

Town of Weaverville

Zoning Board of Adjustment
Minutes – Monday, January 14, 2019

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, January 14, 2019, in Council Chambers at Town Hall at 30 South Main Street, Weaverville.

Present: Chairman Tycer Lewis, Vice Chairman Cynthia Wright, Board Members Paul Clauhs, Roger Parkin, and Sylvia Valois, Alternate Member Gene Knoefel, Town Attorney Jennifer Jackson and Planning Director James Eller. Absent: Alternate Member Bob Pace.

1. Call to Order

Chairman Tycer Lewis called the meeting to order at 7:00pm and welcomed those in attendance to the meeting. The board members and staff introduced themselves.

2. Approval of Minutes

Board Member Clauhs made a motion to approve the minutes from the October 8, 2018, meeting of the Board as presented. Vice Chairman Wright seconded the motion and all voted in favor of approving the minutes.

3. Approval of an Order Establishing a Favor Ruling in the Matter of a Variance Request Related to the Side Yard Setbacks Established by the R-1 Zoning District on the Property Commonly Known as 30 North College Street

Board Member Parkin made a motion to approve the proposed Order as presented. Board Member Clauhs seconded the motion. All voted in favor of the motion and the order was approved.

4. Evidentiary Hearing on an Application for an Amendment to an Existing Special Use Permit Applicable to the Property Commonly Known as Ingles located at 140 Weaver Boulevard

Chairman Lewis asked Attorney Jackson to provide an overview on how quasi-judicial hearings work. The following were Attorney Jackson's statements:

Tonight the Zoning Board of Adjustment will hold a quasi-judicial hearing on a variance application. The purpose of the quasi-judicial hearing is for the Zoning 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.

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. 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.

Chairman Lewis introduced the matter by stating that Ingles Markets, Inc., which owns and operates the Ingles located at 140 Weaver Boulevard (Buncombe County Parcel Identification Number of 9742-19-3699), has requested an amendment to its special use permit. They are seeking to convert their existing garden center space into a space to accommodate an additional commercial establishment permitted in the underlying zoning district of C-2. Town Code Sec. 36-328(1) authorizes the BOA to grant amendments to special use permits. The standards for special use permits are as follows:

1. The establishment, maintenance, or operations of the special use (as amended) will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
2. The special use (as amended) will not be injurious to the use or enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish or impair property values within the neighborhood.
3. The establishment of the special use (as amended) will not impede the normal or 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.
7. The special use (as amended) shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulation may, in each instance, be modified by the board of adjustment.

Chairman Lewis declared the hearing open and began by polling 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. None were reported. No board member indicated that they had had any *ex parte* communication with the applicant; however all of the board members indicated that they had been in the Ingles store. No concerns were noted about the board hearing the matter were expressed.

James Eller noted that his father has worked for Ingles warehouse for over 31 years but that such a relationship would not prevent him from impartially presenting the matter to the board. No objection to Mr. Eller's participation was noted from either the applicant or the Board.

Chairman Lewis noted that the applicant/property owner, Ingles Markets, Inc., had standing to participate in the hearing, as did James Eller on behalf of the Town. No one else expressed a desire to be made a party to the proceeding.

The following individuals were sworn in and gave testimony: James Eller, Preston Kendall as the representative for Ingles Markets, Inc., John Cox as an engineer for Ingles, and Erik Young as a representative of ACE Hardware. John Cox and Erik Young were available for questions but did not provide any testimony.

Mr. Eller described the application and asked that the following exhibits be entered into evidence:

Exhibit 1-A – Affidavit of Mailing

Exhibit 1-B – Affidavit of Posting

Exhibit 1-C – Affidavit of Publication

Exhibit 2 – The entire meeting packet, which did include Mr. Eller's staff report, the application and the general plans that were included as part of the application.

Exhibit 3 – A signed copy of the application

All exhibits were accepted into evidence without objection from any party.

Mr. Eller reviewed the application and noted specifically that the property is zoned C-2 commercial but that it is subject to a special use permit that was issued in 1995. Mr. Eller indicated that he is of the opinion that the changes requested by the applicant would be consistent with the special use standards and the previously issued special use permit. In particular, Mr. Eller indicated that the parking requirements would not change and the requirement for a traffic impact analysis would not be triggered.

Testimony from Preston Kendall supported the application materials and provided evidence that Ingles Markets, Inc. is the owner of the real property located at 140 Weaver Blvd, which bears Buncombe County parcel identification number 9742-19-3699. The improvements on the property include an existing Ingles grocery store and related uses, including an outdoor garden center which has a roof over only a portion of the garden center area. Mr. Preston indicated that they would like to completely enclose the area of the garden

center that is roofed in order to allow a use similar to ACE Hardware to locate there. The remaining uncovered garden center area would remain uncovered and used as a garden center. The footprint would not be enlarged. The general plans presented with the application accurately reflect their plan and request except that a dumpster in the back of the space that is to be enclosed is not shown but should be.

Based on the evidence presented the board indicated that it was inclined to find that the requested amendment meets all of the standards applicable to special use permits.

Having heard all the evidence and heard the responses to all questions asked, Chairman Lewis closed the evidentiary hearing.

5. Ruling on the Application to Amend an Existing Special Use Permit - Ingles

Based on the documentary and testimonial evidence presented during the hearing, Board Member Clauhs made the motion to approve the requested amendment. Board Member Valois seconded the motion and all voted in favor of approving the requested amendment.

The Town Attorney had a draft order for the Board to consider and after the provisions were read aloud, Board Member Clauhs made the motion to adopt the written decision. Vice Chairman Wright seconded the motion and all voted in favor of adopting the written decision.

6. Other Business

Staff presented the Board with some recently released demographic information that was compiled during the comprehensive land use plan update project.

The Town Attorney noted that some proposed amendments to the Board's Rules of Procedures will be presented in an upcoming meeting as the current version has not been updated to reflect the Board's regular meeting schedule. This may be combined with some training for the Board.

7. Adjournment

At approximately 7:30 pm, Board Member Clauhs made a motion to adjourn, which was seconded by Vice Chairman Wright. All voted in favor and the meeting was adjourned.



**Tyker Lewis, Chairman
Board of Adjustment**

ATTEST:



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