

**Town of Weaverville  
Board of Adjustment  
Special Called Meeting  
Tuesday, February 10, 2026, 6:00pm**

**Minutes**

The Board of Adjustment of the Town of Weaverville met for a special-called meeting at 6:00 p.m. on Tuesday, February 10, 2026, 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. At all times during this meeting DeCrosta served as a regular voting member of the Board.

Board members absent: None

Staff Present: Planning Director/Zoning Administrator James Eller, Assistant Town Manager/Staff Attorney Jennifer Jackson, Planner/Clerk to the Board Graham Crawford. Town Attorney Michael Frue served as the Board's attorney during this meeting.

**1. Call to Order**

Vice Chair Wright called the meeting to order at 6:00 pm.

**2. Adoption of the Agenda**

*Clauhs moved that the agenda be adopted. Parkin seconded and all voted in favor. Motion carried 5-0.*

**3. Evidentiary Hearing – 60 Highland Street - Appeal of an Administrative Decision**

**a. GENERAL INTRODUCTION TO QUASI-JUDICIAL DECISIONS**

Before the evidential hearing Vice Chair Wright gave a brief overview on how quasi-judicial hearings work as follows:

Tonight the Board of Adjustment will hold a quasi-judicial hearing on an appeal of an administrative decision. The purpose of this quasi-judicial hearing 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.

In this matter 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 request 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.

**b. EVIDENTIARY HEARING ON THE APPEAL OF AN ADMINISTRATIVE DECISION CONCERNING 60 HIGHLAND STREET**

**INTRODUCTION/PRELIMINARY MATTERS**

Vice Chair Wright opened the evidentiary hearing and introduced the matter by stating that Cynthia Zalman-Wolhart is the owner of the property located at 60 Highland Street that has a Buncombe County Parcel Identification Number of 9742-07-4152, which is zoned R-1. She has appealed an administrative decision which denied a zoning permit to construct a second primary dwelling on the same parcel of land as an existing primary dwelling unit.

Code Sec. 20-3108(b) authorizes the Board to hear and decide appeals of administrative decisions regarding administration and enforcement of all development regulations and to hear and decide appeals arising out of any other ordinance that regulates land use or development.

When hearing an appeal, the Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision or determination that ought to be made. The Board shall have all the powers of the official who made the decision. The Board must also ensure that the rights of the appellant have not been prejudiced.

Wright noted that the parties are entitled to an impartial board and polled 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. Clauhs states he has known the applicant for 30 years, but indicates he is still able to make an impartial decision on the matter. James Eller reported

that he lives at 18 Highland Street which is in the vicinity of the Property, but that the decision to deny the zoning permit was made by Zoning Administrator Graham Crawford so his ownership in the area did not factor into any actions taken in this matter. No one expressed a concern or objected to Eller's continued participation in this matter. No other issues were reported. No *ex parte* communication between the Board members on this matter was indicated. No objection to the Board members hearing the matter was noted by anyone in attendance.

## **STANDING**

Noting that in order to act as a party in this case, an individual must have legal standing. The applicant, who is the property owner, and the Town, were noted as having standing. Other individuals must show that they will suffer special damages in order to establish standing to participate as a party to this matter.

The following individuals were sworn in and testified: Kayla Councell, Michael Dunn, Cynthia Dunn, and Anne McFarland, James Eller, and Graham Crawford.

Kayla Councell requested standing in the matter as the applicant's daughter, project manager and co-contractor. She noted that she has no personal benefit in the matter. The board denies standing to this individual. With a vote of 5-0 Councell was denied standing but would be allowed to offer competent and material evidence during the hearing.

Michael Dunn requested standing and stated that he is an architect and lives across the street from the property. With a 5-0 vote of the Board, Michael Dunn was denied standing based on a lack of evidence of special damages but would be allowed to offer competent and material evidence during the hearing.

Cynthia Dunn requested standing and stated that she also lives across the street from the property and that she is supportive of the new house and the demolition of the dilapidated existing house. With a 5-0 vote of the Board, Cynthia Dunn was denied standing based on a lack of evidence of special damages but would be allowed to offer competent and material evidence during the hearing.

Anne McFarland requested standing and stated that she lives next door to the appellant and was concerned about the safety of the existing house. In a 5-0 vote, the Board denied standing based upon a lack of special damages, but noted that she would be allowed to offer competent and material evidence during the hearing.

The following individuals were sworn in as witnesses, Graham Crawford (Planner), James Eller (Planning Director), Kayla Councell, Michael Dunn, Cynthia Dunn, Anne McFarland.

## **PRESENTATION OF EVIDENCE**

Mr. Eller reviewed the administrative materials that were included in the agenda packet and asked that the packet of information be marked as 'Exhibit A' and entered into evidence. Additionally, Director Eller submitted the deed to the subject property marked as 'Exhibit B' and asked that it be entered into evidence to verify that the property is legally owned by the applicant Cynthia Zalman-Wolhart.

Cynthia Zalman-Wolhart submitted to the board a packet of evidence to be submitted for the record. The packet included the following.

- a. Appeal application and administrative decision letter;
- b. Site plan showing existing a proposed structure;
- c. Construction timeline and sequencing plan;
- d. Lender letter regarding subdivision/recombination;
- e. Contractor affidavit on construction feasibility;
- f. Code excerpts: Sec. 20-3208(f) and Sec. 20-3309;
- g. Demolition plan and proposed timing;
- h. Applicant statement of compliance intent;
- i. Pictures of existing house and new house site

The applicant presents the board with the entire packet and reads through each page, laying out her argument to be allowed to build the new home prior to demolition of the existing home. The applicant states it is not her intent to have two homes on the property and explains that the existing home is in extremely poor condition and is beyond repair.

Parkin asks for the definition of Principal Building from the Code of Ordinances. He seeks clarification as to when a building becomes a principal building, asking if it is related to the issuance of a certificate of occupancy or when a building's construction is completed, or when the ground is cleared for construction. Director Eller explains that a secondary dwelling is defined as having a maximum square footage of 800 square feet and therefore anything over 800 sq. ft. would be considered primary. Director Eller states that the town does not enforce state building code nor issue certificates of occupancy, that job is handled by Buncombe County within town limits and the issuance of a Certificate of Occupancy (C.O.) has no bearing on the Town's zoning ordinances.

Murray asks the attorney about the letter from HomeTrust Bank and notes that it is not dated nor signed. He also asks if there is anything the Town can do through the order or bonding to ensure there is financial penalty if the existing home is not demolished upon completion of the proposed construction. Attorney Frue states that there will be a time when all of the evidence that has been presented by both staff and the applicant and it is asked whether there is objection to receiving all of this material into the record for consideration.

Director Eller states that primary/principal dwelling is not specifically defined but read the definition for secondary dwelling as contained in Code Sec. 20-1202. Director Eller states that if something is not specifically enumerated by the code of ordinances staff references the dictionary, when there is a question about that specific use or term. He also notes that with this definition of secondary dwelling it would again be anything over 800 sq. ft. that would be considered primary or principal.

The applicant requests that the dictionary definition be read for principal, and or primary. Director Eller reads the dictionary definition for 'primary'.

The applicant called Kayla Councill to testify. Kayla Councill states that the builder/contractor could not attend due to prior engagement and so she plans to speak to some of those issues. First, the option of subdividing the property. Kayla Councill states that this option did not make sense because it would create a financial burden that the applicant could not bear, due to requirements for water, sewer and the recording of a new plat. It would also be a timely process and the loan agreement that the applicant has entered into is on a 12-month timeline for the completion of construction and demolition of existing structure. Kayla Councill states that in the county the building does not become a principal building until a C.O. is issued. Kayla Councill

states that she communicated with the Town's water department about connection to the new construction and this issue or concern was never brought up.

The applicant called Michael Dunn as her second witness. Mr. Dunn states that there is a need for creative thinking from the Town and Board of Adjustment to achieve zoning approval.

DeCrosta tells Mr. Dunn that staff provided options to achieve compliance, however the builder not being present to speak to or answer questions as to why these options were not viable makes it challenging.

The applicant states again that subdividing was challenging due to the timing of the loan agreement and the length of process to get a survey and then recorded. The option of building up to 800 sq. ft. was not viable because of the financial burden required to get new engineered drawings, the floor plan of the new construction being an open concept, it was not a workable solution. And the option of demolishing prior to construction, the applicant would have nowhere to live and could not afford rent as well as her mortgage.

Director Eller states, for the record, that prior to the receipt of the original zoning permit application, which was denied, the Town Planning staff had no communication with the applicant and/or contractor or HomeTrust Bank which issued the loan.

Director Eller, related to an earlier statement made about a dwelling unit and when it becomes a principal building, read the definition of 'dwelling' or 'dwelling unit' from the Weaverville Code of Ordinances into the record and noted that the definition makes no reference to a certificate of occupancy.

The applicant called Cynthia Dunn as a third witness to testify. Mrs. Dunn states that her understanding of the purpose of zoning is to provide quality residential areas within a village or a town, and that is to increase or maintain value. Mrs. Dunn states that it should be the responsibility of the zoning staff and ordinances to evaluate the status of the residential zoning districts to see where improvements can be made. She states for the record that as neighbor of the applicant she is in support of the sequencing of construction and the allowance of a zoning permit to be issued for a new home to be built. The board asked no questions of this witness.

The applicant asks the Board if there are conditions that can be applied to an order made by the board to require the demolition of her existing structure that may allow her to proceed to construct her new dwelling.

Chair Wright asks if there is approval to admit the documentary evidence into the record. *Clauhs made a motion to accept Exhibits A & B as presented by the Town into the record as evidence, seconded by Parkin. All voted in favor, none opposed. Motion carries 5-0.*

Assistant Manager Jackson on behalf of the Town objected to the admission of the following items within applicants evidence packet as evidence: C (constructing sequencing diagram), D (HomeTrust Bank Letter), & E (Affidavit of Contractor Builder). Assistant Manager Jackson states this packet can be recorded as 'Exhibit C'. The board finds those items that staff objected to be not competent to be considered. *Clauhs made a motion to sustain the Town's objection to the three items identified within Exhibit C as documents C, D, and E, as they are not competent to be considered, but to otherwise admit Exhibit C into the record as evidence. The motion is seconded by Parkin. All voted in favor, none opposed. Motion carries 5-0.*

## BOARD DISCUSSION AND DECISION

The Board's work is to review the competent, material, and substantial evidence in the record and decide whether the decision to deny the zoning permit for a second primary dwelling on the property be affirmed or reversed, wholly or in part, or modified.

The board discusses ways the decision could be modified or overturned and whether the board could issue an order that had conditions stipulating the existing structure is demolished. Conditions such as a financial bond placed by the Town to ensure the property is brought to compliance with the Code are discussed. Staff believes the ordinances give the board or Town no authority to enforce such a condition.

Parkin discusses whether the basis of the board's decision could be based on the financial harm that would be caused to the applicant if the decision to deny the zoning permit is denied. Attorney Frue states that basis for a decision would be more closely related to a decision on the case of a variance, with an appeal of administrative decision, the board must hang their decision on the code of ordinances.

Kayla Councell asks whether Buncombe County's definition for a principal building would be helpful and clarify if it is a principal building if a certificate of occupancy has not been issued. Chair Wright points out that this ordinance (Sec. 20-3208) makes no mention of occupancy. Town Attorney makes note that C.O.'s are related to building code which is enforced by the County Permit office and are not addressed by the Town's Zoning Ordinances.

Chair Wright asks if there is a motion to affirm the staff decision to deny the zoning permit. *DeCrosta made a motion to affirm the decision. There was no second, so the motion failed.*

Murray asks if this is a case where a continuance would be helpful or needed to allow the applicant to gather more evidence. Murray states he would love to vote to allow them to do this (the proposed construction and sequencing), but what he is hearing is he cannot. Attorney Frue states again that since this case is based on code of ordinances, and there has been debate on whether the code is clear enough with the lack of a definition for principal building or primary building, but any decision must be based on substantial, competent, material evidence.

DeCrosta asks what would be gained from a continuance or hearing from the contractor. Murray states there has to be a way to allow this to happen on a controlled basis, given that they are only proposing to be out of compliance with ordinance for 30 days for something that the 'whole neighborhood' and the Town probably want.

Parkin states that in regard to a continuance, he does not believe any new witness could provide information that would change the facts of the case and requests a motion to be made again.

Chair Wright asks if there is a motion to affirm the staff decision to deny the zoning permit – *DeCrosta made a motion to affirm, seconded by Parkin. Without further discussion, the motion carries 4-1 with Murray opposing.*

The applicant asks the board why there was no motion to modify the decision, Chair Wright states there was no option to modify presented that would have brought the case into compliance with the code of ordinances namely (Sec. 20-3208(f)) limit of one principal building.

The applicant expresses frustration that there was no definition of principal building provided except for that from the dictionary.

Staff was directed to draft a written decision for board consideration at include it for consideration by the Board at a meeting as soon as possible.

Vice Chair Wright declared the hearing closed at 7:48 p.m.

#### **4. Election of Chair and Vice Chair**

The recent resignation of previous chair Tycer Lewis resulted in the need for the board to consider the election of officers. In addition, Vice Chair Wright indicates she will resign from her position on the Board of Adjustment effective 4/1/2026.

*Clauhs made a motion to elect Larry Murray as Chair and Paul DeCrosta as Vice Chair, conditioned upon his appointment as a regular member of the Board; motion seconded by Parkin. All voted in favor, none opposed. Motion carries 5-0.*

#### **5. Adjournment**

There being no further business, Vice Chair Wright requested adjournment. *Murray moved to adjourn at approximately 8:00 p.m., seconded by Parkin. Motion carried unanimously, 5-0.*

Attest:

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Graham Crawford, Clerk to the Board