

**Town of Weaverville
Board of Adjustment
Special Called Meeting
Monday, January 12, 2026, 4:00pm
Agenda**

	Pg#	
1. Call to Order		Chairman Lewis
2. Approval of the Agenda.....		Chairman Lewis
3. Approval of the Minutes – 10/13/25 Regular Meeting	2	Chairman Lewis
4. Discussion and Action Related to Board Meeting Schedule and Amendment to Rules of Procedure.....	7	Planning Director Eller
5. Any Other Administrative Matters		
6. Adjournment		Chairman Lewis

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, January 12, 2025

Subject: Minutes

Presenter: Planning Director

Attachments: Minutes from the October 13, 2025 Meeting of the Board

Description:

Attached you will find proposed minutes from the October 13, 2025 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
Regular Monthly Meeting
Monday, October 13, 2025, 6:00pm**

Minutes

The Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 6:00 p.m. on Monday, October 13, 2025, in the Community Room and Council Chambers at Town Hall, 30 South Main Street, Weaverville.

Present: Vice-Chair Cynthia Wright, Board Members Paul Clauhs, Roger Parkin, Larry Murray, and Alternate Paul DeCrosta. Chair Tyker Lewis was not present.

Staff Present: Staff Attorney Jennifer Jackson and Planning Director/Zoning Administrator James Eller, and Planner Graham Crawford

1. Call to Order and Adoption of Agenda

Vice Chair Wright called the meeting to order at 6:05 pm. *Murray moved that the agenda be adopted with an added item to elect officers. Clauhs seconded and all voted in favor. Motion carried 5-0.*

2. Election of Officers –

Parkin moved to appoint Graham Crawford as Clerk to the Board. Clauhs seconded. All voted in favor and the motion carried 5-0.

Parkin moved to reappoint Lewis as Chair and Wright as Vice-Chair. Murray seconded the motion. Without discussion all voted in favor and the motion carried 5-0.

3. Approval of the Minutes – 8/11/2025 Regular Meeting

Vice Chair Wright requested a motion on the approval of the meeting minutes. *Clauhs moved to approve the August 11, 2025 meeting minutes, seconded by Murray. Motion carried unanimously 5-0.*

4. Evidentiary Hearing – 68 Camsyn Drive

Vice-Chair Wright provided an overview on how quasi-judicial hearings work. The following were Wright's statements:

Tonight the Board of Adjustment will hold a quasi-judicial evidentiary hearing on a vegetative buffer waiver/modification. 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 hearing is a formalized means of gathering evidence relevant to the issues that are before the Board tonight. This is not an opportunity for citizens to come and just speak their minds like in a public hearing on a legislative matter before Town Council. The Board's decisions can only be made based on competent, material and substantial evidence in the record of the respective hearings. "Competent" evidence is generally understood to mean that evidence which is legally admissible in a court of law, but can also include evidence admitted without objection, and evidence that appears to be sufficiently trustworthy and reasonable for the Board to rely on. Competent evidence does not include the opinion testimony of lay witnesses as to any of the following:

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

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

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

Vice-Chair Wright introduced the matter by stating that AVL Builders LLC is the owner of the property located at 68 Camsyn Drive that has a Buncombe County Parcel Identification Number of 9752-49-5646, which is zoned R-2. The owners have applied for a front setback variance. 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. She then reviewed the following 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.

Vice-Chair Wright declared the evidentiary hearing open and began by polling the board members to see whether or not any members had conflicts of interest or bias that might disqualify them from serving on the Board during the hearing. None were reported. No board member indicated that they had had any ex parte communication with the applicant. No concerns were noted about the board hearing the matter were expressed.

Vice-Chair Wright noted that Applicant/property owner, AVL Builders LLC, represented by Daniel Carare, 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 Daniel Carare.

Eller reviewed the administrative materials that included the following: Public Notice; Application for a Variance dated 8 September 2025 and Supporting Documents including some correspondence from the HOA; Affidavit of Mailing and Posting; Staff Report; and Deed; and said packet was received into the record without objection as Exhibit A. 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.

Carare offered to review his application and request that the front yard setback be reduced by 8 feet due to topographical and subsurface geological challenges. Eller noted that the HOA has approved the requested setback reduction. Carare answered questions of the Board and indicated that other building footprints and configurations had been considered but were not reasonably feasible as they would result in very tall retaining walls facing the street.

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

Based on documentary and testimonial evidence presented during the hearing, *DeCrosta made a motion to grant the front yard setback variance as requested. Murray seconded the motion. All voted in favor and the motion passed unanimously, 5-0.*

Vice-Chair Wright inquired as to whether a written decision was available for 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. *Wright made a motion to approve the written decision as presented. Clauhs seconded the motion. In a vote of 5 to 0, the motion passed and the written decision was adopted.*

Wright declared the evidentiary hearing closed.

5. Adjournment

There being no further business, Vice-Chair Wright requested adjournment. *Murray moved to adjourn at 6:40 p.m., seconded by Clauhs. Motion carried unanimously, 5-0.*

Attest:

Graham Crawford, Clerk to the Board

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, January 12, 2026
Subject: Schedule of Meetings – Rules of Procedure
Presenter: Planning Director
Attachments: 2026 Town Council Meeting Schedule; Section 2-164; Rules of Procedure

Description:

Staff is requesting the Board discuss a new meeting schedule due to a scheduling conflict with the regularly scheduled Town Council workshops.

Action Requested:

Staff is requesting action related to the adoption of a new meeting schedule and subsequent change to the rules of procedure for the Board of Adjustment.

2026 Town Council Meeting and Holiday Schedule

Town Council Meetings held in Council Chambers at Town Hall (30 South Main Street, Weaverville) unless otherwise noticed.

In accordance with the Town of Weaverville Personnel Policy, Article VII, Section 2(a), The Town provides paid holidays consistent with the State's holiday schedule, and includes any personal observance leave or floating holiday provide to State employees.

Thursday, January 1, 2026	New Year's Holiday – Town Offices Closed
Monday, January 19, 2026	Martin Luther King Jr. Holiday – Town Offices Closed
Monday, January 12, 2026	Regular Town Council Workshop at 6:00pm
Monday, January 26, 2026	Regular Town Council Meeting at 6:00pm
Monday, February 9, 2026	Regular Town Council Workshop at 6:00pm
Monday, February 23, 2026	Regular Town Council Meeting at 6:00pm
Monday, March 9, 2026	Regular Town Council Workshop at 6:00pm
Monday, March 23, 2026	Regular Town Council Meeting at 6:00pm
Friday, April 3, 2026	Good Friday Holiday – Town Offices Closed
Monday, April 13, 2026	Regular Town Council Workshop at 6:00pm
Monday, April 27, 2026	Regular Town Council Meeting at 6:00pm
Monday, May 11, 2026	Regular Town Council Workshop at 6pm
*Monday, May 18, 2026	Regular Town Council Meeting at 6:00pm
Monday, May 25, 2026	Memorial Day Holiday – Town Offices Closed
Monday, June 8, 2026	Regular Town Council Workshop at 6pm
Monday, June 22, 2026	Regular Town Council Meeting at 6:00pm
Friday, July 3, 2026	Independence Day Holiday observed – Town Offices Closed
Monday, July 13, 2026	Regular Town Council Workshop at 6:00pm
Monday, July 27, 2026	Regular Town Council Meeting at 6:00pm
Monday, August 10, 2026	Regular Town Council Workshop at 6:00pm
Monday, August 24, 2026	Regular Town Council Meeting at 6:00pm
Monday, September 7, 2026	Labor Day Holiday – Town Offices Closed
Monday, September 14, 2026	Regular Town Council Workshop at 6:00pm
Monday, September 28, 2026	Regular Town Council Meeting at 6:00pm
Monday, October 12, 2026	Regular Town Council Workshop at 6:00pm
Monday, October 26, 2026	Regular Town Council Meeting at 6:00pm
Wednesday, November 11, 2026	Veterans Day Holiday – Town Offices Closed
Monday, November 9, 2026	Regular Town Council Workshop at 6:00pm
*Monday, November 16, 2026	Regular Town Council Meeting at 6:00pm
Thursday-Friday, November 26-27, 2026	Thanksgiving Holidays – Town Offices Closed
*No workshop meeting scheduled	
*Monday, December 14, 2026	Regular Town Council Meeting at 6:00pm
Thurs, Fri, & Mon Dec. 24, 25, & 28, 2026	Observed Holidays – Town Offices Closed
Friday, January 1, 2027	2027 New Year's Holiday – Town Offices Closed

Sec. 2-164. Rules of procedure.

The board of adjustment shall adopt appropriate rules of procedure which shall be consistent with G.S. Chapter 160D and subject to the approval of the town council. A copy of the adopted rules of procedure shall be maintained by the town clerk and posted on the town's website.

(Ord. of 5-24-2021(1), § 4b(Att. A))

Rules of Procedure for the Weaverville Board of Adjustment

INDEX

Section 1. General Rules	3
Section 2. Officers and their Duties.....	3
(a) Chair.....	3
(b) Vice Chair.....	3
(c) Interim Chair.....	3
(d) Clerk.....	3
Section 3. Members	4
(a) Regular Members	4
(b) Alternate Members	4
Section 4. Rules of Conduct for Members	5
(a) Removal.....	5
(b) Attendance	5
(c) Member Disclosures/Testimony.....	5
(d) Conflicts of Interest, Impermissible Bias or Impartiality; Recusals.....	5
(e) <i>Ex Parte</i> Communication	6
(f) Duty to Vote	6
(g) Personal Opinions	6
Section 5. Meetings.....	6
(a) Regular Meetings.....	6
(b) Special Meetings.....	7
(c) Cancellation of Meetings.....	7
(d) Quorum.....	7
(e) Hearing Deferrals and Continuances	7
(f) Recessed Meetings	7
(g) Voting.....	8
(h) Conduct of Meetings.....	8

(i) Agenda and Meeting Materials.....	8
(j) Meeting Recordings.....	9
(k) Oaths.....	9
(l) Subpoenas.....	9
Section 6. Appeals and Applications.....	9
(a) Types of Appeals and Applications.....	9
(b) Procedure for Filing Appeals and Applications.....	10
(c) Evidentiary Hearings.....	10
(4) Re-hearings.....	12
(d) Decisions.....	12
Section 8. Substantive Motions.....	13
Section 9. Procedural Motions.....	13
Section 10. Report to Town Council.....	13
Section 11. Amendment of the Rules.....	14
Section 12. Reference to Robert’s Rules of Order.....	14
APPENDIX – PROCEDURAL MOTIONS.....	15

Section 1. General Rules – The function of the Board of Adjustment (referred to as the “Board” in these Rules of Procedure) is to hear and determine certain quasi-judicial matters under the development regulations and other ordinances of the Town of Weaverville. The Board shall be governed by the terms of Chapter 160A, Article 19, Part 3, of the General Statutes of North Carolina, or by Chapter 160D of the General Statutes of North Carolina beginning January 1, 2021, and by the Code of Ordinances adopted by the Town of Weaverville. The Board shall exercise such additional authority as may be given it under general law, special act and local ordinance. These rules of procedures are intended to supplement and explain procedural provisions and requirements set out in the applicable provisions of law and ordinance. These rules of procedure are adopted by the Board under authority as provided in Section 36-327 of the Town’s Code. All members of the Board shall thoroughly familiarize themselves with these laws. Where these rules conflict with such laws or ordinances, the laws or ordinances shall control.

Section 2. Officers and their Duties –

- (a) **Chair.** A Chair shall be elected by the full membership of the Board of Adjustment from among its regular members. His/her term shall be one year or until a successor is elected, beginning in September of each year , and he/she shall be eligible for re-election. The Chair shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matters before the Board.
- (b) **Vice Chair.** A Vice-Chair shall be elected by the Board from among its regular members in the same manner and for the same term as the Chair. He/she shall serve as acting Chair in the Chair’s absence, and at such times he/she shall have the same powers and duties as the Chair.
- (c) **Interim Chair.** In the event neither the Chair nor the Vice-Chair is available for a particular case or meeting, the Board shall elect one of its members to serve as Interim Chair for that case or meeting. At such times the Interim Chair shall have the same powers and duties as the Chair. Should the Chair or Vice-Chair arrive while an Interim Chair is presiding, the Interim Chair shall relinquish all duties with regard to presiding at the earliest point at which such transition may orderly proceed.
- (d) **Clerk.** The Clerk to the Board shall be the Deputy Town Clerk, as appointed by the Town Council. In the absence of the Deputy Town Clerk, the Town Clerk shall serve as the Clerk to the Board. In the absence of both the Town Clerk/Deputy Town Clerk, the Board may appoint a staff or Board member to serve in that capacity until such time as either the Town Clerk or Deputy Town Clerk is available. The Clerk shall not be entitled to vote on any matter.

The Clerk, subject to the direction of the Chair and the Board, shall keep all records, shall conduct all the correspondence of the Board, shall arrange for all public notices required to be given, shall notify the Board of pending meetings

and their agendas, shall notify parties to cases before the Board of its decision on such cases, shall perform such tasks as the Chair shall assign, and shall generally supervise the clerical work of the Board. The Clerk shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted on by the Board, and all votes of members of the Board on any questions, indicating the names of members who are absent or fail to vote. The Clerk shall provide to every new member of the Board print or electronic copies of all relevant ordinances, the Board's Rules of Procedure, and such other educational materials deemed appropriate, shall arrange for an orientation for new members, and shall coordinate provision of continuing education for Board members.

Section 3. Members –

- (a) **Regular Members.** There shall be 5 regular members of the Board, each to be appointed by the Town Council. The term of membership shall be 3 years. Terms begin in September. A member shall continue to serve until a replacement member is appointed and takes office. Members shall be eligible for reappointment. To the extent feasible, the terms of members shall be staggered. Vacancies shall be filled by appointment by the Town Council, with the appointee serving the balance of the replaced member's term. Regular members receiving notice of a meeting which they cannot attend or upon learning that they will be unable to participate in a particular case shall promptly give notice to the Clerk that they are unable to attend or to participate. The member shall, if feasible, provide that notice at least two working days prior to the date of the hearing.
- (b) **Alternate Members.** There shall be 2 alternate members of the Board, each appointed by the Town Council in the same manner as provided for regular members. Alternate members shall be encouraged to attend all meetings of the Board, but shall participate in hearing, deliberating, and deciding a case only when acting in the place of a regular member. On receiving notice that a regular member will not be participating, the Clerk shall, by the most expeditious means, notify an alternate member to attend. An alternate member shall be called upon by the Chair to participate in an individual case in the place of a member who is absent or has a conflict and is ineligible to participate in that case. Assignments shall be rotated between the alternate members. At any meeting or case upon which they are called upon to participate, alternate members shall have the same powers and duties as regular members. Alternate members who are present and participate in hearing an individual case shall continue to hear, deliberate and vote on that case at any subsequent meeting. Members of the Board of Adjustment present at the meeting, but not serving on the Board of Adjustment, shall step down from the Board seating area and remain in the audience or side tables until called back by the Chair. At no time shall more than

5 members participate officially in any meeting or hearing of the Board of Adjustment.

Section 4. Rules of Conduct for Members –

- (a) **Removal.** Members of the Board of Adjustment may be removed by Town Council for cause, including violation of the rules stated herein. The Chair shall report to the Town Council any violation of these rules of conduct. Where feasible, the Town Council shall notify a member being considered for removal of the reasons for removal and give that member an opportunity to respond.
- (b) **Attendance.** Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Any regular Board member who is absent for more than three consecutive regular meetings or more than half of the regular meetings in a calendar year shall lose his or her status as a Board member. Remote participation in a Board meeting is not allowed. Absence due to sickness, death in the immediate family, or other emergencies of similar nature shall be recognized as excused absences and shall not affect a member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence the member shall be replaced. The Clerk to the Board shall keep a record of attendance and shall provide reasonable notice to any member who is in immediate risk of failing to meet these attendance requirements.
- (c) **Member Disclosures/Testimony.** Board members should disclose at the hearing any pertinent facts about a pending case of which they have personal knowledge prior to the hearing. Other than this type of disclosure, a board member seated for a hearing should not testify at that hearing. A Board member who is recused from a case should avoid testifying as a witness in that hearing if at all feasible.
- (d) **Conflicts of Interest, Impermissible Bias or Impartiality; Recusals.** Board members shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision-maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed *ex parte* communications; a close, familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. For purposes of conflicts a close familial relationship shall include a spouse, parent, child, brother, sister, grandparent, or grandchild, and any step, half or in-law relationships. Board members shall endeavor to avoid the appearance of impropriety. A member with a potential bias or conflict of interest may consult with the Chair, the Clerk, or the Town Attorney regarding that potential conflict prior to the hearing. A Board member with a bias or conflict of interest shall declare that at the opening of the hearing on the matter and shall recuse himself or herself from all participation in hearing and deciding the case. If an objection is raised to a member's

participation in a case by a party to that case or by another board member and that member does not recuse himself or herself, the remaining members of the Board shall by majority vote rule on the objection. When a member is recused, that member shall absent himself or herself from the hearing room for the duration of the board's hearing, deliberation, and vote on that matter and an alternate shall be called by the Chair to replace him/her. If no alternate is available, the seat shall be declared vacant for the purposes of the vote of the particular matter at issue.

- (e) *Ex Parte Communication*. Board members shall not discuss any quasi-judicial case with, or receive any information about a case from, any parties to the case, other board members, or from other interested persons outside the evidentiary hearing on that case. No Board member shall conduct an investigation or gather facts about the case outside the evidentiary hearing. Visits to the site of a pending case for the purpose of investigation or fact-gathering is prohibited. Board members may seek and receive general information about ordinance and planning provisions pertaining to the case from the Clerk, Town staff, or the Town Attorney, provided any factual queries regarding the pending case itself shall only be made in open session at the evidentiary hearing.
- (f) *Duty to Vote*. Board members shall not vote on the merits of any quasi-judicial matter unless the board member has either attended the evidentiary hearing on that matter or has thoroughly reviewed the full hearing record for that matter. No Board member shall be excused from voting except upon matters involving the consideration of his own financial or personal interest or the consideration of his official conduct. In all other cases, a failure to vote by a member who is present at the meeting place or has withdrawn without being excused as provided in subparagraph (c) above, shall be recorded as an affirmative vote.
- (g) *Personal Opinions*. Members of the Board shall not express individual personal opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.

Section 5. Meetings

- (a) *Regular Meetings*. Regular meetings of the Board shall be held on the 2nd Monday of each month at 6:00 p.m. in the Council Chambers of Town Hall, provided that meetings may be held at any other convenient place in the Town if the Chair so directs before the meeting. The Clerk to the Board shall make the schedule of regular meetings available to the public and shall post a copy of the schedule on the Town website. Regular meetings and hearings may be rescheduled by the Chair if a scheduled meeting or hearing cannot be held because of a holiday, weather, lack of a quorum, or other unusual circumstance. Notice of a rescheduled or relocated meeting shall be provided in the same means as required for a special meeting. Regular meetings are subject to cancellation by the Chair if there is no business for the Board. When an

evidentiary hearing will be conducted at a regular or special meeting, all required notices to the parties must be provided within the times set by state law and Town Code of Ordinances.

- (b) **Special Meetings.** Special meetings of the Board may be called at any time by the Chair in accordance with applicable provisions of the Open Meetings Law, North Carolina Gen. Stat. § 143-318.12. At least 48 hours' written notice of the time and place of a special meeting shall be given by the Clerk to the Board to each member of the Board and to each news organization and person requesting such notice. This notice may be provided by electronic mail. This notice shall also be posted on the Town website. Special meetings may be called by the Chair as necessary for Board training, work sessions, a heavy workload, or the conduct of Board business. When an evidentiary hearing will be conducted at a special meeting, all required notices to the parties must be provided within the times set by state law and Town Code of Ordinances.
- (c) **Cancellation of Meetings.** If there are no quasi-judicial cases to be heard or other business before the Board, if there is a weather emergency or similar situation, or if so many regular and alternate members indicate that they will not be able to attend that a quorum will not be available, the Chair may cancel a regular meeting by giving written and oral notice to all Board members. If feasible, notice of cancellation shall be made not less than 24 hours before the time set for the meeting. The Clerk to the Board shall post a notice of the meeting cancellation at the regular meeting location.
- (d) **Quorum.** A quorum of the Board, necessary to meet, shall consist of 3 members of the Board, but the Board shall not vote on any questions related to an appeal of a decision or a determination of the Zoning Administrator or an application for a variance or special use permit when fewer than 4 members of the Board are present. If fewer than 5 voting members of the Board are present, a party to a quasi-judicial matter may request that the hearing be continued until 5 voting members are present. Whenever during a meeting a quorum ceases to be present, if no objection is raised by a member of the Board, the Board may continue to hear evidence and debate but not vote on any action except to adjourn.
- (e) **Hearing Deferrals and Continuances.** Once a quasi-judicial case has been noticed for hearing, the Board generally expects the case to be heard at that time. An applicant may make a written request to delay consideration of a case to the next scheduled meeting, provided that the request is received at least 24 hours prior to the scheduled meeting. Except for good cause shown, if an applicant fails to appear at a meeting to prosecute his or her application, and the hearing has been continued one time before, the Board may dismiss the application for failure to prosecute. An application that has been dismissed may be resubmitted upon payment of applicable fees.
- (f) **Recessed Meetings.** A properly called regular or special meeting may be recessed to a time and place certain by a motion made and adopted in open

session during the regular or special meeting. The motion shall state the date, time and place when the meeting will reconvene. No further notice need be given of such a recessed session of a properly called regular or special meeting.

- (g) **Voting.** All regular members shall vote on any issue unless they have disqualified themselves for one or more of the reasons state in Section 4(d). Alternate members shall vote on any issue for which they are seated in place of regular members unless they have disqualified themselves for one or more of the reasons stated in Section 4(d). The required vote to issue a variance shall be 4/5 of those members eligible to vote on the matter. If a motion to approve a variance does not receive the affirmative vote of 4/5 of those members eligible to vote, the variance shall be deemed denied. When this occurs, members who did not cast an affirmative vote on granting the variance shall state for the record their rationale for casting a negative vote. The required vote to decide any other quasi-judicial matter and any other matter before the Board shall be a simple majority of all members eligible to vote on the matter. The Chair votes as any other Board member.
- (h) **Conduct of Meetings.** All meetings shall be open to the public, except for closed sessions as allowed by law. By general consent of the Board, items may be considered out of order, however the general order of business at regular meetings shall be as follows:
- i. Call to order; roll call, announcements;
 - ii. Action on minutes of previous meetings, including acceptance and correction;
 - iii. Evidentiary hearings, consideration, and determination of cases;
 - iv. Consideration of staff- or board-initiated matters;
 - v. Reports of committees or staff;
 - vi. New business;
 - vii. Adjournment.
- (i) **Agenda and Meeting Materials.** An agenda for each meeting and hearing shall be prepared by the Clerk to the Board and shall be distributed to all members of the Board, applicants with cases to be heard, and any other interested person who has made a written request to receive an agenda. The agenda shall be distributed at least one week prior to regular and special called meetings. Written briefs, documents, letters, and staff reports may be submitted to the Board members by the Clerk to the Board prior to any evidentiary hearing, provided that any such material is also submitted to all parties to that case at the time they are submitted to Board members. Staff may establish reasonable deadlines for submission of any such material to be distributed prior to the hearing. Such materials shall be distributed at the same time the meeting agenda is distributed. Any such material shall be part of the hearing record and introduced as documentary evidence at the evidentiary hearing. Board members shall endeavor to review the materials prior to the hearing.

- (j) **Meeting Recordings.** The Clerk shall make audio or video recordings of each meeting and hearing. Electronic recordings that may be used to generate transcripts for judicial review as needed shall be made of each meeting and shall be held for safekeeping by the Clerk in accordance with record retention policies set by state law and Town policy. Any party to a quasi-judicial proceeding may request a verbatim transcript of the evidentiary hearing, with the cost of preparation of the transcript borne by the party making that request. Any person may make an audio or video recording of any Board hearing or meeting, provided it is done in a manner that does not disrupt the hearing or meeting.
- (k) **Oaths.** All witnesses presenting testimony in evidentiary hearings shall be sworn in. Oaths may be administered by the Chair or the Clerk to the Board, or any notary public present and available to do so. An affirmation may be made by any witness with a religious objection to swearing.
- (l) **Subpoenas.** Persons with standing on a quasi-judicial matter before the Board may make a written request to subpoena witnesses or to compel the production of evidence. The Chair shall issue subpoenas determined to be reasonable in nature and scope and not oppressive. The Chair shall rule on any objections or motions to quash subpoenas. The Chair's decisions on subpoenas may be appealed to the full Board.

Section 6. Appeals and Applications –

(a) Types of Appeals and Applications.

- (1) The Board shall hear and decide all appeals from final, binding written decisions or determinations made by the Zoning Administrator as provided in the Town Code of Ordinances and by state statutes.
- (2) The Board shall hear and decide petitions for variances from the zoning ordinance and other such ordinances as provided in the Town Code of Ordinances.
- (3) The Board shall hear and decide all special use permits, and amendments thereto, as provided in the Town Code of Ordinances.
- (4) The Board shall make interpretations of the Zoning Map, including disputed questions of zoning district boundary lines and similar questions that may arise from administration of the development regulations of the Town of Weaverville.
- (5) The Board shall also hear and decide all matters referred to it or upon which it is required to pass by the Town Code of Ordinances and any other matters assigned to it by ordinance or by law.

(b) Procedure for Filing Appeals and Applications.

- (1) An appeal of a decision or determination of the Zoning Administrator shall be filed with the Town Clerk or such other officer as designated by the Town Code of Ordinances. The notice of the appeal shall state the grounds for the appeal. No appeal shall be heard by the Board unless the appeal is filed within 30 days of written or constructive notice of the order or determination made by the Zoning Administrator.
- (2) Applications for variances and special use permits, or amendments thereto, shall be accompanied by a site plan of sufficient size and accuracy to enable the Board to see the precise location and size of the variance and/or nature and location of the special use permit being sought. Such application shall specifically state the type of variance or special use permit being sought. Upon submission of an application, the Zoning Administrator shall determine if these requirements are satisfied.
- (3) All appeals, applications, and any other matter coming before the Board shall be made upon the form for that purpose, if any.
- (4) All required information shall be complete and all required fees paid before an appeal, application, or other matter shall be considered as having been filed.
- (5) An applicant may withdraw any appeal, application, or other matter at any time prior to a Board decision on the matter. A withdrawal shall be made in writing. Upon withdrawal the case is closed. A new application and fee must be submitted if the application is renewed.

(c) Evidentiary Hearings.

- (1) *Time* – After receipt of an appeal, application, or other matter, the Clerk to the Board shall schedule the matter for hearing at the first available regular meeting or call for the scheduling of a special meeting scheduled within 45 days from acceptance of a complete application, unless otherwise agreed upon by the applicant.
- (2) *Notice* – The Board shall give notice of the evidentiary hearings on quasi-judicial cases by first-class mail to the person whose appeal or application is the subject of the hearing, to the owner of the affected property if the owner did not initiate the hearing, and to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice shall be posted in the mail at least 10 days but not more than 25 days prior to the date of the hearing. A notice of the hearing shall also be prominently posted on the property that is the subject of the hearing (or the adjacent street right-of-way) in this same time period. The Board must also comply with any additional notice required by the development regulations as adopted by Town Council. The hearing notice shall include the location of the property subject to the hearing, the general nature of the matter being heard, and the date, time, and location of the hearing.

If a hearing is set for a given date and a quorum of the Board is not present, the hearing shall be continued until the next regular Board meeting by announcement by the Chair without further advertisement. In addition, the Board may, without further advertisement, continue a hearing to a date and time certain after the hearing has been called to order.

(3) *Conduct of Evidentiary Hearing* – Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows:

- (1) The Chair, or such person as the Chair may direct, shall give an opening statement regarding the nature of the hearing and the process that will be followed.
- (2) The Chair shall poll all Board members participating in the case as to any *ex parte* communications, bias, or conflicts of interest. Issues of participation of board members in consideration of the case, or other jurisdictional issues shall be addressed.
- (3) Issues of standing shall be addressed and parties to the matter shall be identified.
- (4) Witnesses that may offer testimony are to be sworn in.
- (5) The Chair or the staff shall provide a preliminary statement of the case, including a summary of the facts and relevant ordinance provisions.
- (6) Staff shall present the application, supporting materials, staff report, evidence showing notice of the hearing, and any other written materials received and distributed prior to the hearing for introduction into the hearing record.
- (7) The applicant shall present evidence and argument in support of the application or appeal.
- (8) Parties opposed to the application, including staff from whom an appeal is being taken, may present evidence and argument.
- (9) Other persons may present relevant evidence.
- (10) Parties may present rebuttal evidence.
- (11) Closing statements or summaries may be made by parties to the case or by staff.
- (12) The Board shall deliberate on and make a determination of the case.

Witnesses may be called and factual evidence may be submitted. The Chair must recognize witnesses before they are heard and confirm that they are under oath. The Chair shall allow all witnesses to be heard but may limit testimony or evidence that is irrelevant, repetitive, incompetent, hearsay, or inadmissible opinion testimony. The Chair shall allow the parties to the case

to make direct and cross-examination of witnesses and to present rebuttal evidence. The Chair may establish reasonable procedures to assure that is done in a fair, impartial, and efficient manner. Board members may ask questions of any witness.

The Board shall not be limited to consideration of such evidence as would be admissible in a court of law, but all decisions must be based on competent, material, and substantial evidence properly placed in the hearing record.

Upon completion of the presentation of evidence, Board members shall discuss the case among themselves in open session and may recall any witness to ask further questions and otherwise deliberate among themselves. Board members shall not discuss the case or give opinions on the evidence until initial presentation of the case is completed.

- (4) *Re-hearings* – An application for a rehearing may be made to the Board and shall contain evidence that there has been a substantial change in the facts or conditions of the case. The Board may decide to conduct a full evidentiary hearing to consider such application. The application for rehearing shall be denied by the Board if, from the record, it finds there has been no substantial change in facts or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as a new application.

(d) *Decisions.*

- (1) *Time* – Decisions by the Board shall be made in a reasonable time from the completion of the evidentiary hearing but in no event later than 60 days from the conclusion of the hearing.
- (2) *Motion and Voting* – Voting on an appeal, application, or other matter shall be in accordance with the provisions of Town Code and the General Statutes. A vote on a request for a variance, special use permit, or on an appeal of a staff determination shall be in the form of a motion to approve the request, and such motions shall require a second. A motion made to determine a quasi-judicial matter shall state specifically any conditions desired to be made a part of that decision and shall reference, if appropriate, any documents or maps submitted as a part of that application. Any such references made in the motion shall, if approved, be part of the record and decision in that case. The vote of each member shall be recorded. If a request or application is not approved, the members voting not to approve shall state for the record the factual findings and rationale that support their opposition.
- (3) *Form* – All decisions of the Board on quasi-judicial matters shall be reduced to writing as soon as practicable after the case is decided. The written decision shall reflect the Board’s determination of disputed facts and the application of the pertinent standards to those facts. The written decision shall be signed by the Chair or other duly authorize member of the Board. After signature,

the written decision shall be filed with the Clerk to the Board and delivered to the parties.

- (4) *Effective Date and Filing* – Decisions of the Board on quasi-judicial matters are effective upon filing the written decision with the Clerk to the Board and the delivery of the decision to the applicant, the property owner (if different from the applicant), and to any other person who filed a written request for a copy of the decision of the evidentiary hearing on the matter. The decision may be delivered by personal service, first-class mail, or electronic mail.
- (5) *Public Records of Decisions* – The decisions of the Board shall be a public record available for inspection at all reasonable times. All decisions shall be entered into the minutes of the Board. The Clerk to the Board shall maintain copies of all written decisions of the Board.

Section 8. Substantive Motions –

All Board action shall proceed by motion. Any member, including the Chair, may make a motion. A motion does not require a second. A member may make only one motion at a time. A substantive motion is out of order while another substantive motion is pending.

The Chair shall state the motion and then open the floor to debate. The chair shall preside over the debate according to the following general principles:

- The maker of the motion is entitled to speak first;
- A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- To the extent possible, the debate shall alternate between proponents and opponents of the measure.

A motion shall be adopted by a majority of the votes cast when a quorum (as defined in Section 5(d)) is present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first. A motion that is defeated can be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

Section 9. Procedural Motions – In addition to substantive proposals, the Board shall utilize the usual and customary procedural motions consistent with the spirit of *Robert's Rules of Order Newly Revised* to provide for an orderly meeting. See [Appendix](#) for a list and description of some procedural motions. For questions regarding parliamentary procedures see Section 12.

Section 10. Report to Town Council – The Board, with the assistance of staff, shall prepare and submit to the Town Council a report of its activities on an annual or more frequent basis. Such report shall contain a description of the Board (its members, officers, attendance, and the number of meetings held) and a statement of the number and each

type of case heard and a summary of the actions taken. The report may also include any other matters the Board deems appropriate for inclusion.

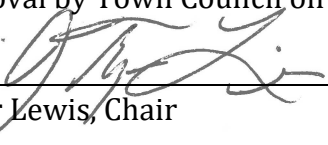
Section 11. Amendment of the Rules – These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment to the rules as one of the stated purposes of the meeting, unless a statute or rule of Town Council provides otherwise. Adoption of an amendment shall require an affirmative vote equal to a quorum of the Board. No amendment to the Rules shall be effective until Town Council has granted its approval.

Section 12. Reference to Robert’s Rules of Order – The Board shall refer to the current edition of *Robert’s Rules of Order Newly Revised* (“RONR”), to answer procedural questions not resolved in these rules, so long as RONR does not conflict with North Carolina law or with the spirit of these rules.

ADOPTED by the Board of Adjustment the 10th day of February, 2020.

CONSENTED TO by Town Council the 24th day of February, 2020.

AMENDED by the Board of Adjustment on the 13th day of December, 2021, with approval by Town Council on the 20th day of December, 2021.



Tycer Lewis, Chair



Patrick Fitzsimmons, Mayor

ATTESTED BY:



James Eller, Town Clerk/Clerk to the Board

APPENDIX – PROCEDURAL MOTIONS

Unless otherwise noted, each motion described below is debatable, may be amended, and requires a majority vote of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted. In order of priority (if applicable), some procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the Board. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Motion 2. To Adjourn/Recess. This motion may be made only at the conclusion of action on a pending substantive matter; it may not interrupt deliberation on a pending matter. A motion to recess to a date, time and place certain shall also comply with the requirements of Section 5(e).

Motion 3. To Take a Brief Recess.

Motion 4. To Follow the Agenda. The motion must be made at the first reasonable opportunity or it is waived.

Motion 5. To Suspend the Rules. The board may not suspend provisions of the rules that state requirements impose by law on the board. For adoption, the motion requires an affirmative vote equal to a majority of the entire membership of the board. A majority is more than half.

Motion 6. To Divide a Complex Motion and Consider it by Paragraph. The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Motion 7. To Defer Consideration. The Board may defer a substantive motion for later consideration at an unspecified time. A substantive motion which has been deferred automatically expires 100 days after the deferral unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending and has not expired. A person who wishes to revisit the matter during that time must take action to revive consideration of the original motion, or else move to suspend the rules.

Motion 8. Motion for the Previous Question. To end debate and call for a vote on a motion, a Board member can move the previous question. The motion is not in order until there has been a full debate and every member has had an opportunity to speak at least once.

Motion 9. To Postpone to a Certain Time and Day. To delay action on a pending motion a motion to postpone to a certain time and day would be proper. If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules.

Motion 10. To Refer a Motion to a Committee. The Board may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days or more after the substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire Board, whether or not the committee has reported the matter to the Board.

Motion 11. To Amend. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote. Any amendment to a proposed order, policy, regulation, statement, resolution, or recommendation, shall be reduced to writing before the vote on the amendment.

Motion 12. To Revive Consideration. The Board may vote to revive consideration of any substantive motion earlier deferred by adoption of a motion to defer consider under [Motion 7](#). The motion is in order at any time within 100 days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires 100 days after the deferral unless a motion to revive consideration is adopted.

Motion 13. To Reconsider. The Board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

Motion 14. To Rescind or Repeal. The Board may vote to rescind action it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.