

**Town of Weaverville
Board of Adjustment
Regular Meeting
Monday, April 6, 2026, 6:00pm
Agenda**

	Pg#	
1.		Call to Order
		Chair Murray
2.		Approval of the Agenda.....
		Chair Murray
3.		Approval of the Minutes from the February 10 and February 24 Meetings of the Board.....
	2	Chair Murray
4.		Approval of an Order Modifying an Admin. Decision.....
	12	Chair Murray
5.		Board Educational Material.....
	17	Assistant Man. Jackson
6.		Adjournment
		Chair Murray

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, April 6, 2026
Subject: Minutes
Presenter: Planning Director
Attachments: Minutes from the February 2026 Meetings of the Board

Description:

Attached you will find proposed minutes from February 10 and February 24, 2026 meetings 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
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:

Graham Crawford, Clerk to the Board

**Town of Weaverville
Board of Adjustment
Special Called Meeting
Tuesday, February 24, 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 24, 2026, in the Community Room and Council Chambers at Town Hall, 30 South Main Street, Weaverville.

Present: Chair Larry Murray, Vice Chair Paul DeCrosta, Board Members Cynthia Wright, Paul Clauhs and Roger Parkin.

Board members absent: Newly appointed Alternate Member Bryson Shook

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

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

2. Appeal of Administrative Decision on 60 Highland Street

a. Motion for Rehearing

Assistant Town Manager explained to the board and the appellant that the Town was requesting a rehearing on the matter based on the discovery of a definition of "building, principal" in the Weaverville Code of Ordinances. There was a lot of discussion in the previous meeting over the definition of primary or principal building and none was found during that meeting because we were looking under 'P' section but it was found a few days later under 'B'. Based on the discovery of 'new evidence' the Board's Rules allow for the rehearing of an appeal of administrative decision.

Clauhs motioned that the board rehear the appeal of administrative decision on 60 Highland Street based on the limited basis of considering the new evidence being presented, seconded by Wright. All voted in favor, none opposed. Motion carries 5-0.

b. Rehearing and Review of Board Decision on February 10, 2026, Decision

Chair Murray requested the Town to present the new evidence to the Board.

The definition of 'Building, Principal' in Weaverville's Code of Ordinances is written as follows

Building, principal. A building in which is conducted the principal use of the lot on which said building is located.

Assistant Manager Jackson states that the newly found definition could be interpreted liberally in favor or the applicant and allow the Board to make a determination in the favor of the applicant and be within the bounds of the Weaverville Code of Ordinances.

Clauhs motioned to repeal and rescind the previous decision affirming the staff decision to deny the zoning permit for 60 Highland Street, seconded by Parkin. All in favor none opposed. Motion carries 5-0.

c. Board Discussion and Decision on Administrative Appeal

Having been presented the definition of Principal Building the board decides to overturn the administrative decision to deny the zoning permit, Parkin motioned to allow the issuance of a zoning permit to allow construction of the new single-family dwelling at 60 Highland St. PIN: 9742-07-4152, with the condition that the existing dilapidated building be demolished within 30 days of the issuance of a certificate of occupancy. Clauhs seconded, all voted in favor none opposed. The motion carries 5-0.

Town staff was directed to draft the written order consistent with the decisions of the Board and bring it back for approval at the Board's meeting on April 6, 2026.

3. Adjournment

Parkin motioned to adjourn at approximately 6:15pm Clauhs seconded. All in favor, none opposed. Motion carries 5-0.

Attest:

Graham Crawford, Clerk to the Board

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, April 6, 2026
Subject: Approval of an Order
Presenter: Planning Director / Town Attorney
Attachments: Order Modifying an Administrative Decision – 60 Highland Street

Description:

Attached you will find a proposed order modifying an administrative decision from the February 24, 2026 meeting of the Board.

Action Requested:

Staff is requesting that the Board adopt the aforementioned order as presented or amended by motion of the Board.

**ORDER ISSUED BY TOWN OF WEAVERVILLE BOARD OF ADJUSTMENT
MODIFYING AN ADMINISTRATIVE DECISION**

APPLICANT/APPELLANT/PROPERTY OWNER: Cynthia Zalman-Wolhart

PROPERTY LOCATION: 60 Highland Street, Weaverville, NC

DEED REFERENCE: Book 6368/Page 544

PARCEL IDENTIFICATION NUMBER: 9742-07-4152

PROCEDURAL MATTERS:

On or about January 12, 2026, an agent for the property owner, Nathan Elliott, applied for a zoning permit to construct a second principal dwelling on the Property.

This zoning permit was denied based on Code Sec. 20-3208(f) which provides: "*Limit of on principal building.* Only one principal building and its customary accessory building(s) may hereafter be erected on any lot, except as authorized by a special use permit or a conditional district, except for multi-unit residential development."

The Board of Adjustment of the Town of Weaverville (hereinafter "Board") held a quasi-judicial evidentiary hearing (hereinafter "Hearing") on Tuesday, February 10, 2026, at 6 p.m. in Council Chambers at Town Hall at 30 South Main Street, Weaverville, on the appeal of the denial of the zoning permit and, upon motion of the Town of Weaverville, re-heard the matter on February 24, 2026 at 6 p.m. in Council Chambers at Town Hall at 30 South Main Street, Weaverville ("Re-Hearing").

At both the Hearing and Re-Hearing a quorum of the Board was all of the following Board Members in attendance: Cynthia Wright, Larry Murray, Paul Clauhs, Roger Parkin, and Paul DeCrosta. Town Attorney Michael Frue, Zoning Administrator James Eller, Assistant Town Manager Jennifer Jackson, and Clerk to the Board Graham Crawford were also present.

The Hearing was held after notice of the meeting had been mailed to property owner and applicant, and to the property owners abutting the subject property, and notice of the meeting was posted on the subject property, all in accordance with North Carolina law and Town Code. The applicant waived formal notice of the Re-Hearing.

Prior to the Hearing the Board was polled as to whether or not any members had conflicts of interest or bias that might disqualify them from serving on the Board during the hearing.

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.

At the Hearing on February 10, 2026, Vice Chair Wright presided as the Acting Chair. At the Re-Hearing on February 24, 2026, the Chair Larry Murray presided.

STANDING:

The Board acknowledged that the following had standing to participate in the hearing and were made parties to this matter: Appellant/property owner Cynthia Zalman-Wolhart, and the Town of Weaverville.

At the Hearing the following individuals were sworn in and testified concerning standing: Kayla Councill, Michael Dunn, Cynthia Dunn, Anne McFarland.

The Board found that Kayla Councill is Cynthia Zalman-Wolhart's daughter and is the project manager, but did not hear any evidence that she would be specially damaged in the matter and was denied standing.

Michael Dunn and Cynthia Dunn were found to be neighbors of the appellant and expressed concern about the existing structure and the opinion that the new structure and demolition of the existing structure was in everyone's best interest. The Board found that there was not enough evidence of a special damage to the Dunns and denied standing as to both.

Anne McFarland was found to live next door to the appellant and expressed concern about safety related to the existing house. Standing was denied to Anne McFarland as no special damages were established.

It was noted that these individuals could offer testimony which could be considered if competent and material to the appeal, even though they were denied standing.

FINDINGS OF FACT and CONCLUSIONS:

After having held the Hearing and Re-hearing in this matter and having considered all the evidence and arguments presented, the Board of Adjustment for the Town of Weaverville finds as fact and concludes as follows:

1. Documentary evidence was submitted and admitted into evidence as follows:
 - a. Eller reviewed the administrative materials that included the following: Public Notice; Application to Appeal Decision of Zoning Administrator dated January 20, 2026, and Supporting Documents; Staff Report; Town Code provisions; Affidavit of Mailing and Posting. Said packet was admitted into the record without objection as Exhibit A.

Eller also presented a copy of the property owner's deed and that was admitted into the record without objection as Exhibit B.
 - b. Zalman-Wolhart presented documentary evidence marked as Exhibit C and consisting of the following:
 - A. Appeal Application and Administrative Denial Letter;
 - B. Site Plan Showing Existing and Proposed Structures

- C. Construction Timeline & Sequencing Plan;
- D. Lender Letter Regarding Subdivision/Recombination;
- E. Contractor Affidavit on Construction Feasibility;
- F. Code Excerpts: Sec. 20-3208(f) and 20-3309;
- G. Demolition Plan & Proposed Timing;
- H. Applicant Statement of Compliance Intent;
- I. Pictures of Existing House and New House Site.

The Town of Weaverville objected to the following portions of Exhibits C: C-C and C-E based on the contractor not being available to be cross-examined on his opinions, and C-D based on it being an undated and unsigned correspondence that could not be verified.

The Board of Adjustment admitted Exhibit C into the record, except for documents marked as C-C, C-D, and C-E, which the Board found to be not competent for consideration.

2. The following individuals were sworn in and testified as to the merits of the appeal: James Eller, Graham Crawford, Cynthia Zalman-Wolhart, Kayla Cuncell, Michael Dunn, and Cynthia Dunn.
3. The appellant owns real property located at 60 Highland Street which is located within the Town of Weaverville bearing Buncombe County parcel identification number 9742-07-4152, and which is zoned R-1 residential ("Property"). A house is currently existing on the Property as a principal building. The house is in dilapidated condition and neighbors question its safety.
4. On or about January 12, 2026, an agent for the property owner, Nathan Elliott, applied for a zoning permit to construct a second principal dwelling on the Property.
5. Staff informed the appellant in writing that the zoning permit was denied based on Code Sec. 20-3208(f) which provides: "*Limit of on principal building. Only one principal building and its customary accessory building(s) may hereafter be erected on any lot, except as authorized by a special use permit or a conditional district, except for multi-unit residential development.*"
6. On January 20, 2026, the property owner appealed the denial of the zoning permit and that application stated: "Only one house on the property will be occupied at any time. Upon completion of the new (proposed) house the existing house is to be demolished and disposed of."
7. Appellant agreed that Sec. 20-3208(f) indicates that there can only be one principal residence on the property at a time. Appellant testified that her intent is to reside in one residence at a time and to move into the new residence once it is constructed and receives a certificate of occupancy.

8. The appellant testified that she is under a contractual obligation with her construction loan lender to demolish the existing residence within 30 days of the issuance of the certificate of occupancy on the new residence and that sufficient funds have been included in her construction loan to pay for the demolition.
9. There was no evidence to indicate that the intended result of a new residence being constructed on the Property as a substitute for the dilapidated existing residence would be contrary to public interest.
10. Town Code Sec. 20-1202 defines “principal building” as: “*Building, principal. A building in which is conducted the principal use of the lot on which said building is located.*”
11. The administrative decision to deny the zoning permit was well-reasoned but did not consider a liberal interpretation of the definition of “principal building.”
12. Town Code Sec. 20-3108 allows the Board to consider appeals of administrative decisions, including a decision to deny a zoning permit.

NOW, THEREFORE, based upon the foregoing findings of fact and conclusions, the Weaverville Board of Adjustment concludes that: (1) it has jurisdiction to hear this appeal of an administrative decision; (2) the definition of “principal building” should be liberally interpreted under this unique circumstance in order to preserve the rights of the appellant.

IT IS, THEREFORE, ORDERED that the decision to deny the property owner’s request for a zoning permit to allow a second principal building on the property located at 60 Highland Street is modified to allow a zoning permit to be issued for the construction of a new residence on the Property, conditioned upon the existing structure being demolished within 30 days of the issuance of the certificate of occupancy of the new residence, with the understanding that upon demolition of the existing structure Sec. 20-3208(f) will be fully complied with, and failure to demolish the existing residence will result in a Code violation and violation of this Order and will subject the appellant or property owner to legal action.

ORDERED THIS the 24th day of February, 2026; and **WRITTEN DECISION** approved by the Board on the 6th day of April, 2026, in a vote of ___ in favor and ___ against.

**Larry Murray, Chair
Board of Adjustment**

ATTEST:

**Graham Crawford
Clerk to the Board**

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, April 6, 2026
Subject: Educational Material
Presenter: Assistant Town Manager
Attachments: Making Quasi-Judicial Decisions

Description:

Attached you will find an article from the North Carolina School of Government titled "Making Quasi-Judicial Decisions" for conversation during tonight's meeting of the Board.

Action Requested:

None.



Coates' Canons

NORTH CAROLINA LOCAL GOVERNMENT LAW BLOG

April 4, 2023

Making Quasi-Judicial Decisions

Jim Joyce

Imagine, if you will: A long, contentious hearing over a controversial variance request has finally come to a close. The Board took careful steps to follow appropriate procedures related to notice, impartiality, and communication between board members and the public. Now it is time for the Board to deliberate, weigh its evidence, and reach a decision. This post addresses how they do so.

Quasi-judicial decisions (including the controversial variance request mentioned above) center around two things: the standards the Board* must apply and the evidence in the record that relates to those standards.

*I will refer to a board of adjustment in the rest of this post as “the Board” for ease of reference. The body making a quasi-judicial decision in any given jurisdiction could be a board of adjustment or it could be a planning board or governing board that serves as the board of adjustment. Regardless of the form of the Board, these rules are the same.

Readers familiar with legislative decisions will recognize that these standards make quasi-judicial decisions quite different from legislative ones. Readers not familiar with the types of development regulatory decisions are encouraged to check out **THIS** post by Adam Lovelady. Governing boards do not make legislative decisions based on statutory or ordinance standards (in fact, they often set those standards). Instead, governing boards make legislative decisions based on policy reasoning and their political perspectives. On the other hand, quasi-judicial decisions *do* have guiding standards that the local or state government has set through the legislative process. The Board must apply those standards regardless of policy preferences or political pressures.

Oxford Languages defines “quasi-” as “being partly or almost” and defines “judicial” as “of, by, or appropriate to a court or judge.” So a decision that is “quasi-judicial” is one that is partly like a court’s decision. As a result, any Board making a quasi-judicial decision must follow certain procedural rules that protect the rights of the parties, a bit like a court might do. Some of those rules refer to the hearing process. Others refer to the way the Board decides the case once the evidence is in. Below are the key rules about how deliberation should take place, what evidence should be the basis of the Board’s decision, what decisions the Board can make, how they take action to reach their decision, and how the final decision gets formalized.

Deliberations must happen in public.

Once the presentation of evidence is complete, it is time for the Board to review the evidence and discuss how they will decide the matter. A Board is a public body making a public decision about an individual’s property rights. Consequently, North Carolina open meetings laws apply to their deliberations. A bit more on open meetings laws can be found in **THIS** blog by Kristina Wilson, and much more can be found in **THIS** book by Frayda Bluestein.

Because open meetings laws apply to the Board acting in a quasi-judicial capacity, all of the Board’s debate must happen during open session. There are very limited exceptions for boards to go into closed session and most do not apply to quasi-judicial proceedings. For this reason, the Board may not go into closed session to discuss the case privately.

A Board may continue the quasi-judicial item until a subsequent meeting, but this path is fraught with peril and should only be undertaken very carefully. Specifically, Board members must not engage in any discussion, deliberation, or fact-gathering between meetings. Such activity could violate the due process rights that must be afforded to an applicant or property owner in a quasi-judicial matter.

Another danger with continuance is whether additional evidence can be taken at the next meeting. Here, whether the hearing is closed or not becomes a significant factor. If the Board holds the hearing open from one meeting to the next, it can accept new evidence at the continued hearing. If the Board closes the hearing, on the other hand, it has moved on to the deliberation phase and can accept no new evidence.

The decision must be based on competent, material, and substantial evidence in the record.

“Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.” G.S. 160D-406(j). This concept is included in the statutory rules regarding quasi-judicial procedures and is repeated in just about every case concerning quasi-judicial decision-making. So what counts as “competent, material, and substantial evidence in the record”? What *can* serve as the basis for answering a quasi-judicial question? Let us look at each term in that phrase:

First, **competent evidence** is trustworthy, reliable evidence. For documents, the rules are much looser than they would be in a court of law, but a Facebook post from an unknown source or the neighborhood conspiracy theorist might not be competent. When it comes to testimony, the witness should have first-hand knowledge of the matter about which they are speaking. For instance, I know what my neighborhood looks like and in a general sense how often people and cars come by. On the other hand, can I talk about traffic in Waxhaw if I only have heard about it from my cousin’s roommate’s best friend? Probably not.

Another key point relates to opinion testimony. Much like in an actual court hearing, opinions about what might happen in the future should be given by experts. This is particularly true—and most commonly encountered—when the issue is impact on traffic or property values. Evidence about what a given quasi-judicial proposal *would* have on traffic in the future is a matter of opinion, and that opinion must come from a traffic engineer or similar expert who has analyzed the project. Likewise, evidence about what could happen to property values must come in the form of testimony and a report from an appraiser or similar expert who has appraised the property. For a deeper discussion of who can provide evidence at a quasi-judicial hearing, see **THIS POST** by David Owens.

Second, **material evidence** is that which relates to the questions the board has to answer. Regardless of whether the matter is a special use permit, variance, or other quasi-judicial approval, there are certain standards that apply to the decision. Material evidence should relate to those standards or to the land use impacts of the proposal.

This is one place where the process can be challenging for boards that also have to make other types of land use decisions. With quasi-judicial decisions, a Board must leave the politics aside. In special use permit cases, a political decision has

already been made that a certain use should be allowed under certain conditions. For variance cases, this decision has been made at the state level. A quasi-judicial hearing is not the time to revisit these policy questions. Even if dozens of people are at the meeting with matching t-shirts and signs, their presence is probably not material evidence. Public opinion can be divided or even firmly against a quasi-judicial proposal, but it is not material to the core decision of whether the evidence matches the applicable standards.

Next, **sufficient evidence** is any evidence that tends to support a finding that the relevant standard is met. What evidence is sufficient, as discussed in more detail in **THIS** blog post, depends on the context. Generally, evidence is sufficient if it tends to help a side meet their burden of proof.

The burden of proof in a quasi-judicial matter is a bit like a seesaw. The burden is first on the applicant. Imagine the seesaw board tipped toward away from the applicant. If nothing happens, the seesaw will remain pointing in the other direction and the applicant does not get the approval they seek. However, if the applicant provides enough evidence to make its "*prima facie*" case – if they provide enough evidence that a board *could* find in their favor on *each* of the applicable criteria – the burden shifts to opponents of the proposal. In the seesaw analogy, imagine the applicant piling enough evidence on their end of the seesaw that it tips in their direction. Once the applicant has made this *prima facie* case and the burden shifts, any opponents of the proposal must pile up some evidence on their side of the seesaw. If they do not provide competent, material, and substantial evidence in response, the Board lacks authority to deny the application. It is only when there is evidence on both ends of this metaphorical seesaw that the Board is called upon to weigh the evidence.

Finally, the evidence needs to be **on the record**. The Board should not be gathering or receiving evidence outside of the public evidentiary hearing. The applicant has a legal right (due process again) to respond to evidence presented in their case, so any evidence that might be the basis for the board's decision should be in the documentary record or presented at the evidentiary hearing.

One topic that comes up from time to time regarding evidence on the record is the question of site visits. Some Board members like to see a site for themselves to understand its particular conditions. These are generally permissible, but since they happen outside of the hearing, they must be disclosed to the rest of the Board and to the public. Further, any key findings should be identified so that they can be discussed in the hearing.

Keeping evidence on the record can also be tricky when it comes to *ex parte* communications. These occur when a Board member speaks with someone about the substance of the hearing outside of the hearing. These communications are to be avoided where possible, and disclosed where they cannot be avoided. The decision still must be made on the evidence in the hearing and on the record, but this disclosure allows an applicant to be aware of and to respond to all evidence in the case.

When reviewing evidence and reaching its decision, the board needs to focus on the competent, material, and substantial evidence that was presented to it during the evidentiary hearing and in any earlier documentation provided in the record (e.g., application materials and responses to requests for additional information).

The Board has a few options for how to act.

Once the Board has heard and weighed all of the evidence, what can they do with it? The answer depends on whether the quasi-judicial matter is an appeal of an administrative action or a development approval (such as a special use permit, variance, or certificate of appropriateness). In either situation, however, the Board has a few options available to it.

For **appeals of administrative decisions**, the board deciding an administrative appeal has a great deal of flexibility. In addition to simply affirming or reversing the challenged administrative decision, they can choose to affirm part of the decision but reverse another part, modify the decision appealed from, and make whatever other orders, determinations, etc. that the original decision-maker could make. In other words, the Board can mold the administrative outcome into what the board thought it should have been, at least within the bounds of the original decision-maker's discretion. See N.C. Gen. Stat. § 160D-406(j).

For **development approvals**, the board has three choices: it can approve the application, deny it, or approve it subject to certain conditions. The range of conditions is limited, however – N.C. Gen. Stat. § 160D-705(d) allows “[a]ppropriate conditions” to be placed on a variance approval if those conditions are reasonably related to the variance, and N.C. Gen. Stat. § 160D-705(c) allows a board of adjustment to put “[r]easonable and appropriate conditions and safeguards” on special use permit approvals. Conditions that are reasonable and appropriate tend to be those that relate to the standards the ordinance provides for making the decision or to the land use impacts of the proposed project. For special use permits, N.C. Gen. Stat. § 160D-705(c) specifically prohibits any conditions that are

outside the scope of the local government's authority, including taxes, impact fees, regulation of certain residential building design elements, and driveway improvements in excess of NC DOT limitations.

When a condition is not related to the ordinance standards that apply to the application or to the land use impacts of the proposed project, that condition is at risk of being challenged and even reversed by a court. Conditions also must not be out of proportion with the project's impact or outside the scope of the government's authority to impose.

Most quasi-judicial decisions require a simple majority vote; variances require a 4/5 supermajority.

N.C. General Statute 160D-406(i) requires the vote of four-fifths (that is, 80%) of the board to grant a variance, but states that a simple majority is required to decide other quasi-judicial matters. In making these calculations, one does not count members of the board who have conflicts of interest or vacant board positions.

To provide an example, if Boroville has a nine-member board, eight members must vote to approve a variance petition in order to grant it (seven of nine is about 78%, which is just under 4/5, so we need that eighth vote to get over the four-fifths threshold). For other quasi-judicial matters, five votes (five is just over half of nine) are required to decide the question. But what if there is an open seat, and one of the board members has a conflict of interest? Since G.S. 160D-406(i) requires us not to count the board member who is conflicted out or the vacant position, we calculate the number of votes we need out of the (9-2=7) seven remaining. Six out of seven (roughly 85%) would be enough to approve a variance and four would be enough to make any other quasi-judicial decision.

There must be a written decision that explains how the board reached their decision.

Once the requisite proportion of the board has agreed on a result, their decision must be put into writing and finalized. The decision is not final and effective until it has been reduced to writing, approved by the board, and filed with the clerk to the board. Only then does it become effective, and only then does the clock for the timeline to challenge the decision begin to run.

When it comes to drafting the decision document, one of the first questions that might arise is how much detail must be in the written decision. Of course, there is

no hard-and-fast rule, but here are a few points to keep in mind:

- One, General Statute 160D-406(j) requires that the decision “reflect the board’s determination of contested facts and their application to the applicable standards.”
- Second, North Carolina courts have maintained, at least since 1974’s *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974), that the parties have a right to know the basis of the board’s decision.
- Third, any appeal of the decision will be based on the Board’s record. A reviewing court will look to the decision document and recording of the hearing rather than call Board members to testify. For this reason, it is essential to explain the Board’s reasoning in the decision document. On the other hand, if the document makes clear what the Board decided and why, it should be sufficient in most cases.

Because this document often takes some significant time and energy to assemble, many boards ask the applicant, staff, or their attorney to prepare a draft decision in the form of proposed findings of fact and conclusions of law. In some cases, boards might allow the prevailing party in the matter to draft the decision document. If there is no proposed set of findings and conclusions in advance, the board’s staff or attorney can prepare the document after the meeting. Regardless of how or by whom the decision is drafted, it must accurately reflect the action the board took and its general reasoning. A simple checklist of whether each standard has been met is not sufficient. The decision must include some explanation of *how* each standard is met or not met, whether the decision is to approve, to approve with conditions, or to deny the application.

Once the decision document is complete, the statutes require that it “be approved by the board and signed by the chair or other duly authorized member of the board.” G.S. 160D-406(j). Exactly *how* the board must approve the decision is not specified. Some boards may circulate the decision by email for each member’s approval, while others might vote to approve a final draft of the decision at its next meeting following the vote. While the latter procedure assures that the written

decision is approved in a public meeting, it also has the effect of delaying the effective date of the approval – recall that the decision is not effective before it has been finalized and filed. Once the document is approved, it is signed by the board chair (or another authorized member), can be filed with the clerk, and becomes effective.

These points and more related to the requirements for the final decision document are discussed in **THIS** David Owens blog post.

Distribution and final steps

Once the written decision has been finalized and filed, the Board must provide copies of the decision to the applicant, landowner, and anyone who has submitted a written (including e-mail) request for a copy. Whoever is providing the notice “shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.” This certification can be important, as it serves as the beginning of the time to file any appeals.

Concluding comments

Although there are several steps to making a quasi-judicial decision and reducing it to a final written document, the operation can be straightforward if taken one step at a time. The vote must happen in a public meeting; the result must be based on competent, material, and substantial evidence in the record; a written document must memorialize the board’s decision; and that decision must be appropriately filed and distributed. Following these general principles will help assure a legal, defensible, and appropriate quasi-judicial decision.