

**Town of Weaverville
Board of Adjustment
Regular Monthly Meeting
Monday, January 8, 2024, 6:00pm
Agenda**

	Pg#	
1.		Call to Order Chairman Lewis
2.	2	Election of Officers..... Chairman Lewis
2.	3	Adoption of Regular Meeting Schedule Chairman Lewis
3.	4	Approval of the Minutes – 3/13/2023 Regular Meeting Chairman Lewis
4.	8	Overview of Board of Adjustment Matters..... Attorney Jackson
		Planning Director Eller
5.		Adjournment Chairman Lewis

TOWN OF WEAVERVILLE
ZONING BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, January 8, 2024

Subject: Election of Officers

Presenter: Planning Director

Attachments: None

Description:

Municipal ordinance currently calls for an annual election of officers for the Board as per the following Sec. 2-163.

Sec. 2-163. Officers.

The board of adjustment shall elect a chair and a vice-chair from its membership, who shall each serve for one year or until reelected or until their successors are elected. The board of adjustment shall appoint a secretary, who may be a municipal officer, an employee of the town, or a member of the board.

(Ord. of 5-24-2021(1) , § 4b(Att. A))

Staff is willing and prepared to continue serving as secretary should this be the consensus of the Board.

Action Requested:

Staff is requesting action related to the annual election of officers as stated. Action may be taken via a motion to the specific appointment and simple majority vote of the Board.

TOWN of WEAVERVILLE

2024 Council and Boards meeting schedule

Meeting Type	recurring day	Time	January	February	March	April	May	June
Town Council Workshop	3rd Tuesday	6:00 PM	1/16/24	2/20/24	3/19/24	4/16/24	*5/14/2024	6/18/24
Town Council Planning Retreat OR Budget		9:00 AM	1/20/24					6/4/24
TC PH notice deadline	by 2:30 pm		1/5/24	2/9/24	3/8/24	4/5/24	5/10/24	6/7/24
Town Council Meetings	4th Monday	6:00 PM	1/22/24	2/26/24	3/25/24	4/22/24	*5/20/24	6/24/24
Planning Board	1st Tuesday	6:00 PM	1/2/24	2/6/24	*3/7/2024	4/2/24	5/7/24	6/6/24
Board of Adjustment	2nd Monday	6:00 PM	1/8/24	2/12/24	3/11/24	4/8/24	5/13/24	6/10/24
ABC Board	1st Wed. Quarterly	10:00 AM			3/6/24			6/5/24
Meeting Type	recurring day	Time	July	August	September	October	November	December
Town Council Workshop	3rd Tuesday	6:00 PM	7/16/24	8/20/24	9/17/24	10/15/24	*11/12/2024	*12/10/2024
TC PH notice deadline	by 2:30 pm		7/5/24	8/9/24	9/6/24	10/11/24	11/1/24	11/29/24
Town Council Meetings	4th Monday	6:00 PM	7/22/24	8/26/24	9/23/24	10/28/24	*11/18/2024	*12/16/2024
Planning Board	1st Tuesday	6:00 PM	7/2/24	8/6/24	9/3/24	10/1/24	*11/7/2024	12/3/24
Board of Adjustment	2nd Monday	6:00 PM	7/8/24	8/12/24	9/9/24	10/14/24	*11/14/2024	12/9/24
ABC Board	1st Wed. Quarterly				9/4/24			12/4/24
Town Council Workshops are generally held the 3rd Tues. of month at 6:00 p.m.								
Town Council Regular Meetings are generally held the 4th Mon. of month at 6:00 p.m.								
Planning Board Meetings are generally held the 1st Tues. of month at 6:00 p.m.								
Board of Adjustment Meetings are generally held the 2nd Mon. of month at 6:00 p.m.								
ABC Board 1st Wed. Quarterly at 10:00 a.m.								
* Adjusted date due to holiday or other conflict								
Election Day- November 5, 2024								

Town of Weaverville
Board of Adjustment
Minutes – Monday, March 13, 2023

The Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 6 pm on Monday, March 13, 2023, in the Community Room and Council Chambers at Town Hall, 30 South Main Street, Weaverville.

Present: Chairman Tycer Lewis, Vice-Chair Cynthia Wright, Board Members Paul Clauhs, Roger Parkin, and Peter McGuire, Alternate Members Larry Murray and Brent Koenig, Town Attorney Jennifer Jackson and Planning Director/Zoning Administrator James Eller

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. Newly appointed Alternate Board Member Brent Koenig was welcomed.

2. Approval of Agenda

Chairman Lewis made a motion to approve the agenda with a reordering of the variance hearings such that the Phipps Street matter was heard first. Clauhs seconded the motion and with a unanimous vote the agenda was approved as amended.

3. Approval of Minutes

Board Member Clauhs made a motion to approve the minutes from the October 10, 2022, meeting of the Board with one typographical correction identified by Murray. 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 Unaddressed Phipps Street

Chairman Lewis asked Attorney Jackson to provide an overview on how quasi-judicial hearings work. The following were Attorney Jackson's statements:

Tonight the Board of Adjustment will hold quasi-judicial evidentiary hearings on two variances applications. The purpose of the hearings is for the Board of Adjustment to hear and consider pertinent facts related to the request. The Board is required to comply with procedural rules much like those of a trial court and to provide for the constitutional right to due process such as proper notice of the meeting, an impartial decision maker, sworn testimony of witnesses, and an opportunity for parties to be heard by allowing direct examination and cross examination of witnesses.

The Board is asked to make a quasi-judicial decision which is like a court decision in several important ways. It requires the Board to use its judgment in applying general laws to a particular land use situation while ensuring the constitutional due process rights of all parties.

Tonight's hearings are formalized means of gathering evidence relevant to the issues that are before the Board tonight. This is not an opportunity for citizens to come and just speak their minds like in a public hearing on a legislative matter before Town Council. The Board's decisions can only be made based on competent, material and substantial evidence in the record of the respective hearings.

“Competent” evidence is generally understood to mean that evidence which is legally admissible in a court of law, but can also include evidence admitted without objection, and evidence that appears to be sufficiently trustworthy and reasonable for the Board to rely on. Competent evidence does not include the opinion testimony of lay witnesses as to any of the following:

- Use of property in a particular way affecting the value of other property;
- Increase in vehicular traffic resulting from a proposed development posing a danger to the public safety;
- Matters about which only expert testimony would generally be admissible under rules of evidence applicable to trial courts.

The burden is on the applicants to demonstrate that the application complies with the review and approval standards of the zoning ordinance. Once an application has been submitted and all evidence in support of the application has been presented, then the burden shifts to those who have standing to oppose the application to present evidence to the Board. Where conflicting evidence is presented the Board must determine the weight of the evidence and the credibility of witnesses.

The evidentiary hearings will consist of the following general steps: ensuring an impartial board, identifying parties that have standing and wish to participate, putting all witnesses under oath, receiving evidence from staff on the application, receiving evidence from the applicant and any other parties, hearing any final argument by the parties, deliberating and deciding the case. Each party will get an opportunity to question all witnesses and to present evidence in the form of documents or testimony.

Chairman Lewis introduced the matter by stating that 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. Lewis noted that Town Code Sec. 20-1602 and 20-3108(d) authorizes the BOA to grant variances to nonconforming lots, the standards of which were reviewed.

Chairman 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.

Chairman Lewis noted that Applicant/property owner, represented by its agent/contractor, Gregory McGuffey, and James Eller on behalf of the Town of Weaverville, both had standing as parties to this matter. No one present indicated that they wanted to be made a party.

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

Mr. Eller reviewed the administrative materials that included the following: Public Notice, Application for a Variance dated February 3, 2023 and supporting documents; Affidavit of Mailing and Posting; and Staff Report. Said packet was received into the record without objection as Exhibit A. A copy of the owner’s deed to the subject property was received into the record without objection as Exhibit B.

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

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Mr. McGuffey reviewed his application and his responses to the standards and indicated that the owner is proposing to construct a single family residence on each lot, both of which are 55 feet wide.

Nancy Abrams, a nearby resident, asked a question regarding how the stream that runs across the property will be handled. Mr. McGuffey indicated that they were aware of a wet weather stream and would be factoring that into the design.

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

Based on documentary and testimonial evidence presented during the hearing, Clauhs made a motion to grant the variance requested. Wright seconded the motion. All voted in favor and the motion passed unanimously.

Chairman Lewis inquired as to whether a written decision was available to review at tonight's meeting. Attorney Jackson reviewed a written decision with the Board by showing it on the screen and reading the substantive provisions. Clauhs made a motion to approve the written decision. McGuire seconded the motion. In a vote of 5 to 0, the motion passed and the written decision was adopted.

Chairman Lewis declared the evidentiary hearing closed.

5. Evidentiary Hearing on a Variance Application for 1 West Cove Road

Chairman Lewis introduced the matter by stating that 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. Town Code Sec. 20-3108(d) authorizes the BOA to grant variances, the standards of which were reviewed earlier in the meeting.

Chairman 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.

Lewis noted that the applicant/property owner, Robert "Chuck" Thornton, and James Eller on behalf of the Town of Weaverville, both had standing as parties to this matter. No one present indicated that they wanted to be made a party or provide testimony.

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

Mr. Eller reviewed the administrative materials that included the following: Public Notice; Application for a Variance dated January 4, 2023 and supporting documents; Affidavit of Mailing and Posting; and Staff Report. Said packet was received into the record without objection as Exhibit A. A copy of the owner's deed to the subject property was received into the record without objection as Exhibit B.

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

Mr. Thornton indicated that he has some mobility issues and wants to age in place on the property but needs an ADA accessible entrance in order to accommodate wheelchair access that is expected in the near future. He proposes an 8-foot wide ADA accessible front porch addition which will encroach within the 30-foot front yard setback by 5 feet. Mr. Thornton clarified his variance request to be a 5-foot setback variance to accommodate the 8-foot wide front porch addition. It was also noted that this property is at the end of a street and will have little impact on the neighborhood.

Attorney Jackson reviewed with the Board the Federal Fair Housing Act and how it requires a reasonable accommodation for disabled individuals that want an equal opportunity to enjoy the housing of their choice.

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

Based on the documentary and testimonial evidence presented during the hearing, Parkin made the motion to grant a 5-foot front yard setback variance to accommodate a front porch addition of up to 8 feet in width. Wright seconded the motion. All voted in favor and the motion passed unanimously.

Chairman Lewis inquired as to whether a written decision was available to review at tonight's meeting. Attorney Jackson reviewed a written decision with the Board by showing it on the screen and reading the substantive provisions. Clauhs made a motion to approve the written decision. McGuire seconded the motion. In a vote of 5 to 0, the motion passed and the written decision was adopted.

Chairman Lewis declared the evidentiary hearing closed.

6. Any Other Business

Eller updated the Board on the Code Amendments that Town Council approved which delegates the animal control appeals to the Board of Adjustment.

Jackson mentioned that policy conversations are going on currently at the Planning Board and Town Council level on nonconforming lots and minimum lot width. There was discussion about density versus sprawl as it relates to whether or not to require the combination of nonconforming lots under common ownership. She encouraged Board members, as individual citizens, to express any opinions on the subject to Town Council during the upcoming public hearing on the matter.

Jackson also mentioned that Town Council and the Planning Board have both eliminated the need for seconding of motions through amendments to their respective rules of procedure and wondered if that is a changed that the Board would want to make. The consensus was to keep their Rules as currently written and continue to require a second for a motion to be properly made.

7. Adjournment

At approximately 7:25 pm, Parkin made a motion to adjourn, which was seconded by McGuire. All voted in favor and the meeting was adjourned.

**Tyler Lewis, Chair
Board of Adjustment**

ATTEST:

**James W. Eller
Town Planner / Town Clerk**

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

The Board of Adjustment almost exclusively does its work by making **QUASI-JUDICIAL** decisions on appeals from administrative decisions, variance requests, applications for special use permits, and applications for waivers of certain development 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, waiver or other requests 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, waivers, etc. 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 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.

BOARD DELIBERATION AND CLOSING OF HEARING

After the presentation of evidence 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. This can be done at the same meeting or 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 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.

MATTERS WITHIN BOARD'S JURISDICTION

- Appeals of Administrative Development Regulation Decisions
- Issuance and Amendments to Special Use Permits
- Variances from Development Regulations
- Waivers from Development Regulations
- Extensions of Time for Repair/Replacement of Nonconforming Structures
- Replacement of Nonconforming Uses with Another Nonconforming Use
- Public Health Nuisance Appeals
- Flood Damage Prevention Variances and Appeals
- Traffic and Parking Appeals
- Appeals of Animal Control Officer Decisions

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 other matters are available upon request.