



**Town of Weaverville
Board of Adjustment
Remote Electronic Meeting
Monday, February 13, 2022, 6:00pm**

Public Meeting via Zoom Meeting:

<https://us02web.zoom.us/j/81829935222> - Meeting ID: 818 2993 5222

Dial +1 301 715 8592 or +1 312 626 6799 - Meeting ID: 818 2993 5222

(see attached notice for more information on how to join meeting)

Agenda

1. Call to Order – Chair Tycer Lewis
2. Approval of the Agenda
3. Approval of the Minutes from the December 13, 2021 Meeting of the Board
4. Board Training Materials Including an Overview of Quasi-Judicial Procedures and Jurisdiction and Standards for Board of Adjustment Matters
5. Any other Business to Come Before the Board
6. Adjournment

**WEAVERVILLE BOARD OF ADJUSTMENT
REMOTE ELECTRONIC MEETING ON FEBRUARY 14, 2022**

The State of North Carolina, Buncombe County and the Town of Weaverville have all declared States of Emergency in response to the COVID-19 public health crisis. Because of the risks to the public that would arise from in-person meetings, the Weaverville Board of Adjustment meeting on February 14, 2022, will be conducted via remote electronic format.

This NOTICE OF REMOTE ELECTRONIC MEETING is to inform the public that the Weaverville Planning and Zoning Board will hold a meeting on Monday, February 14, 2022, at 6:00 p.m. as an electronic video/audio meeting via Zoom Meeting. Access to the meeting will begin at 5:45 p.m. and the meeting will start at 6:00 p.m. The instructions to access this public meeting are:

To join the meeting by computer, go to this link:

<https://us02web.zoom.us/j/81829935222> . You may be asked for permission to access your computer's video and audio. If so, click "allow." You will then be asked for the Meeting ID which is: 818 2993 5222

To join the meeting by phone, call: (301)715-8592 or (312)626-6799. You will then be asked for the Meeting ID which is: 818 2993 5222

For questions or additional assistance in how to participate in this meeting, please contact Planning Director and Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org .

Tycer Lewis, Chair
Posted: 2/9/22

Town of Weaverville
Board of Adjustment
Minutes – Monday, December 13, 2021

The Board of Adjustment of the Town of Weaverville met for a regularly scheduled monthly meeting at 7:00pm on Tuesday, December 13, 2021 within Council Chamber at Town Hall.

Present: Chair Tycer Lewis, Vice Chair Cindy Wright, Board Members Paul Clauhs and Roger Parkin, Alternate Member Larry Murray, Town Attorney Jennifer Jackson and Planning Director James Eller. Regular Member Peter McGuire was absent.

1. Call to Order

Chair Tycer Lewis called the meeting to order at 7:00 pm.

2. Oath of Office for Larry Murray

Ms. Jackson administered the oath of office for new alternate Board Member Murray.

3. Election of Officers

Mr. Eller noted that the Board was due to conduct their annual election of officers as per Sec. 2-163 Officers.

Mr. Clauhs motioned to reappoint Mr. Lewis as Chair, Ms. Wright as Vice Chair, and Mr Eller as secretary to the Board. Mr. Parkin seconded and all voted unanimously in favor of the motion.

4. Approval of the Agenda

Mr. Parkin motioned to approve the agenda as presented. Mr. Clauhs seconded and all voted unanimously in favor of the motion.

5. Approval of the Minutes from the July 12, 2021 Meeting of the Board

Mr. Clauhs motioned to approve the minutes as presented. Mr. Parkin seconded and all voted unanimously in favor of the motion.

6. Any Other Business to Come Before the Board

Mr. Eller noted that beginning in January 2022 Town Council is set to begin their meetings at 6pm and that the Planning Board meets at 6pm as well. Mr. Eller asked if there was a desire for the Board to meet at 6pm as well in order to provide continuity in meeting times across all boards. Ms. Jackson noted that a change in regular meeting time of the Board could occur via a majority vote of the Board which would amend the rules of procedure of the Board subject to subsequent approval by Town Council.

Mr. Parkin motioned to amend the rules of procedure of the Board to reflect a regular meeting start time of 6pm. Mr. Lewis seconded and all voted unanimously in favor of the motion.

7. Adjournment.

Mr. Clauhs motioned to adjourn the meeting. Ms. Wright seconded and all voted unanimously in favor of the motion. Meeting adjourned at 7:30pm.

**Tycer Lewis, Chair
Board of Adjustment**

ATTEST:

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

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

The Board of Adjustment almost exclusively does its work by making **QUASI-JUDICIAL** decisions on appeals from administrative decisions, variance requests, applications for special use permits, and applications for waivers of sidewalk and vegetative screening requirements. Strict adherence to statutorily prescribed procedures before, during, and after a hearing must be followed to ensure that constitutional due process rights of all parties are preserved. **AS RIGHTS ARE DETERMINED IN THESE HEARINGS IT MAY BE ADVISABLE FOR YOU TO CONSULT WITH AN ATTORNEY ON THESE MATTERS.**

PUBLIC NOTICE OF HEARING

The Town Staff must provide notice of the hearings.

MAILED NOTICE – Notice of hearings must be mailed to the applicant, the owner of the affected property, and owners of properties abutting 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, special use permit application, or other request 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.

INTRODUCTION AT HEARING

The Chairman of the Board of Adjustment or the Board's attorney 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 Board of Adjustment must apply.

BURDEN OF PROOF – All decisions of the Board must be based on competent, material, and substantial evidence presented during the hearing. The person appealing an administrative decision, or applying for a variance, special use permit, or sidewalk or vegetative screening/buffering waiver has the burden of providing sufficient evidence for the Board of Adjustment to conclude that the applicable standards have been met. If insufficient evidence is presented, the application must be denied or the 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 land development regulations provide specific standards for the issuance of variances, special use permits, sidewalk waivers, and vegetative screening/buffering waivers. See separate Section on Standards.

BOARD DISCLOSURES AND RECUSALS

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

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

IDENTIFICATION OF PARTIES

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

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

OATH OF WITNESSES

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

HEARING IS OPENED FOR THE PRESENTATION OF EVIDENCE

The hearing is conducted in order to determine the facts relevant to the matter before the Board of Adjustment. The decision of the Board of Adjustment must be made based on competent, material, and substantial evidence in the record of the hearing. The Board of Adjustment’s scope is limited to applying facts to the standards set forth in the land development regulations. 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 Board of Adjustment. Factual testimony should be limited to those facts which relate to the standards. The 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 BOARD OF ADJUSTMENT MATTERS – PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE

CROSS-EXAMINATION

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

HEARING IS CLOSED AND BOARD DELIBERATION BEGINS

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

VOTING

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

WRITTEN DECISIONS

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

APPEALS

Anyone "aggrieved" by a decision of the 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.

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

STANDARDS

The standards as adopted by the Town Council must be set forth in an unambiguous manner so that the 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 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 board of adjustment.

STANDARDS FOR VARIANCES

- (1) Unnecessary hardship would result from the strict application of the regulation. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (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 is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation 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.

Standards and limitations on **SIDEWALK REQUIREMENT WAIVERS** and **VEGETATIVE SCREENING/BUFFERING WAIVERS** are available upon request.

JURISDICTION AND STANDARDS FOR BOARD OF ADJUSTMENT MATTERS

APPEALS OF ADMINISTRATIVE DECISIONS

JURISDICTION: Code Sec. 20-3108(b) authorizes the BOA to hear and decide appeals of administrative decisions regarding administration and enforcement of all development regulations and to hear and decide appeals arising out of any other ordinance that regulates land use or development.

STANDARDS FOR APPEALS OF ADMINISTRATOR DECISIONS: When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. The board must also ensure that the rights of the appellant have not been prejudiced because the administrative findings, inferences, conclusions, or decision were:

1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the authority conferred upon staff by ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by competent, material, and substantial evidence in view of the entire record.
6. Arbitrary or capricious.

QUESTION FOR DELIBERATION: Based on the competent, material, and substantial evidence in the record, should the decision/determination/order be reversed or affirmed, wholly or partly, or does the board wish to modify the decision?

SPECIAL USE PERMITS (AND AMENDMENTS)

JURISDICTION: Code Sec. 20-3108(c) and 20-3204 authorizes the BOA to grant and amend special use permits.

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.

JURISDICTION AND STANDARDS FOR BOARD OF ADJUSTMENT MATTERS

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 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 board of adjustment.

QUESTION FOR DELIBERATION: Does the record include competent, material, and substantial evidence that the amendment as requested by owner/developer meets the standards and should therefore be granted?

VARIANCES

JURISDICTION: Code Sec. 20-3108(d) authorizes the BOA to grant variances when hardships would result from carrying out the strict letter of the terms of the land development regulations. Variances require a 4/5 vote of the board.

STANDARDS FOR VARIANCES:

1. Unnecessary hardship would result from the strict application of the regulation. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
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 is not a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulation such that public safety is secured and substantial justice is achieved.

JURISDICTION AND STANDARDS FOR BOARD OF ADJUSTMENT MATTERS

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.

QUESTION FOR DELIBERATION: Does the record include competent, material, and substantial evidence that the variance requested by the property owner meets the standards and should therefore be granted?

SIDEWALK WAIVERS

JURISDICTION: Code Sec. 20-3108(e) authorizes the BOA to hear and decide all requests for waivers of sidewalk requirements.

STANDARDS AND LIMITATIONS FOR SIDEWALK WAIVERS:

1. Sidewalk requirements imposed by a conditional district or special use permit are not eligible for a waiver of such sidewalk requirements.
2. Major subdivisions are not eligible for a waiver of the sidewalk requirement for sidewalks on new streets proposed for construction within the major subdivision. Major subdivisions may, however, be granted a sidewalk waiver of the sidewalk requirements along existing streets upon the finding that:
 - a. The construction of the sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk; or
 - b. The construction of the sidewalk is not feasible due to special circumstances including but not limited to impending road widening or improvements or severe roadside conditions or slope which would prohibit sidewalk construction.
3. Minor subdivisions may be granted a sidewalk waiver upon the finding that:
 - a. The construction of the sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk; or
 - b. The construction of the sidewalk is not feasible due to special circumstances including but not limited to impending road widening or improvements or severe roadside conditions or slope which would prohibit sidewalk construction.

QUESTION FOR DELIBERATION: Does the record include competent, material, and substantial evidence that the property is eligible for a sidewalk waiver and meets the standards and should therefore be granted?

JURISDICTION AND STANDARDS FOR BOARD OF ADJUSTMENT MATTERS

VEGETATIVE SCREENING AND/OR BUFFER WAIVERS

JURISDICTION: Code Sec. 20-3108(f) authorizes the BOA to hear and decide whether to alter or eliminate the required vegetative screening or buffering requirement

STANDARDS AND LIMITATIONS FOR VEGETATIVE SCREENING/BUFFERING WAIVERS:

1. The owner of the property affected and the adjacent residential property are in single ownership; or
2. A notarized statement is presented which is signed by the property owner affected and the adjacent residential property owner and waives or modifies the screening provisions.