

Town of Weaverville

Zoning Board of Adjustment
Minutes – Monday, November 13, 2017

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, November 13, 2017 in council chambers at Town Hall at 30 South Main Street, Weaverville.

Present: Chairman Jeff McKenna, Vice Chairman Tyker Lewis, Board Members Paul Clauhs, Roger Parkin and Cynthia Wright, Town Attorney Jennifer Jackson and Planning Director James Eller. Absent: none.

1. Call to Order

Chairman Jeff McKenna called the meeting to order at 7:00pm.

Chairman McKenna gave those in attendance a description of the quasi-judicial process to which the Zoning Board of Adjustment is bound which included the following.

Tonight the Zoning Board of Adjustment will holding 2 quasi-judicial hearings. The purpose of each quasi-judicial hearing is for the Zoning Board of Adjustment to hear and consider pertinent facts related to each request. The Board is required to comply with procedural rules much like those of a trial court and to provide for the constitutional right to due process such as proper notice of the meeting, an impartial decision maker, sworn testimony of witnesses, and an opportunity for parties to be heard by allowing direct examination and cross examination of witnesses.

The hearings that will be held tonight are 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. Competent evidence does not include the opinion testimony of lay witnesses as to any of the following:

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

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

the evidence and the credibility of witnesses. The Board can consider reasonable conditions that, if imposed, would bring a project into compliance with the standards set out in the zoning ordinance.

Generally the following will occur for each matter:

1. **OPENING OF HEARING AND INTRODUCTION** – *The hearing will be opened and a brief introduction of the matter will be made in which the applicant, the property affected and the request are briefly identified.*
2. **BOARD DISCLOSURES** - *The Board will then discuss any potential bias or conflict of interest and make any adjustments to the Board’s membership for that particular matter. The Board will disclose the nature of any outside communication that has been received prior to the hearing on the matter.*
3. **IDENTIFICATION OF PARTIES** - *We will then go through a process to identify the relevant parties to the hearing. Only those people who have a sufficient interest, or standing, in the outcome of the matter before the Board are allowed to become a party and present evidence. Anyone that can show some “special damage” or damage not common to all other persons who may be opposed to the request, will have standing to be identified as a party.*
4. **SWEARING IN OF WITNESSES** - *Anyone thinking that they might wish to provide testimony during the hearing, even if not a party, will then be asked to come forward and take an oath to tell the truth during such testimony. This will be done as a group with all signing a sheet giving your name and address.*
5. **STAFF PRESENTATION** – *Staff will summarize the request, state the applicable standards, recite notice provided, state what materials were provided to the board in advance, and summarize the content of any staff analysis. In appeals of staff decisions, the staff person acts as a party to the case rather than in the typical role of staff to the board.*
6. **APPLICANT TESTIMONY AND ARGUMENT** – *The Applicant will present evidence and legal arguments in support of the request. Evidence and arguments must focus upon the applicable standards.*
7. **TESTIMONY AND ARGUMENT OF OTHER PARTIES** – *Other parties, in the order called on by the chair, will present evidence and legal arguments for or against the request. Evidence and arguments must focus upon the applicable standards.*
8. **TESTIMONY OF OTHER FACTUAL WITNESSES** – *Anyone wishing to provide factual testimony concerning the request will be provided an opportunity to do so. Factual testimony should be limited to how the project does or does not meet the standards. Testimony should be limited to facts and not personal preferences and opinions.*
9. **RESPONSE** – *Parties with standing will have an opportunity to offer rebuttal testimony and a closing argument. Responses should focus on legal arguments and new or clarifying evidence and avoid repetition of the evidence already presented.*
10. **MOTION TO CONTINUE THE HEARING** - *In some circumstances the board may decide to continue a hearing to a later meeting. This may be at the request of a party or on the board’s own motion.*
11. **DELIBERATION** – *The board will ask any final questions or offer any personal knowledge or additional facts relevant to the matter and then begins its deliberations. The hearing will remain open during deliberations so that the board may ask clarifying questions as needed. The board must make its decisions based on the competent, relevant and substantial evidence in the record and the application of those facts to the standards set out in the Town’s Code. The decision cannot be based on the personal preference of board members, but on the standards and the evidence.*
12. **MOTION AND VOTE** – *A motion to approve, approve with conditions, or deny the request will be made based on the board’s discussions and a vote will be taken.*
13. **DECISION** - *The Board will then discuss important facts relevant to its decision and direct Staff to prepare a written decision consistent with the Board’s discussion and vote. That written decision will be*

reviewed by the Board at its next meeting. The written decision will be provided to the applicant and other parties with a right to such notice. Parties have thirty days to appeal the decision.

14. CLOSING OF HEARING – *The hearing will be closed and we will move on to the next matter.*

Ms. Jackson described that an application related to an amendment of an existing special use permit for the property commonly known as Fairfield Inn, Weaverville, which had been duly noticed and therefore eligible to be heard by the Board, had been removed from consideration at the request of the applicant.

Mr. Lewis motioned to remove the previously listed items 4 and 5 from the agenda which related to the aforementioned matter. Mr. Parkin seconded and all voted unanimously.

2. Public Hearing on an Amendment to an Existing Special Use Permit which Governs the Property Commonly Known as Northridge Commons.

Chairman McKenna reviewed the procedure for the public hearing which included the following.

INTRODUCTION: HFW Endeavors, LLC, is the owner of the commercial development known as Northridge Commons located at 152 Monticello Road, which was developed under a special use permit that was issued on June 5, 2006. The developer has requested an amendment to its special use permit to remove Outparcel F, 2.64+/- acres, from the operation of the special use permit.

JURISDICTION: Sec. 36-328(a) authorizes the BOA to amend previously granted special use permits

STANDARDS:

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.
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 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.
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 zoning board of adjustment.

Chairman McKenna declared the public hearing open.

Chairman McKenna also inquired of the Board if any member had any bias or had participated in any ex parte communication regarding the matter to be heard. No Board Member disclosed such a bias or action.

Chairman McKenna asked which individuals wished to participate as parties to the matter before the Board. The Board acknowledged applicant and owner HFW Endeavors, LLC and Planning Director James Eller had standing to participate in the hearing, each were duly sworn and made parties to the matter. No other appearances or requests were made to be a party to this matter.

Mr. Eller described the nature of the application which called for the removal of outparcel F from the special use permit which governs Northridge Commons granted on June 5, 2006.

Mr. Eller submitted into evidence an affidavit of mailing as exhibit 1-A, an affidavit of posting as exhibit 1-B and provided testimony that the public hearing had been duly advertised in a paper of record but the affidavit of publication had not been received prior the meeting.

Mr. Eller also submitted a packet of information into evidence as exhibit 2. Said packet of information included the application to amend an existing special use permit, a site plan for the property, development standards for Northridge Commons, an open space bulletin and the order granting the special use permit for Northridge Commons from June, 2006.

Speaking specifically to the aforementioned development standards and open space bulletin, Mr. Eller testified that one variable of the development standards called for the reservation of 20% of the property as open space and it was his belief and understanding that the open space bulletin provided by the applicant ensured that the removal of outparcel F from the special use permit would not adversely affect the standards placed upon the remainder of the development.

Applicant Steve Harris testified that he was the owner of the subject property and spoke in support of the application.

Warren Sugg, a professional engineer from Civil Design Concepts and representative of the applicant, testified to the accuracy of the aforementioned open space bulletin and affirmed Mr. Eller's position that enough open space would remain for the rest of Northridge Commons.

3. Consideration of a Motion Establishing a Ruling on the Aforementioned Application for an Amendment to an Existing Special Use Permit.

QUESTION FOR DELIBERATION: Does the record include competent, relevant and substantial evidence that the amendment as requested by developer meets the standards and should therefore be granted?

Mr. Lewis made a motion to remove Outparcel F from the special use permit for Northridge Commons originally granted on June 5, 2006. Ms. Wright seconded and all voted unanimously.

4. Public Hearing on an Appeal of a Decision of the Zoning Administrator Related to the Design Standards Established by Ordinance within the Conditional Zoning District for the Property Commonly Known as Weaver Village.

Chairman McKenna reviewed the procedure for the public hearing which included the following.

INTRODUCTION: Brandt Point Investments is the owner of one of the lots within Weaver Village which was developed under a conditional zoning district that was adopted by ordinance on May 19, 2008. The conditional zoning district has many development standards, one of which is that the exterior of all buildings must be of an arts and crafts style, using arts and crafts finishes (which include stone, wood timbers, brick, stucco, and cement siding and cedar shake shingles on exterior elevations and architectural design roof shingles) and colors. The owner has requested approval to construct the exterior of its lots with metal siding that is made to resemble stucco. The zoning administrator has determined that this is inconsistent with the Order, that he is without authority to grant a zoning permit with this construction material. The owner has appealed the zoning administrator's decision and requests that the metal siding made to resemble stucco be allowed as a permissible construction material under the Order.

JURISDICTION: Sec. 36-328(c) authorizes the BOA to hear and decide appeals of decisions of the zoning administrator

STANDARDS: When the issue is whether the zoning administrator erred in interpreting an ordinance, the BOA reviews the issue de novo or as if it were deciding the question in the first place. The board must consider the interpretation of the zoning administrator but is not bound by that interpretation and may freely substitute its judgment. The board must also ensure that the rights of the appellant have not been prejudiced because the zoning administrator's 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 the zoning administrator by ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

Chairman McKenna declared the public hearing open.

Chairman McKenna also inquired of the Board if any member had any bias or had participated in any ex parte communication regarding the matter to be heard. No Board Member disclosed such a bias or action.

Chairman McKenna asked which individuals wished to participate as parties to the matter before the Board. The Board acknowledged applicant and owner Brandt Point Investments, LLC and Planning Director James Eller had standing to participate in the hearing, each were duly sworn and made parties to the matter. No other appearances or requests were made to be a party to this matter.

Mr. Eller described the nature of the application which called for the use of a metal siding which had been designed to resemble stucco.

Mr. Eller submitted into evidence an affidavit of mailing as exhibit 1-A, an affidavit of posting as exhibit 1-B and provided testimony that the public hearing had been duly advertised in a paper of record but the affidavit of publication had not been received prior the meeting.

Mr. Eller also submitted a packet of information into evidence as exhibit 2. Said packet of information included the application to appeal a decision of the zoning administrator, construction material information, a zoning permit denial letter, the ordinance establishing Weaver Village as a conditional zoning district, power point slides referenced in the aforementioned ordinance, zoning permit application for the proposed structure, site plans and construction details submitted with the zoning permit application, a photograph of a building which had been constructed with the proposed siding and the Merriam-Webster definitions of stucco, plaster and emboss. Additionally Mr. Eller submitted into evidence a material sample of metal embossed to resemble stucco.

Mr. Eller provided additional testimony related to the materials submitted, a recitation of Condition #14 in the CZD Ordinance which states that “architecture of all the structures located on the property shall be on an arts and crafts style, using arts and crafts finishes (which include stone, wood timbers, brick, stucco, cement siding and cedar shake shingles on exterior elevations...), and an explanation of the reasoning behind his determination that the metal embossed to resemble stucco did not comply with Condition #14, i.e. embossed metal siding still most resembled a corrugated metal building, and not an arts and crafts finish.

Appellant and Owner Darren Cady gave testimony and submitted to the Board as exhibits 3 and 4, different materials than had been submitted to the zoning administrator in conjunction with the zoning permit application. Using Exhibit 3 the new material was demonstrated to be a metal siding/insulation product that was sprayed with a synthetic stucco substance. The construction shown by exhibit 4 was noted to be real rock/stone 3 to 4 feet up and then the stucco substitute panels. Mr. Cady also indicated that this newer product will allow for easier expansion of the building as the end can be deconstructed and reconstructed with relative ease.

Chris Cormier, a general contractor on the project, also gave testimony in support of the approval of this substituted siding product and answered questions concerning the siding product, the construction process, the frequency of expansion joints.

5. Consideration of a Motion Establishing a Ruling on the Aforementioned Appeal.

QUESTION FOR DELIBERATION: Did the zoning administrator err in interpreting the Order? If so, does the board wish to substitute its judgment?

Mr. Parkin motioned to reverse the decision of the zoning administrator related to the construction material to be used on a building within Weaver Village. Ms. Wright seconded and all voted unanimously.

6. Any Other Business to Come Before the Board.

There being no further business before the Board, Chairman McKenna called for a motion to adjourn.

7. Adjournment.

Mr. Lewis motioned to adjourn. Mr. Clauhs seconded and all voted unanimously.

**Jeff McKenna, Chairman
Zoning Board of Adjustment**

ATTEST:

**James W. Eller
Town Planner / Deputy Town Clerk**