

Town of Weaverville

Board of Adjustment
Minutes – Monday, July 12, 2021

The Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, July 12, 2021, in the Community Room and Council Chambers at Town Hall, 30 South Main Street, Weaverville.

Present: Chair Tycer Lewis, Vice Chair Cynthia Wright, Board Members Paul Clauhs, Roger Parkin, and Gene Knoefel, Alternate Member Peter McGuire, Town Attorney Jennifer Jackson and Planning Director/Zoning Administrator James Eller.

1. Call to Order

Chair Tycer Lewis called the meeting to order at 7:00pm and welcomed those in attendance to the meeting. The board members and staff introduced themselves. Newly appointed alternate member, Peter McGuire, was welcomed to the Board as well.

2. Approval of Agenda

Board Member Clauhs made a motion to approve the agenda as written. Board Member Parkin seconded the motion and all voted to approve the motion and the agenda was adopted.

3. Approval of Minutes

Vice Chair Wright made a motion to approve the minutes from the January 11, 2021, meeting of the Board with a correction in Section 6 to change the reference to Chair Burge to correctly reflect Chair Lewis. Board Member Clauhs seconded the motion and all voted in favor of approving the minutes as amended.

4. Evidentiary Hearing on a Variance Application for 20 Brown 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 Board of Adjustment will hold a quasi-judicial hearing on a variance application. The purpose of the quasi-judicial hearing is for the 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, but can also include evidence admitted without objection, and evidence that appears to be sufficiently trustworthy and reasonable for the Board to rely on. 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 evidentiary hearing will consist of the following general steps: ensuring an impartial board, identifying parties that have standing and wish to participate, putting all witnesses under oath, receiving evidence from staff on the application, receiving evidence from the applicant and any other parties, hearing any final argument by the parties, deliberating and deciding the case. Each party will get an opportunity to question all witnesses and to present evidence in the form of documents or testimony. Chair Lewis introduced the matter by stating that 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 previously issued for the Fairfield Inn project. The proposed development is for a restaurant with a drive-thru, which is a permitted use in the underlying C-2 zoning district. Town Code Sec. 36-328(1) authorizes the BOA to grant amendments to special use permits. The standards for special use permits were reviewed.

Ms. Jackson introduced the matter before the Board by stating that John and Laura Chase are the owners of property located at 20 Brown Street that has a Buncombe County Parcel Identification Number of 9742-26-6315 and is zoned R-1. John Chase has applied for a minimum lot width variance.

Chair Lewis declared the evidentiary 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.

Mr. Eller indicated that while he has a relationship with the applicant, John Chase, who is a member of the Town's Planning Board, that associational relationship has not and will not affect his work on this matter.

Chair Lewis noted that the applicant/property owner, John Chase, had standing to participate in the hearing as a party, as did James Eller on behalf of the Town.

Mary Wheeler came forward and stated that she and her husband own property at 12 Rhoda Court which backs up to the subject property. Due to the topography of the general area, stormwater runs to the low part of the Wheeler property and she has a concern that further development will negatively impact her property. Without objection from the applicant, the Board agreed that Ms. Wheeler had standing to participate in the hearing.

The following individuals were sworn in and gave testimony: John Chase, James Eller, and Mary Wheeler.

Mr. Eller reviewed the administrative materials that included the following: Staff Report; Application for a Variance dated 3 June 2021, including attached boundary survey and referenced deeds; Affidavit of Mailing and Posting; said packet was received into the record without objection as Exhibit 1.

Eller reviewed his staff report by providing information concerning the subject property, noted that the board has jurisdiction to hear and decide variances concerning nonconforming lots, and provided some information concerning similar Board decisions made in the past. Upon a question from Board Member Parkin, Ms. Jackson indicated that variance applications require the Board to consider the particulars of each property so the past decisions do not provide a mandatory precedent.

Mr. Chase provided testimony that supported his application, including that he owns the real property located at 20 Brown Street, which bears Buncombe County parcel identification number 9742-26-6315 and is zoned R-1 residential. The subject property originated as two tracts of land that were created in 1973 ("First Tract" and "Second Tract") by that deed recorded in Book 1088 at Page 453, but said lots have since been combined by subsequent deeds beginning in 1989. Tracts 1 and 2 are shown on a map recorded in Plat Book 211 at Page 78, Buncombe County Registry. The tracts of land created in 1973 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 Tract 1 is 98.95 feet and the lot width for Tract 2 is 74.78 feet. A single-family residence currently exists on Tract 1, but the applicant has requested a variance on the minimum lot width for Tract 2 to allow construction of a single-family residence on Tract 2. Mr. Chase indicated that he contemplated constructing an accessory dwelling unit on the property, but that the maximum square footage of accessory dwellings as allowed by Town Code would not be big enough for his intended single-family use. Without the requested variance Tract 2 is not able to be used as a single-family residence which is the primary purpose of the R-1 zoning district.

Mr. Eller indicated that there are several single-family residences in the vicinity that have been built on lots that are less than 75 feet in width, indicating that the requested variance will have a minimal impact on the neighboring properties.

The Board heard testimony from Mary Wheeler that her property lies in a valley and that several properties, including the subject property, slope towards her property. She indicated that she has a concern that a house built on the subject property will add to the stormwater runoff that is negatively impacting her property. Ms. Wheeler testified that 20 years ago NCDOT looked at the issue, but that no work has been done to resolve this issue. Ms. Wheeler did not present any expert testimony concerning any affect that the construction of a single-family residence on applicant's Tract 2 would have on her property.

Ms. Jackson indicated that stormwater runoff is a private matter between property owners as the Town does not have any stormwater regulations that would be applicable.

Having heard all of the evidence and the responses to all questions asked, Chair Lewis asked if there was a motion on the matter.

Based on the documentary and testimonial evidence presented during the hearing, Board Member Clauhs made the motion to approve the variance requested. Board Member Knoefel seconded the motion. All voted in favor and the motion passed unanimously.

Chair Lewis declared the evidentiary hearing closed.

The Town Attorney reviewed a proposed written decision drafted based on the evidence presented and the Board's ruling for possible adoption. Board Member Clauhs made a motion to adopt the written decision. Board Member Parkin seconded the motion. All voted in favor and the written decision was adopted.

5. Discussion Related to the Land Use Regulations Update

Mr. Eller and Ms. Jackson reviewed with the Board the outcome of the land use regulations project and noted that the new regulations became effective on July 1.

6. Any Other Business

Mr. Eller reviewed with the Board the notebooks that were distributed that included the updated land use regulations, zoning map, Board rules of procedure, and a copy of the comprehensive land use plan.

7. Adjournment

At approximately 8:30 pm, Board Member Clauhs made a motion to adjourn, which was seconded by Vice Chair Wright. All voted in favor and the meeting was adjourned.



Tycer Lewis, Chair
Board of Adjustment

ATTEST:



James W. Eller
Town Planner / Town Clerk