

Town of Weaverville

Board of Adjustment

Minutes – Monday, June 13, 2022

The Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 6 pm on Monday, June 13, 2022, in the Community Room and Council Chambers at Town Hall, 30 South Main Street, Weaverville.

Present: Vice-Chair Cynthia Wright, Board Members Paul Clauhs, Roger Parkin, and Peter McGuire, Alternate Member Larry Murray, Town Attorney Jennifer Jackson and Planning Director/Zoning Administrator James Eller. Chair Tycer Lewis and Alternate Board Member Caleb Fieser were absent.

1. Call to Order

Vice-Chair Wright called the meeting to order at 6:00 pm and welcomed those in attendance to the meeting. The board members and staff introduced themselves. Board Member Larry Murray was recognized as a regular voting member of the Board.

2. Approval of Agenda

Without objection, Vice-Chair Wright declared the agenda approved.

3. Approval of Minutes

Board Member Clauhs made a motion to approve the minutes from the March 14, 2022, meeting of the Board. Board Member Parkin seconded the motion and all voted in favor of approving the minutes as amended.

4. Evidentiary Hearing on a Variance Application for 104 Fortress Ridge

Vice-Chair Wright 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 quasi-judicial evidentiary hearings on two variances application. The purpose of the hearings 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 hearings are 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 applicants 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 hearings 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.

At the request of Vice-Chair Wright, Attorney Jackson introduced the matter by stating that William Richard Hanby is the owner of property located at 104 Fortress Ridge bearing Buncombe County Parcel Identification Number of 9743-60-1107 which is zoned R-1 and has applied for a variance from the front yard setback. Town Code Sec. 20-3108(d) authorizes the BOA to grant variances, the standards of which were reviewed.

Vice-Chair Wright 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.

Vice-Chair Wright noted that Applicant/property owner and James Eller on behalf of the Town of Weaverville, both had standing as parties to this matter.

The following individuals were sworn in and gave testimony: James Eller and Rick Hanby

Mr. Eller reviewed the administrative materials that included the following: Affidavit of Mailing and Posting; Application for a Variance dated May 2, 2022, including the attached survey dated March 15, 2022; and Staff Report; said packet was received into the record without objection as Exhibit A. A copy of the owner's deed to the subject property was received into the record without objection as Exhibit B.

Eller reviewed the noticing of the matter and his staff report by providing information concerning the subject property and the variance application.

Mr. Hanby reviewed his application and his responses to the standards and noted that due to the steep topography, especially on the back side it will be virtually impossible to build a residence on the lot. He indicated that there is a steep drop off in the back that was not apparent when the property was purchased and only revealed when the property was cleared. A sewer easement makes 25-30% of the area in the back unbuildable. Geotech engineering has been performed and has indicated that the property is stable. Mr Hanby indicated that his contractor and engineer have informed him that without a 7-foot front yard setback

variance, resulting in a 23-foot setback from the road right-of-way, the residence as it was laid out on the survey shown with the application is not buildable. A 7-foot front yard setback variance would allow the residence to move up the hill and be built.

Mr. Eller indicated that the road frontage on the lot is approximately 135 feet.

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

Based on documentary and testimonial evidence presented during the hearing, Board Member Parkin made a motion to grant the variance requested. Board Member McGuire seconded the motion. All voted in favor and the motion passed unanimously. By consensus the Board indicated that Mr. Eller could proceed with the issuance of any zoning permits prior to the adoption of the written decision.

Vice-Chair Wright declared the evidentiary hearing closed.

5. Evidentiary Hearing on a Variance Application for 12 Banks Town Road

At the request of Vice-Chair Wright, Attorney Jackson introduced the matter by stating that Steven and Lori Ottofy are the owners of property located at 12 Banks Town Road bearing Buncombe County Parcel Identification Number of 9742-04-7237 which is zoned R-1 and has applied for a variance from the minimum lot width. Town Code Sec. 20-3108(d) authorizes the BOA to grant variances, the standards of which were reviewed earlier in the meeting.

Vice-Chair Wright 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.

Vice-Chair Wright noted that the applicant/property owner, who was represented by contractor James E. Hunter, and James Eller on behalf of the Town of Weaverville, both had standing as parties to this matter.

The following individuals were sworn in and gave testimony: James Eller and James Hunter.

Mr. Hunter informed the Board that the non-conforming commercial structure on the property has now been demolished and the property owners plan to build a residence in order to bring the use of the property into compliance with the R-1 zoning. He also indicated that there are several instances of minimum lot width variances that the Board has granted under similar circumstances, including for a property just down the street at 27 Banks Town Road.

Mr. Eller reviewed the administrative materials that included the following: Affidavit of Mailing and Posting; Staff Report; and Application for a Variance dated May 20, 2022; said packet was received into the record without objection as Exhibit A. A copy of the owner's deed to the subject property was received into the record without objection as Exhibit B.

Eller reviewed the noticing of the hearing, his staff report by providing information concerning the subject property, noted that the board has jurisdiction to hear and decide variances from minimum lot width requirements.

Through the testimony it was determined that the property was a former non-conforming lot with a non-conforming structure/use that is now being converted into a compliant use on a non-conforming lot. The residence that is proposed will be an 1800 square foot, arts and crafts style residence that is similar in size and appearance to others along Banks Town Road. All requirements of R-1 can be met except for the minimum lot

width. The variance requested is to allow a 75-foot lot width instead of the 100-foot lot width required by the zoning regulations.

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

Based on the documentary and testimonial evidence presented during the hearing, Board Member Murray made the motion to grant the variance requested. Board Member McGuire seconded the motion. All voted in favor and the motion passed unanimously. By consensus the Board indicated that Mr. Eller could proceed with the issuance of any zoning permits prior to the adoption of the written decision.

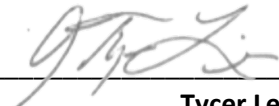
Vice-Chair Wright declared the evidentiary hearing closed.

6. Any Other Business

The Board discussed having the application amended to include questions regarding consideration of alternate building designs. Mr. Eller posed the question about whether the Board would like staff to pursue legislative fixes to decrease the matters coming before the Board. The consensus was that the Board likes that these hearings provide an opportunity for neighbors to be heard and does not propose a change at this time.


7. Adjournment

At approximately 6:58 pm, Board Member Murray made a motion to adjourn, which was seconded by Board Member Clauhs. All voted in favor and the meeting was adjourned.



Tycer Lewis, Chair
Board of Adjustment

ATTEST:



James W. Eller
Town Planner / Town Clerk