

**Town of Weaverville
Board of Adjustment
Regular Meeting
Monday, October 5, 2026, 6:00pm
Agenda**

		Pg#	
1.	Call to Order		Chairman Murray
2.	Approval of the Agenda.....		Chairman Murray
3.	Approval of the Minutes – 7/6/26 Regular Meeting	2	Chairman Murray
4.	Board Training.....	5	Assis. Town Manager/ Planning Director
5.	Adjournment		Chairman Murray

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, October 5, 2026

Subject: Minutes

Presenter: Planning Director

Attachments: Minutes from the July 6, 2026 Meeting of the Board

Description:

Attached you will find proposed minutes from the July 6, 2026 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.



Board of Adjustment - July 6, 2026 Minutes

The Board of Adjustment of the Town of Weaverville met for a regular quarterly meeting at 6:00 p.m. on Monday, July 6, 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, Paul Clauhs, Roger Parkin and Alternate Bryson Shook

Staff Present: Planning Director/Zoning Administrator James Eller, Assistant Town Manager/Staff Attorney Jennifer Jackson, Planner/Clerk to the Board Graham Crawford.

1. Call to Order

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

Bryson Shook was welcomed to the Board and recognized as a voting member.

2. Approval of the Agenda

Motion to approve the agenda as presented.

Moved by: Paul Clauhs; seconded by: Paul DeCrosta

Carried 5-0

3. Approval of the minutes 4/6/2026 Regular Meeting

Motion to approve the minutes of the 4/6/2026 meeting as presented.

Moved by: Paul Clauhs; seconded by: Paul DeCrosta

Carried 5-0

4. Board Training

Assistant Town Manager Jackson presented the board with an article from the UNC School of Government regarding standing in quasi-judicial hearings. The board and staff went through the article and had discussions on different situations in which an individual may have standing in a certain case.

Jackson also requested the board to provide feedback for how staff can prepare or present material to the board differently for improvement of case understanding.

Lastly, Jackson requested the board provide topics for their next meeting in October on which they may like to receive training or spend more discussion time on. The board decided to focus on the types of decisions that are within this board's purview and the potential outcomes of those decisions.

5. Adjournment

Chair Murray called for a motion to adjourn at approximately 6:45pm.

Motion to adjourn the meeting.

Moved by: Roger Parkin; seconded by: Paul DeCrosta

Carried 5-0

Board Clerk

Draft

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, October 5, 2026
Subject: Board Training, Educational Material
Presenter: Assistant Town Manager / Planning Director
Attachments: School of Government Article, Jurisdiction and Standards

Description:

Attached you will find an article from the North Carolina School of Government and an overview of jurisdiction and standards for conversation during tonight's meeting of the Board.

Action Requested:

None.

Coates' Canons

NORTH CAROLINA LOCAL GOVERNMENT LAW BLOG

August 24, 2026

Variances, or how to bend the rules without breaking them

Jim Joyce

Rules are meant to be enforced, but it can be helpful (and appropriate) to grant a little bit of leeway in unusual circumstances. At home, depending on one's parenting style, this may mean relaxing bedtime during the **Stanley Cup Finals** or extending curfew on graduation night. In the land use context, granting a bit of leeway for special circumstances is called a **variance**. This blog post explores variances, the criteria for granting them, and how the criteria might apply in practice.

Basic Form and Function

In most cases, land use regulations apply uniformly across the jurisdiction. At the same time, each property is unique, and a governing board cannot possibly anticipate every circumstance that will arise in implementing its development regulations. To account for this, General Statute 160D-705(d) allows (in fact, it *requires*) a local government to *vary* the rules when four criteria are met: strictly applying the regulation would cause an undue hardship, the hardship is caused by conditions unique to the property, the applicant did not cause the hardship, and granting the variance would still be consistent with the general intent of the ordinance and with public safety and welfare.

The decision as to whether to grant a variance is a *quasi-judicial* decision. This means that it proceeds somewhat like a court trial. The board that will make the decision conducts a hearing that follows constitutionally appropriate due process. At this hearing, the applicant puts on evidence tending to show that they are entitled to a variance, and other parties might do the same. At the end of that hearing, the board makes a final decision based on the evidence presented and reduces that decision to writing. This procedure is in contrast to some other types

of land use decisions. The range of decision types is discussed in more detail in **this post by Adam Lovelady**.

The decision is ultimately made by the local government's *board of adjustment*. Indeed, the North Carolina Supreme Court has held that granting variances is "[o]ne of the fundamental purposes of zoning boards of adjustment..." *Morris Comm. Corp. v. City of Bessemer City Zoning Bd. of Adjust.*, 365 N.C. 152, 159 (2011). A quick note regarding the term "board of adjustment." Some local governments give the authority to make quasi-judicial decisions to their planning board or governing board, see G.S. 160D-302(b) and 160D-705(a), but the operation of the criteria and the process remain the same regardless of which board has the duty to make the decision. When this post refers to a "board of adjustment," that term should be read to apply equally to another board that has the authority to hear variance cases.

Sample Variance Scenario: The Brewery and the Champion Tree

As an example, let us imagine that Logan wants to build a microbrewery somewhere in the Town of Fakesville. He finds an ideal site: it looks like just the right size, it has easy access to plentiful clean water, and the local zoning regulations and land use plan favor this spot for a brewery. But there is one little problem – Fakesville's tree protection regulations require a 40-foot setback around "**champion**" trees (the really big, really old ones), and one such tree, a great old live oak, sits right in the corner of the lot Logan wants to build on!

Applying the 40-foot setback would mean that Logan's vats and fermenters would not all fit in the building. Fakesville's setback rules did not anticipate this kind of situation (how could they have?), but the tree's roots only extend **16** feet into the setback. Allowing Logan's brewery to extend **3** feet into the setback would allow him to build the facility he needs while giving the tree room to grow.

Logan only needs three measly feet. What can he do? Will Logan's run as brewmaster come to an end before it even begins?

What follows is the story of Logan seeking a variance from this setback standard. The remainder of this post will summarize the criteria for granting variances, apply

those criteria to the scenario of Logan's proposed brewery, and suggest some evidence that Logan might put forward.

Two notes about this evidence: First, as discussed in [this post on evidence in quasi-judicial matters](#), Logan does not have to prove his case beyond doubt like a criminal prosecutor. He is only *required* to put forth some evidence that tends to support findings in his favor (though he will of course want to provide as convincing of evidence as he can in case there are disputed facts). Second, any evidence suggested here should **not** be taken as a standard requirement for someone seeking a similar variance; the testimony and documents included in the scenario are to be illustrative of the *kind* of evidence that could be helpful for someone in Logan's position.

Criteria for Decision

Variances are unique among local land use decisions in that state law—specifically, G.S. 160D-705(d)—sets the criteria for granting a variance from zoning regulations and requires variances to be granted when those standards are met. (other development regulations can provide for variances but are not required to do so). Because variances are provided for in the statutes, they can be granted even where development regulations do not address them, and the criteria are the same regardless of the jurisdiction. G.S. 160D-705(d) establishes the following four criteria for granting a variance:

1. **Unnecessary Hardship:** Applying the regulation strictly as written would be more burdensome than is necessary.
2. **Peculiar to the Property:** The hardship is caused by circumstances specific to the property, such as its size, shape, or natural features.
3. **Not Self-Created:** The applicant or property owner did not cause or create the hardship.
4. **Generally Consistent with Ordinance and Policy:** Granting the variance requested would be “consistent with the spirit,

purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.”

These criteria can be challenging to apply and therefore require a bit more explanation.

Unnecessary hardship

G.S. 160D-705(d)(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.

The zoning statutes allow variance requests to be granted only when the board concludes that applying the regulation strictly as written would cause **unnecessary hardship**. The applicant is not required to show that the property lacks any reasonable use. What makes a hardship “unnecessary” is that applying the regulation strictly would result in a significantly greater cost or burden than would be expected.

At the same time, the fact that the applicant does not want to comply or that it is inconvenient or costly to comply is not a legitimate basis for a variance petition. Such costs or inconveniences are, as Justice (later Senator) Sam Ervin noted in a 1949 North Carolina Supreme Court opinion, “a misfortune which [a property owner] must suffer as a member of society.” Financial loss alone is not sufficient to demonstrate a hardship, but it can be a factor. *Turik v. Town of Surf City*, 182 N.C. App. 427, 434-35, (2007).

So an unnecessary hardship is something more than an inconvenience but something less than a total deprivation of all reasonable use of the property. That leaves a board a great deal of discretion in determining whether a condition rises to the level of an unnecessary hardship. Determining exactly where that line should be drawn requires a case-by-case judgment and is perhaps the single most difficult task for many boards handling variance requests.

Let us return to Logan’s proposed brewery and the champion tree in the corner of his lot. If the champion tree setback rule is strictly enforced, the property cannot be used as a brewery. Taking away an otherwise valuable use of the property is more than a minor inconvenience. At the same time, presumably the same property could be used for a trendy gym or a **silversmith's workshop** instead.

These are other reasonable uses of the property. How, then, would Logan demonstrate that the hardship his project faces is unnecessary?

One approach Logan might take is to present preliminary drawings of the building to show that the building does not fit within a 40-foot setback, but may fit within a 37-foot setback. This would suggest that the strict application of the setback creates a hardship. He might also provide expert testimony from an arborist, or else some research or other document evidence, to show that the champion tree's fragile roots near the dripline will not be damaged by allowing a three-foot encroachment into the setback. This would suggest that the hardship is unnecessary, since the tree would still have plenty of room to grow even with the relaxed setback requirement.

Peculiar to the Property

G.S. 160D-705(d)(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 a 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.

For a variance to be granted, the hardship also must be caused by circumstances **peculiar to the property**, such as its size, shape, or natural features. The hardship cannot be one that every lot on the same block, in the same neighborhood, or in the general public, faces. When such a shared hardship occurs, a legislative approach to addressing the issue—such as a text amendment to development regulations—is more appropriate. In addition, the conditions causing the hardship should relate to the property, not to the applicant's personal circumstances. Like a special use permit, a variance stays with the property, not the applicant. Therefore, it is the *property's* characteristics on which the board should focus its attention.

This factor is examined differently for persons with disabilities and accommodations of those disabilities. Normally a variance is granted or denied independent of any personal circumstances of the applicant. However, state law explicitly allows for variances as needed “to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.” G.S. 160D-705(d) (2). Thus, a variance might be allowed for a particular resident who needs to install

a ramp that might otherwise encroach on a setback or for a resident who needs an elevator not otherwise allowed in their two-story home. This “reasonable accommodation” rule serves as an exception to the typical practice of ignoring the identity and circumstances of the applicant (it also happens to avoid a conflict with federal law!).

Once more to Logan, the tree, and the brewery: Not every property will have a champion tree in the corner, and not every use will require this kind of variance. Logan might demonstrate that his situation is peculiar to his property through aerial imagery from the internet, possibly even from the town’s or county’s online mapping tool, that shows other breweries in town or just the street his property is on. Some boards might simply accept testimony that other uses or other lots would not present the same hardship. As long as the evidence tends to support a finding in Logan’s favor, it is sufficient to meet his burden of proof.

Not self-created

G.S. 160D-705(d)(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.

The third criterion is that the hardship must not be **self-created**; that is, it cannot be caused by the actions of the applicant. For example, Logan did not put the tree where it is and did not subdivide the lot on which his proposed brewery would sit. He has not caused the situation that he seeks a variance to fix.

In contrast, let’s say that the prior owner of the property, Jake, was the one to subdivide the lot. He obtained approval to create this particular parcel as part of a larger light industrial development project. Jake could not obtain a variance to put a brewery on the property, because it was his subdivision that created the situation in the first place. Similarly, if Jake bought the champion tree somewhere else in the world and had it planted in the corner of the lot, he could not then ask for a variance to the setback. Again, it was he who created the conundrum, and the variance statutes will not rescue him from his own mistake.

But wait a minute, what if Logan buys his brewery property knowing that he will need a variance? Did he then cause his own problem? G.S. 160D-705(d)(3) says no. Unlike Jake, Logan did nothing to create the circumstances that led to him

seeking a variance. He faces the same hardship that any other owner of the property would face in trying to establish a brewery on the site.

To support a finding in his favor on this criterion, Logan might provide the old subdivision plat, or simply testify that he had nothing to do with bringing this situation about. Again, he only needs to produce evidence that tends to support a finding in his favor. He does not need to confirm beyond a shadow of a doubt that he did not cause the hardship he now faces.

General consistency

G.S. 160D-705(d)(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.

The final criterion is one of **general consistency**. Even though the variance grants some relief from the development regulation, it should not violate the intention of the ordinance or endanger the public. Variances are intended to be adjustments to the rules, not significant alterations. Thus, to the maximum extent possible, the variance should stay within the bounds of existing rules and priorities. As such, a variance cannot be issued to expand a nonconformity, create a nuisance, or subvert a guiding principle of the regulation.

Further, while variances can be used to adjust setbacks, to reduce landscaping requirements, or to alter most any other aspect of development regulation, a variance cannot be used to allow a permitted use where it would otherwise be prohibited. Although he might get a variance from the champion tree setback requirement, he would not be able to obtain a variance to build a brewery in a zoning district that did not allow breweries. In that situation, Logan would need to request a rezoning to a suitable zoning district rather than a variance.

With regard to the setback, its purpose is presumably to protect the extensive and delicate root systems of champion trees. If the champion tree in the corner of Logan's lot is still adequately protected by allowing him to develop closer than the usual setback allows, the purpose and intent of the regulation is still served. Depending on one's perspective, it might have been unjust for a variance to be granted if the tree would be severely damaged or taken out entirely. That would not have been consistent with the purpose of the setback.

Making the Decision

A variance hearing will thus involve the applicant producing evidence tending to show that they face an undue hardship that is peculiar to the property and that they did not create, and that granting a hardship would be generally consistent with the jurisdiction's regulations and plans.

The evidence

In seeking a variance, the applicant “bear[s] the burden of proving their case and must show ... why the variance is needed.” *Robertson v. Zoning Bd. of Adjust. for City of Charlotte*, 167 N.C. App. 531, 534 (2004). The applicant must produce evidence related to each of the four variance criteria. The law, in G.S. 160D-406(j), describes this evidence as having to be “competent, material, and substantial.” This means (in short) that the evidence must be reliable, relate to the criteria to be applied, and have *some* tendency to support a finding that one or more criteria are met.

If the applicant does not meet that burden, their application fails. However, if the applicant produces competent, material, and substantial evidence in their favor related to each of the four variance criteria, then the burden shifts. At this point, if no competent, material, and substantial evidence is introduced that would contradict the applicant's evidence, the board must award the variance.

For more on how a board of adjustment applies the evidence to the criteria in making a quasi-judicial decision, see [**this post**](#).

Conditions

The statute also provides that “[a]ppropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.” Where appropriate, the board of adjustment can grant a variance subject to **conditions**. However, any condition must be reasonably related to the variance and the standards for its approval.

Thus, the Fakesville board in our example might require some additional steps to be taken to preserve the champion tree, such as avoiding any disturbance to vegetation within the rest of the setback, preserving additional non-champion trees to support the big oak, or creating a landscaping feature that separates and

protects the space set aside for the tree. But imposing a condition that Logan include a town slogan like, “Born in Fakesville: where life is as real as it gets” on his brewery’s sign or improve vehicle access to a nearby school would not be allowed.

Conclusion

In summary, variances are used to avoid unnecessary hardships in limited circumstances. Further, in our example and like any other applicant for a variance, Logan needs to demonstrate that (1) applying the regulation strictly as written would cause a substantial hardship, (2) the hardship results from conditions unique to the property, (3) his actions did not create the conditions that have given rise to the hardship, and (4) granting the variance would still be consistent with the purpose of the regulation and would not be unjust or dangerous.

Logan can provide evidence that applying the setback strictly as written would create a hardship for his brewery that is not necessary given the fact that the champion tree would not be harmed by allowing him to build in the setback. He can show that the hardship is unique to this particular property and is not the result of any of his actions. Finally, he can show that *adjusting* the application of the rule would still protect the champion tree and thus be consistent with the intent of the setback rule. Once he provides competent, material, and substantial evidence on these points, Fakesville’s Board of *Adjustment* can *vary* the application of the champion tree setback rule.

Let’s imagine that no one provides competent, material, and substantial evidence to refute Logan’s evidence that a tree setback variance is justified. If Logan can present evidence to support all four variance criteria, the Fakesville Board of Adjustment will grant Logan a variance to encroach into the setback, possibly with some conditions to assure protection of the champion tree. In honor of the tree and his variance, Logan decides to name his brewery Old Oak Brewing Co. and feature it prominently on the label.

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – JURISDICTION AND STANDARDS

PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE

The Board of Adjustment may only hear and decide matters if authorized to do so by North Carolina law and/or the Town's Code of Ordinances.

MATTERS WITHIN BOARD'S JURISDICTION

- Appeals of Administrative Development Regulation Decisions
- Issuance and Amendments to Special Use Permits
- Variances from Development Regulations
- Waivers from Development Regulations
- Extensions of Time for Repair/Replacement of Nonconforming Structures
- Replacement of Nonconforming Uses with Another Nonconforming Use
- Public Health Nuisance Appeals
- Flood Damage Prevention Variances and Appeals
- Traffic and Parking Appeals
- Appeals of Animal Control Officer Decisions

APPEALS OF ADMINISTRATIVE DECISIONS

Code Sec. 20-3108(b) authorizes the BOA 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 partly, 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 because the administrative findings, inferences, conclusions, or decision were:

- (1) In violation of constitutional provisions, including those protecting procedural due process rights;
- (2) In excess of the authority conferred upon staff by ordinance;
- (3) Inconsistent with applicable procedures specified by statute or ordinance;
- (4) Affected by other error of law;
- (5) Unsupported by competent, material, and substantial evidence in view of the entire record;
- (6) Arbitrary or capricious.

The Board must decide, based on the competent, material, and substantial evidence in the record, whether the decision/determination/order should be reversed or affirmed, wholly or partly, or whether the board wishes to modify the decision.

SPECIAL USE PERMITS (AND AMENDMENTS)

Code Sec. 20-3108(c) and 20-3204 authorizes the BOA to grant and amend special use permits.

Standards for special use permits:

- (1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – JURISDICTION AND STANDARDS

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- (2) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood;
- (3) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
- (4) The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or with the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood;
- (5) Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being, or will be provided;
- (6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
- (7) The special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the board of adjustment.

The Board must decide whether the record includes competent, material, and substantial evidence that the issuance of the permit or the amendment as requested by owner/developer meets the standards and should therefore be granted.

VARIANCES

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.

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.

The Board must decide whether the record includes competent, material, and substantial evidence that the variance requested by the property owner meets the standards and should therefore be granted.

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – JURISDICTION AND STANDARDS

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SIDEWALK WAIVERS

Code Sec. 20-3108(e) authorizes the BOA to hear and decide all requests for waivers of sidewalk requirements.

Standards and limitations for sidewalk waivers:

- (1) Sidewalk requirements imposed by a conditional district or special use permit are not eligible for a waiver of such sidewalk requirements;
- (2) Major subdivisions are not eligible for a waiver of the sidewalk requirement for sidewalks on new streets proposed for construction within the major subdivision. Major subdivisions may, however, be granted a sidewalk waiver of the sidewalk requirements along existing streets upon the finding that:
 - a. The construction of the sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk; or
 - b. The construction of the sidewalk is not feasible due to special circumstances including but not limited to impending road widening or improvements or severe roadside conditions or slope which would prohibit sidewalk construction.
- (3) Minor subdivisions may be granted a sidewalk waiver upon the finding that:
 - a. The construction of the sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk; or
 - b. The construction of the sidewalk is not feasible due to special circumstances including but not limited to impending road widening or improvements or severe roadside conditions or slope which would prohibit sidewalk construction.

The Board must decide whether the record includes competent, material, and substantial evidence that the property is eligible for a sidewalk waiver and meets the standards and should therefore be granted.

VEGETATIVE SCREENING AND/OR BUFFER WAIVERS

Code Sec. 20-3108(f) authorizes the BOA to hear and decide whether to alter or eliminate the required vegetative screening or buffering requirement

Standards and limitations for vegetative screening/buffer waivers:

- (1) The owner of the property affected and the adjacent residential property are in single ownership; or
- (2) A notarized statement is presented which is signed by the property owner affected and the adjacent residential property owner and waives or modifies the screening provisions.

The Board must decide whether the record includes competent, material, and substantial evidence that the property is eligible for a vegetative screening and/or buffer waiver and meets the standards and should therefore be granted.

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – JURISDICTION AND STANDARDS

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EXTENSION OF TIME FOR REPAIR/REPLACEMENT OF NON-CONFORMING STRUCTURES

Code Sec. 20-1603(h) and 1604(h) authorizes the BOA to extend the time for repair/replacement of a nonconforming structure by an additional 180 days for good cause. Good cause could include, but is not limited to, delays related to estate administration, casualty insurance issues, or litigation concerning the property.

The Board must decide whether the record includes competent, material, and substantial evidence that there is good cause to grant the extension of time to repair or replace a non-conforming structure as requested.

REPLACEMENT OF NONCONFORMING USE WITH ANOTHER NONCONFORMING USE

Code Sec. 20-1604(d) authorizes the BOA to approve the replacement of one nonconforming use with another nonconforming use if the new nonconforming use is no less compatible with the surrounding properties and district than the nonconforming use being replaced. Factors for the BOA to consider include, but are not limited to, traffic, noise, site activity, hours of operation, lighting, vibration, dust, smoke, odor, emissions, and any other factors that the BOA finds relevant to compare or differentiate between the uses. The BOA may establish conditions to ensure that the compatibility factors are maintained as approved.

The Board must decide whether the record includes competent, material, and substantial evidence that the request to replacement a nonconforming use should be granted, either with or without conditions.

PUBLIC HEALTH NUISANCE APPEALS

Code Sec. 9-101 authorizes the BOA to serve as the appeals board for all decisions made under Code Chapter 9 “Nuisances”, unless specific provisions state otherwise.

Code Sec. 9-208 provides that, after hearing all interested persons and reviewing the findings of the town manager, his or her designee or the code enforcement officer, the BOA may affirm or reverse the finding that a nuisance exists in the town. If the BOA determines that the findings are correct and proper, it must adopt an order specifically declaring the condition existing on the property to be a danger and hazard to the health and safety of the inhabitants of the town and a public health nuisance and direct the town to cause such conditions to be abated.

FLOOD DAMAGE PREVENTION APPEALS AND VARIANCES

Code Sec. 13-80 authorizes the BOA to hear and decide all appeals from any order, requirement, decision, or determination made by the floodplain administrator. In deciding appeals, the BOA may hear both those based on allegedly improper or erroneous interpretation of Code Chapter 13 and those based upon alleged hardship resulting from strict interpretation of the chapter.

Upon timely receipt of an appeal/variance request, the BOA must hold a hearing within 30 calendar days of the filing of the appeal.

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – JURISDICTION AND STANDARDS

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TRAFFIC AND PARKING APPEALS

Code Sec. 28-3 authorizes the BOA to serve as the appeals board for all decisions made under Code Chapter 28 “Traffic and Parking”, unless specific provisions state otherwise.

APPEALS OF ANIMAL CONTROL OFFICER DECISIONS

Code Sec. 4-86 designates the BOA as the animal control appeals board and authorizes the BOA to hear and determine all appeals from determinations made by the animal control officer except for matters referred for criminal prosecution or civil actions for injunctive relief.

Upon timely receipt of an appeal, the BOA must hold a hearing within 10 business days of the filing of the appeal unless a different hearing date is consented to by the applicant/appellant.