

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.

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.



**Tycer Lewis, Chair
Board of Adjustment**

ATTEST:



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