

City of West Branch

~A Heritage for Success~

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ZONING BOARD OF ADJUSTMENT MEETING

Wednesday, April 22, 2015 • 6:30 p.m.

West Branch City Council Chambers, 110 N. Poplar St.

Council Quorum May Be Present

1. Call to Order
2. Roll Call
3. Approve minutes from the January 6, 2015 Zoning Board of Adjustment meeting./Move to action.
4. Approve minutes from the January 27, 2015 Planning and Zoning Commission Joint Work Session with the Zoning Board of Adjustment./Move to action.
5. Walkthrough - *Application for Special Exception to City Zoning Regulations* - Paul Stagg (Attachment A)
6. Discussion - Chapter 29 Zoning Board of Adjustment - Draft (4/7/15) (Attachment B)
7. Review Calendar/Next Steps
8. Adjourn

Board of Adjustment Members: Chair Craig Walker, Jennie Embree, Wayne Frauenholtz, Frank Frostedstad, Kami Poppen

Zoning Administrator: Paul Stagg • **Deputy City Clerk:** Leslie Brick

Mayor: Mark Worrell • **Council Members:** Jordan Ellyson, Colton Miller, Brian Pierce, Tim Shields & Mary Beth Stevenson

City Administrator/Clerk: Matt Muckler • **Fire Chief:** Kevin Stoolman • **Library Director:** Nick Shimmin • **Parks &**

Rec Director: Melissa Russell • **Police Chief:** Mike Horihan • **Public Works Director:** Matt Goodale

(These minutes are not approved until the next Commission meeting.)

City of West Branch Board of Adjustment Meeting
January 6, 2015
West Branch City Council Chambers, 110 North Poplar Street

Chairman, Craig Walker opened the regular meeting of the Zoning Board of Adjustments at 6:30 p.m. by welcoming the audience which included Matt Olson and the following City Staff: City Administrator Matt Muckler, Deputy City Clerk Leslie Brick and Zoning Administrator Paul Stagg.

Board members Craig Walker (Chair), Wayne Frauenholtz, Jennie Embree and Kami Poppen were present. Absent: Frank Frostestad

Introductions of new member Kami Poppen and Frank Frostestad were announced however, Frank was unable to attend this meeting.

Approve minutes from the December 2, 2014 Zoning Board of Adjustment meeting.

Motion by Embree, second by Poppen. Motion carried on a voice vote. AYES: Embree, Poppen, Walker, Frauenholtz NAYS: None Absent: Frostestad

A Special Exception was requested for signage for a home occupation from Matt Olson. The business that Matt currently operates is a home computer repair business. It takes up a small portion in his home no larger than 12 x 15' interior room. He would like to place a sign on his property for the purpose of advertising this business. He feels that his service would benefit the residents of West Branch since there are no similar services offered here currently.

Board member Frauenholtz questioned if computer equipment would need to be recycled as part of his service. Mr. Olson replied that he does not take in equipment and that disposing of old equipment is not part of his service. Board member Embree was agreeable with signage as long it met the criteria of the code and it is placed in an area not in the right of way. Stagg also commented that where Mr. Olson previously had his sign place on his mailbox was in the right of way and that it must be on the other side of the sidewalk on his property. Move to action. Motion by Embree, second by Poppen to approve this Special Exception. Voice vote –AYES: Embree, Poppen, Walker, Frauenholtz. NAYS: None. Absent: Frostestad. Motion carried.

Review revised Ordinance 725. Chairperson Walker explained that the reasoning behind the suggested revision to Ordinance 725 (165.22 (7)) is to align with the state code and to provide the board with the ability to attach conditions and safeguards when granting a variance or Special Exception. The next step is to have the Planning and Zoning Commission review and support the suggested change before going to Council for approval.

Review Draft Application of Special Exception. Walker opened the conversation regarding Attachment D of the January 6, 2015 packet. Walker requested approval on the content only. Embree suggested that a vote should be taken to advance this item to the next Planning and Zoning Commission scheduled for January 27, 2015. Move to Action. Motion by Embree, second by Fraenholtz. Voice vote –AYES: Embree, Fraenholtz, Walker, Poppen. NAYS: None. Absent: Frostestad. Motion carried.

Discussion- Potential creation of ZBOA Chapter within City Code. Walker introduced the idea of creating a Chapter within the City Code for the Zoning Board of Adjustment (Chapter 29). He noted that all other commissions have their own Chapters and that the ZBOA having their own would help provide clarity to this Board. The new Chapter would have much of the same language that is consistent with the other commissions such as Term of Office, Vacancies, and Compensation. Regarding the Powers and Duties section of the Chapter, Stagg commented that this board has 3 essential duties that would need to be included. Walker offered to create a draft modeled after Chapter 23 Planning and Zoning Commission for the ZBOA to review and critique. Walker indicated he would complete this task prior to the Planning and Zoning meeting scheduled on January 27, 2015 at which time he would like to introduce it to the Commission.

Review upcoming calendar. Walker reviewed the agenda items that need further action and inquired if the ZBOA could attend a P & Z meeting to share revised Ordinance 725, Special Exception Application and introduce draft Chapter 29 Zoning Board of Adjustment.

New Business. Stagg commented that he has prepared a Zoning 101 presentation that he would like to share with this group as well as the Planning & Zoning Commission. The presentation is an overview of the structure, roles & responsibilities of a commission member and will be reviewed for some and new to others. Walker suggested that the ZBOA attend the next P & Z meeting and they could review it as a group. All members were in favor of attending. Muckler shared two upcoming training opportunities with the group that he felt would be beneficial for all commission members. More information will be forthcoming.

Adjourn

Motion by Poppen and second by Fraenholtz. Motion carried on a voice vote. Meeting adjourned at 7:07 p.m.

(The following is a synopsis of the minutes of the West Branch City Council meeting. The full text of the minutes is available for inspection at the City Clerk's office. The minutes are not approved until the next regularly scheduled City Council meeting.)

**West Branch, Iowa
Council Chambers**

**Planning & Zoning and Board of Adjustment
Joint Work Session**

**January 27, 2015
6:30 p.m.**

Chairperson Craig Walker opened the Joint Work Session of the Planning & Zoning Commission and Board of Adjustment Meeting 6:30 p.m. welcoming the audience and Mayor Mark Worrell, City Administrator Matt Muckler, Zoning Administrator Paul Stagg, Deputy City Clerk Leslie Brick, City Engineer Dave Schechinger. Board of Adjustment Commission Members, Wayne Frauenholtz, Frank Frostestad, and Kami Poppen. Planning & Zoning Commission Chairperson Roger Laughlin, Commission Members LeeAnn Aspelmeier, Ryan Bowers, John Fuller, Clara Oleson and Sally Peck were present. Absent: Gary Slach and Jennie Embree.

Zoning Administrator Paul Stagg – Zoning Duties and Responsibilities within the City of West Branch.

BOA Chairperson introduced Zoning Administrator Paul Stagg. Stagg presented a 'Zoning 101' presentation to the commission members. The presentation provided information on the structure and powers of each commission along with meeting protocols, roles and responsibilities of each commission.

Potential Board and Commission Rules of Procedure.

Stagg asked all commission members to review the Procedural Rules of the West Branch City Council. Stagg commented that the City Council has adopted and follows the Procedural Rules and would like each commission to review and adopt them for each commission. Stagg noted that since there are new members to the boards and commission that special attention should be paid to Section IV.

February 24, 2015 – U of I Institute of Public Affairs Board & Commission Training, Brick Arch Winery.

Muckler invited all commission members to a Board & Commission training event at the Brick Arch Winery on February 24, 2015. The City Council has declared this a public purpose and funds have been made available so all members are encouraged to attend.

April 6, 2015 – ISU Extension Introduction to Planning & Zoning for Local Officials Workshop, Davenport Public Library.

Muckler invited all interested commission members to attend a Planning & Zoning Training to be held in Davenport. Muckler noted that while it is more specific to Planning & Zoning, others could attend. He also noted that this training is on a regularly scheduled City Council night so the meeting may be cancelled or rescheduled.

ADJOURNMENT

Motion by Oleson to adjourn the work session, second by Laughlin. Motion carried on a voice vote. Planning & Zoning and Board of Adjustment joint work session adjourned at 6:26.m.

City of West Branch
Application for Special Exception to City Zoning Regulations

Instructions:

Individuals requesting a Special Exception must complete this application and submit it to the City Zoning Administrator at the West Branch City Office - 110 N. Poplar Street, West Branch, IA 52358.

Individuals requesting a special exception should familiarize themselves with the requirements as outlined under the West Branch City Code 165.26 - 165.29 - District Requirements (as applicable) and 165.04 - Definitions (as applicable). The City Code is available on the West Branch website www.westbranchiowa.org

Name _____
Address _____
E-mail _____
Phone _____
Zoning District _____

Describe in detail the Special Exception you are requesting:
(Continue on back of form if necessary)

Applicant Signature _____ Date _____

Zoning Board of Adjustment Action (including specific conditions - if applicable):

Chair Zoning Board of Adjustment _____ Date _____

Applicant acknowledgement of specific conditions (if applicable)

Signature _____ Date _____

CHAPTER 29

ZONING BOARD OF ADJUSTMENT - *Draft (4/8/15)*

29.01 BOARD OF ADJUSTMENT. A Board of Adjustment is hereby established as provided in Chapter 414 of the State Code of Iowa, as amended, the members of which shall be appointed by the Council for staggered terms of five (5) years. The Board of Adjustment shall consist of five (5) members, none of whom shall hold an elective office or other official position in the City. **The members of the Board of Adjustment shall be residents of the City (WB City Code 23.01) representing the public at large and shall not be involved in the business of purchasing or selling real estate. (Iowa Code 414.8)** The members of the Board shall be removable for cause by the Council upon written charges and after public hearing. A vacancy shall be filled by the Council for the unexpired term of any member who resigns, dies, or is removed. The Board **shall meet each January** to select a Chairperson **and Vice Chairperson** from its members, and a Secretary who may, but need not, be a member of the Board.

(from WB City Code - Zoning Regs 165.20) **(Blue Text added to address selection of Chair, Vice Chair)** (“residents of the City from WB code 23.01 P&Z Commission)

29.02 RULES - MEETINGS - GENERAL PROCEDURE The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in the chairperson’s absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(from Iowa Code 414.9)

29.03 COMPENSATION. All members of the Board shall serve without compensation, except their actual expenses which shall be subject to the approval of the Council.

(from WB City Code — P&Z 23.04)

29.04 EXPENSES OF THE BOARD OF ADJUSTMENT. The Board shall have authority to expend such sums as may be appropriated by the Council.

(from WB City Code - Zoning Regs 165.21)

29.05 POWERS AND GUIDELINES OF THE BOARD. The Board of Adjustment shall have the following powers:

1. Administrative Review. To hear and decide appeals where it is alleged by the appellants that there is error in any order, requirement, permit, decision, determination or refusal made by the zoning officer or other administrative official in the carrying out or enforcement of any provision of this chapter, and for interpretation of the Zoning Map.
2. Vote Required. The concurring vote of three (3) members of the Board shall be necessary to reverse or modify any order or decision of an administrative official.
3. Special Exceptions. To hear and decide applications for special exceptions as specified in this chapter and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.
4. Variance. To hear and decide applications for variance from the terms of this chapter because of unnecessary hardship. Before any variance is granted, all of the following conditions must be shown to be present.
 - A. Conditions and circumstances are peculiar to the land, structure or building and do not apply to neighboring lands, structures or buildings in the same district.
 - B. Strict application of the provisions of this chapter would deprive the applicant of reasonable use of the land, structure or building equivalent to the use made of neighboring lands, structures or buildings in the same district and permitted under the terms of this chapter.
 - C. The peculiar conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of this chapter.
 - D. The use to be authorized by variance will not alter the essential character of the locality.
5. Financial disadvantage to the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
6. The Board does not possess the power to permit a use not generally or by special exception, permitted in the district involved.
7. In granting a variance or Special Exception (ORD 725), the Board may attach thereto any conditions and safeguards it deems necessary or desirable in furthering the purposes of this chapter. Violation of any of these conditions or safeguards shall be deemed violation of this chapter.
8. The effective date of a variance is thirty days after granted by Zoning Board of Adjustment. The City Council may remand a decision to grant a variance to the

Zoning Board of Adjustment for further study. The effective date of the variance in this case is delayed for thirty days from the date of the remand. (ORD 720)

(from WB City Code - Zoning Regs 165.22)

(BLUE Text — added to provide clarity to Section 29.05)

(Green Text — adds condition to Variance process noted by the court in *Greenwalt v. Davenport ZBA*, 1984 which defined unnecessary hardship)

29.06 CONFLICTING RULES, ORDINANCES, STATUTES AND OMISSIONS

In the case of conflicting rules, ordinances, statutes, or omissions in the West Branch City Code, the rules outlined in the Iowa Code shall take precedence.

(Blue Text added to address unintended issues of inconsistency within the WB Code and address sections of Iowa Code not specifically noted in the WB Code)

THE FOLLOWING ARE SECTIONS FROM IOWA CODE SEC 414 — That have NOT been included in the Draft Chapter 29.

414.10 Appeals.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

414.11 Effect of appeal.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay would in the officer's opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

414.13 Decision on appeal.

In exercising the above-mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

414.15 Petition for certiorari.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

414.16 Writ — restraining order.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

414.17 Return.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

414.18 Trial — judgment — costs.

If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with the referee's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

414.19 Preference in trial.

All issues in any proceedings under sections 414.15 through 414.18 shall have preference over all other civil actions and proceedings.

414.20 Actions to correct violations.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the council, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.