



**Town of Weaverville
Board of Adjustment
Monday, June 13, 2022, 6:00pm**

Agenda

1. Call to Order – Chair Tycer Lewis
2. Approval of the Agenda
3. Approval of the Minutes from the March 14, 2022 Meeting of the Board
4. Variance Application – 104 Fortress Ridge
 - Evidentiary Hearing Regarding a Proposed Variance for 104 Fortress Ridge
 - Consideration of a Motion Establishing the Ruling of the Board on the Proposed Variance
5. Variance Application – 12 Banks Town Road
 - Evidentiary Hearing Regarding a Proposed Variance for 12 Banks Town Road
 - Consideration of a Motion Establishing the Ruling of the Board on the Proposed Variance
6. Adjournment

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.

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

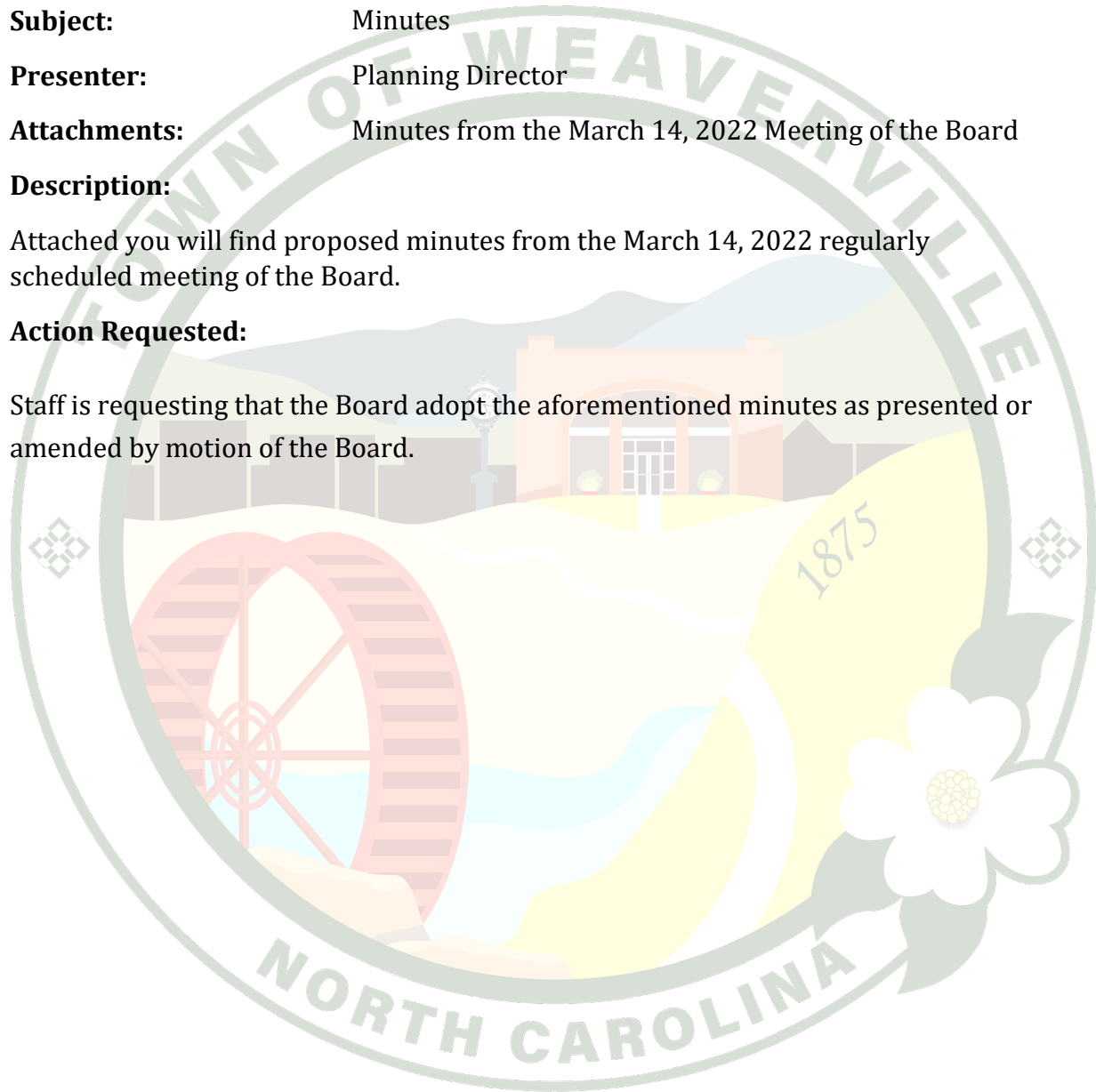
Date of Meeting: Monday, June 13, 2022
Subject: Minutes
Presenter: Planning Director
Attachments: Minutes from the March 14, 2022 Meeting of the Board

Description:

Attached you will find proposed minutes from the March 14, 2022 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, March 14, 2022

The Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 6pm on Monday, March 14, 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 arrived at 6:10pm.

1. Call to Order

Vice-Chair Cynthia Wright called the meeting to order at 6:00pm and welcomed those in attendance to the meeting. The board members and staff introduced themselves.

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 February 14, 2022, meeting of the Board with a correction to one date. 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 Carden Drive Property Bearing PIN 9752-49-9087

Vice Chair Wrihs 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 Marie Marcelin and Jeffrey Chapman are the owners of property bearing Buncombe County Parcel Identification Number of 9752-49-9087 which is zoned R-2 and have 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.

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.

Chair Lewis noted that Applicant/property owner who was represented by Jason Gilliland, a landscape architect and planner with Site Design Studio, PLLC, 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 Jason Gilliland.

Mr. Eller reviewed the administrative materials that included the following: Staff Report; Application for a Variance dated February 21, 2022, including the attached survey last dated February 21, 2022, and correspondence from Buncombe County Stormwater Administrator Victoria Hoyland; Affidavit of Mailing and Posting; said packet was received into the record without objection as Exhibit 1.

A copy of the owner's deed to the subject property was received into the record without objection as Exhibit 2.

Eller reviewed his staff report by providing information concerning the subject property, noted that the board has jurisdiction to hear and decide variances for setback requirements. Eller specifically indicated that the subject property was created in 2006, prior to Buncombe County's enactment of its Stormwater Control Ordinance on June 24, 2008, and noted that a stream bisects the subject property and discharges into a designated trout stream and, as such, a 25-foot wide trout buffer/non-disturbance area and standard erosion control buffer enacted by the Buncombe County Stormwater Ordinance applies on either and both sides of the stream. The front yard setback in the R-2 zoning district was noted to be 30 feet and the applicant has requested a variance to allow construction of a single-family residence on the subject with a front yard setback reduced to 20 feet

Gilliland indicated that Mr. Eller's testimony was an accurate summary of the request and highlighted that the 25 foot wide nondisturbance area is on both sides of the stream and means that there cannot be any grading activity within that area. He also indicated that a two-story residence, which would reduce the footprint of the building, is not feasible as the applicant/property owner has some physical disabilities and needs a reasonable accommodation under the ADA in that regard. He also indicated that the restrictions applicable to the Fox Lair Crossings Subdivision include minimum square footage requirements, including a minimum square footage of 2400 square feet for a one-story residence, that further restrict the development on the property. It was also noted that the requested variance will have a minimal impact on the neighboring properties as the closest structure is to be located more than 30 feet from the edge of the pavement of Carden Road due to the placement of the road within the road right-of-way.

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 Parkin made the motion to approve the variance requested. Vice Chair Wright 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 McGuire 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. Any Other Business

Mr. Eller provided the Board with a Development Guide that was produced by the Mountain Express and a 2021 School of Government Bulletin on land use. Eller also updated the Board on the GIS implementation.

Ms. Jackson forecasted that some amendments to the sidewalk waiver language is likely to be reviewed and amended in the coming months to provide the Board with a more reasonable amount of discretion in considering such requests. She also took a few minutes and review some parliamentary principles that serve as the basis for many of the Board's procedures.

6. Adjournment

At approximately 6:45 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

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, June 13, 2022
Subject: Public Hearing – Variance Request
Presenter: Planning Director / Applicant
Attachments: Public Notice; Staff Report; Variance Application and Supporting Documents; Affidavit of Mailing and Posting

Description:

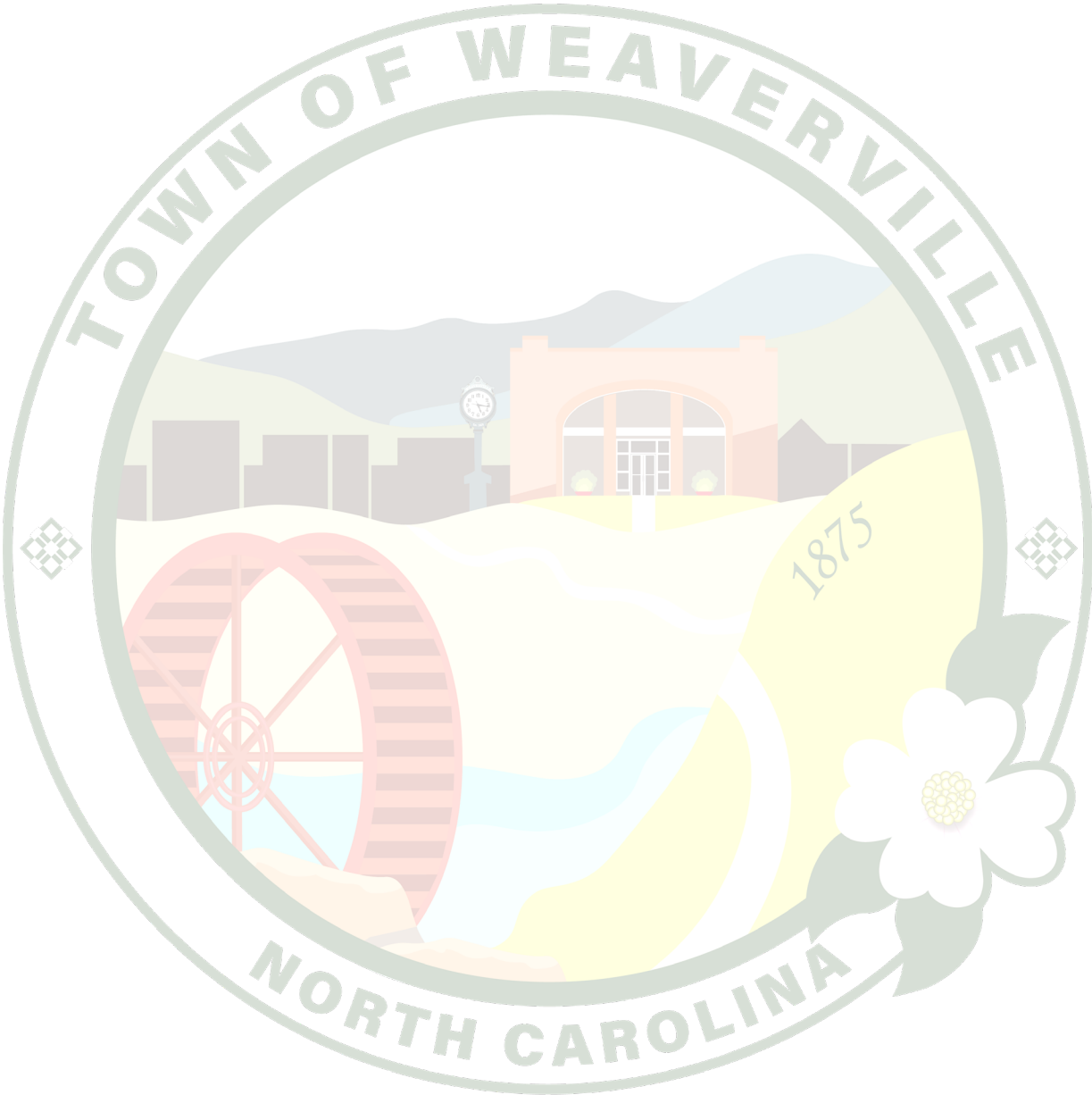
INTRODUCTION: William Richard Hanby is the owner of property located at 104 Fortress Ridge that has a Buncombe County Parcel Identification Number of 9743-601107 and is zoned R-1. The applicant has applied for a front yard setback variance.

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.
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?



NOTICE OF PUBLIC EVIDENTIARY HEARING WEAVERVILLE BOARD OF ADJUSTMENT

Public Notice is hereby given that the Town of Weaverville Board of Adjustment will hold a Public Evidentiary Hearing following quasi-judicial procedures on Monday, June 13, 2022 at 6:00p.m. This meeting will occur within the Community Room and Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC to consider the following item:

An application for a Variance related to the front yard setbacks established by the R-1 Zoning District for a property bearing Buncombe County PIN# 9743-60-1107, 104 Fortress Ridge, Weaverville, NC.

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

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

Variance – Public Evidentiary Hearing
104 Fortress Ridge, PIN: 9743-60-1107

AFFIDAVIT OF MAILING AND POSTING

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 24th day of May, 2022, 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 locations shown on Exhibit C and that a Notice of Public Hearing, Exhibit A, was affixed to the reverse side of same.

This the 24 day of May, 2022.



James W. Eller

Sworn to and subscribed before me
this 24 day of May, 2022



Notary Public

My Commission Expires: 3/21/2026



Exhibit A

NOTICE OF PUBLIC EVIDENTIARY HEARING WEAVERVILLE BOARD OF ADJUSTMENT

Public Notice is hereby given that the Town of Weaverville Board of Adjustment will hold a Public Evidentiary Hearing following quasi-judicial procedures on Monday, June 13, 2022 at 6:00p.m. This meeting will occur within the Community Room and Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC to consider the following item:

An application for a Variance related to the front yard setbacks established by the R-1 Zoning District for a property bearing Buncombe County PIN# 9743-60-1107, 104 Fortress Ridge, Weaverville, NC.

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

Exhibit B

Michael Brandon
2611 Ave. O
Galveston, TX 77550

Timothy Carter
112 Hamburg Mountain Rd.
Weaverville, NC 28787

Laurence Ogden
116 Fortress Rdg.
Weaverville, NC 28787

William Hanby
368 Players Ridge Rd.
Hickory, NC 28601

Chris Papaioannou
97 Fortress Rdg.
Weaverville, NC 28787

Terry Laduke
PO Box 10
Weaverville, NC 28787

Town of Weaverville
PO Box 338
Weaverville, NC 28787

Exhibit C



Town of Weaverville, North Carolina

Staff Report: Proposed Variance at 104 Fortress Ridge

Prepared May, 2022

Sources: Town of Weaverville Code of Ordinances

Introduction to the Property

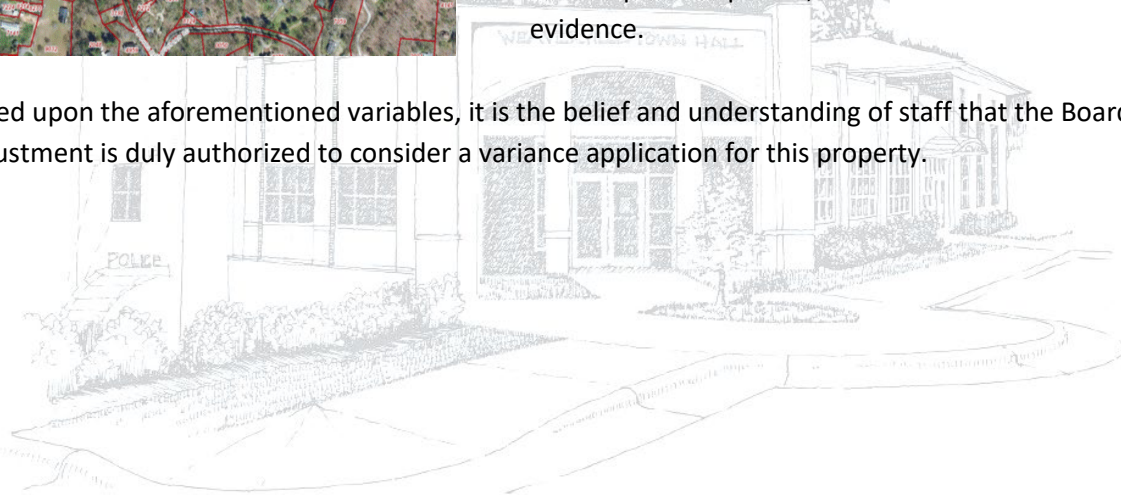
The subject parcel, commonly known as 104 Fortress Ridge, consists of .79 acres as shown on Buncombe County tax records. The property may be found on Hamburg Mountain at the intersection of Fortress Ridge and Longstreet Court. The intersection of Main Street and Weaver Boulevard may be found approximately ½ mile to the west.



Question of Jurisdiction

Section 20-3108(d) tasks the Board of Adjustment to consider requests for variances when unnecessary hardships would result from carrying out the strict letter of a zoning regulation. The Board of Adjustment may vary any of the provisions of the zoning regulation when based upon competent, material and substantial evidence.

Based upon the aforementioned variables, it is the belief and understanding of staff that the Board of Adjustment is duly authorized to consider a variance application for this property.



TOWN OF WEAVERVILLE APPLICATION FOR A VARIANCE

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002 --- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee: \$250.00

General Notes:

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

A. Property Information

Address of Subject Property: 104 FORTRESS RIDGE WEAVERVILLE N.C.
PIN(s) of Subject Property: 974360110700000

B. Contact Information

Owner's Name: William R. Hamby
Mailing Address: 368 PLAYERS RIDGE RD. Hickory NC 28601
Telephone #: 828-244-3493 Email rhamby1958@gmail.com

Primary Contact if Other Than Owner and Authorization to Represent
Owner: Ria Smith
Mailing Address: 32 SANDSTONE DR. WEAVERVILLE, NC 28787
Telephone #: 828-717-9458 Email moeswann723@gmail.com

C. Type of Submission

Describe the Variance Requested: I WOULD LIKE A 7' FRONT (ROAD SIDE) SETBACK.
VARIANCE

Provision of Ordinance Relevant to Variance Application Including Section Title, Section Number, Subsection Number or Letter: SEC. 2-165.- DUTIES (E) VARIANCES REFER TO SEC. 20-3108(D)

TOWN OF WEAVERVILLE APPLICATION FOR A VARIANCE

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002 --- fax (828) 645-4776 --- jeller@weaverville.org
Application Fee: \$250.00

D. Variance Burden of Proof

The Zoning Board of Adjustment is authorized to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of Chapter 20 of the Code of Ordinances upon a showing of all of the following criteria. The burden of proof falls upon the applicant for each of the six standards listed below. Following each standard please indicate the facts you intend to demonstrate and the arguments you intend to make in support of the variance application. You may attach a separate page if necessary.

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

WITHOUT A 7' VARIANCE, DUE TO A TOPOGRAPHICAL DROP OFF ON THE
BACK (SOUTH SIDE) OF THE LOT, IT WILL BE VIRTUALLY IMPOSSIBLE TO BUILD.

b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

THE HARDSHIP IS A NATURAL TOPOGRAPHICAL HAZARD. DUE TO THE STEEP AND
SUDDEN DROP OFF AND THE SEWER EASEMENT DIRECTLY BELOW WE HAVE NO ROOM.

c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

THE LOT WAS COVERED WITH BRUSH WHEN THE LOT WAS PURCHASED IN JUNE
OF 2021 AND THE HAZARD COULD NOT BE IDENTIFIED.

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

THIS 7' VARIANCE ON A 30' SETBACK WOULD IN NO WAY CHANGE THE CHARACTER
OF THE NEIGHBORHOOD AND WOULD POSE NO SAFETY ISSUES TO ROADWAY TRAFFIC.

e. The variance is not a request to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.

THE VARIANCE IS REQUESTED IN ORDER TO BUILD OUR PRIMARY HOME.

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

NO SIGNS WILL BE BUILT ON 104 FORTRESS RIDGE.

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

**TOWN OF WEAVERVILLE APPLICATION FOR
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002--- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee: \$250.00

E. List of Supporting Documents

Please provide an inventory of additional documentation submitted to the Board in support of the application. Such documentation should include a site plan with such information as the zoning administrator determines as needed for a full review of the application: SITE PLAN

F. Certification

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

Signature of Owner: 

Date: 5/2/2022

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

OFFICE USE ONLY

Date Received: 5.2.22

Date of Public Hearing: 6.13.22

Staff

Comments: _____

Fee: \$250

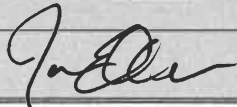
Date: 5.11.22

Decision: _____

Date: _____

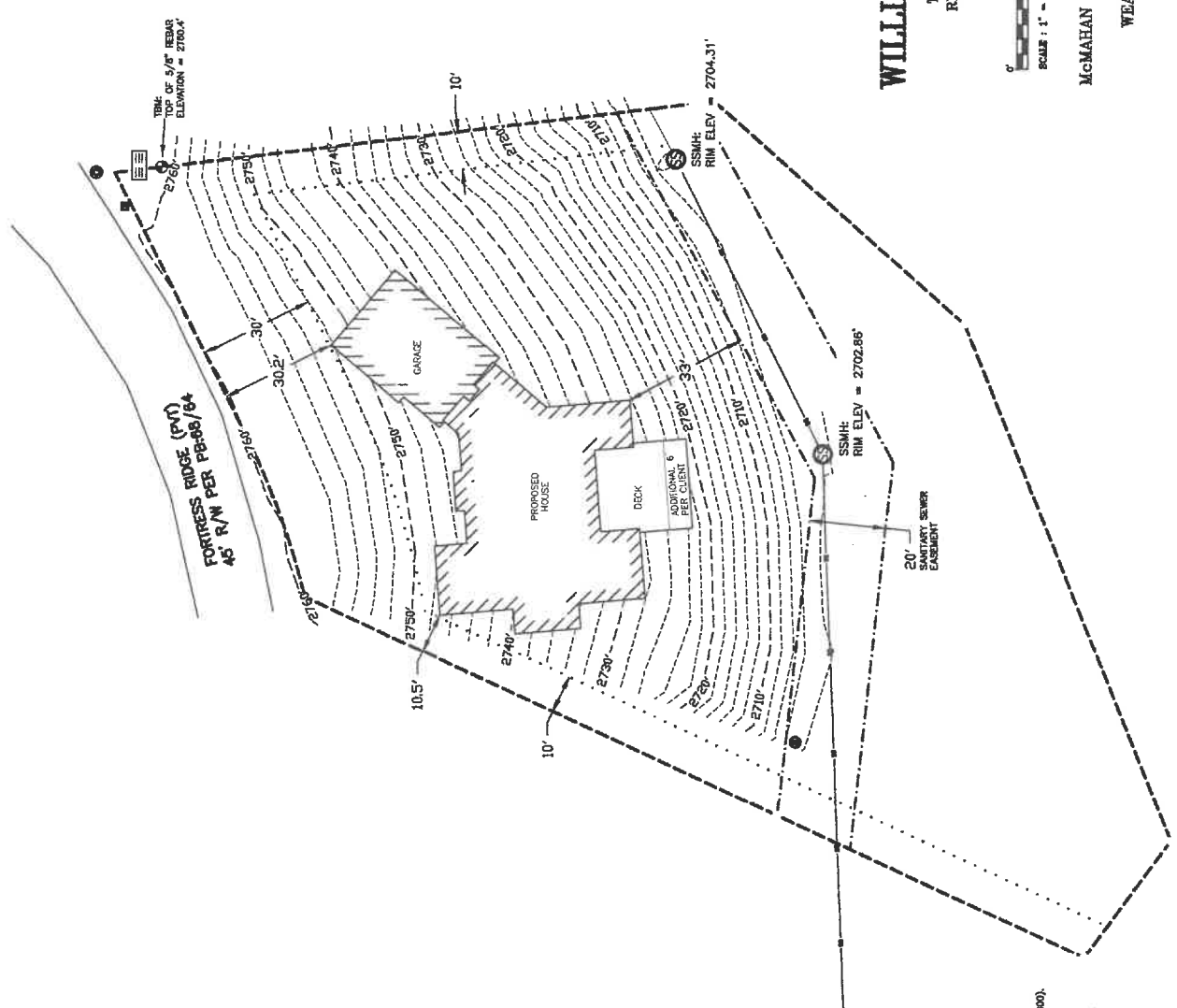
Approved with

Conditions: _____

Signature of Zoning Administrator: 

LEGEND

- VERTICAL CONTROL BENCHMARK (TBM)
- UNMARKED POINT
- UTILITY POLE WITH OVERHEAD LINES
- ⊗ SANITARY SEWER MANHOLE
- ⊕ SANITARY SEWER CLEANOUT
- SANITARY SEWER LINE
- ⊕ GAS VALVE
- ELECTRIC EQUIPMENT HANDHALE ACCESS
- ⊞ ELECTRICAL BOX (TRANSFORMER)



WILLIAM R. HAMBY
 A TOPOGRAPHIC SURVEY FIRM
 TOWN OF WEAVERVILLE
 REEMS CREEK TOWNSHIP
 BUNCOMBE COUNTY
 NORTH CAROLINA

McMAHAN & ASSOCIATES, P.A. (C-319)
 P.O. BOX 1296
 WEAVERVILLE, N.C. 28787
 828-645-5564



2' CONTOUR INTERVAL
 INDEXED EVERY 10'

WESLEY C. McMAHAN CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION AND THAT THIS MAP MEETS THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 06.1800). THIS LIABILITY OF _____ A.D., 2022.

PROFESSIONAL LAND SURVEYOR
 REGISTRATION NUMBER L-5475



JOB NO. 06-1816 (119)
 S:\JOB\06-1816-119 TOPOLONG

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, June 13, 2022
Subject: Public Hearing – Variance Request
Presenter: Planning Director / Applicant
Attachments: Public Notice; Staff Report; Variance Application and Supporting Documents; Affidavit of Mailing and Posting

Description:

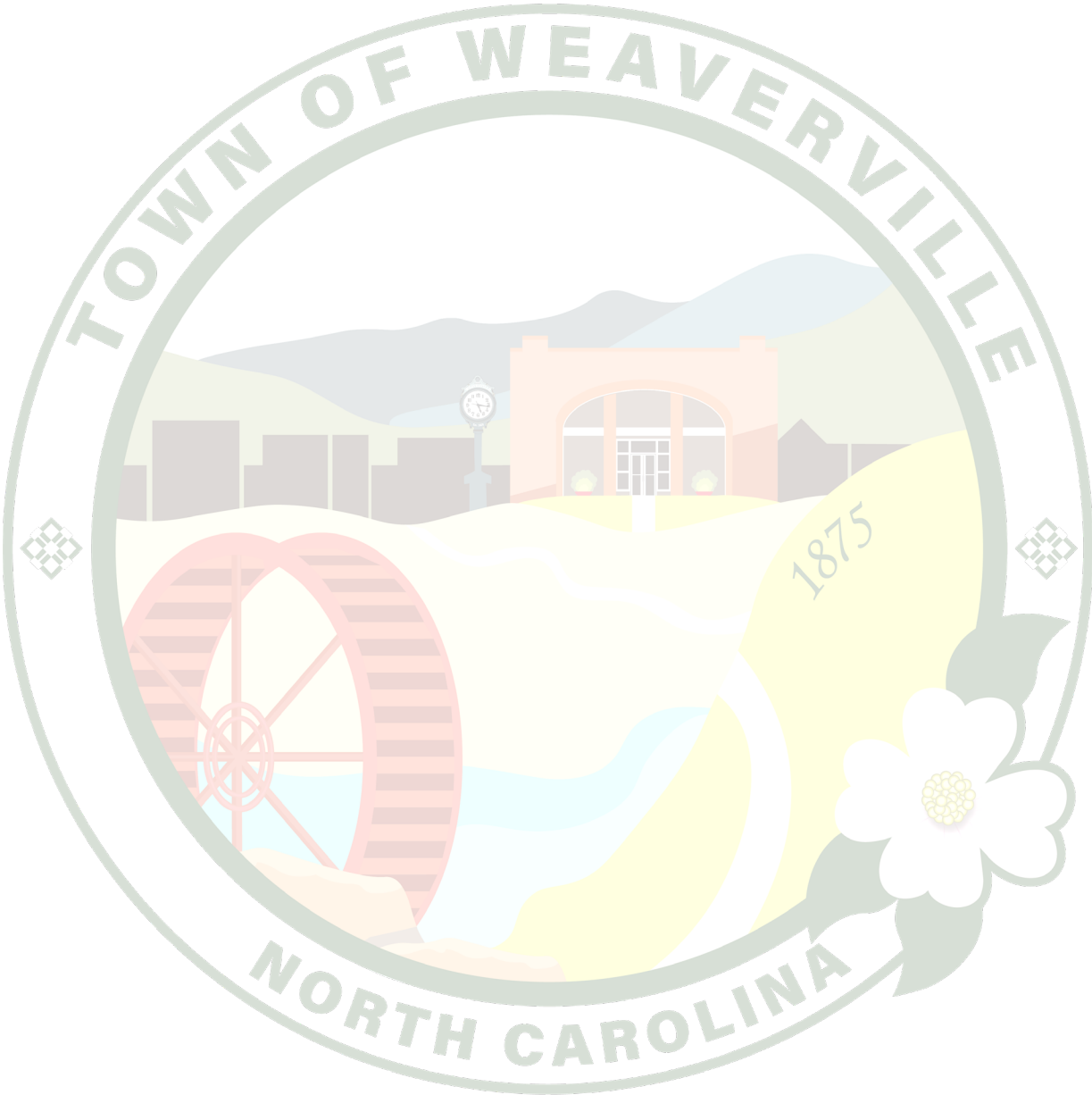
INTRODUCTION: Steven and Lori Ottofy are the owners of property located at 12 Banks Town Road that has a Buncombe County Parcel Identification Number of 9742-04-7237 and is zoned R-1. The applicant has applied for a minimum lot width variance.

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.
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?



NOTICE OF PUBLIC EVIDENTIARY HEARING WEAVERVILLE BOARD OF ADJUSTMENT

Public Notice is hereby given that the Town of Weaverville Board of Adjustment will hold a Public Evidentiary Hearing following quasi-judicial procedures on Monday, June 13, 2022 at 6:00p.m. This meeting will occur within the Community Room and Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC to consider the following item:

An application for a variance to build upon a nonconforming lot of record with a dimensional nonconformity more than 20 percent below the minimum standards established by the R-1 Zoning District on a property bearing Buncombe County PIN#9742-04-7237, 12 Banks Town Road, Weaverville, NC.

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

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

Variance – Public Evidentiary Hearing
12 Banks Town Road, PIN: 9742-04-7237

AFFIDAVIT OF MAILING AND POSTING

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 24th day of May, 2022, I:

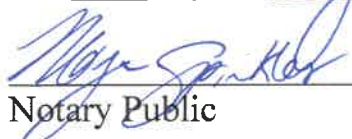
1. Mailed the attached Notice of Public Hearing, attached as Exhibit A, to all of the persons listed on the attached Exhibit B and that said mailing was accomplished by putting the Notice in envelopes, with postage pre-paid, addressed to all persons shown and at the addresses reflected on the attached 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 locations shown on Exhibit C and that a Notice of Public Hearing, Exhibit A, was affixed to the reverse side of same.

This the 24 day of May, 2022.



James W. Eller

Sworn to and subscribed before me
this 24 day of May, 2022



Notary Public

My Commission Expires: 3/24/2026

[Notary Seal]

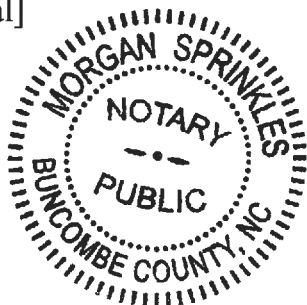


Exhibit A

NOTICE OF PUBLIC EVIDENTIARY HEARING WEAVERVILLE BOARD OF ADJUSTMENT

Public Notice is hereby given that the Town of Weaverville Board of Adjustment will hold a Public Evidentiary Hearing following quasi-judicial procedures on Monday, June 13, 2022 at 6:00p.m. This meeting will occur within the Community Room and Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC to consider the following item:

An application for a variance to build upon a nonconforming lot of record with a dimensional nonconformity more than 20 percent below the minimum standards established by the R-1 Zoning District on a property bearing Buncombe County PIN#9742-04-7237, 12 Banks Town Road, Weaverville, NC.

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

Exhibit B

William Barnes
PO Box 1123
Weaverville, NC 28787

Waters Edge Condo Unit Owners
PO Box 580
Arden, NC 28704

Richard Downer
101 Waters Edge Dr.
Weaverville, NC 28787

Ella Ingle
102 Waters Edge Dr.
Weaverville, NC 28787

Judith McClung
103 Waters Edge Dr.
Weaverville, NC 28787

Charles Thompson
104 Waters Edge Dr.
Weaverville, NC 28787

Clayton Jones
17 Fish Hawk Dr.
Fern Beach, FL 32034

James Pence
3576 Barton Creek Cir.
Green Cove Springs, FL 32043

Timothy Splain
203 Waters Edge Dr.
Weaverville, NC 28787

Michael Stuart
204 Waters Edge Dr.
Weaverville, NC 28787

Selena Hinton
205 Waters Edge Dr.
Weaverville, NC 28787

John Kilkenny
4421 Gulf Pines Dr.
Sanibel, FL 33957

Oliver Omara
209 Forbes Ave.
San Anselmo, CA 94960

Michael Steininger
32 Oak Hollow Dr.
Asheville, NC 28805

Wanda Wilson
74 Parker Cove Rd.
Weaverville, NC 28787

Antoinette Calloway
304 Waters Edge Dr.
Weaverville, NC 28787

Constance Wilson
305 Waters Edge Dr.
Weaverville, NC 28787

Judy Homayouni
8407 Cypress Hollow Dr.
Sarasota, FL 34238

John Ferguson
634 Gambel Dr.
Corona, CA 92881

Ernest Hinterkopf
308 Waters Edge Dr.
Weaverville, NC 28787

Steven Ottofy
45 Nate Trl.
Dallas, GA 30157

Malcolm Morgan
PO Box 1528
Arden, NC 28704

Exhibit C



Town of Weaverville, North Carolina

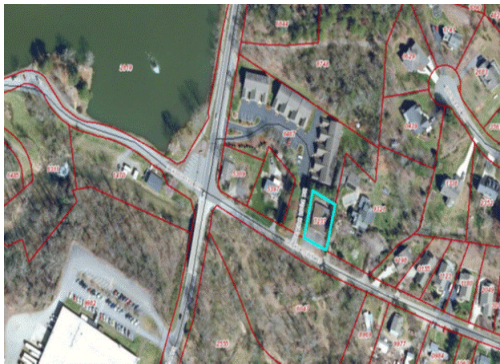
Staff Report: Proposed Variance at 12 Banks Town Road

Prepared May, 2022

Sources: Town of Weaverville Code of Ordinances

Introduction to the Property

The subject parcel, commonly known as 12 Banks Town Road, consists of .24 acres as shown on Buncombe County tax records. The property may be found just east of the intersection of Merrimon Avenue, Lakeshore Drive and Banks Town Road. The property is also in close proximity Lake Louise which is visible in the upper left hand corner of the following map. Reems Creek Road may be found approximately ¼ mile to the east.



Question of Jurisdiction

Section 20-1602(b)(2) tasks the Board of Adjustment to consider requests for variances where the minimum lot area or lot width are more than 20% below the minimum standard set by the zoning district in which the property is located. The R-1 zoning district requires a minimum lot width of 100 feet and the plat provided shows a lot width of 75 feet.

Based upon the aforementioned variables, it is the belief and understanding of staff that the Zoning Board of Adjustment is duly authorized to consider a variance application for this property.

Previous Decisions

Similar variance requests to convert a nonconforming lot of record into a buildable lot have been heard by the Board of Adjustment. The Board granted a variance for substantially similar applications for the properties commonly known as 124 and 126 South Main Street in July of 2013, 84 West Street in May of 2017, 120 South Main in October of 2019 and 20 Brown Street in July of 2021.

Additional Information

The property currently houses a commercial building originally constructed in the early 1960's prior to the adoption of zoning by the Town. The commercial use of the property ended some time ago and, therefore the nonconforming use may not be reestablished. The structure itself is also nonconforming due to it's placement in proximity to a neighboring property line. Should the variance be achieved, it is the applicant's intent to establish a single-family home on the property.

**TOWN OF WEAVERVILLE APPLICATION FOR
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002--- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee: \$250.00

General Notes:

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

A. Property Information

Address of Subject Property: 12 BANKS TOWN RD WEAVERVILLE, NC 28787
PIN(s) of Subject Property: 9742 04 7237

B. Contact Information

Owner's Name: STEVEN OTTOFY & LORI OTTOFY
Mailing Address: 45 NATE TRAIL DALLAS GA 30157
Telephone #: 770 655 5057 Email: S OTTOFY @ GMAIL.COM

Primary Contact if Other Than Owner and Authorization to Represent

Owner: _____
Mailing Address: _____
Telephone #: _____ Email: _____

C. Type of Submission

Describe the Variance
Requested: 75' FOOT LOT WIDTH VERSUS 100' REQUIREMENT.
OWNER IS DEMOLISHING NON-CONFORMING COMMERCIAL
BUILDING AND REPLACING WITH SINGLE FAMILY

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

**TOWN OF WEAVERVILLE APPLICATION FOR
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002--- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee: \$250.00

D. Variance Burden of Proof

The Zoning Board of Adjustment is authorized to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of Chapter 20 of the Code of Ordinances upon a showing of all of the following criteria. The burden of proof falls upon the applicant for each of the six standards listed below. Following each standard please indicate the facts you intend to demonstrate and the arguments you intend to make in support of the variance application. You may attach a separate page if necessary.

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

lots on either side of this lot are fixed and lot cannot be widened.

b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

Bankstown Road lots have been in platted for years. The property was downzoned from commercial to residential causing the hardship.

c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Owner of the property inherited it

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

New single family to be built is consistent with other uses on the street

e. The variance is not a request to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.

Correct. The building of a single-family house will correct a non-conforming use.

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

Correct.

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

**TOWN OF WEAVERVILLE APPLICATION FOR
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002--- fax (828) 645-4776 --- jeller@weavervilleenc.org
Application Fee: \$250.00

E. List of Supporting Documents

Please provide an inventory of additional documentation submitted to the Board in support of the application. Such documentation should include a site plan with such information as the zoning administrator determines as needed for a full review of the application: _____

F. Certification

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

X Signature of Owner: _____

Date: 5/20/22

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

OFFICE USE ONLY

Date Received: 5.20.22

Date of Public Hearing: 6.13.22

Staff

Comments: Please see staff report

Fee: \$250

Date: 5.20.22

Decision: _____

Date: _____

Approved with

Conditions: _____

Signature of Zoning Administrator: _____