

Town of Weaverville

Zoning Board of Adjustment

Minutes – May 7, 2018

The Zoning Board of Adjustment of the Town of Weaverville met a special called meeting at 7pm on Monday, May 7, 2018 in council chambers at Town Hall at 30 South Main Street, Weaverville.

Present: Chairman Jeff McKenna, Vice Chairman Tycer Lewis, Board Members Paul Clauhs, Roger Parkin and Cynthia Wright; Alternate Board Member Sylvia Valois; Town Attorney Jennifer Jackson and Planning Director James Eller.

1. Call to Order

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

2. Oath of Office

Town Attorney Jennifer Jackson administered the Oath of Office to recently appointed alternate board member Sylvia Valois.

3. Approval of the minutes from the March 12, 2018 meeting of the Board.

Mr. Clauhs motioned to approve the minutes as presented. Mr. Parkin seconded and all voted unanimously.

4. Public Hearing Regarding an Application to Appeal a Decision of the Zoning Administrator Related to a Nonconforming Use Established at 320 Merrimon Avenue.

We will now open the evidentiary hearing on an appeal from a zoning administrator's decision.

On March 28, 2018, the zoning administrator issued a decision that mobile food vendors can no longer operate on the property located at 320 Merrimon Avenue owned by David Robinson. On April 9, 2018, Jeremiah McDaniel and Tracy Shenkin, who have leased the property for their Southern Smoke BBQ food truck business, filed an appeal to this Board.

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

The Board's decision can only be made based on competent, material, and substantial evidence in the record of the hearing.

The burden is on the appellant to demonstrate that the decision of the zoning administrator was not proper. Where conflicting evidence is presented the Board must determine the weight of the evidence and the credibility of witnesses.

The Town Attorney is with us tonight to help us conduct the hearing properly.

No conflicts of interest or ex parte communications were noted or revealed.

James Eller, Planning Director; Jeremiah McDaniel and Tracy Shenkin, leaseholders of 320 Merrimon Avenue and owners of the mobile food vendor Southern Smoke; Russ Roberson, owner of 320 Merrimon Avenue; Rachel Smith and Tom Sawicki were sworn in as parties to the matter.

Mr. Eller entered into evidence as exhibit 1 3 ordinances; those being Section 36-130 effective March 19, 2018, Section 36-130 in place prior to March 19 and Section 36-19 Nonconforming Uses. Mr. Eller also entered into evidence exhibit 2 a packet of information distributed to the Board for this particular hearing including a notice of violation, an application to appeal a decision of the zoning administrator, University of North Carolina School of Government publications related to nonconformities, affidavits of posting and mailing as exhibits 3A and 3B, and an email suggesting the public hearing had been advertised in a paper of record in place of the affidavit of publication. No objection to the noticing was given.

Mr. Roberson asked staff if he should have been directly contacted related to the ordinance change that affected his property. Mr. Eller suggested that the ordinance change was duly advertised as per state statute and relayed the lengthy process undertaken by the Planning and Zoning Board and Town Council.

Mr. Roberson asked if Squeelin' Pig, a previous mobile food vendor which inhabited the site, would have been forcibly removed. Mr. Eller denied suggesting that it was the former inhabitant who would have been afforded nonconforming protection.

Tracy Shenkin testified that she and her husband were present to appeal the decision of the zoning administrator, a verbal contract had been entered on March 8, and submitted into evidence as exhibit 4 a signed lease to use the property a site for a mobile food vendor from March 18 suggesting that these actions predated the passage of the ordinance and constituted the commencement of the use. Ms. Shenkin also testified that if the notice of violation were upheld, an undue hardship would be applied to her and her husband as well as the property owner Mr. Roberson. Ms. Jackson noted to the Board and applicant that the lease submitted into evidence showed an effective date of April 1, 2018.

Mr. Roberson testified that the property had been advertised for general lease and not for the specific use of the property to house a mobile food vendor.

Mr. Eller testified that neither Mr. Roberson nor the leaseholders had contacted municipal staff over the proposed use of the property.

The leaseholders and Mr. Roberson suggested that Mr. Roberson should have been contacted directly over the change in ordinance which affected the use of mobile food vendors in certain zoning district. Mr. Eller testified that the process for such a zoning text amendment prescribed by municipal ordinance and state statute had been adhered to and such a notice to individual property owners or leaseholders was not feasible when considering the entirety of the jurisdiction.

A lengthy conversation ensued between board members as to the applicability of Sec. 36-19 Nonconfirming Uses and as to whether any ambiguities existed within same.

Mr. Eller noted other sections of code that were not being observed based upon the establishment of this use without permit for zoning and signage; landscaping regulations; and sidewalk requirements.

Mr. Eller inquired Mr. Robinson and the leaseholders as to whether any evidence could be produced establishing that Southern Smoke was operational on the property at the time of the ordinance passage on March 19. No such evidence was produced.

The leaseholders alleged they were being attacked by Mr. Eller; that the Board and Staff were being pressured by an individual member of Town Council; the enforcement of the zoning ordinance of the Town upon the property was a violation of their 14th amendment rights; and the zoning text amendment should not be enforceable because individual property owners were not noticed.

Ms. Jackson noted that no such influence over the Board existed as noted earlier in the meeting when no ex parte communication was revealed and no objection was offered toward same.

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

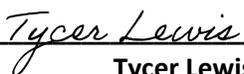
Chairman McKenna motioned to deny the appeal and affirm the decision of the zoning administrator. Ms. Wright seconded and all voted unanimously.

6. Any Other Business to Come Before the Board.

No further business was conducted by the Board

7. Adjournment.

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



**Tycer Lewis, Vice-Chairman
Zoning Board of Adjustment**

ATTEST:



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