



**Town of Weaverville
Board of Adjustment
Monday, March 13, 2023, 6:00pm**

Agenda

1. Call to Order – Chair Tycer Lewis
2. Approval of the Agenda
3. Approval of the Minutes from the October 10, 2022 Meeting of the Board
4. Variance Application – 1 West Cove Road
 - Evidentiary Hearing Regarding a Proposed Variance for 1 West Cove Road
 - Consideration of a Motion Establishing the Ruling of the Board on the Proposed Variance
5. Variance Application – Unaddressed Phipps Street
 - Evidentiary Hearing Regarding a Proposed Variance for Two Unaddressed Lots on Phipps Street
 - Consideration of a Motion Establishing the Ruling of the Board on the Proposed Variance
6. Any other Business to Come Before the Board
7. 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, October 10, 2022

Subject: Minutes

Presenter: Planning Director

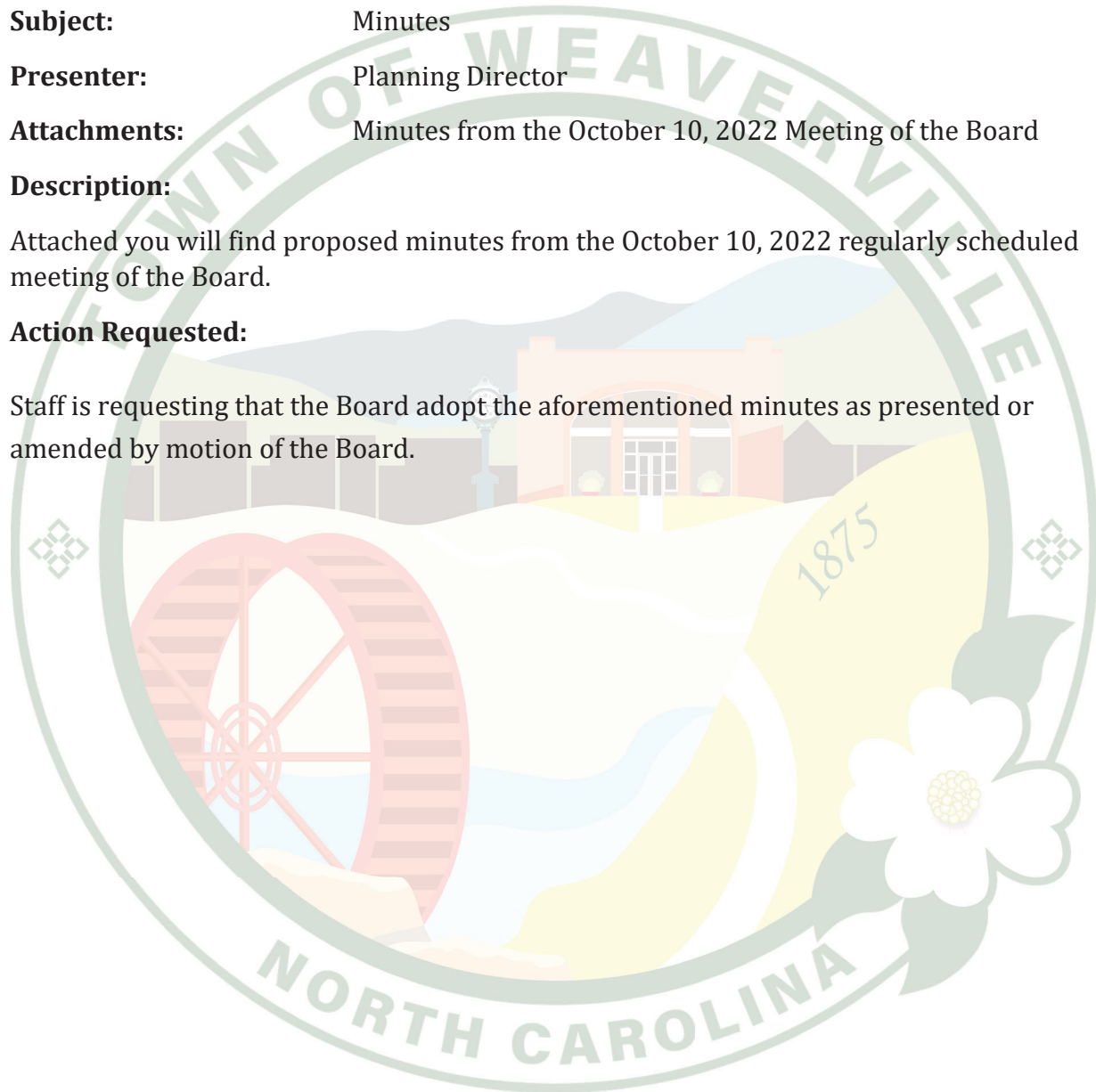
Attachments: Minutes from the October 10, 2022 Meeting of the Board

Description:

Attached you will find proposed minutes from the October 10, 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, October 10, 2022

The Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 6 pm on Monday, October 10, 2022, in the Community Room and Council Chambers at Town Hall, 30 South Main Street, Weaverville.

Present: Chairman Tycer Lewis, Board Members Paul Clauhs and Roger Parkin, Alternate Member Larry Murray, Town Attorney Jennifer Jackson and Planning Director/Zoning Administrator James Eller. Vice-Chair Cynthia Wright was absent. Board Member Peter McGuire participated in the meeting by Zoom to listen but did not vote.

1. Call to Order

Chairman Lewis 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. Election of Officers

Board Member Clauhs made a motion to appoint Tycer Lewis as Chairman of the Board. Board Member Parkin seconded the motion. In a vote of 4 to 0, the motion passed.

Board Member Parkin made a motion to appoint Cynthia Wright as Vice Chair of the Board. Chairman Lewis seconded the motion. In a vote of 4 to 0, the motion passed.

3. Approval of Agenda

Board Member Clauhs made a motion to approve the agenda as presented. Board Member Murray seconded the motion. In a vote of 4 to 0 the motion passed.

4. Approval of Minutes

Board Member Murray made a motion to approve the minutes from the June 13, 2022, meeting of the Board with minor amendments suggested. Chairman Lewis seconded the motion and all voted in favor of approving the minutes as amended.

5. Order on Variance Application for 104 Fortress Ridge

Based on the evidentiary hearing held on June 13, 2022, and the vote of the Board on the matter, staff presented a written order for the Board's consideration. After review of the order, Board Member Parkin made a motion to adopt the order as written. Board Member Clauhs seconded the motion. In a vote of 4 to 0 the motion passed and the order was adopted.

6. Order on Variance Application for 12 Banks Town Road

Based on the evidentiary hearing held on June 13, 2022, and the vote of the Board on the matter, staff presented a written order for the Board's consideration. After review of the order, Board Member Murray

made a motion to adopt the order as written. Chairman Lewis seconded the motion. In a vote of 4 to 0 the motion passed and the order was adopted.

7. Any Other Business

For training purposes, Attorney Jackson provided a review of the areas within the Town's Code of Ordinance that provide the Board of Adjustment with jurisdiction, and their respective standards, which includes: appeals of administrative decisions, issuance and amendments to special use permits, variances from development regulations, sidewalk waivers, decisions vegetative screening and/or buffer waivers, extensions of time for the repair/replacement of nonconforming structures, replacement of a nonconforming use with another nonconforming use, public health nuisance appeals, flood damage prevention variances and appeals, and traffic and parking appeals.

Attorney Jackson indicated that the Board may be asked to take on the duties of the animal control appeals board as well. While the subject matter is outside the normal scope of the Board, which typically works in land use matters, the animal control appeals does have to conduct its business using quasi-judicial procedures and there are no other boards that are trained in that. She also indicated that the cases are very rare. There was a consensus that the Board was willing to take on those duties. Jackson indicated that she would pass this consensus along to the Mayor as he decides what he would like to propose.

Attorney Jackson and Planning Director Eller also provided a review of quasi-judicial procedures with an emphasis on evidence standards.

An updated roster was presented showing a vacancy in an alternate seat. It is anticipated that Town Council will be taking action in the upcoming months to fill this vacancy. Board members were encouraged to send any recommendations for appointment to the Board to staff.

8. Adjournment

At approximately 6:45 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

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, March 13, 2023

Subject: Public Hearing – Variance Request

Presenter: Planning Director / Applicant

Attachments: Administrative Materials including Public Notice; Staff Report; Variance Application and Supporting Documents; Affidavit of Mailing and Posting

Description:

INTRODUCTION: Robert E. Thornton is the owner of the property located at 1 West Cove Street that has a Buncombe County Parcel Identification Number of 9742-25-0481, which is zoned R-1. Thornton has applied for a front setback variance.

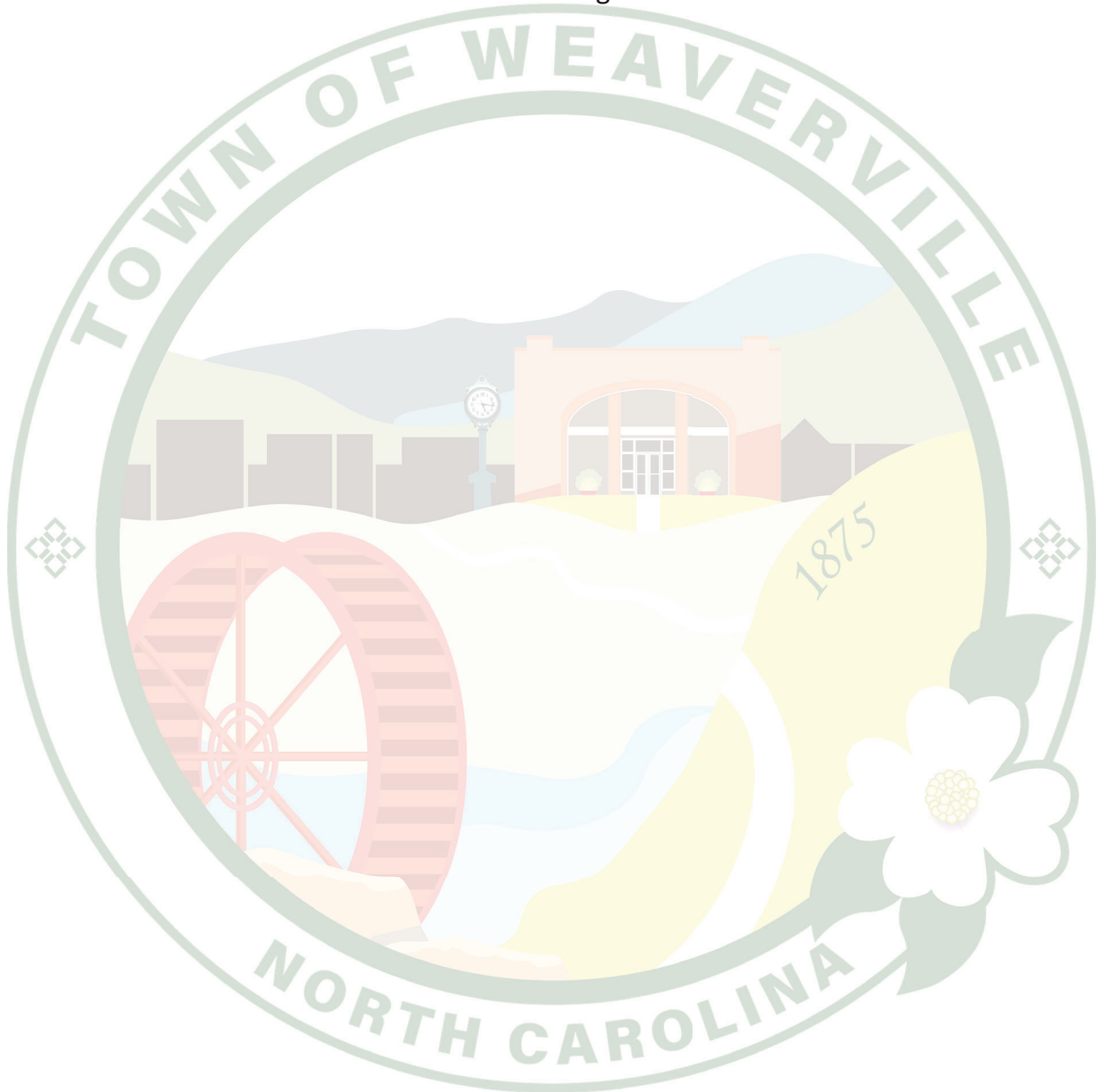
JURISDICTION: Code Sec. 20-3108(d) authorizes the BOA to grant variances when hardships would result from carrying out the strict letter of the terms of the land development regulations. Variances require a 4/5 vote of the board.

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, March 13, 2023 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# 9742-25-0481, 1 West Cove 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, North Carolina

Staff Report: Proposed Variance

at 1 West Cove Road

Prepared February, 2023

Sources: Town of Weaverville Code of Ordinances

Introduction to the Property

The subject parcel, commonly known as 1 West Cove Road, consists of .21 acres respectively as shown on Buncombe County tax records. The property may be found just south of the intersection of West Street and Merrimon Avenue. The properties are also in close proximity to Weaverville Elementary School whose roofline is visible at the bottom of the following map.



Question of Jurisdiction

Section 20-3108(d) tasks the Board of Adjustment to consider requests for variances and establishes the standards which must be met in order for a variance to be granted. Based upon this section of town code, it is clear the Board of Adjustment has jurisdiction to hold the requisite hearing and offer judgement on the issue.

In this case, an encroachment of eight feet into the 30 foot front yard setback established by the R-1 zoning district in which the property is located.

Previous Decisions

Variance requests encroach into the required setback have been commonly heard by the Zoning Board of Adjustment and these applications have been both approved and denied in recent years. Though each case is a unique set of circumstances, a determining factor appears to be the amount of encroachment being requested.

**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

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: 1 WEST COVE STREET
PIN(s) of Subject Property: 9742250481

B. Contact Information

Owner's Name: ROBERT E THORNTON
Mailing Address: 1 WEST COVE ST
Telephone #: 828 776 5428 Email: CHUCK.THORNTON@FRONTIER.COM
Primary Contact if Other Than Owner and Authorization to Represent
Owner: SAME
Mailing Address: _____
Telephone #: _____ Email: _____

C. Type of Submission

Describe the Variance
Requested: ENCROACH UP TO 8 FEET INTO 30FT FRONT YARD SET BACK TO ALL FRONT PORCH ON PLANNED NEW ADDITION
Provision of Ordinance Relevant to Variance Application Including Section Title, Section Number, Subsection Number or Letter: CHAPTER 20 PLANNING AND DEVELOPMENT
SEC 20-3205 TABLE OF USES
20-3206 TABLE OF DIMENSIONS

**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.

~~A PORCH 3' DEEP CAN NOT MEET THE MINIMUM REQUIREMENT FOR ADA MINIMUM MANEUVERING CLEARANCE FOR DOORWAYS~~

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 PARCEL AND ORIGINAL DESIGN LIMIT THE ABILITY TO COMPLY WITH BOTH CODE AND ADA~~

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.

~~LIMITATIONS ONLY BECAME APPARENT AFTER PLANNING A NEW ADDITION~~

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.

~~COMPLYING WITH SPIRIT OF ADA IS ALWAYS IN THE PUBLIC'S SAFETY AND JUSTICE INTEREST OF~~

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.

~~DOES NOT APPLY~~

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

~~DOES NOT APPLY~~

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**

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(828) 484-7002 --- fax (828) 645-4776 --- jeller@weavervillenc.org
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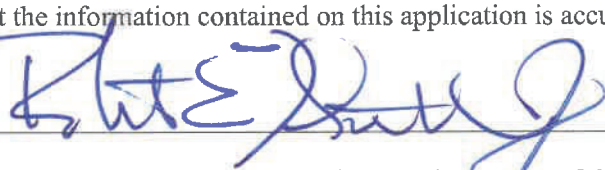
E. List of Supporting Documents

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: APPLICATION, PROPOSED DESIGNS, PLAT, CURBANT
Photo, Photos of NEIGHBORS, RELEVANT ADA DESIGNS

F. Certification

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

Signature of Owner: 

Date: 1-4-2023

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

EMAIL: CHUCK.THORNTON@FRONTIER.COM

OFFICE USE ONLY

Date Received: _____

Date of Public Hearing: _____

Staff

Comments: _____

Fee: _____

Date: _____

Decision: _____

Date: _____

Approved with

Conditions: _____

Signature of Zoning Administrator: _____

NARRATIVE
VARIANCE REQUEST FOR 1 WEST COVE STREET

January 4, 2023

The purpose of this variance request is to allow a front porch to encroach as much as 8 ft into the 30 ft front yard setback required by Section 20-3206 Table Of Dimensions of the Weaverville Codes and Ordinances.

The house was built in 1981 by Wiley Smith and Wade Huey on a 0.21-acre lot. My wife acquired it in 1984. **(Exhibit 1 & 2)**

In 2017 we began exploring ways to expand the house using several concepts, but the topography is extremely limiting. We elected to either adopt some version of the design we are proposing or sell the house and move away. The available suitable property near downtown is very limiting.

After watching costs and prices fluctuate wildly for five years, we compromised on the accompanying design. **(Exhibit 3.1-3.5)** It is a drastic compromise of our expectations and is considered our minimum acceptable.

ADA Design Standards

The proposed front porch (front entry) is restricted to only 3 ft deep by the limitations the 30 ft setback. This places the entry in conflict with the Department of Justice's **2010 Standards For Accessible Design**. These are *minimum* standards and require at least 60" for an outward opening door as well as for landings. **(Exhibit 4.1-4.3)**

Although the Standards were not intended for privately owned residences, the DOJ CFR's giving authority are referenced by **International Codes Commission** and by the **2018 North Carolina State Building Code** as guidelines for design for accessibility.

My Home Is In Violation As Built

My front porch, built in 1981, is 4 ft wide, encroaches 1 ft into the front yard setback as it is.

My Neighbor's Home At 3 West Cove Street

My delay, in part, for applying for this variance has been in locating the property line of my neighbor. Having found all mine years ago. After getting their permission I found his last week once the ground thawed.

The line in question is depicted in the plat in **Exhibit 5.1**. In **Exhibit 5.2** the photo shows the two houses in relation to each other. **Exhibit 5.3** shows the property line established by the yellow steel tape between the two pins. **Exhibit 5.4** shows the distance from the property line to the front side of the house which measures 22 ft, +/- 2" and the deck which extends toward the property line an additional 4 ft. This is implying that my neighbor's home encroaches 12 ft into the front yard setback. I do not remember when the expansion was built but the builder must have had an approved variance.

Conclusion

A major reason for this renovation and addition is to prepare for a time when accessibility will become critical. This project moves the laundry upstairs and changes both bathrooms to accessible showers. I am now approaching my 73rd birthday and I may well need the additional room at the front door to maneuver in and out of the house. I am not asking for 12 ft, but I would love to have approval for 8 ft or even 6 ft for a front porch.

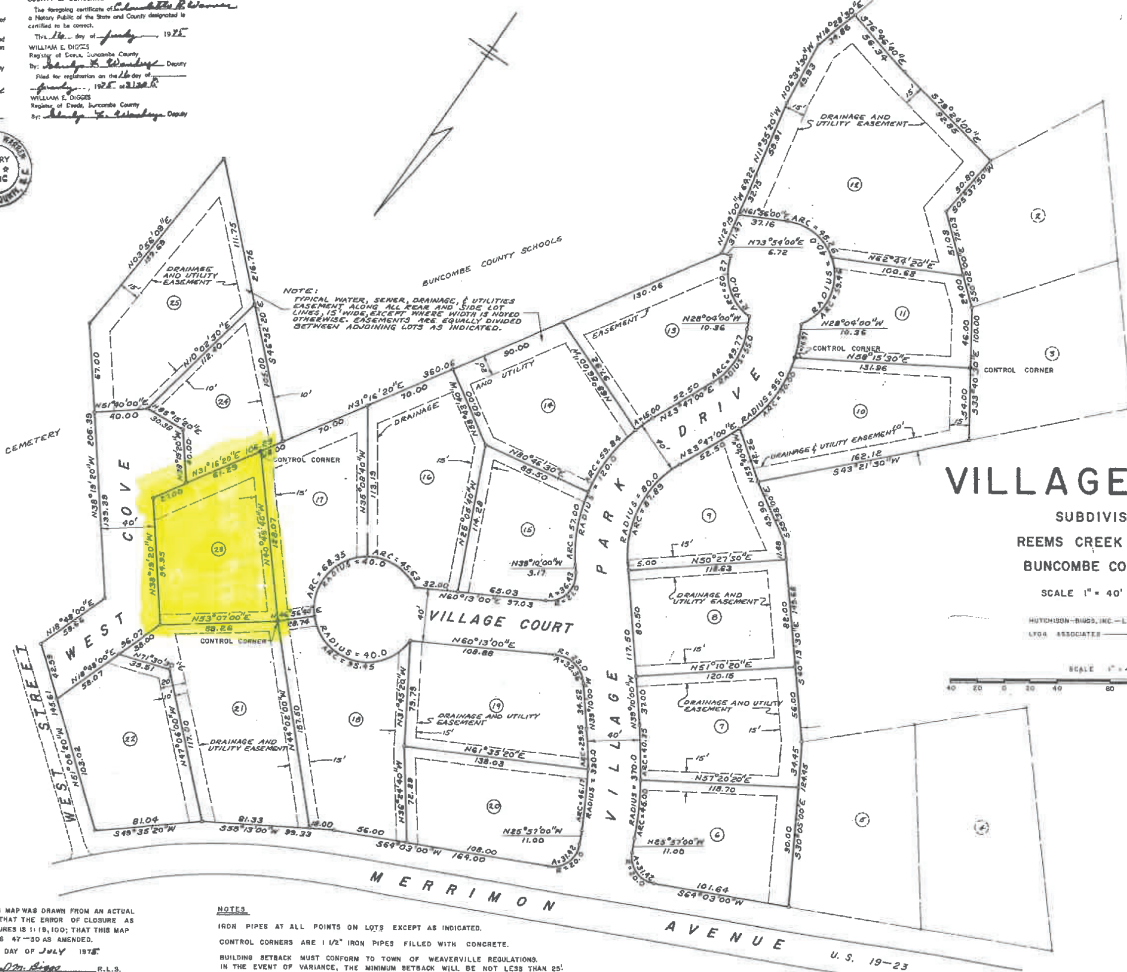
EXHIBIT 1



EXHIBIT 2

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE
I, Richard M. Siepp, a Notary Public in and for the County of Buncombe, do hereby certify that the foregoing plat was duly prepared and approved by the Board of Commissioners of the County of Buncombe, North Carolina, on the 16th day of July, 1928.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE
The foregoing plat was prepared by Richard M. Siepp, Notary Public in and for the County of Buncombe, North Carolina, on the 16th day of July, 1928.



VILLAGE PARK

SUBDIVISION
REEMS CREEK TOWNSHIP
BUNCOMBE COUNTY, N. C.

SCALE 1" = 40' 5/31/73

HUTCHINSON-BIBB, INC. - LAND SURVEYING
LBS ASSOCIATES - ENGINEERS

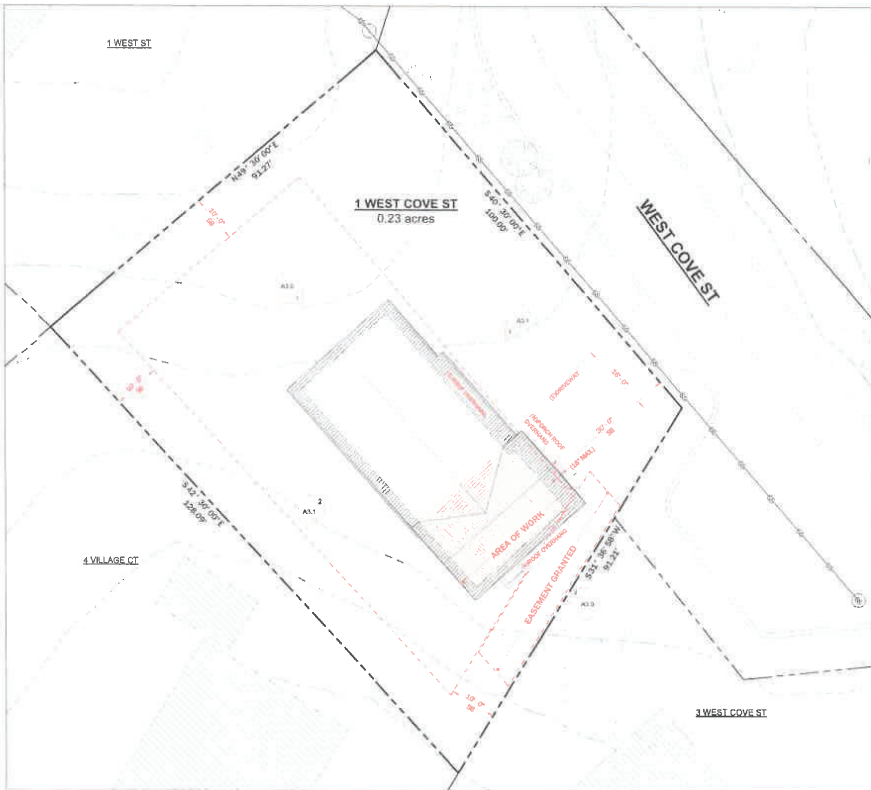


I, RICHARD M. SIEPP, CERTIFY THAT THIS MAP WAS DRAWN FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION; THAT THE ERRORS OF CLONES AS COMPUTED BY LATITUDES AND DEPARTURES IS 1:19,100; THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH §§ 47-50-63, 47-50-64, 47-50-65, 47-50-66, 47-50-67, 47-50-68, 47-50-69, 47-50-70, 47-50-71, 47-50-72, 47-50-73, 47-50-74, 47-50-75, 47-50-76, 47-50-77, 47-50-78, 47-50-79, 47-50-80, 47-50-81, 47-50-82, 47-50-83, 47-50-84, 47-50-85, 47-50-86, 47-50-87, 47-50-88, 47-50-89, 47-50-90, 47-50-91, 47-50-92, 47-50-93, 47-50-94, 47-50-95, 47-50-96, 47-50-97, 47-50-98, 47-50-99, 47-50-100.

NOTES:
IRON PIPES AT ALL POINTS ON LOTS EXCEPT AS INDICATED.
CONTROL CORNERS ARE 1 1/2" IRON PIPES FILLED WITH CONCRETE.
BUILDING SETBACK MUST CONFORM TO TOWN OF WEAVERVILLE REGULATIONS.
IN THE EVENT OF VARIANCE, THE MINIMUM SETBACK WILL BE NOT LESS THAN 25'.

2-21-80
M.S.B.

EXHIBIT 3.1



Area Schedule (Gross Building)

Name	Area
1ST FLOOR	100 SF
2ND FLOOR	100 SF
HEATED TOTA	200 SF
REBASEMENT	100 SF
UNCONCRETE	100 SF

Area Schedule (Exterior)

Name	Area
ENTRY PORCH	48 SF
STOOP	32 SF
EXTERIOR	80 SF

2 AREA PLANS
1/16" = 1'-0"

SITE LEGEND

Water Meter	Water Meter
Catch Basin	Catch Basin
Sewer Manhole	Sewer Manhole
Sanitary Sewer Line	Sanitary Sewer Line
Water Line	Water Line
Gas Line	Gas Line
Overhead Utilities	Overhead Utilities
Temporary 6ft Fence	Temporary 6ft Fence
Underground Utilities	Underground Utilities
Property Line Boundary	Property Line Boundary

CODE INFORMATION

PROJECT #TAD-22047	ATTN: MARILYN & ROBERT THORNTON
1. PROJECT ADDRESS	1 WEST COVE ST, WEAVERVILLE, NC, 28787
2. LEGAL DESCRIPTION	Deed Dttw 11/28/2017 Deed: 5914-1139 SubDiv-VILLAGE PARK Lot-23 Plat: 0040-0107
3. PARCEL NUMBER	97422048100000
4. JURISDICTION	WEAVERVILLE, NC - CUV
5. CODES	2018 INTERNATIONAL RESIDENTIAL CODE 2018 INTERNATIONAL BUILDING CODE 2020 NORTH CAROLINA RESIDENTIAL CODE 2022 CITY OF WEAVERVILLE, NC ORDINANCE
6. ZONE	R-1
7. CONSTRUCTION TYPE	RESIDENTIAL ADDITION / REMODEL
8. SCOPE OF WORK	THE PROPOSED PROJECT IS THE INTERIOR REMODEL AND A NEW ADDITION TO AN EXISTING RESIDENCE

VICINITY MAP



NOT FOR CONSTRUCTION



TRANSARC DESIGN, LLP
3500 Old Stone Hwy, Suite 100, Weaverville, NC 28787
TRANSARCDESIGN.COM TEL: 252-415-3452

Architect/Designer:
Benjamin Rishel, Architect

Structural Engineer:
NA

Revisions:

Revision	Description	Date

SCHEMATIC DESIGN
9/10/2022 10:13:00 AM

Thornton Addition

Owner:
MARILYN & ROBERT THORNTON
1 WEST COVE ST,
WEAVERVILLE, NC, 28787

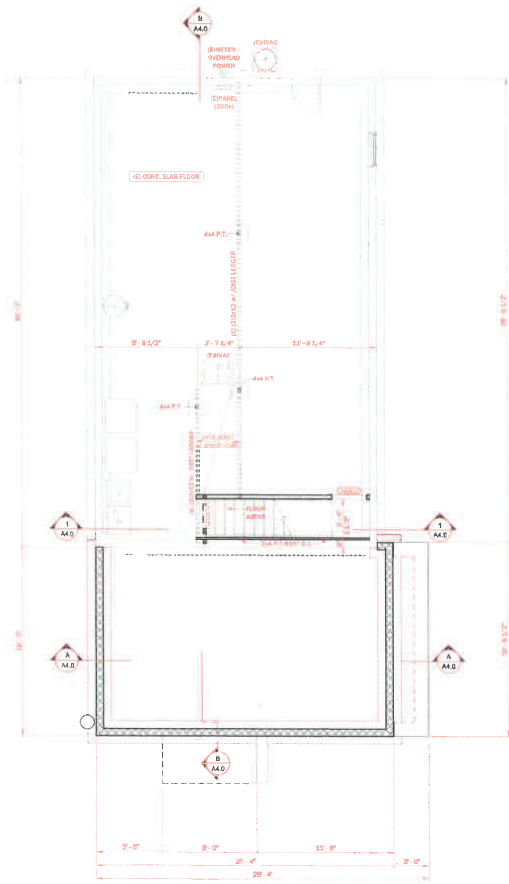
1 Site Plan
1" = 10'-0"

BOUNDARIES ARE APPROXIMATE, NOT A SURVEY

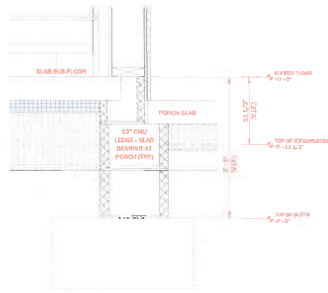
SITE PLAN

22047 **A0.2**

EXHIBIT 3.2



2 BASEMENT FLOOR PLAN
1/4" = 1'-0"



1 STEMWALL SLAB FOUNDATION
1 1/2" = 1'-0"

WALL / DEMOLITION LEGEND

- EXISTING TO REMAIN
- EXISTING TO BE DEMOLISHED
- NEW CONSTRUCTION



TRANSARC DESIGN, L.P.
3535 ONE BOWEN WAY, COLUMBIANA, N.C. 28028
TRANSARCDESIGN.COM TEL: 252.415.3622

Architect/Designer:
Benjamin Rihel, Architect

Structural Engineer:
N/A

NOT FOR CONSTRUCTION

Revision	Description	Date

SCHEMATIC DESIGN
9/10/2022 10:13:00 AM

Thornton Addition

Owner:
MARILYN & ROBERT THORNTON
1 WEST COVE ST,
WEAVERVILLE, NC, 28787



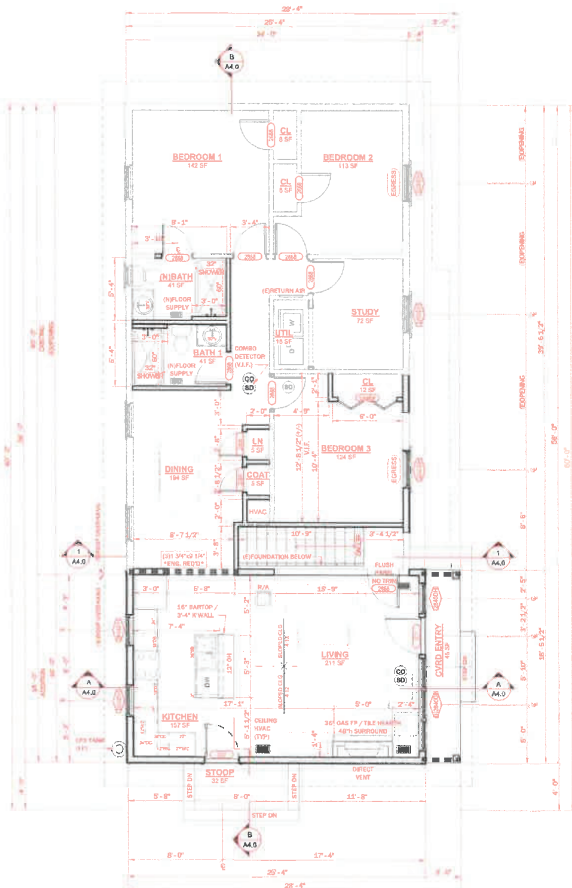
FOUNDATION /
BASMENT PLAN

22047

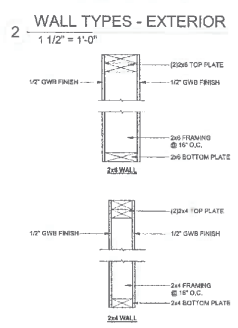
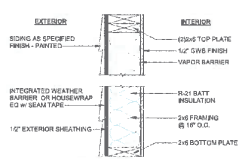
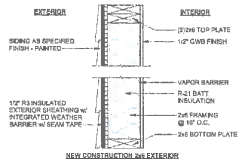
A1.0

9/10/2022 10:13:00 AM
 G:\projects\Thornton Addition\22047\Drawings\22047-FOUNDATION.dwg
 22047 Thornton Addition

EXHIBIT 3.3



1 FIRST FLOOR PLAN
1/4" = 1'-0"



3 WALL TYPES - INTERIOR
1 1/2" = 1'-0"

GENERAL NOTES

- DO NOT SCALE DRAWINGS
- SEE SPECIFICATION FOR STRUCTURAL INFORMATION (FOUNDATION, LATERAL FRAMING MEMBERS & CONNECTIONS, ETC.)
- ALL DIMENSIONS TO BE VERIFIED IN FIELD IN RELATION TO THE EXISTING CONDITIONS
- FLOOR PLANS SHOW PROPOSED LOCATIONS OF HEED SMOKE DETECTORS AND HOSE REEL SHALVES
- BOHUST AIR SHALL VENT DIRECTLY TO THE EXTERIOR OF BUILDING PER SPECIFICATIONS
- INTERIOR FINISHES INCL. FLOOR, WALL, CEILING, TRIM, ETC., TO BE COORDINATED WITH OWNER
- ALL LIGHTING FIXTURE SELECTIONS & LOCATIONS TO BE DETERMINED BY OWNER & CONTRACTOR
- ALL WINDOW AND DOOR HEADERS SHALL BE INSULATED WITH A MINIMUM OF R-10 INSULATION
- ALL OPERABLE WINDOWS TO HAVE SCREENS AND TO BE CONFORM LABEL AND SECURABLE
- ACCESS ESCAPE FROM UNCONDITIONED SPACES TO UNCONDITIONED SPACES SHALL BE WEATHERSTRIPPED AND RELATED TO A LEVEL EQUIVALENT TO THE INSULATION ON THE SURROUNDING SURFACES. A BATTERY OR RELIABLE RECHARGEABLE BATTERY SHALL BE INSTALLED FOR RESIDENTIAL CONSTRUCTION WITHIN 3' OF THE ELECTRICAL PANEL PRIOR TO FINAL INSULATION
- ALL FENESTRATIONS TO BE NFRC LABELLED AND CERTIFIED BY THE MANUFACTURER

- ### LEGEND
- NEW FLOOR
 - NEW CONSTRUCTION
 - EXISTING TO REMAIN
 - EXISTING TO BE DEMOLISHED
 - NEW CONSTRUCTION
- (S) WHV INSTALL 30 CM WHV FAN ON CEILING ABOVE
 (S) WHV INSTALL 50 CM FAN ON CEILING ABOVE
 (S) WHV INSTALL 100 CM FAN ABOVE
 (S) WHV INSTALL SMOKE DETECTOR ON CEILING ABOVE
 (S) WHV WINDOW TAG
 (S) WHV DOOR TAG
 (S) WHV POINT OF EGRESS
 (S) WHV DOWNSPOUT LOCATION

WALL / DEMOLITION LEGEND

- EXISTING TO REMAIN
 - EXISTING TO BE DEMOLISHED
 - NEW CONSTRUCTION
- (S) WHV DOOR / WINDOW TAGS ONLY
 (S) WHV WIDTH
 (S) WHV HEIGHT
 (S) WHV TYPE

Door Schedule - Exterior

Type	Width	Height	U-VALUE	Comments	
SD1	3'-0"	6'-8"	3'-2"	6'-10"	PR. CRAFTSMAN
SD2	3'-0"	6'-8"	3'-2"	6'-10"	LN-FULL LITE

NOTE: SAFETY GLAZING TO BE PROVIDED PER SRS 800 SECTION 2400.

Window Schedule

Type	Width	Height	U-VALUE	Comments	Count	
WD1	3'-0"	6'-8"	3'-2"	6'-10"	WHITE COLORED	1
WD2	3'-0"	6'-8"	3'-2"	6'-10"	6'-8"	1
WD3	3'-0"	6'-8"	3'-2"	6'-10"	6'-8"	3

1. GLAZING TO BE PROVIDED PER SRS 800 SECTION 2400 AS NOTED - SEE PLAN.
 2. SAFETY GLAZING TO BE PROVIDED PER SRS 800 SECTION 2400 AS NOTED - SEE PLAN.
 3. ROUGH OPENING MAY VARY PER MANUFACTURER.



Architect/Designer:
Benjamin Risher, Architect

Structural Engineer:
N/A

Revisions

Revision	Description	Date

SCHEMATIC DESIGN
9/10/2022 10:13:00 AM

Thornton Addition

Owner:
MARILYN & ROBERT THORNTON
1 WEST COVE ST,
WEAVERVILLE, NC, 28787

FIRST FLOOR PLAN

22047 **A.1.1**

EXHIBIT 3.4

Architect/Designer:
 Benjamin Rishel, Architect

Structural Engineer:
 N/A

NOT FOR CONSTRUCTION

Revisions:

Revision	Description	Date

SCHEMATIC DESIGN
 9/10/2022 10:13:01 AM

Thornton Addition

Owner:
 MARILYN & ROBERT THORNTON
 1 WEST COVE ST,
 WEAVERVILLE, NC, 28787

ELEVATIONS

22047

A3.0

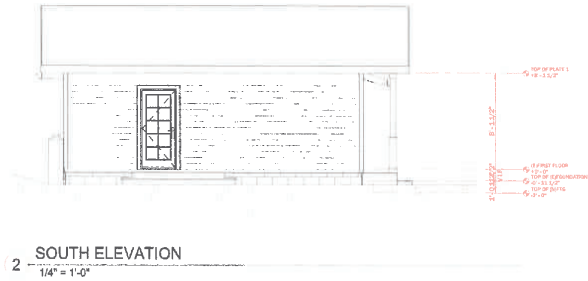
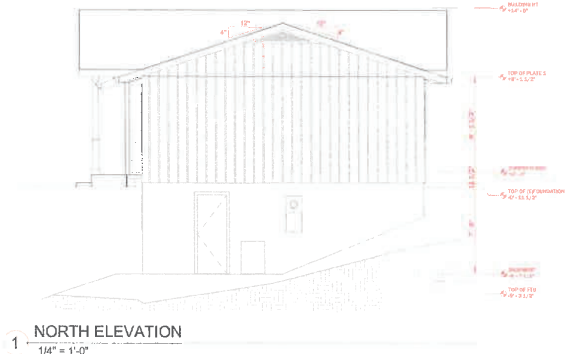
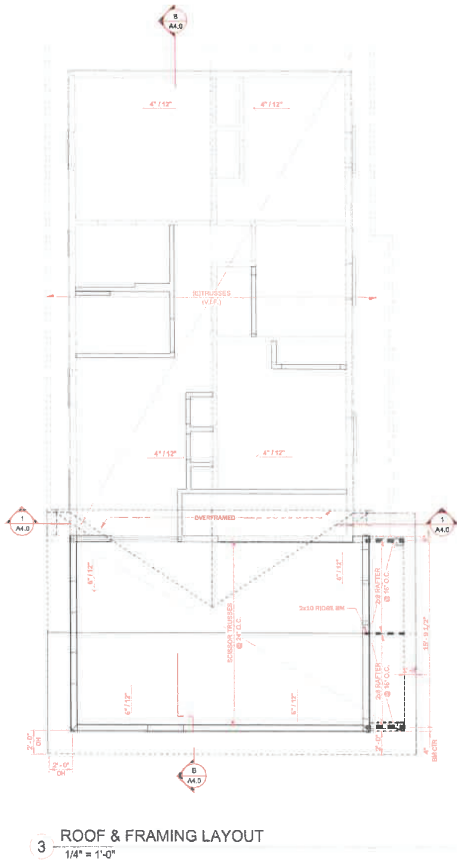


EXHIBIT 3.5



TRANSARC DESIGN LLP
 1832 Oak Bluffs Way, Raleigh, NC 27605
 TRANSARCDESIGN.COM TEL: 919.416.5442

Architect/Designer:
 Benjamin Rishel, Architect

Structural Engineer:
 N/A

Revisions:

Revision	Description	Date

SCHEMATIC DESIGN
 9/10/2022 10:13:02 AM

Thornton Addition

Owner:
 MARILYN & ROBERT THORNTON
 1 WEST COVE ST,
 WEAVERVILLE, NC, 28787

ELEVATIONS

22047

A3.1

Comments: 2/21/2024



1 EAST ELEVATION
 1/4" = 1'-0"



2 WEST ELEVATION
 1/4" = 1'-0"

NOT FOR CONSTRUCTION

9/10/2022 10:13:02 AM

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 22047

22047

Thornton Addition

EXHIBIT 4.1

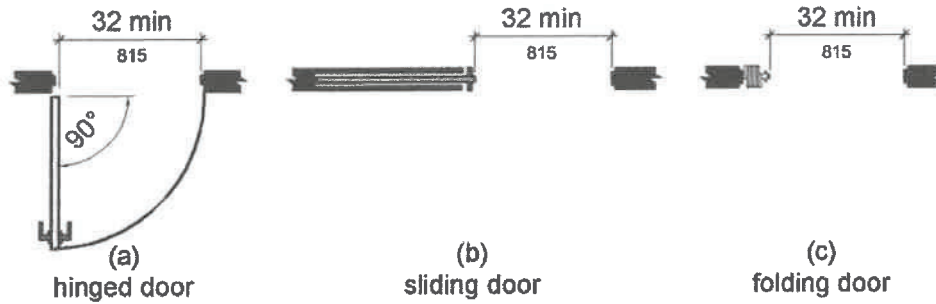


Figure 404.2.3
Clear Width of Doorways

404.2.4 Maneuvering Clearances. Minimum maneuvering clearances at doors and gates shall comply with 404.2.4. Maneuvering clearances shall extend the full width of the doorway and the required latch side or hinge side clearance.

EXCEPTION: Entry doors to hospital patient rooms shall not be required to provide the clearance beyond the latch side of the door.

404.2.4.1 Swinging Doors and Gates. Swinging doors and gates shall have maneuvering clearances complying with Table 404.2.4.1.

Table 404.2.4.1 Maneuvering Clearances at Manual Swinging Doors and Gates

Type of Use		Minimum Maneuvering Clearance	
Approach Direction	Door or Gate Side	Perpendicular to Doorway	Parallel to Doorway (beyond latch side unless noted)
From front	Pull	60 inches (1525 mm)	18 inches (455 mm)
From front	Push	48 inches (1220 mm)	0 inches (0 mm) ¹
From hinge side	Pull	60 inches (1525 mm)	36 inches (915 mm)
From hinge side	Pull	54 inches (1370 mm)	42 inches (1065 mm)
From hinge side	Push	42 inches (1065 mm) ²	22 inches (560 mm) ³
From latch side	Pull	48 inches (1220 mm) ⁴	24 inches (610 mm)
From latch side	Push	42 inches (1065 mm) ⁴	24 inches (610 mm)

1. Add 12 inches (305 mm) if closer and latch are provided.

2. Add 6 inches (150 mm) if closer and latch are provided.

3. Beyond hinge side.

4. Add 6 inches (150 mm) if closer is provided.

EXHIBIT 4.2

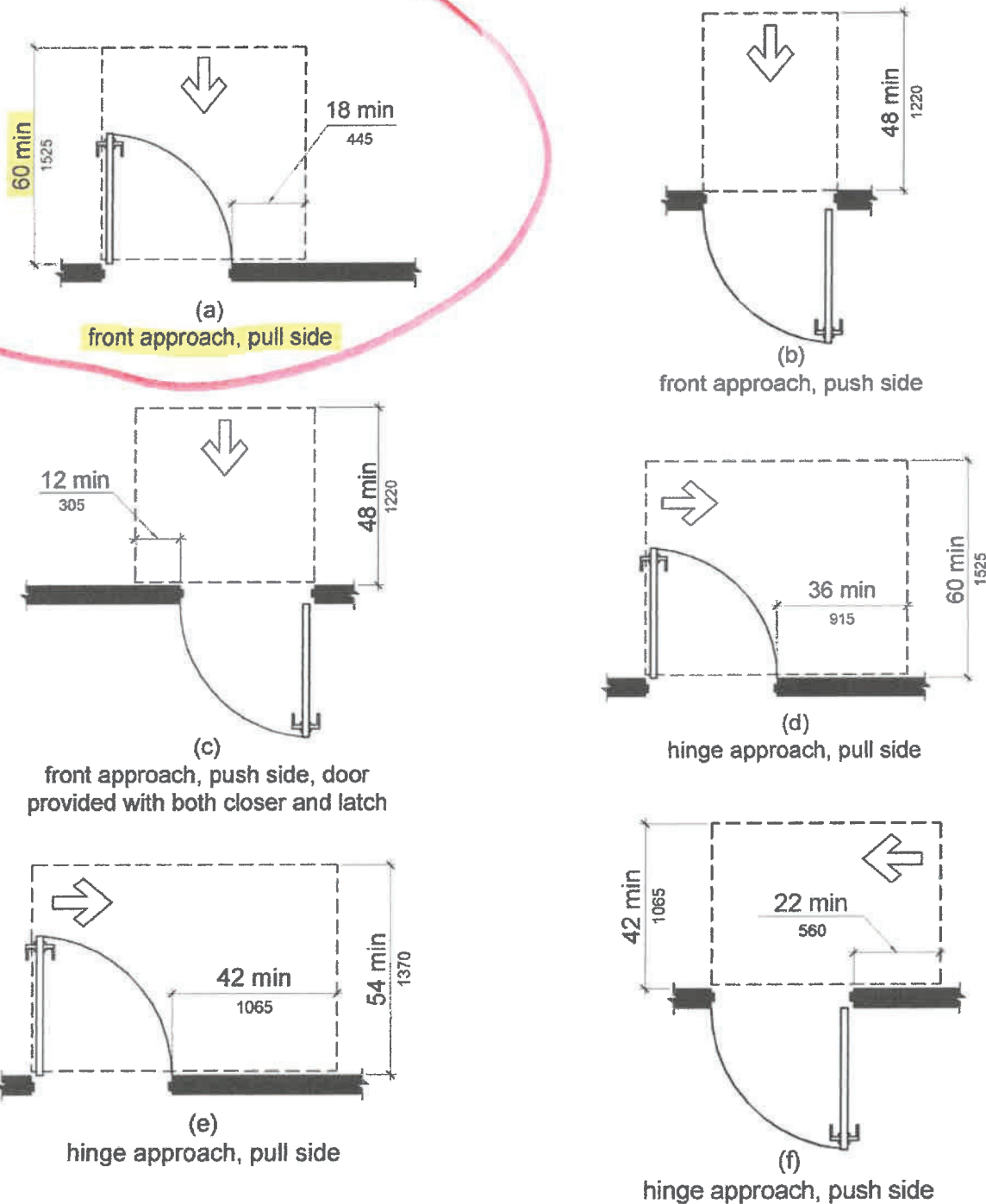


Figure 404.2.4.1
Maneuvering Clearances at Manual Swinging Doors and Gates

EXHIBIT 4.3

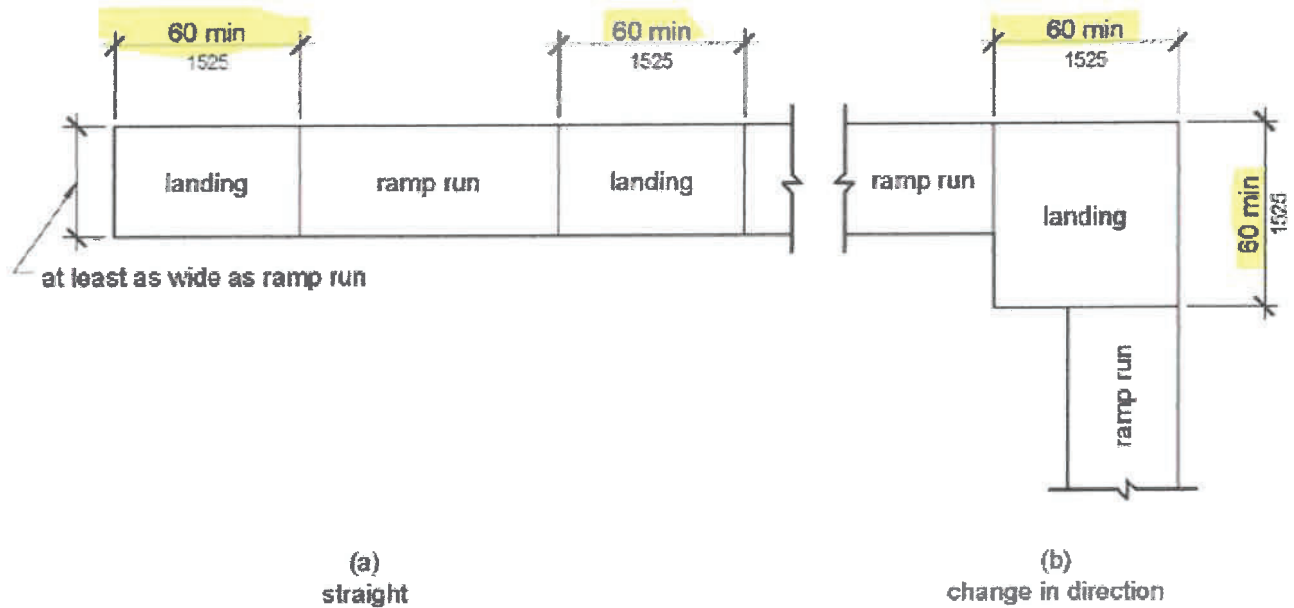


Figure 405.7
Ramp Landings

405.7.1 Slope. Landings shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

405.7.2 Width. The landing clear width shall be at least as wide as the widest *ramp* run leading to the landing.

405.7.3 Length. The landing clear length shall be 60 inches (1525 mm) long minimum.

405.7.4 Change in Direction. *Ramps* that change direction between runs at landings shall have a clear landing 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum.

405.7.5 Doorways. Where doorways are located adjacent to a *ramp* landing, maneuvering clearances required by 404.2.4 and 404.3.2 shall be permitted to overlap the required landing area.

405.8 Handrails. *Ramp* runs with a rise greater than 6 inches (150 mm) shall have handrails complying with 505.

EXCEPTION: Within *employee work areas*, handrails shall not be required where *ramps* that are part of *common use circulation paths* are designed to permit the installation of handrails complying with 505. *Ramps* not subject to the exception to 405.5 shall be designed to maintain a 36 inch (915 mm) minimum clear width when handrails are installed.

405.9 Edge Protection. Edge protection complying with 405.9.1 or 405.9.2 shall be provided on each side of *ramp* runs and at each side of *ramp* landings.

EXHIBIT 5.2



EXHIBIT 5.4

4 ft

22 ft

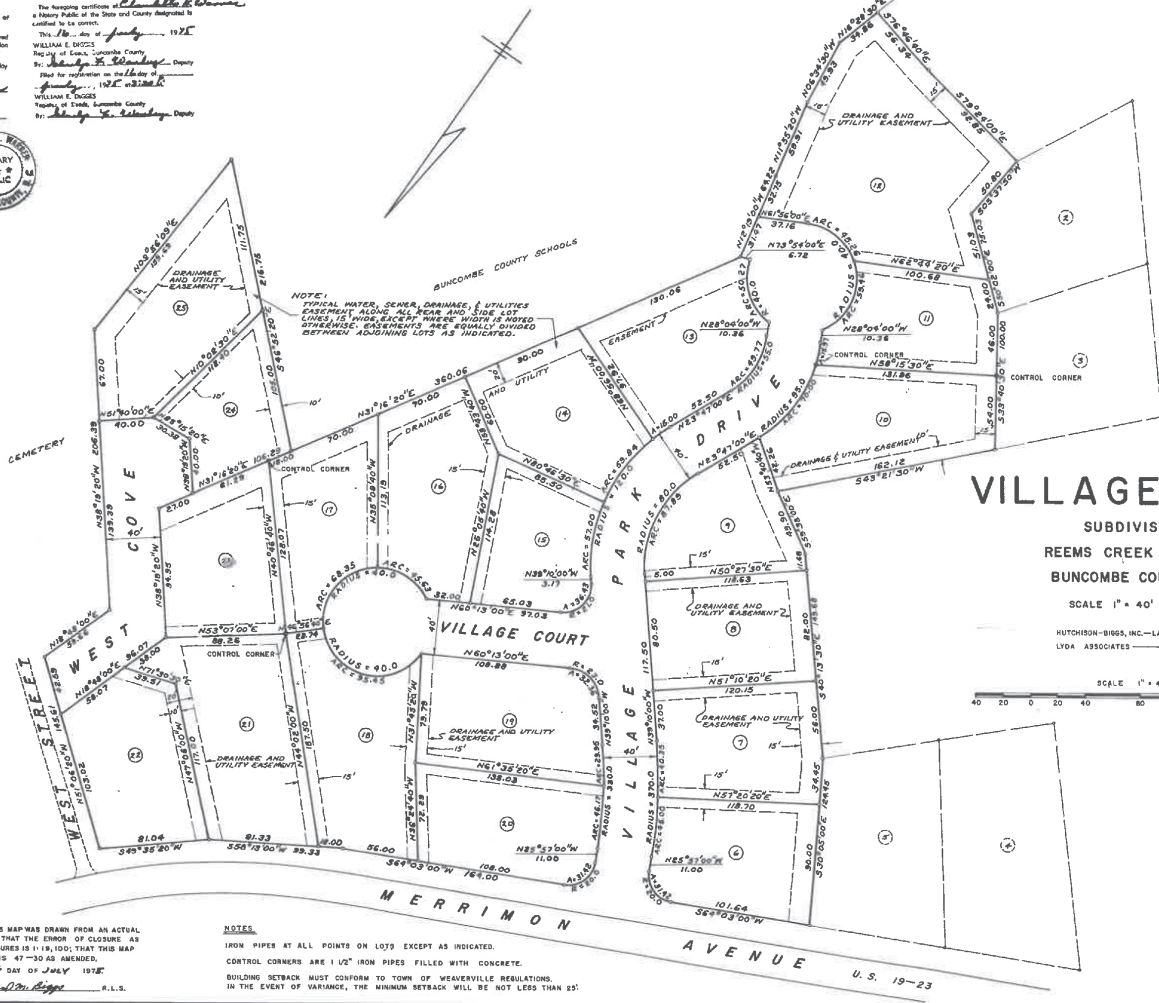


EXHIBIT 5.3



STATE OF NORTH CAROLINA
 COUNTY OF BUNCOMBE
 I, Richard M. Biggs, Notary Public of
 Buncombe County, do hereby certify that
Richard M. Biggs personally appeared
 before me this day and acknowledged the due execution
 of the foregoing instrument.
 Witness my hand and Notarial Seal this 16 day
 of July, 1975
Richard M. Biggs
 NOTARY PUBLIC
 MY COMMISSION EXPIRES
 5-26-77

STATE OF NORTH CAROLINA
 COUNTY OF BUNCOMBE
 The foregoing conditions of Charlotte R. Weaver
 a Notary Public of the State and County designated in
 Article 14, G.S. (1973)
 This 16 day of July, 1975
 WILLIAM E. BIGGS
 Notary of Buncombe County
 My Commission Expires
 11-21-77
 By: Richard M. Biggs, Deputy
 Notary Public
 My Commission Expires
 11-21-77
 WILLIAM E. BIGGS
 Notary of Buncombe County
 My Commission Expires
 11-21-77
 By: Richard M. Biggs, Deputy



NOTE:
 TYPICAL WATER, SEWER, DRAINAGE & UTILITIES
 EASEMENTS ALONG ALL PAVED AND UNPAVED
 LINES IS 15' WIDE EXCEPT WHERE WIDTH IS NOTED.
 DRAINAGE EASEMENTS ARE EQUALLY DIVIDED
 BETWEEN ADJOINING LOTS AS INDICATED.

VILLAGE PARK

SUBDIVISION
 REEMS CREEK TOWNSHIP
 BUNCOMBE COUNTY, N.C.

SCALE 1" = 40' 5/31/75

HUTHRON-BIGGS, INC.—LAND SURVEYING
 LYDA ASSOCIATES—ENGINEERING



I, RICHARD M. BIGGS, CERTIFY THAT THIS MAP WAS DRAWN FROM AN ACTUAL
 SURVEY MADE UNDER MY SUPERVISION; THAT THE ERROR OF CLOSURE AS
 COMPUTED BY LATITUDE AND DEPARTURES IS 0' 11.16" 00"; THAT THIS MAP
 WAS PREPARED IN ACCORDANCE WITH GS 47-30 AS AMENDED,
 WITNESS MY HAND AND SEAL THIS 16 DAY OF JULY, 1975.
Richard M. Biggs R.L.S.

NOTES:
 IRON PIPES AT ALL POINTS ON LOTS EXCEPT AS INDICATED.
 CONTROL CORNERS ARE 1/2" IRON PIPES FILLED WITH CONCRETE.
 BUILDING SETBACK MUST CONFORM TO TOWN OF WEAVERVILLE REGULATIONS.
 IN THE EVENT OF VARIANCE, THE MINIMUM SETBACK WILL BE NOT LESS THAN 25'

5-21-80
 M. J. D.

40/107

Page 33 of 54

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

Variance Application
1 West Cove Road

AFFIDAVIT OF MAILING AND POSTING

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 21st day of February, 2023, I:


1. Mailed the attached Notice of Public Hearing, attached as Exhibit A, to all of the persons listed on the attached Exhibit B and that said mailing was accomplished by putting the Notice in envelopes, with postage pre-paid, addressed to all persons shown and at the addresses reflected on the attached Exhibit B, and that said envelopes were deposited in a U.S. Mail Box under the exclusive control of the U.S. Postal Service; and
2. Posted the attached Notice of Public Hearing Sign(s), Exhibit C, at the location(s) shown on Exhibit C and that a Notice of Public Hearing, Exhibit A, was affixed to the reverse side of same.

This the 21 day of February, 2023.



James W. Eller

Sworn to and subscribed before me
this 21 day of February, 2023



Notary Public

My Commission Expires: 5/29/2026

[Notary Seal]

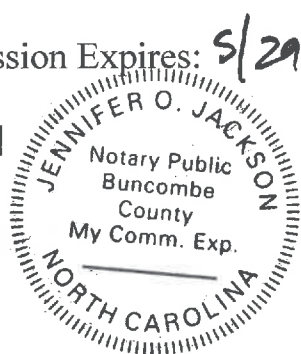


Exhibit A

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, March 13, 2023 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# 9742-25-0481, 1 West Cove 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

Dino Frattaroli
18 Village Ct.
Weaverville, NC 28787

Buncombe County Board of Ed.
175 Bingham Rd.
Asheville, NC 28806

Maria De Souza
4 Village Ct.
Weaverville, NC 28787

Robert Thornton
1 West Cove St.
Weaverville, NC 28787

Frederick Wadhams
1 West St.
Weaverville, NC 28787

David Esposito
3 West Cove Rd.
Weaverville, NC 28787

Exhibit C



TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, March 13, 2023
Subject: Public Hearing – Variance Request
Presenter: Planning Director / Applicant
Attachments: Administrative Materials including Public Notice; Staff Report; Variance Application and Supporting Documents; Affidavit of Mailing and Posting
Description:

INTRODUCTION: The Estate of William Jack Duncan is the owner of two unimproved lots located Phipps Street that have Buncombe County Parcel Identification Number of 9742-24-7799 and 9742-24-7894. These lots are zoned R-1. Harry Quiett, the Executor of the Estate, has applied for a minimum lot width variance for both lots.

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.

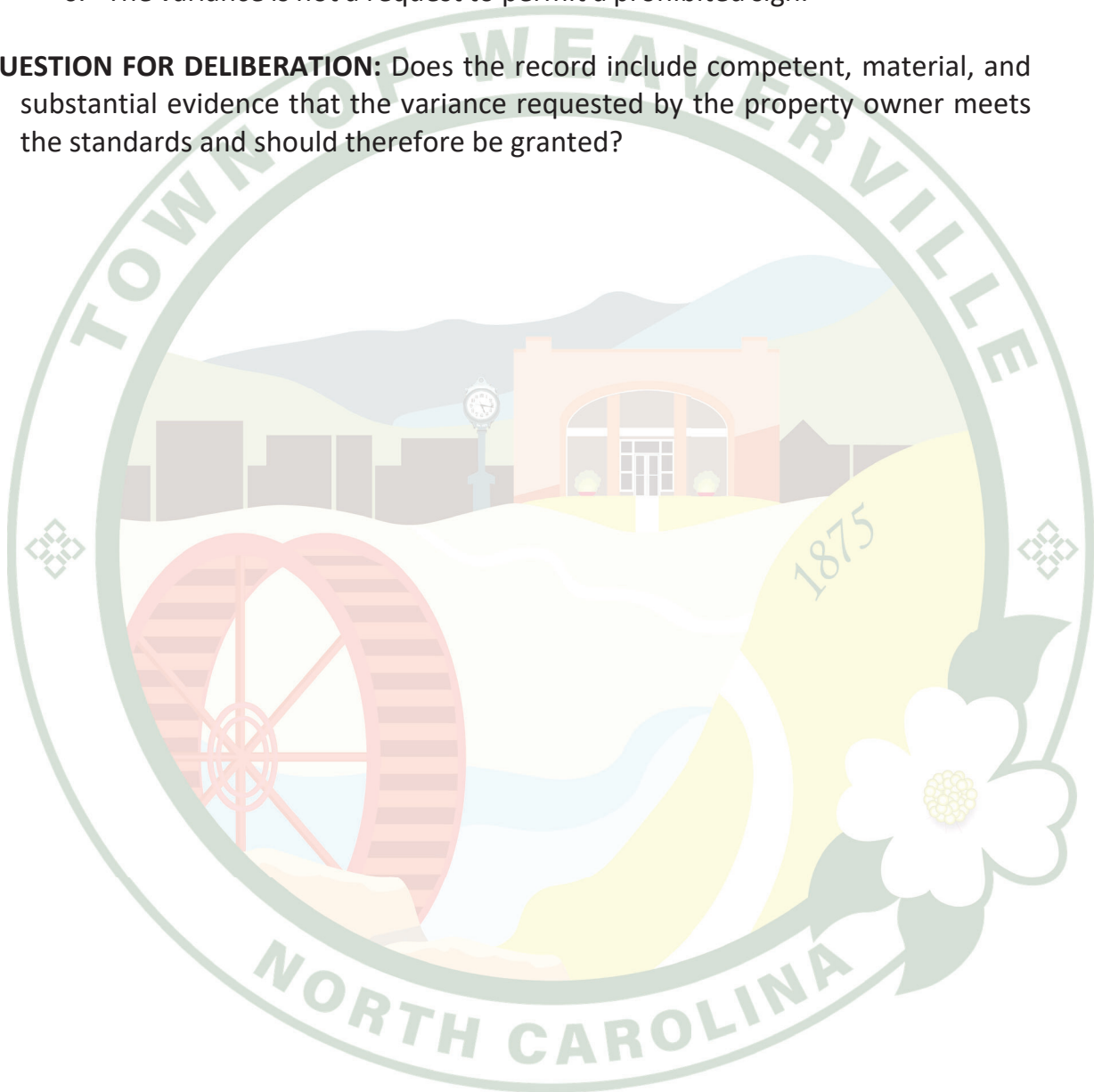
Code Sec. 20-1602 authorizes the BOA to consider requests for variances related to nonconforming lots if the lot width is more than 20% below the minimum standards.

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, March 13, 2023 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#9742-24-7799 and PIN#9742-24-7894, unaddressed Phipps Street, 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, North Carolina

Staff Report: Proposed Variance at Unaddressed Phipps Street

Prepared February, 2023

Sources: Town of Weaverville Code of Ordinances

Introduction to the Property

The subject parcels, known by PIN: 9742-24-7894 and 9742-24-7799, consists of .17 and .19 acres respectively as shown on Buncombe County tax records. The properties may be found just north of the intersection of Phipps Street and Reems Creek Road. The properties are also in close proximity to Weaverville Elementary School whose roofline is visible on the left hand of the following map. The plat of record is also attached hereto which shows the properties as lots 19 & 20 on the plat that the application seeks to convert into buildable lots.



Question of Jurisdiction

Section 20-1602(b)(2) tasks the Zoning 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 of record provided shows a lot width of 55 feet for the two lots on Phipps Street.

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.

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 and 120 South Main Street in October, 2019.

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: 9999 Phipps St.
PIN(s) of Subject Property: _____

Lot 19 - PIN # 9742247799 + Lot 20 - PIN # 9742247894

B. Contact Information

Owner's Name: Harry Quiett - Administrator for Estate
Mailing Address: 5025 Gerton Hwy. Gerton, NC 28735
Telephone #: 202-374-3330 Email: ustreet@msn.com

Primary Contact if Other Than Owner and Authorization to Represent

Owner: Gregory S. Mc Huffey
Mailing Address: 222 Cook Cove rd. Weaverville, NC 28787
Telephone #: 828-230-4469 Email: earthstonebuilders@gmail.com

C. Type of Submission

Describe the Variance

Requested: 55' lot width for each individual lot

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.

An unnecessary hardship will result from the strict application of the Zoning Ordinance as the lot(s) without the variance cannot be used for single family residential purposes- the stated use within the R1 zoning district

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.

Variances have been granted under similar circumstances, and a vast majority of other similarly sized lots have been built upon, suggesting the preexisting nonconformity is peculiar to the property(s)

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.

Preexisting nonconforming lots were recorded in 1920 well in advance of the Town's zoning ordinance taking effect in 1978

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.

Substantially similar nonconforming lots in the immediate vicinity of lots 19 & 20 on Phipps st. have previously received variance approval

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.

Structures to be located on the present lot(s) with preexisting nonconformities will be used for single family residential use - the primary and stated use within the R-1 zoning district

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

NA

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: _____

F. Certification

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

Signature of Owner:  Date: 2-3-23

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

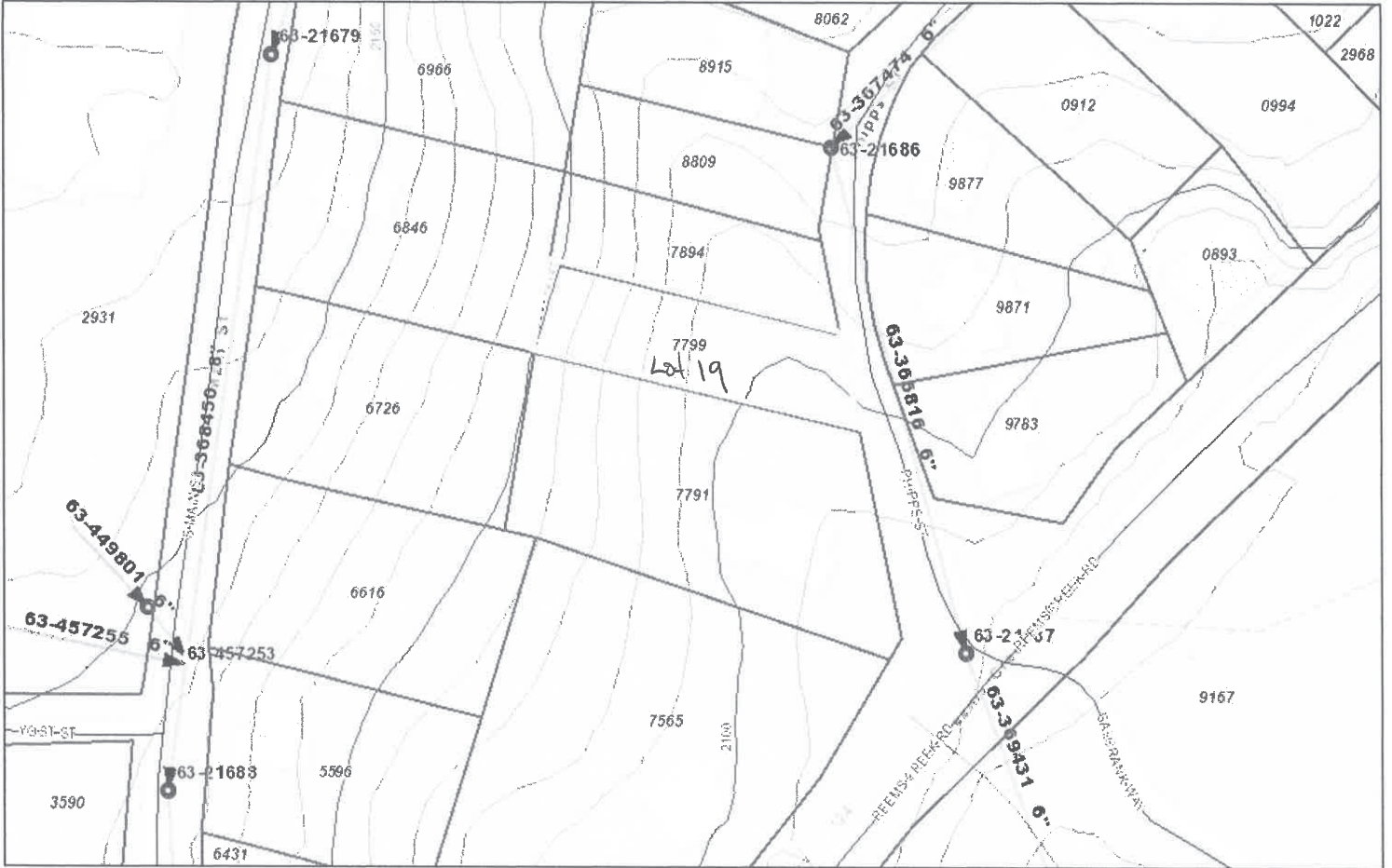
Date Received: 2.3.23
Date of Public Hearing: 3.15.23

Staff
Comments: _____

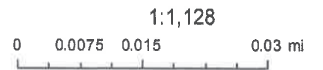
Fee: \$250 Date: 2.3.23
Decision: _____ Date: _____
Approved with
Conditions: _____

Signature of Zoning Administrator: _____

Buncombe County

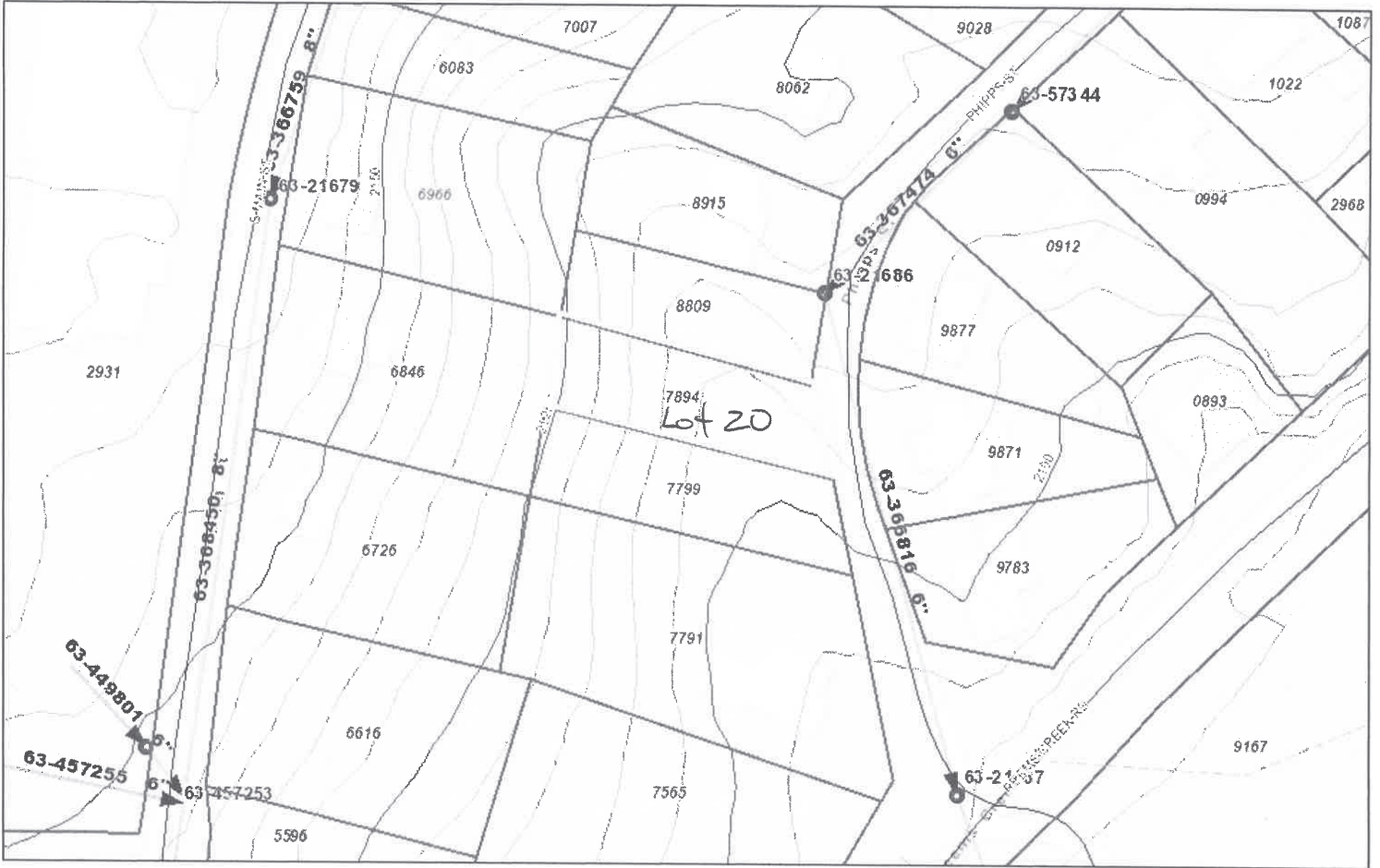


December 12, 2022

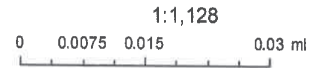


Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

Buncombe County



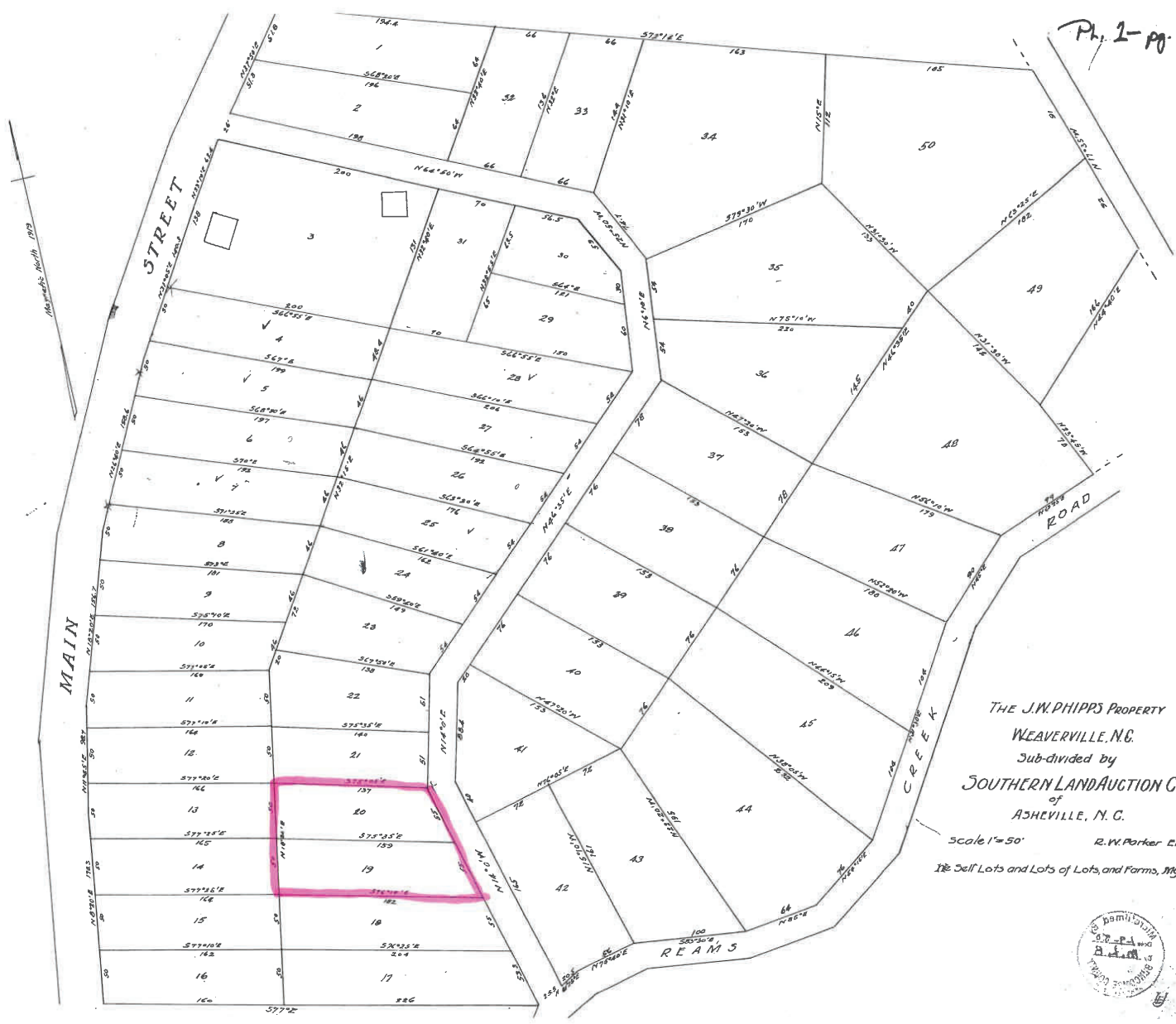
December 12, 2022



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

11/11

Ph. 1 - pg. 1



THE J.W. PHIPPS PROPERTY
 WEAVERVILLE, N.C.
 Sub-divided by
 SOUTHERN LANDAUCTION CO.
 of
 ASHEVILLE, N. C.

Scale 1"=50' R.W. Parker En.
 1/2 Acre Lots and Lots of Lots, and Farms, Myl.



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

PROPERTY LEGAL DESCRIPTION:

PARCEL ID: Lot 19 - PIN# 9742247799 + Lot 20 - PIN#
STREET ADDRESS: 99999 Phipps St. 9742247894

PROPERTY OWNER:

(complete Certificate of Authority if a corporation or LLC)

PROPERTY OWNER: Harry Quiett Administrator for Estate of William Jack Duncan

PROPERTY OWNER CONTACT INFORMATION:

EMAIL ADDRESS: ustreet@msn.com
PHONE NUMBER: 202-374-3330
MAILING ADDRESS: 5025 Gerton Highway
Gerton, NC 28735

PERMIT SOUGHT/APPLICATION TO BE SUBMITTED: A Variance

NAME OF INDIVIDUAL AGENT: Gregory S. Mcbuffey
NAME OF CONTRACTOR/CONSULTING FIRM:

AGENT CONTACT INFORMATION:

EMAIL ADDRESS: earthtonebuilders@gmail.com
PHONE NUMBER: 828-230-4469
MAILING ADDRESS: 222 Cook Coverd. Weaverville, NC 28787

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

DocuSigned by:

Harry Quiett

05854F7D35A048C...

Property Owner Signature

Property Owner Signature

Date: 1/30/2023 | 12:58 PM EST

Date: _____

STATE OF NORTH CAROLINA

File No.

2022 E 001966

BUNCOMBE County

In The General Court Of Justice
Superior Court Division
Before the Clerk

IN THE MATTER OF THE ESTATE OF:

Name
WILLIAM JACK DUNCAN

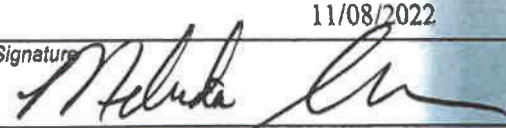
LETTERS
TESTAMENTARY

G.S. 28A-6-1; 28A-6-3; 28A-11-1; 36C-2-209

The Court in the exercise of its jurisdiction of the probate of wills and the administration of estates, and upon application of the fiduciary, has adjudged legally sufficient the qualification of the fiduciary named below and orders that Letters be issued in the above estate.

The fiduciary is fully authorized by the laws of North Carolina to receive and administer all of the assets belonging to the estate, and these Letters are issued to attest to that authority and to certify that it is now in full force and effect.

Witness my hand and the Seal of the Superior Court.

Name And Address Of Fiduciary 1 HARRY VERNON QUIETT 5025 GERTON HIGHWAY GERTON NC 28735	Date Of Qualification 11/08/2022
	Clerk Of Superior Court STEVEN D COGBURN
Title Of Fiduciary 1 EXECUTOR	EX OFFICIO JUDGE OF PROBATE
Name And Address Of Fiduciary 2	Date Of Issuance 11/08/2022
	Signature 
Title Of Fiduciary 2	<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

SEAL

NOTE: This letter is not valid without the official seal of the Clerk of Superior Court.

11/08/2022

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


Variance Application
Unaddressed Phipps Street

AFFIDAVIT OF MAILING AND POSTING

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 21st day of February, 2023, I:

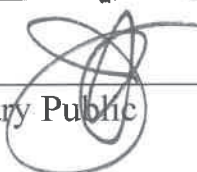
1. Mailed the attached Notice of Public Hearing, attached as Exhibit A, to all of the persons listed on the attached Exhibit B and that said mailing was accomplished by putting the Notice in envelopes, with postage pre-paid, addressed to all persons shown and at the addresses reflected on the attached Exhibit B, and that said envelopes were deposited in a U.S. Mail Box under the exclusive control of the U.S. Postal Service; and
2. Posted the attached Notice of Public Hearing Sign(s), Exhibit C, at the location(s) shown on Exhibit C and that a Notice of Public Hearing, Exhibit A, was affixed to the reverse side of same.

This the 21 day of February, 2023.



James W. Eller

Sworn to and subscribed before me
this 21 day of February, 2023



Notary Public

My Commission Expires: 5/29/2026

[Notary Seal]

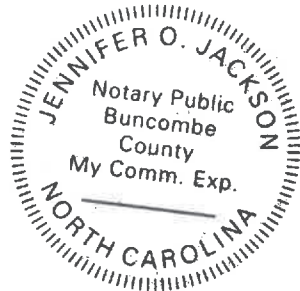


Exhibit A

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, March 13, 2023 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#9742-24-7799 and PIN#9742-24-7894, unaddressed Phipps Street, 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

Ray Nettles
134 S Main St.
Weaverville, NC 28787

Kristen Brown
400 S Elam Ave.
Greensboro, NC 27403

Elaine Garrison
128 S. Main St.
Weaverville, NC 28787

Charles Nines
37 Phipps St.
Weaverville, NC 28787

William Duncan
33 Phipps St.
Weaverville, NC 28787

Phillip Rice
87 Old Burnsville Rd.
Weaverville, NC 28787

Emily Hubbard
34 Phipps St.
Weaverville, NC 28787

T & E Property Investment
620 Lumina Ave. S.
Wrightsville Beach, NC 28480

Nancy Abrams
116 Lincoln Rd.
Lincoln, MA 1773

Exhibit C

