



**Town of Weaverville
Planning and Zoning Board
Council Chambers
Tuesday, March 6, 2018, 6:00pm**

Agenda

1. Call to Order – Chairman Doug Theroux.
2. Approval of the Minutes from the February 6, 2018 Meeting of the Board.
3. Discussion Related to the Rules of Procedure for the Planning and Zoning Board.
4. Consideration of a Motion Adopting the Rules of Procedure for the Planning and Zoning Board.
Said Rules Shall be Subject to the Approval of Town Council.
5. Review Related to the Duties and Responsibilities of the Planning and Zoning Board.
6. Discussion Related to a Statutory Modification for Plan Consistency Statements.
7. Review and Discussion Related to the Approval Process for Major Subdivisions.
8. Any Other Business to Come Before the Board.
9. Adjournment.

Town of Weaverville
Planning and Zoning Board
Minutes – Tuesday, February 6, 2018

The Planning and Zoning Board of the Town of Weaverville met for a regularly scheduled monthly meeting at 6:00pm on Tuesday, February 6, 2018 within Council Chambers at Weaverville Town Hall.

Present: Chairman Doug Theroux, Vice-Chairman Gary Burge, Board Members Catherine Cordell, Leslie Osborne and Peter Stanz, Alternate Board Members John Chase and Steve Warren, Town Attorney Jennifer Jackson and Planning Director James Eller.

1. Call to Order.

Chairman Doug Theroux called the meeting to order at 6:00 pm.

Chairman Theroux noted to the members of the audience the procedure which would be followed for those in attendance who wished to address the Board on matters reflected on the agenda.

2. Approval of the Minutes from the January 2, 2018 Meeting of the Board.

Mr. Eller noted a statement made by Ms. Osborne to be redacted. Ms. Osborne motioned to approve the minutes as amended. Mr. Burge seconded and all voted unanimously.

3. Discussion Related to a Preliminary Plat for a Minor Subdivision Located at 11 Moore Street.

Mr. Eller presented to the Board the application and plat for a minor subdivision at 11 Moore Street. Said application and plat called for the creation of one lot for a single family residence from the existing 2.7 acre lot. Following a conversation related to the contents of the application and plat, consensus was granted that the setback lines should be shown within the property lines in addition to the shown zoning designation of the property.

4. Consideration of a Motion Establishing a Recommendation to the Planning Director Related to the Aforementioned Minor Subdivision.

Mr. Burge motioned to favorably recommend to the Planning Director the minor subdivision plat for 11 Moore Street with one revision being the setbacks shown within the property lines. Mr. Stanz seconded and all voted unanimously.

5. Discussion Related to a Proposed Text Amendment Regarding the Land Use of Mobile Food Vendors and the Additional Standards Placed Thereon.

Mr. Eller noted that staff received an application in December for a text amendment related to the additional standards placed upon mobile food vendors. The nature of the application called for mobile food vendors to be permitted in the C-1 Zoning District absent the requisite special event permit and reducing the location requirements from existing residential structures within residentially zoned districts. Mr. Eller noted that

additional language had been crafted following the concerns and input of the Planning and Zoning Board discussed during the January meeting.

Chairman Theroux noted that an additional standard should be added related to a permit fee found within the schedule of fees adopted annually by Town Council in conjunction with the fiscal year budget.

Mr. Eller clarified to the Board that the application was withdrawn from consideration at the Board's last meeting due to the additional language that was requested of staff. The same application is being submitted once again in conjunction with the additional language crafted reflective of the concerns of the Planning and Zoning Board expressed during the January meeting.

Chairman Theroux reminded those in attendance the previously established procedure for addressing the Board and called upon the applicant to speak to their proposal.

Jon Varner, applicant and owner of Eluvium Brewing Company at 11 Florida Avenue, introduced himself to the Board and spoke on behalf of the application. Mr. Varner suggested that a mobile food vendor would bring more commercial activity downtown and spoke to the concern of competition to the existing restaurants.

Chairman Theroux asked if the applicant had considered adding a traditional kitchen within the existing structure. Mr. Varner responded that he was awaiting the result of the ruling on the application for a text amendment to fully explore his options.

Mr. Burge asked if the reduction in the spatial requirement related to existing residential structures within residential districts would be sufficient to house a mobile food vendor at the desired location on the subject property. Mr. Varner deferred to Mr. Eller who affirmed.

Mike Vanhose of Blue Mountain Pizza spoke to the Board in opposition of the application. Mr. Vanhose noted taxation of brick and mortar restaurants, limited parking availability, and access to restrooms as concerns.

Joey Cagle of Blue Mountain Pizza seconded the comments of Mr. Vanhose.

Louis Accornero spoke to the Board in opposition of the application. Mr. Accornero expressed a desire to promote permanent development in downtown and suggested that the brewery develop a relationship with existing restaurants to have food delivered.

Judy Glicken of Well Bread Bakery spoke to the Board in opposition of the application. Ms. Glicken noted volume of traffic along Main Street, one way traffic pattern of Florida Avenue, limited parking availability, and the proximity to a loading zone for the bakery as concerns.

Ruben Tirado of Well Bread Bakery spoke to the Board in opposition of the application. Mr. Tirado noted the general congestion of downtown, limited parking availability, the proximity to a loading zone for the bakery, and emergency vehicle access as concerns.

Ms. Osborne asked Mr. Varner to describe the parking availability for Eluvium Brewing. Mr. Varner described an area directly in front of the building as well as an adjacent private parking lot dedicated to his business and the tenants of the Shope's Furniture building.

Ms. Cordell asked Mr. Accornero to describe the parking availability for the four restaurants contained within building under his ownership. Mr. Accornero described private parking availability for Twisted Laurel, All Good Coffee, Maggie B's and noted that Well Bread Bakery relied solely on public parking spaces.

Mayor Root spoke to the Board regarding their work on the issue of permitting mobile food vendors in the C-1 Zoning District, noted the necessity of a vibrant downtown and described historical references to issues which were perceived to be detrimental to downtown.

Doug Dearth, who had previously signed up to speak, yielded his time to Patty Keeran of Glass Onion. Ms. Keeran suggested that allowing food trucks would create an uneven playing field for the existing brick and mortar restaurants and requested some clarification on the issuance of special event permits.

Ms. Jackson noted that a special event permit is only applicable when said event causes the closure of streets or sidewalks.

Alan Sheppard, owner of 11 Florida Avenue where Eluvium Brewing is located, spoke to the Board in favor of the application. Mr. Sheppard noted that some of the parking problems referenced by others are created by the employees of the existing restaurants and cautioned the perspective of protectionism expressed by others who had previously spoken.

With public comment concluded, Mr. Eller asked Chairmen Theroux if he may offer clarifications to some of the comments which were made based upon the proposed ordinance. Mr. Eller noted that it was not a disagreement with the position of those who had spoken but information for the Board's consideration in the event that they had similar concerns. Speaking to the concern of restroom availability, Mr. Eller noted that a standard placed upon mobile food vendors linked their hours of operation to the primary use or structure on a property and ensured the availability of restroom facilities. Speaking to the concern of parking availability, Mr. Eller noted that several of the proposed standards ensured that a mobile food vendor would be housed entirely on private property absent the issuance of a special event permit. Speaking to the concern of general congestion in the C-1 Zoning District, Mr. Eller noted that zero lot line construction is permitted by right within same. Speaking to the concern of traffic and loading zones, Mr. Eller noted that Florida Avenue, Main Street and Merchants Alley were all public streets and therefore open to all members of the public. Speaking to the concern of additional dining options in the C-1 Zoning District, Mr. Eller noted that a restaurant is permitted by right within same.

Chairman Theroux reviewed and framed the topic for consideration as the revision of existing standards placed upon mobile food vendors to permit within the C-1 Zoning District absent a special event permit when said standards are met. Chairman Theroux also noted the Board's responsibility to establish a recommendation to Town Council based upon their conversations and deliberations over the past two meetings related to the topic.

Mr. Stanz commented on the statements made related to existing brick and mortar establishments and asked that all consider that Eluvium Brewing is itself a brick and mortar business.

6. Consideration of a Motion Establishing a Recommendation to Town Council Related to the Aforementioned Text Amendment.

Mr. Stanz motioned to favorably recommend to Town Council the amended additional standards placed upon mobile food vendors. Ms. Cordell seconded and all voted unanimously.

Ms. Jackson noted to those in attendance that the issue would now progress to Town Council and that members of the public could express their concerns during the requisite public hearing.

7. Discussion Related to a Proposed Amendment of Code Related to the Prohibition of Storage or Shipping Containers as an Accessory Structure within Residentially Zoned Districts.

Mr. Eller noted that, due to statutory limitations in place, design standards related to any structure covered by the North Carolina Residential Building Code may not be imposed. Mr. Eller stated that it was his position that the language before the Board for their consideration represented an improvement over existing regulations but noted that they do not solve the circumstances Council directed staff to investigate based upon the aforementioned statutory limitations.

Mr. Warren affirmed Mr. Eller's position on the statutory limitations in place for residential structures.

Ms. Jackson suggested the redaction of a statement found in proposed Section 36-139(c) and consensus was achieved for same.

Mr. Eller noted to the Board that proposed section 36-139(d) concerning Landscaping buffering was crafted in an attempt to address the circumstances at Salem Road and Kyfields but noted that due to lot configuration this language would not address that particular instance.

Ms. Jackson asked Mr. Eller if he would recommend the removal of the aforementioned language. Mr. Eller suggested that the buffering requirement described would potentially cause more problems than it solved and would be particularly detrimental to the corridors of Moore and Church.

Mr. Warren asked Mr. Eller if there were other sections of the code which may address concerns over light and noise trespass. Mr. Eller responded that noise and light ordinances exist in other section of the code.

Chairman Theroux suggested that present language related to the height of accessory structures be clarified and Ms. Jackson recommended a revision be made in Section 36-139(b).

8. Consideration of a Motion Establishing a Recommendation to Town Council Related to the Aforementioned Rezoning.

Mr. Burge motioned to favorably recommend to Town Council the additional standards placed upon accessory structures as amended per aforementioned discussion and additional standards placed upon storage containers. Mr. Stanz seconded and all voted unanimously.

9. Any Other Business to Come Before the Board.

No further business was discussed or conducted by the Board.

10. Adjournment.

Ms. Osborne motioned to adjourn. Ms. Cordell seconded and all voted unanimously.

**Doug Theroux, Chairman
Planning and Zoning Board**

ATTEST:

James W. Eller
Planning Director / Deputy Town Clerk

Rules of Procedure for the Weaverville Planning and Zoning Board

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Rule 1. Regular Meetings – The Board should adopt a regular schedule of meetings for each calendar year. The regular schedule shall indicate the date, time and location of the Board’s regular meetings and shall be filed with the Town Clerk and the Secretary of the Planning and Zoning Board. In the event that the Board fails to adopt a regular schedule of meetings, then the meeting shall be held on the first Tuesday of each month within Council Chambers of the Weaverville Town Hall located at 30 South Main Street, Weaverville, North Carolina, and shall begin at 6:00 p.m.

Rule 2. Special and Recessed Meetings –

(a) **Special Meetings.**

The chair may at any time call a special meeting of the Board or a special meeting may be called or scheduled by vote of the Board in open session during another duly called meeting. At least 48 hours before a special meeting is held, written notice of the meeting stating its date, time, place, and subjects to be considered shall be (1) given to each Board member; (2) posted on the Town’s principal bulletin board for legal notices or, if none, at the door of the Board’s usual meeting room; and (3) mailed or delivered to each newspaper, wire service, radio station, and person who has filed a written request for notice with the Board’s Secretary.

(b) **Recessed Meeting.** A properly called regular or special meeting may be recessed to a time and place certain by a motion made and adopted in open session during the regular or special meeting. The motion shall state the date, time and place when the meeting will reconvene. No further notice need be given of such a recessed session of a properly called regular or special meeting.

Rule 3. Organizational Meeting – On the date and time of the first regular meeting in September, the newly appointed members shall take and subscribe the oath of office as the first order of business. As the second order of business, the Board shall elect a chair and vice-chair, if he or she is not otherwise selected, using one of the nomination and voting procedures set out in [Rule 15](#). Adoption of a regular schedule of meetings for the upcoming calendar year would be appropriate at the Organizational Meeting, or as soon thereafter as the Board can take such action.

Rule 4. Agenda –

(a) **Proposed Agenda and Agenda Packet.** The Board’s Secretary shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda must be received at least 10 working days before the meeting

with the required fee, if any. Any Board member may, by a timely request, have an item placed on the proposed agenda. An agenda packet shall be prepared that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce. Each Board member shall receive a copy of the proposed agenda and the agenda packet at least 3 business days prior to each regular meeting. The agenda shall be made available for public inspection and/or distribution when it is distributed to the Board members and agenda packets made available upon request. The Zoning Administrator/Town Planner has the authority to remove from the agenda any submission for review which, in his or her determination, does not meet the minimum requirements of Town Code.

(b) **Adoption of the Agenda.** As its first order of business at each meeting the Board shall discuss and revise the proposed agenda and adopt an agenda for the meeting; provided, however, that the Board may not add items to or subtract items from the proposed agenda for a special meeting. If items are proposed to be added to the agenda, the Board may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all Board members.

(c) **Open Meetings Requirements.** The Board shall not deliberate, vote, or otherwise take action on any matter by reference to a letter, number, or other designation, or other secret devise or method, with the intention of making it impossible for persons attending the meeting of the Board to understand what is being deliberated, voted, or acted on. However, the Board may deliberate, vote, or otherwise take action by reference to an agenda, if copies of the agenda – sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on – are available for public inspection at the meeting.

Rule 5. Order of Business – Items shall be placed on the agenda generally according to the following order of business:

- Call to Order
- Adjustment/Adoption of agenda
- Approval of minutes
- Consideration of Applications (including Public Comment if allowed by Chair)
- Consideration of Staff- or Board-Initiated Items
- Public Hearing
- Administrative Reports
- Committee Reports
- Any Additional Informal Discussion
- Any Additional Public Comment
- Adjournment

By general consent of the Board, items may be considered out of order.

Rule 6. Format for Review of Applications – The following outline is a guide for review of all applications:

1. Chair Requests Staff Report/Memo
 - a. Planner presents report/memo for the proposed application and addresses outstanding issues. Staff report/memo is entered into minutes
 - b. Questions from Board
 - i. Has the applicant received the Staff report/memo?
 - ii. Have all the technical requirements been met for the application?
 - iii. Are there any outstanding issues that have not been addressed by the applicant or other questions?
2. Applicant's Presentation
 - a. Applicant presents any additional information
 - b. Questions from Board/Staff
 - i. Does the applicant have any solutions to the issues identified by Board/Staff?
3. Board Questions/Discussion
4. Chair Entertains Motion on the Application
5. Board Motion and Action

Rule 7. Presiding Officer –

The chair of the Board shall preside at Board meetings if he or she is present. If the chair is absent, the vice-chair shall preside. If both the chair and vice-chair are absent, another member designated by vote of the Board shall preside.

The chair may vote in all cases. In order to address the Board, a member must be recognized by the chair. The vice-chair or another member who is presiding retains all of his or her rights as a member, including the right to make motions and the right to vote.

If the chair becomes actively involved in debate on a particular matter, he or she may designate another Board member to preside over the debate. The chair shall resume presiding as soon as action on the matter is concluded.

The presiding officer shall have the following powers:

- To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground;
- To entertain and answer questions of parliamentary law or procedure;
- To call for a brief recess at any time;
- To adjourn in an emergency;

- To appoint members to a Board committee and to attend committee meetings as an ex officio member;
- To sign recommendations, statements, and certificates that have been prepared consistent with Board action.

A decision by the presiding officer under any of the first three powers listed may be appealed to the Board upon motion of any member. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion on an appeal of the presiding officer's decision need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

Rule 8. Substantive Motions – All board action shall proceed by motion. Any member, including the chair, may make a motion. A motion does not require a second. A member may make only one motion at a time. A substantive motion is out of order while another substantive motion is pending.

The chair shall state the motion and then open the floor to debate. The chair shall preside over the debate according to the following general principles:

- The maker of the motion is entitled to speak first;
- A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- To the extent possible, the debate shall alternate between proponents and opponents of the measure.

A motion shall be adopted by a majority of the votes cast when a quorum (as defined in [Rule 12](#)) is present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first. A motion that is defeated can be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

Rule 9. Procedural Motions – In addition to substantive proposals, the Board shall utilize the usual and customary procedural motions consistent with the spirit of *Robert's Rules of Order Newly Revised* to provide for an orderly meeting. See [Appendix](#) for a list and description of some procedural motions. For questions regarding parliamentary procedures see [Rule 19](#).

Rule 10. Public Address to the Board – Any individual or group who wishes to address the Board on any item listed on the agenda shall make a request to the Board's Secretary. However, the Board shall determine at the meeting whether it will hear the individual or group.

Rule 11. Public Hearings -

Public hearings may be required by law, required by Town Council, or deemed advisable by the Board. All notices and other requirements of the open meetings law applicable to the Board meetings shall also apply to public hearings at which a majority of the Board is present; such a hearing is considered to be part of a regular or special meeting of the Board. A public hearing for which any required notices have been given may be continued to a time and place certain without further advertisement. The requirements of [Rule 2\(b\)](#) shall be followed in continuing a hearing at which a majority of the Board, or of a Board committee, as applicable, is present.

At the time appointed for the hearing, the chair shall call the hearing to order and then preside over it. When the allotted time expires, or earlier, if no one wishes to speak who has not done so, the presiding officer shall declare the hearing ended.

The Board has the authority to establish rules regarding the length of time allotted for each speaker, and other pertinent matters such as designation of spokespersons, and those rules necessary to maintain order and decorum in the conduct of the hearing. Such public hearing rules can be adopted by a majority vote.

[Rule 12. Quorum](#) - A majority of the actual membership of the Board, excluding vacant seats, shall constitute a quorum. A majority is more than half. The chair shall be considered a member of the Board in determining the number on which a majority is based and in counting the number of members actually present. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

[Rule 13. Duty to Vote](#) - Every member must vote unless excused by the remaining members of the Board. A member who wishes to be excused from voting shall so inform the chair, who shall take a vote of the remaining members. No member shall be excused from voting except in cases involving conflicts of interest [see [Rule 14](#)], as defined by the Board or by law, or the member's official conduct, as defined by the Board. In all other cases, a failure to vote by a member who is physically present in the Board chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as a vote with the prevailing side.

[Rule 14. Conflicts of Interest](#) - Board members should not participate in or vote on any matter that involves a close familial, business, or other associational relationship or where the member has a financial interest in the outcome of the matter.

Rule 15. Appointments/Elections –

All members of the Board shall be appointed by Town Council and shall serve at Town Council's pleasure. The Board may consider and make appointments to other bodies, including its own committees, if any, only in open session.

The Board shall use the following procedure to elect a chair and vice-chair and to make appointments to any of its committees. For each election or appointment the chair shall open the floor for nominations, whereupon the names of possible appointees may be put forward by the Board members. The names submitted shall be debated. When the debate ends, the chair shall call the roll of the members and each member shall cast his or her vote. The nominees receiving the highest number of votes shall be appointed.

Rule 16. Committees and Boards –

The Board may establish and appoint members for such temporary and standing committees as are required by law or needed to help carry on the board's work. Any specific provisions of law relating to particular committees and board shall be followed.

The requirements of the open meetings law [see [Rule 4\(c\)](#)] shall apply to all elected or appointed authorities, boards, commissions, councils, or other bodies of a local governmental unit that exercise or are authorized to exercise legislative, policy-making, quasi-judicial, administrative, or advisory functions. However, it is noted that open meetings law does not apply to a meeting solely among the Town's professional staff.

Rule 17. Minutes – Full and accurate minutes of the Board proceedings shall be kept. The exact wording of each motion and the results of each vote shall be recorded in the minutes, and on the request of any member of the Board, the entire Board shall be polled by name on any vote. Members' and other persons' comments may be included in the minutes if the Board approves. The Board Secretary has the duty to draft and present minutes to the Board for approval and to draft recommendations, statements, and certificates consistent with Board action and present the same to the chair for review and signature.

Rule 18. Amendment of the Rules – These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment to the rules as one of the stated purposes of the meeting, unless a statute or rule of Town Council provides otherwise. Adoption of an amendment shall require an affirmative vote equal to a quorum of the Board. No amendment to the Rules shall be effective until Town Council has granted its approval.

Rule 19. Reference to Robert's Rules of Order – The Board shall refer to the current edition of *Robert's Rules of Order Newly Revised* ("RONR"), to answer procedural questions not resolved in these rules, so long as RONR does not conflict with North Carolina law or with the spirit of these rules.

ADOPTED by the Planning and Zoning Board this the ____ day of _____, 2018.

ATTESTED BY:

Doug Theroux, Chair

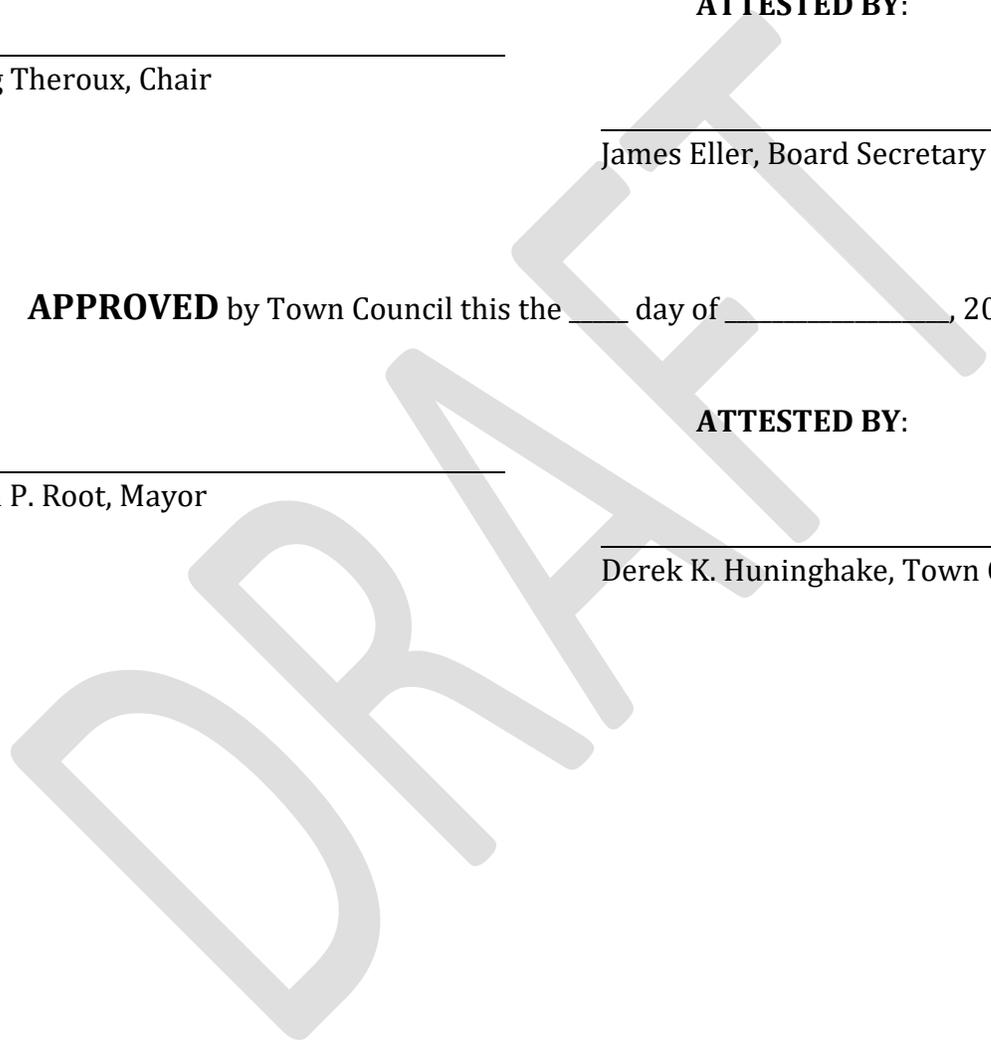
James Eller, Board Secretary

APPROVED by Town Council this the ____ day of _____, 2018.

ATTESTED BY:

Allan P. Root, Mayor

Derek K. Huninghake, Town Clerk



APPENDIX – PROCEDURAL MOTIONS

Unless otherwise noted, each motion described below is debatable, may be amended, and requires a majority vote of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted. In order of priority (if applicable), some procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the Board, as specified in [Rule 7](#). This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Motion 2. To Adjourn/Recess. This motion may be made only at the conclusion of action on a pending substantive matter; it may not interrupt deliberation on a pending matter. A motion to recess to a date, time and place certain shall also comply with the requirements of [Rule 2\(b\)](#).

Motion 3. To Take a Brief Recess.

Motion 4. To Follow the Agenda. The motion must be made at the first reasonable opportunity or it is waived.

Motion 5. To Suspend the Rules. The board may not suspend provisions of the rules that state requirements imposed by law on the board. For adoption, the motion requires an affirmative vote equal to a majority of the entire membership of the board. A majority is more than half.

Motion 6. To Divide a Complex Motion and Consider it by Paragraph. The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Motion 7. To Defer Consideration. The Board may defer a substantive motion for later consideration at an unspecified time. A substantive motion which has been deferred automatically expires 100 days after the deferral unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending and has not expired. A person who wishes to revisit the matter during that time must take action to revive consideration of the original motion [see [Motion 12](#)], or else move to suspend the rules [see [Motion 5](#)].

Motion 8. Motion for the Previous Question. To end debate and call for a vote on a motion, a Board member can move the previous question. The motion is not in order until there has been at least 10 minutes of debate and every member has had an opportunity to speak at least once.

Motion 9. To Postpone to a Certain Time and Day. To delay action on a pending motion a motion to postpone to a certain time and day would be proper. If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules [Motion 5].

Motion 10. To Refer a Motion to a Committee. The Board may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days or more after the substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire Board, whether or not the committee has reported the matter to the Board.

Motion 11. To Amend. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote. Any amendment to a proposed order, policy, regulation, statement, resolution, or recommendation, shall be reduced to writing before the vote on the amendment.

Motion 12. To Revive Consideration. The Board may vote to revive consideration of any substantive motion earlier deferred by adoption of a motion to defer consider under Motion 7. The motion is in order at any time within 100 days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires 100 days after the deferral unless a motion to revive consideration is adopted.

Motion 13. To Reconsider. The Board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

Motion 14. To Rescind or Repeal. The Board may vote to rescind action it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.

Coates' Canons Blog: A Statutory Modification for Plan Consistency Statements

By David Owens

Article: <https://canons.sog.unc.edu/a-statutory-modification-for-plan-consistency-statements/>

This entry was posted on June 20, 2017 and is filed under Land Use & Code Enforcement, Legislative Decisions, Ordinances & Police Powers, Planning, Zoning

Cities and counties routinely consider proposals to amend their zoning ordinances. Amendments vary from the rezoning of a single parcel of land to major rewrites of the whole ordinance. The decision of whether or not to make a particular amendment is a legislative policy choice left to the good judgment and discretion of the elected governing board.

A variety of factors are considered by the governing board in making these decisions. For the past decade in North Carolina, one of the factors that must be considered is how the proposal relates to previously adopted plans. Under the General Statutes a zoning amendment is not required to be consistent with the plan, but both the planning board and governing board are required to consider the plan and to document that consideration with a written statement approved by the board. For the most part this has become a routine and noncontroversial step in the zoning amendment process. But there has been enough confusion about this requirement that the General Assembly has amended the plan consistency statement requirement, with the changes to take effect for *applications for zoning amendments* made on or after October 1, 2017.

When a local government adopts development regulations, there must be a rational basis for determining what those regulations should be. Zoning regulates where various land uses can be located and at what density and intensity of use. To make rational and informed choices in adopting and later amending these regulations, there should be careful consideration of many factors, including what infrastructure is needed to support development, how the land uses relate to one another, what the community's goals, objectives, and vision for the future are, and so forth.

Plan Consistency Statement Requirement

It has always been presumed that a comprehensive plan or land use plan is an essential tool to produce the data analysis, community engagement, and policy direction needed to allow rational choices in applying zoning. From the earliest days of zoning, statutes across the country have required that zoning be undertaken "in accordance with a comprehensive plan." Some states, by statute or case-law, require zoning regulations to be in substantial compliance with an adopted plan.

That is not the case in North Carolina. Our courts have not mandated that zoning be consistent with a comprehensive plan. However, in 2005 the North Carolina planning statutes were amended to require that planning boards and the governing board review and consider any adopted plan when a zoning amendment is proposed. That plan consistency statement requirement is discussed in more detail in this 2011 [blog post](#).

The statute only requires that the plan be considered, not that it be followed. Some zoning ordinances make plan compliance a mandatory factor for individual permit decisions, typically for a special use permit. But when a legislative decision is being made on a proposed zoning amendment, the statutes are clear that the plan is advisory in nature. A zoning amendment that is inconsistent with an adopted plan is legal, so long as the governing board was aware of what advice and guidance the plan offers. The statutory requirement is that the governing board's awareness must be documented by a statement describing plan consistency that is approved at the time the zoning amendment is adopted.

Subsequent Litigation

One might think that a simple statutory requirement that planning boards and governing boards pull out their adopted plans and think about what, if any, useful guidance the plan provides before making a decision on a pending zoning amendment would be straight-forward and non-controversial. After all, the boards are not required to take action

consistent with the plan, only to know and consider what it says. In most instances that has indeed proven to be the case. But there has been confusion and controversy about plan consideration in a few high profile zoning disputes that led to litigation.

In the first case addressing the plan consistency statement requirement, the City of Kannapolis was considering a proposal to rezone a large recently annexed parcel from low-density residential to a district that would allow retail, office, and light industrial uses. The staff prepared an analysis of the compatibility of the proposed uses with the adjacent area and concluded the rezoning was consistent with the long-range goals of the city. The staff report was presented to the city council and the rezoning was approved.

Opposing neighbors challenged the rezoning. The court in Wally v. City of Kannapolis, 365 N.C. 449 (2012), sided with the neighbors. The court held the statutory requirement for the council to approve a statement addressing plan consistency is clear and mandatory. The fact that a staff analysis was available for the board's review is not the same as the governing board itself approving a statement on plan consistency. This case is discussed in more detail by my colleague Rich Ducker in this [blog post](#).

The Wally case makes the fairly simple point that when the statute says the board must approve a statement, it means the board must really approve a statement, not just have a staff report in its meeting packet. While the substance of the statement is not subject to judicial review, whether it was formally approved by the governing board is subject to review. If the statement did not exist or was not clearly approved by the board, the statute is violated and the zoning amendment is invalid.

The second case addressing the plan consistency statement requirement arose when Queens University in Charlotte sought a zoning amendment to facilitate construction of a parking deck. Adjacent residents in the Meyers Park neighborhood objected. The city's zoning commission found the proposed amendment to be consistent with city plans and recommended approval. The city council agreed and adopted a statement that "this petition is found to be consistent with adopted policies."

In Atkinson v. City of Charlotte, 235 N.C. App. 1 (2014), the court found this conclusory statement failed to meet the requirement of the statute that the governing board statement describe how the action is consistent with adopted plans and explain why it is reasonable and in the public interest. The case is discussed in more detail by my colleague Adam Lovelady in this [blog post](#).

These two cases confirm that the governing board must actually approve a statement when it amends a zoning ordinance and that statement must be more than a checklist conclusion – it must include some modest discussion and explanation.

New Statutory Requirements

In 2017 the General Assembly amended G.S. 153A-341 and 160A-383 to add more specificity to the law regarding the mandated plan consistency statements.

Section 2.4 of **S.L. 2017-10** amends the statutes and makes these new requirements applicable to all zoning amendment applications filed on or after October 1, 2017. This bill also made amendments to the subdivision statute, discussed by my colleague Adam Lovelady in this [blog post](#).

The amended statute still requires approval of a statement and the statement still must describe plan consistency and explain why the proposed action is reasonable and in the public interest. So the Wally and Atkinson cases noted above are still good law.

However, the form of the required statement is changing. As of October, the statement must take one of three forms:

1. A statement approving the proposed zoning amendment and describing its consistency with the plan;
2. A statement rejecting the proposed zoning amendment and describing its inconsistency with the plan; or
3. A statement approving the proposed amendment and declaring that this also amends the plan, along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.

With each of these alternatives, the statement is also to include an explanation of why the governing board deems the action reasonable and in the public interest.

The statutory amendment also includes a rather curious provision that for the purposes of plan consistency, the “plan” includes a unified development ordinance as well as any other officially adopted plan that is applicable. A comprehensive or land use plan is rarely a part of a unified development ordinance. If a unified development ordinance exists, the zoning ordinance is a part of that ordinance. In that situation amending the zoning ordinance is an amendment in and of itself of the “unified development ordinance.” Given this near universal practice, this provision seems superfluous.

Implications

In some respects this amendment heightens the tie between the plan and zoning ordinances. If a proposed zoning amendment is consistent with the plan it may be approved and if it is inconsistent with the plan it may be rejected. But if the zoning amendment is inconsistent with the plan and the governing board wants to approve the amendment anyway, the plan is deemed amended and the governing board must set forth the “change in conditions” that led it to take that action.

The statute does not address a fourth possibility – that the board finds the amendment consistent with the plan but decides to reject the amendment anyway. Prior case law allows this to happen and given the advisory nature of the plan, that is likely still permissible. But the fact that it is not listed as an option in the new statute does give some pause to consider whether it is implied that this is no longer permissible. After all, the amended statute uses mandatory language, saying the governing board “shall adopt one of the following statements.” To avoid a potential problem in this situation, it would be prudent for a governing board rejecting a zoning amendment that is consistent with its plan to concurrently amend the plan.

Presumably the discretion of the governing board is not substantially limited when it decides to approve a zoning amendment that is inconsistent with the plan. The board can decide which “changing conditions” to consider and whether they are sufficient. For example, there may have been changes in physical conditions on the site, on the infrastructure available, on the demand for new development, on the policies or priorities of the board, on the board’s assessment of neighborhood needs, or on a host of other potential “conditions.”

In any event, the lessons of the *Wally* and *Atkinson* cases noted above should continue to be carefully observed. The statutory requirement for consideration of plan consistency is not a legislative suggestion. A statement on plan consistency must be explicitly approved by the governing board at the time a zoning amendment decision is made. The statement must be more than a one-sentence conclusion. It must both describe plan consistency or inconsistency and it must explain the rationale of the decision. The statement is to take the form of one of the three options noted above.

That said, the statement does not need to be a long, complicated, legalistic document. The statement does not have to be supported by evidence in the record, as would be the case for a quasi-judicial decision. But it must be real, it must be approved by the board, and it must have a brief description of why the action is or is not consistent with the plan. Anything less risks judicial invalidation of the zoning amendment.

Links

- canons.sog.unc.edu/what-if-a-proposed-rezoning-is-inconsistent-with-our-plan/
- canons.sog.unc.edu/zoning-ordinance-amendments-and-plan-consistency-statements/
- canons.sog.unc.edu/consistently-inconsistent-considering-consistency-statements-for-zoning-amendments/
- canons.sog.unc.edu/subdivision-legislation-old-exemption-new-expedited-review/

WEAVERVILLE PLANNING AND ZONING BOARD

Regularly meets 1st Tuesday of the month at 5:45 pm
in Council Chambers at Town Hall

NAME AND POSITION	CONTACT INFORMATION	DATE OF APPOINTMENT	TERM (2 YEARS)
Doug Theroux Chairman	73 Hillcrest Drive Weaverville, NC 28787 658-9477; (cell) 231-3568 dbtheroux93@gmail.com	August 2017	September 2017 – 2019
Gary Burge Vice Chairman	3 High Bluff Drive Weaverville, NC 28787 (cell) 423-0150 garyburge@garyburge.com	September 2016	September 2016 – 2018
Catherine Cordell Regular Member	13 Hamburg Drive Weaverville, NC 28787 (cell) 776-7380 cat.cordell7@gmail.com	September 2016	September 2016 – 2018
Leslie Osborne Regular Member	9 Reeves Street Weaverville, NC 28787 (cell) 712-3507 lesliesellshomes@charter.net	September 2016	September 2016 – 2018
Peter Stanz Regular Member	49 Brown Street Weaverville, NC 28787 (cell) 828-768-4202 stanzbus@gmail.com	August 2017	September 2017 – 2019
John Chase Alternate Member	151 South Main Street Weaverville, NC 28787 (cell) 828-337-3366 jchase@medlockengr.com	February 2017	Feb 2017 – Sept 2018
Stephen Warren	3 Duncannon Street Weaverville, NC 28787 (cell) 704-682-5801 Warren.smw.steve@gmail.com	August 2017	September 2017 – 2019
James Eller Town Planner	484-7002 jeller@weavervillenc.org		
Jennifer Jackson Town Attorney	828-442-1858 jjackson@weavervillenc.org		

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