

Town of Weaverville

Zoning Board of Adjustment  
Minutes – Monday, May 13, 2019

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, May 13, 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 January 14, 2019, meeting of the Board as presented. Board Member Parkin seconded the motion and all voted in favor of approving the minutes.

**3. Evidentiary Hearing on an Application for an Amendment to an Existing Special Use Permit Applicable to the Property owned by Monticello Development, LLC at 16 Monticello Village Drive**

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 an application to amend a special use permit. 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 Monticello Development, LLC, is the owner of approximately 5.47 acres at 16 Monticello Village Drive (Buncombe County Parcel Identification Numbers of 9743-21-7812 and 9743-31-0653), and, through its Member Manager P. Andrew Walker, has requested an amendment to the special use permit that is in place for this commercial development. They are seeking to amend the site plan in order to reconfigure the size, number and location of office buildings and parking lots. 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.

Chairman Lewis noted that the applicant/property owner, Monticello Development, LLC, 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, Warren Sugg of Civil Design Concepts as the representative for Monticello Development, LLC.

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, including specifically the application, revised site plan and elevations, Mr. Eller’s staff report, the Board of Adjustment Order adopted November 15, 2006, and the conceptual plan that was reviewed and mentioned in the 2006 Order..

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 2006 for a unified business development. 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.

Documentary evidence included the application materials and provided evidence that Monticello Development, LLC, is the owner of the real property located at 16 Monticello Village Drive, which bears Parcel Identification Number 9743-21-7812 and 9743-31-0653, and is located with the Town’s C-2 zoning district. Consistent with the original conceptual plan, a unified business development consisting of up to 7 mixed use buildings and up to 45 residential dwelling units were approved for the property. There are currently two mixed use buildings that have been constructed in accordance with the approved unified business development. The requested amendment would allow a reconfiguration of the size, number, and location of the mixed use or commercial/retail/office buildings, and the associated parking lots.

The proposed site plan and amendment calls for building #5 (as shown on the conceptual plan) to be enlarged, buildings #3 and #4 to be eliminated and used for additional parking, and building #6 to be slightly relocated and slightly enlarged. It is unclear whether these improvements will leave any room for any additional development on the property. Building #5 is proposed as a commercial/office building, not a mixed use building, and is shaded in gray on the site plan. Building #6 is marked as “future building” and shown in white.

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. The board was further indicated that it was inclined to substitute the site plan and elevations as the new conceptual plan for this property.

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

**4. Ruling on the Application to Amend an Existing Special Use Permit – Monticello Development, LLC**

Based on the documentary and testimonial evidence presented during the hearing, Board Member Valois made the motion to approve the requested amendment. Board Member Clauhs seconded the motion and all voted in favor of approving the requested amendment. There was further discussion by the Board and consensus reached that the zoning administrator has authority to approve further reconfigurations on the property if they are consistent with the new conceptual plan.

The Town Attorney will draft a written order for the Board to consider at its next meeting. The Board authorized the zoning administrator to go ahead and issue a zoning permit in advance of the approval of the written order as long as it is consistent with the action taken at the meeting.

**5. Other Business - None**

**6. Adjournment**

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

  
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**Tyker Lewis, Chairman**  
**Board of Adjustment**

**ATTEST:**

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