parcel identification number 9742-09-7663, 39 Fairfield Approach Drive. The nature of the requested amendment is to amend the site plan established by order of the Zoning Board of Adjustment for the parcel and project on October 10, 2016 to provide for a permitted use within the underlying zoning district.

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

# Town of Weaverville, North Carolina

## Staff Report: Proposed Special Use Permit Amendment – Fairfield Approach Drive

Prepared October 2020

Sources: Town of Weaverville Code of Ordinances; Special Use Permit – Fairfield Inn, Weaverville

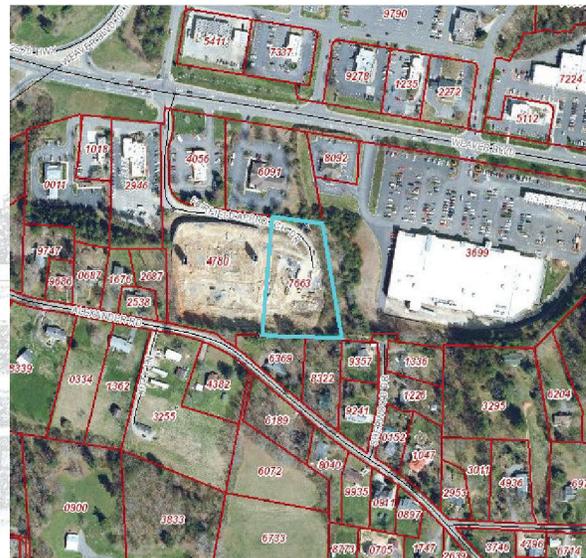
### Introduction to the Property

The subject parcel (highlighted) consists of 1.8 acres as shown on Buncombe County tax records and a special use permit amendment originally issued for the construction of Fairfield Inn is desired. The property may be found and accessed along Weaver Boulevard between the intersections of Weaver and I-26 to the west and Weaver and North Main to the east. The property also lies in close proximity to Ingles (large white rooftop pictured) found less than one tenth of a mile to the west. Residentially zoned properties along Alexander Road may also be found directly to the south.

### Question of Jurisdiction

Section 36-239(d) *Special Use Permit* tasks the Zoning Board of Adjustment to consider requests for special use permits and amendments thereto.

Based upon the aforementioned section of municipal ordinance, it is the belief and understanding of staff that the Zoning Board of Adjustment is duly authorized to consider a special use permit amendment for this property.



### Previous Decisions

On October 10, 2016 the Zoning Board of Adjustment issued a special use permit for the property in question as well as the property which now houses Fairfield Inn and a copy of the order establishing the special use permit is attached hereto. The site plan associated with the aforementioned special use permit labeled the lot now before the Board as future development with no other particulars given. The main objective of tonight's meeting is to incorporate the general site plan provided to the original special use permit should the Board determine the project meets or will meet the conditions established by the special use permit and the standards generally applicable to special use permits.

The following conditions are applicable to the property in question as a result of the original special use permit followed by a brief comment related to the current status of the individual condition:

## **Staff Report: Proposed Special Use Permit Amendment – Fairfield Approach Drive**

Sources: Town of Weaverville Code of Ordinances; Special Use Permit – Fairfield Inn, Weaverville

1. Weaverville Town Council approval of a 3-inch water meter and water allocation sufficient for the project; (said water allocation was accomplished and the associated water infrastructure has been installed larger than required at six inches in anticipation of further development which may access the water line)
2. Repair and/or installation of a fence to separate the project from Alexander Road and maintenance of that fence in a serviceable condition; (a fence is currently in place adjacent to Alexander Road / the subject parcel does not directly abut Alexander Road)
3. Installation and maintenance of a 20-foot wide buffer along all portions of the property which abut a residential zoning district and the planting of that buffer area with plants and trees that meet or exceed, in height and /or density, those required by Article 6 of Chapter 36 of Town Code; (Existing vegetation on the subject parcel is not sufficient to meet this condition and shall be installed as per the aforementioned article and chapter of Town Code)
4. The width of all access road(s) must be at least 20 feet to meet Fire Code; (the access road has been installed and is currently in use for Fairfield Inn)
5. If blasting of rock on the property is necessary, the applicant/owner/developer must provide all properties entitled to notice of this hearing with notice of the date and time of such blasting at least two weeks in advance. (it is unknown whether such blasting will be required on the subject parcel)

It is appropriate for the Board to examine compliance with the previously established conditions as well as the following standards applicable to special use permits.

### **Standards Applicable to Special Use Permits and Amendments to Same**

Sec. 36-238. - Standards.

No special use permit shall be issued or amended unless the board of adjustment shall find that:

- (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 immediate neighborhood or with the character

## **Staff Report: Proposed Special Use Permit Amendment – Fairfield Approach Drive**

Sources: Town of Weaverville Code of Ordinances; Special Use Permit – Fairfield Inn, Weaverville

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.

### **Proposed Use**

The proposed use of the property is defined as a drive-thru retail/restaurant by the zoning ordinance of the Town as follows.

*Drive-thru retail/restaurants.* A facility where food and other products may be purchased by motorists without leaving their vehicles. Examples include but are not limited to fast-food restaurants, drive-through coffee, dairy products, photo stores, and pharmacies.

### **Zoning Analysis**

Absent the special use permit original issued for Fairfield Inn which currently governs the property, it is fair to examine the underlying zoning district of C-2 which would otherwise be applicable to the property. The C-2 zoning district is described by the zoning ordinance of the Town as follows.

C-2. The general business district is established in which the principal use of the land is for commercial development and the regulations for the C-2 district are established in order to promote current and future development of businesses which are required to serve the needs of residents of the town with convenience shopping, goods and services.

As it related to the Zoning Board of Adjustment's application of the standards established by Sec. 36-238, it is also fair to establish that within C-2 the proposed use would be permitted by right within the underlying zoning district as per the following excerpt from the table of uses which establishes uses which are appropriate within individual zoning districts.

Sec. 36-105. - Table of uses.

# Staff Report: Proposed Special Use Permit Amendment – Fairfield Approach Drive

Sources: Town of Weaverville Code of Ordinances; Special Use Permit – Fairfield Inn, Weaverville

USES	R-1	R-2	R-3	R-12	C-1	C-2	I-1
<b>RETAIL / RESTAURANTS</b>							
Drive-Thru Retail / Restaurant	-	-	-	-	-	P	P

Municipal ordinance calls for the submission of *detailed plans* within six months of the approval of the general plan approved by the Zoning Board of Adjustment. Once found compliant with various sections of municipal ordinance and relevant federal and state laws, rules and regulations by the Town’s technical review committee (Fire Marshal, Planning Director, Public Works Director) a zoning permit may be issued for construction.

**Other Considerations**

**Fairfield Approach Drive:** Fairfield Approach Drive is currently a private road which intersects with Weaver Boulevard which is an NCDOT road. The town of Weaverville has no investment in this regard as it relates to the ownership and maintenance of the road(s) which serve the property.

**Traffic Impact Study:** Finding of fact #6 of the attached order establishing a special use permit establishes the following: *“It was admitted by the applicant’s engineer that this project would trigger the threshold calling for a traffic impact study for the project. However, due to the property’s direct access to existing roads with dedicated turning lanes and a traffic light the Board finds that there is no purpose in having a traffic impact study conducted for this project as the remedies to handle the flow of traffic generated by the project are already in place.”*

**Water Availability:** While no formal water allocation application has been made (the applicant is waiting the decision of the Board to determine if the project may move forward), it is the belief and understanding of staff that sufficient water capacity is available to serve the project. A recent staff analysis of the capacity of the water system on August 27, 2020 suggests that sufficient units, gallons per connection and projected demand are available for this project with ample room for many additional projects within the reserve for projected inside-town vacant land development.

**TOWN OF WEAVERVILLE  
STATE OF NORTH CAROLINA**

**SPECIAL USE PERMIT  
UNIFIED BUSINESS DEVELOPMENT**

**IN THE MATTER OF:**

**APPLICANT: BLUE RIDGE HOSPITALITY VENTURE, LLC  
PROPERTY LOCATION: 2.5+/- ACRES AT 166 WEAVER BLVD, WEAVERVILLE, NC, 28787  
PARCEL IDENTIFICATION NUMBER: 9742-09-6618**

The Zoning Board of Adjustment (hereinafter as Board) of the Town of Weaverville held a Quasi-Judicial Evidentiary Hearing on Monday, September 12, 2016, at 7p.m. in Council Chambers at Town Hall at 30 South Main Street, Weaverville, North Carolina, on an application for a special use permit to allow a unified business development for a 103 room, 4-story hotel.

A quorum of the Board was present with Chairman Al Root, Vice-Chairman Jeff McKenna, Board Members Paul Clauhs, Cynthia Wright, Tycer Lewis and Alternates Jan Rector and Roger Parkin each in attendance. Town Attorney Jennifer Jackson, Fire Marshal Jayson Harwood, and Town Planner & Code Enforcement Officer James Eller were also present.

The Quasi-Judicial Evidentiary 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 newspaper having general circulation.

At the Quasi-Judicial Evidentiary Hearing on September 12, 2016, Chairman Root presided and reviewed the procedure for the hearing on the special use request. Chairman Root inquired of the Board members whether anyone had any conflicts of interest, potential bias or outside communication concerning this project. None were noted.

The Board acknowledged without objection that the following individuals had standing to participate in the hearing and were made parties to this matter:

Planner/Zoning Administrator James Eller;  
Applicant Blue Ridge Hospitality Venture, LLC, which has a contract to purchase the property;  
Deborah Shelton who resides at 46 Alexander Road; and  
Kelly Terry who resides at 39 Alexander Road.

The following were sworn in as potential witnesses: James Eller, Jayson Harwood, Marvin Mercer, Bob Hodges, John Sandman (?), Bernie Edwards, Deborah Shelton and Kelly Terry.

Documentary evidence was submitted and admitted into evidence without objection as follows:

- Exhibit A-1 – Affidavit of Publication
- Exhibit A-2 – Affidavit of Posting
- Exhibit A-3 – Affidavit of Mailing
- Exhibit B-1 – Application for Unified Business Development and Checklist
- Exhibit B-2 – MSD Allocation Approval
- Exhibit B-3 – Real Estate Sales Agreement
- Exhibit B-4 – Complete set of Plans (Sheets C-1 through C-4)
- Exhibit C – Aerial Image of Site and neighboring properties
- Exhibit D-1 through D-4 – Photographs of the Site

James Eller introduced the project and the Applicant, through its manager and engineer, reviewed the project and the plans and answered questions.

Deborah Shelton indicated that she was concerned about people coming and going through a hole in the fence, potential for light and noise pollution since it is a 24-hour business, adequate buffering, cutting of a bank and existing trees, outdoor amenities which would increase the noise. Kelly Terry expressed concerns about adequate buffering and screening, how lighting will affect her property, and whether the hotel expects to have lots of tractor trailers staying as guests.

Based on the documentary and testimonial evidence provided at the Evidentiary Hearing the Board makes the following FINDINGS OF FACT and CONCLUSIONS:

1. This matter was properly noticed in accordance with North Carolina law and Town Code.
2. The proposed unified business development is for a Fairfield Inn to be located at 166 Weaver Boulevard and consisting of a 103-room, 4-story hotel with rooms accessible internally, onsite security provided, no outside amenities such as pools, 121 parking spaces provided, access to Weaver Boulevard via an existing road intersecting with DOT road Weaver Boulevard at an intersection having dedicated turning lanes and a traffic light.
3. The lighting plan for the project will be developed by the applicant in consultation with Duke Energy and will to the greatest extent possible keep the light directed downward.
4. The proposed unified business development has been designed and planned in accordance with Town Code and, except for those matters specifically addressed herein, meets the standards set out in Town Code §§ 36-240 and 36-238.
5. The applicant has been working with the Town's Public Works Director on water allocation for this project. It was originally expected that a 2-inch water meter and allocation request would be sufficient and fall under the authority of the Public Works Director. Just prior to the September 12<sup>th</sup> Zoning Board of Adjustment meeting it was discovered that a 3-inch meter and allocation were necessary and requires approval by Town Council. The applicant has, therefore, not yet secured water meter and allocation approval from the Town of Weaverville for this project but intends to request the same at Town Council's next regularly scheduled meeting on September 19, 2016, and understands that the project cannot be approved without a condition requiring the approval of a water meter and allocation from the Town Council of Weaverville.
6. It was admitted by the applicant's engineer that this project would trigger the threshold calling for a traffic impact study for the project. However, due to the property's direct access to existing roads with dedicated turning lanes and a traffic light the Board finds that there is no purpose in having a traffic impact study conducted for this project as the remedies to handle the flow of traffic generated by the project are already in place.
7. The applicant's plans currently show two driveways/access roads, one to the East and one to the West of the hotel footprint, which provide a means of ingress and egress to a road that will be used to access Weaver Boulevard at a traffic light and to a right-of-way to access Weaver Boulevard through the SunTrust Bank parking lot. The Board finds that should the applicant wish to eliminate the driveway shown on the western side of the hotel and move the footprint of the building westward by up to 20 feet the project will still be in compliance with the standards set forth in §§ 36-240 and 36-238 as long as access to the hotel from the intersection at the traffic light on Weaver Boulevard between McDonalds and Bojangles is provided.
8. As this project abuts a residential district with several residences located just beyond the project boundaries it is necessary that the owner of the property install, repair and maintain in serviceable condition a fence which will serve to separate the property on which the hotel will be located from those residential properties along Alexander Road.

9. A 20-foot wide landscaped buffer is adequate if the buffer area is planted with sufficient vegetation selected from the Town's approved list found in Article 6 of Chapter 36 of Town Code. It is noted that the applicant agreed to provide taller and more prolific plantings within the 20-foot buffer.

NOW THEREFORE, based upon the foregoing findings and conclusions, the Zoning Board of Adjustment for the Town of Weaverville hereby waives the requirement for presentation of a traffic impact study and concludes that the application for a special use permit should be granted subject to certain conditions.

IT IS, THEREFORE, ORDERED that the application for the special use permit submitted by Blue Ridge Hospitality Venture, LLC, and shown on Exhibit B-4, a copy of which is attached hereto and incorporated herein, is hereby approved and the special use permit for the project is GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. Weaverville Town Council approval of a 3-inch water meter and water allocation sufficient for the project;
2. Repair and/or installation of a fence to separate the project from Alexander Road and maintenance of that fence in a serviceable condition;
3. Installation and maintenance of a 20-foot wide landscape buffer along all portions of the property which abut a residential zoning district and the planting of that buffer area with plants and trees that meet or exceed, in height and/or density, those required by Article 6 of Chapter 36 of Town Code;
4. The width of all access road(s) must be at least 20 feet to meet Fire Code; and
5. If blasting of rock on the property is necessary, the applicant/owner/developer must provide all properties entitled to notice of this hearing with notice of the date and time of such blasting at least two weeks in advance.

An alternate plan in which the western driveway/access road is eliminated and the building footprint is moved westward by not more than 20 feet is also hereby GRANTED subject to the same conditions noted above and subject to the provision of a revised plan to the Town's Zoning Administrator.

Effective as of the 10th day of October, 2016.



Al Root, Chairman  
Zoning Board of Adjustment

ATTEST:

  
James W. Eller  
Town Planner / Deputy Town Clerk



# TOWN OF WEAVERVILLE SPECIAL USE PERMIT APPLICATION

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](mailto:jeller@weavervillenc.org)

Special Use Permit Fee: \$500

OWNER/APPLICANT NAME: **FFC Limited Partnership** APPLICATION DATE: **9/21/20**  
 BRIEFLY DESCRIBE THE PROJECT: **Wendy's Restaurant w/ drive-thru**  
 PHONE NUMBER: **828-262-1911** PROPERTY ADDRESS: **39 Fairfield Approach Dr., Weaverville, NC**  
 PIN: **9742-09-7663-0000** DEED BOOK/PAGE: **5544/1631**  
 TRACT AREA (acres): **1.8** PROPOSED SQ. FOOTAGE: **78,425 land roughly 2,250 building**  
 REGISTERED CONTRACTOR: **TBD** PHONE NUMBER: **TBD**  
 ADDRESS:  
 REGISTERED ENGINEER: **Municipal Engineering Services Company, P.A.** PHONE NUMBER: **828-262-1767**  
 ADDRESS: **PO Box 349 Boone, NC 28607**

All applications shall be accompanied by a general site plan draw to scale and containing all elements of the attached checklist.

It is the applicant's responsibility to obtain a copy of the Town of Weaverville Zoning Ordinance and to be fully aware of the regulations detailed therein.

I certify that the above information is accurate and true and that I am the owner or a duly appointed agent of the owner.

  
 \_\_\_\_\_  
 SIGNATURE OF APPLICANT

**9/21/20**  
 \_\_\_\_\_  
 DATE

## OFFICE USE ONLY

FEE:	DATE PAID:	<input type="checkbox"/>	CHECK	<input type="checkbox"/>	CASH
SITE PLAN DECISION	<input type="checkbox"/>	APPROVED	<input type="checkbox"/>	DISAPPROVED	DATE:
DETAILED PLAN DECISION	<input type="checkbox"/>	APPROVED	<input type="checkbox"/>	DISAPPROVED	DATE:
<input type="checkbox"/>	APPROVED WITH CONDITIONS:				

SPECIAL USE PERMIT  
GENERAL PLAN REQUIREMENTS

All site plans submitted shall be prepared by, and bear the seal and signature of a registered engineer. Plans shall be drawn to scale containing all elements listed below. Plans shall be submitted in duplicate and accompanied by a statement that an Erosion Control permit from Buncombe County has been applied for.

At least one three-dimensional, color depiction of the proposed project shall be submitted containing elements listed below. Three-dimensional depictions of the proposed project may be submitted electronically or on a disk, if preferred.

	Title block containing:
	<input checked="" type="checkbox"/> Name of owner
	<input checked="" type="checkbox"/> Location/Address
	<input checked="" type="checkbox"/> Buncombe County tax number (PIN)
	<input checked="" type="checkbox"/> Date or dates survey was conducted and plan prepared
	<input checked="" type="checkbox"/> Scale of the drawing, in feet per inch
	<input checked="" type="checkbox"/> Deed book and page reference of deed conveying property to current owner
<input checked="" type="checkbox"/>	Property lines, public rights-of-way
<input checked="" type="checkbox"/>	Exact dimensions by metes and bounds of the lot including interior lines if lot consists of multiple lots of record
<input checked="" type="checkbox"/>	Lot area in acres
<input checked="" type="checkbox"/>	Location, right-of-way width, and name of all streets bordering the property
<input checked="" type="checkbox"/>	Ownership of all properties within 500 feet of site boundaries
<input checked="" type="checkbox"/>	Minimum building setback lines applicable to the lot
<input checked="" type="checkbox"/>	Drainage or utility easements (public and private) located on the lot
<input checked="" type="checkbox"/>	Location of existing underground utilities
<input checked="" type="checkbox"/>	Location of existing natural features including ponds, streams, watersheds, rock outcroppings
<input checked="" type="checkbox"/>	Location of existing wells or septic fields
<input checked="" type="checkbox"/>	Exact dimension and location of all existing & proposed buildings or structures including patios, porches, awnings, etc.
<input checked="" type="checkbox"/>	Exact dimension and location of all off-street parking (refer to 36.176 of zoning ordinance)
n/a	Exact dimension and location of all loading spaces/docks including all turn-around spaces
n/a	Topography of the site in five (5) foot contours and true elevations
<input checked="" type="checkbox"/>	Proposed points of ingress and egress (minimum of two each) with the proposed internal traffic pattern and parking
Noted	Proposed provisions for stormwater collection and disposal, both natural & manmade, and treatment of ground cover
<input checked="" type="checkbox"/>	Proposed connections with Town water
<input checked="" type="checkbox"/>	Proposed connections with the MSD sewer system
<input checked="" type="checkbox"/>	Proposed locations and screening of garbage dumpsters /bulk containers
<input checked="" type="checkbox"/>	Buffering requirements if property abuts residential district (30ft setback, 20ft buffer)
n/a	Proposed sidewalk (refer to 36.24 of zoning ordinance)

**Topographic Survey**

<input checked="" type="checkbox"/>	Boundary information in metes and bounds including existing and proposed street rights of way
<input checked="" type="checkbox"/>	Location, grade, width, alignment of existing curbing, walks, grass, planting strips, roadway medians
<input checked="" type="checkbox"/>	Location, size, depths, of all underground utilities including gas, electric, water, sewer, stormwater

SPECIAL USE PERMIT  
GENERAL PLAN REQUIREMENTS

✓	Location and height above existing grade of overhead utility lines and poles
✓	Location and description of all recorded public or private utility easements and building setbacks
✓	Location of all natural features on the lot or within 100ft of the graded area
n/a	Location of existing wells or septic fields
n/a	Location of existing structures

**Grading Plan** (To be provided upon approval of SUP modification)

	Contour lines at no greater than 10ft intervals
	Grades at corners of buildings, step landings, and first floor elevations
	Finished grades at the edges of surfaced areas and at such interior points as necessary
	Proposed roadway elevations (profiles, cross sections, spot elevations)
	Top-of-Curb grades at all connecting sidewalks, curb returns, and all catch basin locations
	Spot elevations along swale lines, by using arrows to show direction of flow including slope gradients
	Lawn and earth grades
	Proposed location of stockpiled topsoil for future land use in landscaped areas
	Storage locations of construction materials outside the root zones of significant vegetation
	Location of existing significant vegetation
	Elevations of any floodplains location on or directly affecting the tract
	Location and size of any landscaping, screening, or buffering requirements as required by the Town

**Landscape plan** (To be provided upon approval of SUP modification)

	Existing and proposed landscaping
	Buffers required by Article VI – Landscape regulations
	Screens required
	Existing and proposed land uses of all adjoining properties and current zoning of those properties
	Existing vegetation intended to be saved under Section 36-154
	Any barriers proposed to protect vegetation during or after construction
	Topographic contours at intervals no greater than five feet
	Description of stormwater control and indication of direction of stormwater flow

**Also may be required by the Town of Weaverville:**

**Traffic Impact Analysis (Section 36-25 ), Lighting Plan (Section 36-26), Street Cut Permit**

**Also may be required by Buncombe County:**

**Stormwater Plan, Erosion Control Plan, Building Permit, Floodplain Development Permit**

**Also may be required by NCDOT:**

**Driveway Permit**

**TOWN OF WEAVERVILLE  
AGENT AUTHORIZATION FOR LAND USE DEVELOPMENT  
PETITION/APPLICATION AND APPROVAL**

**PROPERTY LEGAL DESCRIPTION:**

**PARCEL ID:** 974209766300000

**STREET ADDRESS:** 39 FAIRFIELD APPROACH DR. Weaverville, NC

**PROPERTY OWNER:** BH2 PARTNERS LLC  
PO BOX 1686  
CLEMMONS, NC 27012

(complete Certificate of Authority if a corporation or LLC)

**PROPERTY OWNER CONTACT INFORMATION:**

**EMAIL ADDRESS:** [bob@williamsgeneralcontracting.com](mailto:bob@williamsgeneralcontracting.com)  
**PHONE NUMBER:** 336-998-9900  
**MAILING ADDRESS:** PO BOX 1686  
CLEMMONS, NC 27012

**PERMIT SOUGHT/APPLICATION TO BE SUBMITTED:** All necessary permits to develop Wendy's on the subject site from the Town of Weaverville and Buncombe County.

**NAME OF INDIVIDUAL AGENT:** Tige Darner

**NAME OF CONTRACTOR/CONSULTING FIRM:** FFC Limited Partnership

**AGENT CONTACT INFORMATION:**

**EMAIL ADDRESS:** [tdarner@tarheelcapital.com](mailto:tdarner@tarheelcapital.com)  
**PHONE NUMBER:** 828-262-1811  
**MAILING ADDRESS:** 166 S. Gate Drive, Suite 10  
Boone, NC 28607

We, the undersigned property owner(s) of the above noted property, do hereby authorize the individual or company listed above as the property owner's agent to act on his/her/their behalf and to take all actions necessary for the processing, issuance, and acceptance of the above-referenced permit or application. We hereby certify the above information submitted in this application is true and accurate to the best of our knowledge.

  
 \_\_\_\_\_  
 Property Owner Signature

  
 \_\_\_\_\_  
 Property Owner Signature

Date: 9/21/2020

Date: 9/21/2020

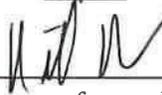
**CERTIFICATE OF AUTHORITY FOR LIMITED LIABILITY COMPANY  
 TOWN OF WEAVERVILLE, NORTH CAROLINA**

The undersigned, being (a/the) duly elected, qualified and active member / manager of **BH2 Partners, LLC**, a limited liability company organized and existing in the State of North Carolina (hereinafter "Company"), does hereby certify that:

1. That the Company currently exists and is in good standing with the NC Secretary of State;
2. That a controlling majority of the members and the manager of the Company have adopted resolutions with respect to the attached Agent Authorization for Land Use Development Permit/Application and Approval and such resolutions have been duly and validly adopted and are in full force and effect.
3. That said resolutions adopted/approved the Agent Authorization for Land Use Development Permit/Application and Approval and authorized any and all actions on behalf of the Company and that no further authorizing action need be taken.
4. That the said resolutions authorized the following person or persons to execute all documents in connection with the Agent Authorization and that the signature appearing to the right of their name(s) is his/her genuine signature:

NAME	SIGNATURE	OFFICE HELD
WILLIAM R. HICKS		MEMBER MANAGER
BOB HODGES		MEMBER

THIS the 21<sup>st</sup> day of SEPTEMBER, 2019. 2020.

  
 \_\_\_\_\_  
 Signature of member/manager

STATE OF NORTH CAROLINA  
COUNTY OF Davie

I, Cheryl A Stultz, a Notary Public, certify that William Hicks + Bob Hodges personally came before me this day and acknowledged that he/she is the owners of BH2 Partners, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the Company, the foregoing Certificate of Authority was signed by him/her on behalf of the Company. Witness my hand and seal this the 21st day of September, 2019.

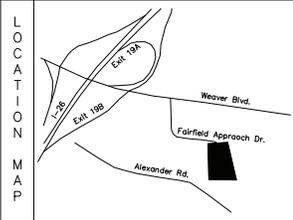
Cheryl A Stultz  
Notary Public

My Commission Expires: 6-24-2023

CHERYL A. STULTZ  
Notary Public, North Carolina  
Stokes County  
My Commission Expires  
June 24, 2023







National Bank of Commerce  
D.B. 2721, Pg. 731  
PIN: 9743-00-6091

**LEGEND:**

○	NIP	NEW IRON PIN
○	EIP	EXISTING IRON PIN
○	CP	CALCULATED POINT ONLY
⊙		POWER POLE
⊙		LIGHT POLE
⊙		WATER VALVE
⊙		GAS VALVE
⊙		WATER METER
⊙		FIRE HYDRANT
⊙		SANITARY SEWER MANHOLE
⊙		STORM DRAIN MANHOLE
⊙		CATCH BASIN
⊙		CLEANOUT
⊙		CURB INLET
⊙		TRANSFORMER
⊙		OVERHEAD POWER
-X-X-		FENCE LINE

Lot 1  
Blue Ridge Hospitality Ventures  
D.B. 5629, Pg. 497  
P.B. 174, Pg. 94  
PIN: 9742-09-4780

Lot 2  
1.80 Acres±  
78,425 Sq.Ft.±

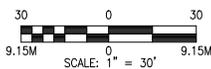
Ingles Markets Incorporated  
D.B. 1865, Pg. 79  
PIN: 9742-19-3699

Joseph & Kelly Terry  
D.B. 5126, Pg. 487  
PIN: 9742-09-6369

Arloa Johnson  
D.B. 2923, Pg. 123  
PIN: 9742-09-8322

**SURVEY NOTES**

- 1) The basis of bearings for this survey is NC Grid, based on NAD83(2011).
- 2) The basis of elevations of this survey is NAVD88. Topography as shown has a 2' contour interval.
- 3) This property is located in Zone "X" of the Flood Insurance Rate Map, Community Panel Number 3700974200J, which bears an effective date of January 6, 2010 and is not in a Special Flood Hazard Area.
- 4) There could be other easements that affect this property which should be contained in a current title report. Title report not furnished.
- 5) Storm water underground structures and pipes based on Site Plan by Mercer Design Group, Project No. 16-075, dated January 25, 2018.



**Not For Recordation**

The original drawing and/or all copies of it are not transferable to any future owner(s) of the platted property and shall not be used or relied upon by future owner(s) and/or their representatives for any reason without written release by the professional surveyor.

This is to certify that the property shown on this plat was surveyed under my direct supervision. Property lines and improvements are located correctly and that no visible encroachments exist unless otherwise shown.



Not valid without the signature and the original seal of a North Carolina licensed land surveyor.

**Plat of Boundary & Topographic Survey for  
Tarheel Capital**  
39 Fairfield Approach Drive  
Town of Weaverville, Buncombe County, North Carolina  
Lot 2, BH2 Partners, LLC

FREELAND - CLINKSCALES  
& ASSOCIATES, INC. OF N.C.  
ENGINEERS + LAND SURVEYORS  
201 2nd AVE. EAST  
HENDERSONVILLE, N.C. 28792  
fca@nc.earthlink.net  
(828) 697-6539  
Fax (828)-697-4195  
Firm No. C-1562

REF. PLAT BOOK	174/94
REF. DEED. BOOK	5544/1631
TAX MAP	9742-09-7663
PARTY CHIEF	ADM
DRAWN	TEC
DATE	September 11, 2020
DWG.NO.	H40467

# CITIZEN-TIMES

PART OF THE USA TODAY NETWORK

## AFFIDAVIT OF PUBLICATION

BUNCOMBE COUNTY

NORTH CAROLINA

### NOTICE OF PUBLIC HEARING

Public Notice is hereby given that the Town of Weaverville Board of Adjustment will hold a Public Hearing following quasi-judicial procedures on Monday, October 12, 2020 at 7:00p.m. This meeting will occur within the Fire Department training room located at 1 Monticello Road, Weaverville, NC to consider the following item:

An application to amend an existing special use permit for Fairfield Inn, Weaverville specific to parcel identification number 9742-09-7663, 39 Fairfield Approach Drive. The nature of the requested amendment is to amend the site plan established by order of the Zoning Board of Adjustment for the parcel and project on October 10, 2016 to provide for a permitted use within the underlying zoning district.

If you would like additional information or to review the content related to the Public Hearing you may contact Planning Director and Town Clerk James Eller at 828-484-7002 or [jeller@weavervillenc.org](mailto:jeller@weavervillenc.org).  
09/25, 10/02/2020  
0004388438

Before the undersigned, a Notary Public, duly commissioned, qualified and authorized by law to administer oaths, personally appeared said legal clerk, who, being first duly sworn, deposes and says: that he/she is the **Legal Clerk of The Asheville Citizen-Times**, engaged in publication of a newspaper known as **The Asheville Citizen-Times**, published, issued, and entered as first class mail in the City of Asheville, in Buncombe County and State of North Carolina; that he/she is authorized to make this affidavit and sworn statement; that the notice or other legal advertisement, a true copy of which is attached here to, was published in **The Asheville Citizen-Times** on the following date(s) 09/25/20, 10/02/20. And that the said newspaper in which said notice, paper, document or legal advertisement was published was, at the time of each and every publication, a newspaper meeting all of the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina and was a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

Signed this 2nd of October, 2020 ,

  
Legal Clerk

Sworn to and subscribed before the 2nd of October, 2020

  
Notary Public of State of Wisconsin, County of Brown

9-19-21  
My Commission expires.



(828) 232-5830 | (828) 253-5092 FAX

14 O. HENRY AVE. | P.O. BOX 2090 | ASHEVILLE, NC 28802 | (800) 800-4204

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

Special Use Permit Amendment - Public Hearing  
39 Fairfield Approach Drive

**AFFIDAVIT OF MAILING AND POSTING**

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 24th day of September, 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 39 Fairfield Approach Drive and that a Notice of Public Hearing, Exhibit A, was affixed to the reverse side of same.

This the 5<sup>th</sup> day of October, 2020.

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

Sworn to and subscribed before me  
this 5 day of Oct, 2020

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

My Commission Expires: 5/31/22

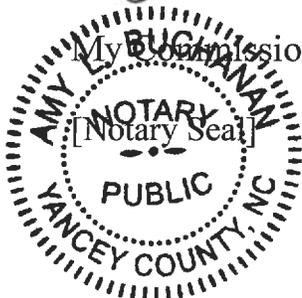


Exhibit A

## **NOTICE OF PUBLIC HEARING**

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

Exhibit B

OWNER	ADDRESS	CITYNAME	STATE	ZIPCODE
BLUE RIDGE HOSPITALITY VENTURES	PO BOX 578	DUNN	NC	28335
TERRY JOSEPH PATRICK;TERRY KELLY RENE	39 ALEXANDER RD	WEAVERVILLE	NC	28787
BH2 PARTNERS LLC	PO BOX 1686	CLEMMONS	NC	27012
JOHNSON ARLOA K	31 ALEXANDER RD	WEAVERVILLE	NC	28787
RICE STEVEN OTHA;RICE SANDRA FLYNN	114 SHERWOOD DR	WEAVERVILLE	NC	28787
INGLES MARKETS INCORPORATED	PO BOX 741328	DALLAS	TX	75374
NATIONAL BANK OF COMMERCE	PO BOX 26665	RICHMOND	VA	23261



Exhibit C



**TOWN OF WEAVERVILLE**  
**ZONING BOARD OF ADJUSTMENT AGENDA ITEM**

**Date of Meeting:** Monday, October 12, 2020

**Subject:** Any Other Business

**Presenter:** Planning Director / Town Attorney

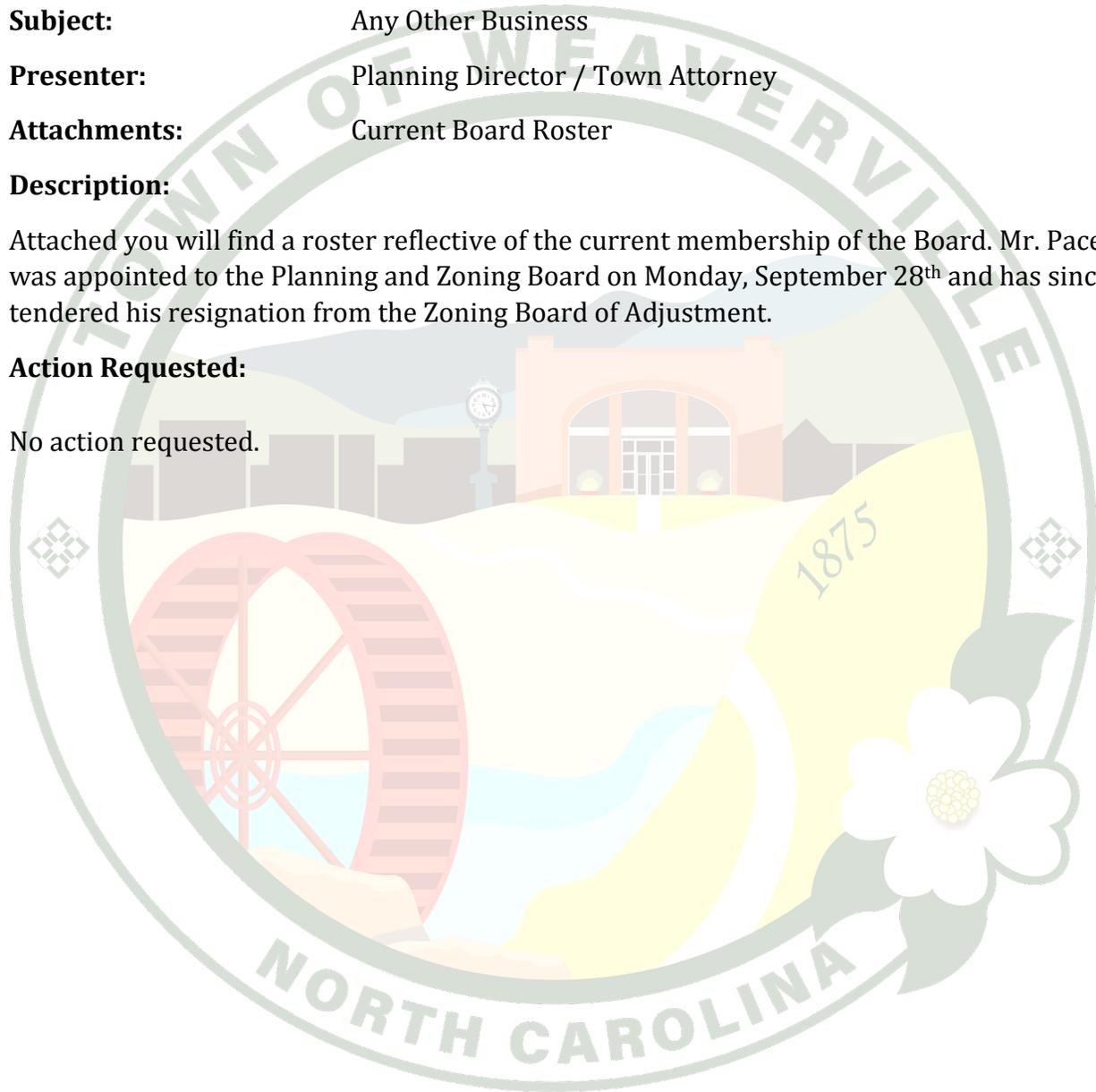
**Attachments:** Current Board Roster

**Description:**

Attached you will find a roster reflective of the current membership of the Board. Mr. Pace was appointed to the Planning and Zoning Board on Monday, September 28<sup>th</sup> and has since tendered his resignation from the Zoning Board of Adjustment.

**Action Requested:**

No action requested.



<b>WEAVERVILLE BOARD OF ADJUSTMENT</b>				
Regularly meets 2 <sup>nd</sup> Monday of the month at 7:00 pm (as needed) in Community Room/Council Chambers at Town Hall				
<b>NAME AND POSITION</b>	<b>CONTACT INFORMATION</b>	<b>FIRST APPT</b>	<b>DATE OF APPT</b>	<b>TERM (3 YEARS)</b>
John "Tyger" Lewis Chairman	14 South College Street (cell) 279-4290 <a href="mailto:tycerrenovations@gmail.com">tycerrenovations@gmail.com</a>	2017	August 2020	September 2020 – 2023
Cynthia Wright Vice-Chairman	88 Hillcrest Drive (cell) 703-862-8428 <a href="mailto:wright.cindy2011@gmail.com">wright.cindy2011@gmail.com</a>	2014	August 2018	September 2018 – 2021
Paul Clauhs Regular Member	P.O. Box 483 74 Hamburg Drive 828-768-6679 <a href="mailto:weavervilleplumbing@hotmail.com">weavervilleplumbing@hotmail.com</a>	2011	August 2019	September 2019 – 2022
Roger Parkin Regular Member	57 Church Street 828-337-2868 <a href="mailto:rdplimey@gmail.com">rdplimey@gmail.com</a>	2017	August 2020	September 2020 – 2023
Sylvia Valois Regular Member	42 Loftin Street 504-717-0275 <a href="mailto:svalois2000@yahoo.com">svalois2000@yahoo.com</a> <a href="mailto:sylvia.valois@ncdps.gov">sylvia.valois@ncdps.gov</a>	2018	August 2018	September 2018 – 2021
Gene Knoefel Alternate Member	10 Highland Pointe Drive 828-645-8800 <a href="mailto:gknoefel@charter.net">gknoefel@charter.net</a>	2019	August 2019	September 2019 – 2022
Alternate Member				- Sept 2023
James Eller Zoning Administrator	828-484-7002 <a href="mailto:jeller@weavervillenc.org">jeller@weavervillenc.org</a>			
Jennifer Jackson Town Attorney	828-442-1858 <a href="mailto:jjackson@weavervillenc.org">jjackson@weavervillenc.org</a>			

*Last updated September 2020*