

**Town of Weaverville
Board of Adjustment
Regular Monthly Meeting
Monday, August 11, 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, August 11, 2025, 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 Larry Murray. Staff Present: Town Attorney Jennifer Jackson and Planning Director/Zoning Administrator James Eller, Planner Graham Crawford, and Town Clerk Tamara Mercer

1. Call to Order

Chairman Lewis called the meeting to order at 6:00 pm.

2. Approval of the Minutes – 12/9/2024 Regular Meeting

Chairman Lewis requested a motion and Clauhs moved to approve the December 9, 2024 meeting minutes, seconded by Murray. Carried unanimously 5-0.

3. Approval of Order – 9 North Street Variance

Clauhs moved to approve the written order denying a variance for 9 North Street as presented. Murray seconded. All voted in favor of the motion. Carried unanimously 5-0.

5. Evidentiary Hearing on Vegetative Buffer for 10 Garrison Branch

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 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.

Chairman Lewis introduced the matter by stating that Garrison Branch Reserve, LLC, is the owner of the property located at 10 Garrison Branch Road that has a Buncombe County Parcel Identification Number of 9733-72-3054, which is zoned C-2, and has applied, through an authorized agent, for a vegetative buffer waiver. Lewis noted that Code Sec. 20-3108(e) authorizes the BOA to review requests for vegetative buffer waivers and has the authority to alter or eliminate the required vegetative screening or buffering requirement where the lot requiring the vegetative screen and the adjacent lot zoned residential are in single ownership or upon receipt of a notarized statement waiving or modifying the screening provisions of Chapter 20, between the owner of the lot requiring the vegetative screen and the owner of the adjacent lot zoned residential.

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, Rob Dull, 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 Rob Dull.

Mr. Eller reviewed the administrative materials that included the following: Public Notice; Code Sec. 20-3108; Staff Report; Signed letter from Pig and Grits Restaurant (Applicant) requesting modification of vegetative buffer requirements and supporting documents; Affidavit of Mailing and Posting; Staff Report; said packet was received into the record without objection as Exhibit A. A copy of a notarized statement from the neighboring property owner, The Holston

Apartments, agreeing to the request with the conditions noted, was received into the record without objection as Exhibit B. A copy of the owner's deed to the subject property was received into the record without objection as Exhibit C.

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 waivers from required vegetative buffers.

Rob Dull reviewed his application and requested waiver to reduce the vegetative buffer required by the Table of Dimensional Requirements set out in Code Sec. 20-3206. In particular, the Applicant requests a reduction of the vegetative buffer from 20 feet to 10 feet and, to gain approval from the neighboring property owner [The Holston Apartments], has agreed to plant the remaining 10-foot vegetative buffer area with a mix of evergreen and deciduous trees and shrubs, construct their dumpster enclosure out of masonry materials (natural or manufactured stone) similar in design to the dumpster enclosure on the Holston property, and to plant 10-foot tall evergreen trees around three sides of their new dumpster.

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 vegetative buffer modification requested. Murray 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 as presented. Wright 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. Adjournment

There being no further business, and without objection, Chairman Lewis requested adjournment. *Murray moved to adjourn at 6:24 p.m. seconded by Parkin. Carried unanimously 5-0.*

Attest:

Graham Crawford, Acting Secretary