

AGENDA
ZONING BOARD OF ADJUSTMENTS
September 26, 2019

Following the Planning Board Meeting,
Quorum Court Room, New Court House
280 N. College Ave.
Fayetteville, Arkansas 72701

DEVELOPMENTS REVIEWED:

ACTION TAKEN:

REZONING HEARING

Fayetteville Planning Area

a. Lingle Commercial Rezoning Request

Approved

1. **ROLL CALL:** *Roll call was taken. Members present include Walter Jennings, Robert Daugherty, Philip Humbar, Joel Kelsey and Neil Helm. Randy Laney and Jay Percy were not present.*
2. **APPROVAL OF THE AGENDA:** *Walter Jennings made a motion to approve the agenda as written. Joel Kelsey seconded. All board members present were in favor of approving. Motion passed.*
3. **NEW BUSINESS**

Nathan Crouch, Planning Director, addressed the Board, "Traditionally, the Zoning Board of Adjustments is used to hear Rezoning and Variance requests. In practice we have combined the Planning Board and the Zoning Board of Adjustments meetings for quite some time, since both boards are composed of the same members. And now they will be convened separately. This evening I have a Rezoning request to present to you for your consideration."

REZONING HEARING

Fayetteville Planning Area

a. Lingle Commercial Rezoning Request

Rezoning Request

Location: Section 01, Township 16, Range 31

Applicant: Jode Lingle

Location Address: 4651 Sunshine Rd.

Approximately: +/- 1.71 acres

Proposed Land Use: Commercial- Warehouse

Coordinates: Latitude: 36.09362867, Longitude: -94.22720502

Planner: Nathan Crouch

email: ncrouch@co.washington.ar.us

Background- Washington County recognizes there is a need for a process to rezone properties rather than requiring Conditional Use Permits for every proposed use other than Agricultural and/or Single Family Residential at 1 unit/acre. Currently, if a property owner wants to lease their property to a commercial tenant a CUP is required for the tenant's specific land use. Then if the tenant changes, a new CUP must be reviewed and approved for each subsequent tenant's specific land use. Or in this case, the property owner had a chance to sell the property to an established moving business, but allegedly lost the sale due to this CUP requirement. If this rezoning request is approved there will be no further requirement for review and approval of each tenant's specific land use.

Vicinity map- The Lingle property, currently occupied by PATH Utility, is located just outside Fayetteville's city limits, at the corner of Mt. Comfort and Sunshine Rd. But PATH Utility's lease is up and they are moving out.

Site Map- With several businesses, both nearby and adjacent, mostly all grandfathered into compliance with zoning, the Lingle's property has been operating commercially for quite some time. The yellow stars on this slide represent nearby businesses.

Deed Transfers- The Lingle's purchased this property in 2015, but it has been operating as a commercial property at least since 2001. The business that was operating at this location when the Lingles purchased the property was considered grandfathered into compliance with zoning. However, since the Lingles haven't owned the property since before Zoning was adopted in 2006, Washington County is requiring the use be addressed with regard to zoning now that the business, and potentially the land use, will be changing with the next tenant.

Site Visit- The property is currently being used as a construction business, with work trucks and trailers parked outside along the property line. Some materials of the trade are found outside, but mostly stored inside. And there is an office where walk-in customers are seen. This imagery from the County's public map system is approximately 1 year old. With the cars parked out front, and other items stored along the western property line, you can clearly see it was being used as a commercial property at that time.

Proposal- Mr. Lingle, owner of the subject property, requests this property to be rezoned to Commercial- Warehouse.

Recommendation- Washington County recommends approval of the rezoning request, contingent that once we have a permanent process in place to rezone properties this commercial use shall be compliant with the approved requirements.

Nathan Crouch, Planning Director, presented a rezoning request for the Board Members.

Walter Jennings, Planning Board Member, inquired, "Defining what commercial use will be established later?"

Nathan Crouch replied, "Yes sir. We recognize we have this need. Another example that you all are familiar with was the Old Wire issue where we did a CUP on the whole property, but then we are going to require a CUP for every suite. Two suites, ten buildings. We could potentially be looking at 21 CUP's on that one 17 acre property. That's not the way that planning works. It is not the way zoning works. It is not the way Washington County wants to operate. With this rezoning issue that we have been up against we feel it's time to go ahead and make these changes. Even though it is painful to try to get through some of this, we have really good people to work with at Regional Planning. We are working diligently in the Planning Office and we are taking advice and direction from our chain of command as well. Rezoning the property at this time is what we are requesting. Then down the road whenever we get the new zoning guidelines in place. Basically it's to say that Mr. Lingles property won't be grandfathered in as commercial without having to adhere to whatever is approved for commercial in the future. We are working on it and are going to try to have it to the Quorum Court by Christmas and whatever they decide, that will apply to this property as well."

Joel Kelsey, Planning Board Member, asked "So you could make a motion to approve this with future acceptance?"

Nathan Crouch answered, "I believe so, but our County Attorney could probably speak to that a little more clearly."

Neil Helm, Planning Board Member, inquired, "Would he in fact be grandfathered in once the zoning system is set?"

Nathan Crouch replied, "I am not terribly sure, sir, to be honest, but that is the reason I am throwing this caveat in here is so that we can make sure that his commercial use, if he gets approved, will have to adhere to whatever is approved by the Quorum Court whenever we begin making these zoning changes."

Joel Kelsey stated, "That's why I am asking on the motion, to make sure that it's also in the motion as well."

Neil Helm added, "I don't see the advantage. I am not against it. I just don't see why he would want it done now."

Nathan Crouch responded, "Because he has a need. He has already lost tenants and he has lost a sale on this property. If he continues down the path that we already have established then each new tenant is going to have to come here on a CUP on a leased property. He doesn't know who is going to want to come in and lease that property, but we do know that it is going to take 5-10 weeks for that permitting to be in place before they could even begin their use of that property."

Neil Helm understood, "Okay so his customer will be under a conditional situation as well. Based on what the zoning says at the time."

Nathan Crouch clarified, "If we rezone that property tonight and then it gets approved by the Quorum Court at the next meeting then that property will be able to facilitate commercial use."

Joel Kelsey noted, "But then it won't be a CUP anymore."

Nathan Crouch affirmed, "Correct. It would then be a zoning change and there are no conditions on a zoning change."

Philip Humbar, Planning Board Member, commented, "As long as it follows what the commercial use is."

Walter Jennings remarked, "It would be a use by right."

Nathan Crouch explained, "That is why I said commercial warehouse a couple of times because the commercial warehouse zone is the one that most closely fits this one and that was on advice from the City of Fayetteville Senior Planner."

Neil Helm inquired, "Are you going to be allowing this at the next meeting as well? The same type of decision to have been made?"

Nathan Crouch replied, "We don't have any requests for that. I would say that this is an outlier, but I would say that if we don't move along and get this rezoning established with the Quorum Court, it is going to start backing up on us. So yes, I think once the word gets out this is going to come up more and more. Because we have a serious need for it."

Philip Humbar disclosed, "I like the idea. I just don't know how you are going to make it work."

Neil Helm responded, "This would be a good example for court to see."

Nathan Crouch agreed, "Exactly and we can look back to this and say that was the need."

Brian Lester, County Attorney, addressed the Board, "Currently the Quorum Court has established only two zonings in Washington County. Only the Quorum Court can establish zoning. It is a legislative act. Only the legislative body can. What you would be doing in essence tonight is saying 'Hey we understand that there is a need for this and Quorum Court for what it's worth we would recommend that you allow this to move forward and zone this property.' Now only the Quorum Court can define what commercial zoning is and that is probably going to be an issue that they have. The thing here with Mr. Lingle and his property is just like Nathan said, this is one of those times where a Conditional Use Permit just doesn't fit effectively. By forcing someone to go through a Conditional Use Permit process on a situation like this actually hinders the citizen's right with their property. This is one of those things where we can certainly see that this CUP process is not beneficial to the applicant. It can actually harm them. This is something the Quorum Court is going to have to address. I anticipate that we will have some recommendations on exactly what the commercial zoning will be for the Quorum Court. In order to do so I believe if they were to pass it as commercial without any qualifiers if they change those this would have to be rezoned again under those zoning requirements. That is probably something that we are going to look at and need to come up with. I am sure that's something the Quorum Court is going to ask, but ultimately regardless of what happens here this has to go to Quorum Court. They are the ones that have to make a legislative change to accept something like this. Again, that is why when Mr. Lingle came forward and we talked, I didn't really want to wait on this because I think we got to get out ahead of this and say "Okay, we see a need and we've got to start addressing this." even if it doesn't get resolved right now. It needs to get resolved and we need to get it resolved as quickly as possible."

Neil Helm asked, "Will the city be able to negate that zoning?"

Brian Lester answered, "I don't believe so. If the city were to annex this property in, they annex it subject to what's been zoned. I don't know that there is a requirement that they do. I think best practice for the city, and the city would probably agree, on anything that we've done even a Conditional Use Permit the cities will continue to honor those permits. It would be bad governance for the city just like if the county were to come in and say, all of a sudden, 'We are going to change everything from residential/agricultural. We have given you a CUP, but we are going to now take it back and make you go through something else.' Governments typically don't function well or tend to survive when they start doing things like that. This is certainly something that the city would probably look at and say 'Okay in thinking about annexing this, what are we looking at and would we continue to honor this commercial.' Which is why in looking at this we want to get it as compatible to the City of Fayetteville in our zoning so that it is not an issue. That is why we have reached out to them, because it does sit across the street from the city limits. As a matter of fact there is some property across the street just a little bit further north that some of the land owners came in and requested an annexation into Fayetteville today that was granted by the Judge because they met the requirements. Now it will be up to the city to actually annex that. We know the city is growing out in that area. We want to make sure that whatever we do it looks good to Fayetteville so that when they do annex in there is not an issue for the land owner."

Jode Lingel, Applicant for rezoning request, addressed the Board, "I purchased this property four years ago with intentions of leasing it. I understand the need for this property. I have been in the construction business most of my life. It facilitates a building that has offices, and a warehouse. A place for the contractor to put his equipment. What's been in there basically has been service contractors, electrical contractors, lawn care contractor and right now Path Construction utilities contractor. It is fenced in so it has security. It has a unique type of building. It is a large building too. Before I purchased it I made a call to the Washington County Planning Department. I don't remember who I talked to, but they assured me that it is grandfathered in as long as I lease it to someone that has a similar type business that I could do that. Of course now I am faced with the changes being made they want me to do the CUP process. I've had it advertised for over a month. I've had a couple of people approach me, but they are not willing to wait the 5-10 weeks to see if they can lease it or not. They want something where they can move in pretty quick. I've lost those potential tenants, as well as a buyer. They couldn't wait that period of time. Those potential

people have went off to Tontitown and Springdale where buildings are readily available. Just to understand I have invested my life savings in this property. It is a big investment. I am having a problem leasing it or selling it the way it is. The only thing I might add to that is, I do have experience owning commercial buildings. I moved here five years ago from the Tulsa area. I owned a commercial building in the Tulsa city limits. I leased it for 20 years. It was zoned commercial. They had restrictions. I couldn't lease it to anybody, but all you had to do was get an occupancy permit, which took a day or two. They just wanted to make sure that it was being used as it was zoned for. Then the occupants can move in. That is the difference. I understand you are going through zoning changes and stuff and it's a little complicated, but that is where I am at. Hopefully you can get this zoned commercial and I can continue to lease it."

Joel Kelsey made a motion to approve the **Lingle Commercial Rezoning Request** subject to staff recommendations and future criteria. Walter Jennings seconded. All Board Members present were in favor of approving. Motion passed.

4. Adjourn

Walter Jennings moved to adjourn. Joel Kelsey seconded. All Board members were in favor of approving. Motion passed.

Zoning Board of Adjustments adjourned.

Minutes submitted by: Juliana Mendoza

Approved by the Zoning Board of Adjustments on:

_____ Date: _____
Randy Laney, Zoning Board of Adjustments Chairman