

IREDELL COUNTY PLANNING BOARD

The Iredell County Planning Board met on Wednesday, February 3, 2021 at 7:00 p.m. in the Commissioners Meeting Room of the Iredell County Government Center (Old Courthouse) at 200 S. Center Street in Statesville, NC.

MEMBERS PRESENT

Harry Tsumas, *Chairman*
Kristi Pfeufer, *Vice-Chair*
Doug Holland
Mark Davis
Raymond Burnette
Tracy Jenkins
Jerry Santoni
Ronda Hoke
Andy Webster

STAFF PRESENT

Leslie Meadows
Matthew Todd
Cindy Nicholson

MEMBERS ABSENT

Chris Carney
Robert Palmes

Chairman Tsumas called the meeting to order.

Leslie Meadows presented the following case:

EXPANSION OF NON-CONFORMING USE, B&I HEATING AND AIR FRED W. BLAKE, CIB REALTY LLC (OWNER/APPLICANT)

EXPLANATION OF THE REQUEST

Legal non-conforming uses are allowed to expand per approval by the Iredell County Board of Commissioners. This is a request to allow expansion of an existing legal non-conforming HVAC contractor's facility within a Residential Agricultural (RA) District per the submitted site plan. The proposed site plan includes a 5,000 square foot warehouse addition for extra storage.

OWNER/APPLICANT

OWNER/APPLICANT: Fred W. Blake, *CIB Realty LLC*

PROPERTY INFORMATION

ADDRESS/LOCATION: 358 Triplett Road, B & I Heating and Air; more specifically PIN# 4772481840.000.

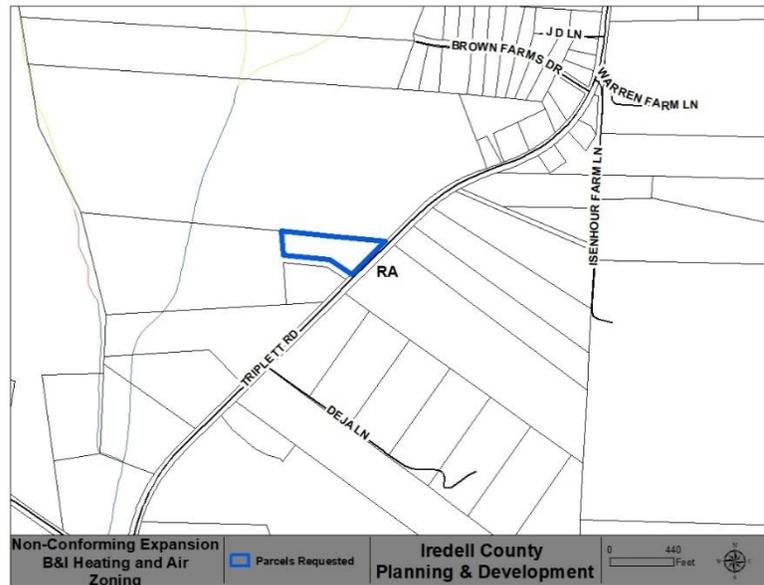
SURROUNDING LAND USE:

Residential (RA) development in all directions, with a few larger parcels of vacant land in agricultural use.

SIZE: 2.578 Acres

EXISTING LAND USE: There is an existing commercial HVAC contractor's facility on the property.

ZONING HISTORY: The property has been Residential Agricultural (RA) since countywide zoning in 1990. The initial legal non-conforming business/structure has been in existence since 1968. The Board of Adjustment approved a non-conforming Change of Use from auto repair business to HVAC contractor facility in 2011. Since then, B&I Heating and Air has had one 780 square foot addition, an Expansion of a Non-Conforming Use approved in 2016.



IMPACTS ON LOCAL INFRASTRUCTURE AND/OR FACILITIES

TRAFFIC: The closest, most recent traffic count is near the intersection of US Hwy 70 and Triplett Road and had a traffic count of 1,300 vehicles per day in 2010. Triplett Road is considered a minor thoroughfare according to the current CRTPO Comprehensive Transportation Plan. Thus, traffic capacity for this road is not currently being monitored. The speed limit along this section of Triplett Road is 45 mph.

REQUIREMENTS

The Iredell County Zoning Ordinance allows non-conforming uses to expand based upon the consideration of criteria outlined below:

- The enlargement will NOT cause substantial harm to the adjoining property owners.
- The enlargement will NOT result in traffic increases beyond the capacity of the roads serving said use.

- c. The enlargement will NOT result in emission of smoke, fumes, noise, odor, or dust which will be detrimental to the character of the district or to the health, safety, or general welfare of the community.
- d. The enlargement will maintain all minimum setbacks and buffer requirements of the use district in which said use would be permitted.

Section 15.4 of the Iredell County Land Development Code provides the above-referenced criteria that must be considered for an applicant to expand a non-conforming use. All aspects may be evaluated in light of location of the property and the submitted site plan showing the existing facilities and proposed expansion.

STAFF AND BOARD COMMENTS

STAFF COMMENTS: Staff is recommending in favor of the request and feels that based upon the submitted site plan and history of the operation that an expansion would not negatively impact adjoining residential properties and meets all criteria for an expansion of a non-conforming use. According to the preliminary site plan submitted, the new warehouse structure will be behind the existing building, and most closely adjoins open farmland. Traffic into the site is not expected to increase. The expansion of a non-conforming use is preferred to a rezoning request for avoidance of potential spot zoning. Any future expansions would need to be evaluated by the Board.

If approval for expansion of the non-conforming use is granted, it is noted that the applicant must still submit a commercial site plan for Planning Department review, before development can begin on the property. Zoning requirements such as parking, landscaping, and buffering/screening will be reviewed at such time. Erosion and sedimentation control standards must also be reviewed for compliance.

SITE REVIEW COMMITTEE: Staff performed a site visit on January 15, 2021, accompanied by Planning Board members: Raymond Burnette, Andy Webster, and Ronda Hoke.

QUESTIONS FROM BOARD TO STAFF

Chairman Tsumas asked how many square feet the facility is currently under roof developed.

Ms. Meadows said per the site plan, total disturbed area including the 5,000' addition will be 9,049 square feet.

Chairman Tsumas asked Ms. Meadows to point to the different areas on the overhead to clarify.

At this time, Ms. Meadows highlighted and circled the different areas on the overhead.

Chairman Tsumas verified they will basically double in size.

Ms. Meadows said yes.

Ms. Meadows also mentioned that the property that is closest to the addition is still open farmland with no residence on the northern side.

Chairman Tsumas asked if the addition will be for warehouse use only.

Ms. Meadows said yes.

Chairman Tsumas verified they would not have to do anything with septic or any of that type of thing with bathrooms, etc.

Ms. Meadows said there was some discussion about septic the day of the site visit with the office manager of the facility regarding where the septic might be currently in regard to the current building, and she said that was something they are looking into for their site plan.

Mr. Santoni asked about the non-conforming uses criteria, Section 15.4(2) per the staff report, where it states the enlargement will not cause substantial harm to adjoining property. He would like to know what is the definition of substantial harm. It looks as though it is built within 15' of the property line or thereabouts, and doesn't think there is a fence built there by the pictures.

Ms. Meadows said when the site plan is reviewed, if there were to be screening or any other thing like that which would come into play, it would be dealt with at that time. As for the definition of substantial harm, that is pretty subjective.

Mr. Santoni said he is looking at it from a public document standpoint. The way substantial is stated is vague for the public as well as the Board.

Ms. Meadows said currently, the applicant has extra parts/equipment sitting out in the elements, and feels people would probably rather look at a storage building.

Mr. Santoni said he agrees to have all the outdoor storage in an enclosed building, but the topic is the enlargement will not cause substantial harm. Mr. Santoni wants to know what harm would be caused by the enlargement.

Ms. Meadows states staff does not feel there would be substantial harm.

Mr. Santoni said he feels staff should be careful what is put in the staff report, because he was looking for some type of harm if this was occurring. It doesn't sound like there is an issue with the septic, other than it may have to be moved. With the enlargement, there would be no bathroom, so he said he is trying to understand what substantial harm would/can exist.

Chairman Tsumas gave an example of an excessive enlargement of a non-conforming use next to a property that wants to be developed for residential purposes would be future harm to the adjoining property. Chairman Tsumas said he hasn't had one of these expansion request in a while. Is this a conditional request where they can ask for things to be added to the site plan, or what is the Board's parameters to say yay or nay, or is this just an up and down vote based on what is submitted.

Mr. Matthew Todd, Planning Director, said it is just up or down. In the past, staff has always put an emphasis on the fact that the set criteria shall be considered. It is not like the Board of Adjustment where you have to make Findings of Facts to prove such criteria, it does read similar to that. Honestly, it used to be under the Board of Adjustment's authority and was specifically changed to come through the Planning Board and then to County Commissioners. These are just things to be cognizant of and aware of, and they are subjective and a lot would depend on the neighbors showing up and what concerns they expressed to really hone in and see where issues fall in relation to the specific request.

Ms. Pfeufer said she understands this is non-conforming, but is there any buffering that has to be done with it being a commercial business.

Mr. Todd said yes, if it gets approved, staff would review it as a commercial site plan and would come through the full process, looking at landscaping requirements, setbacks, and is not just allowed to be constructed without going through that process. It would also trip Environmental Health to get involved to make sure the building is not placed on the repair area, existing septic lines, etc.

Chairman Tsumas clarified that the Board is not approving this particular site plan. They are just saying the applicant can expand by 5,000 feet.

Mr. Todd said it would have to closely match to this site plan. The applicant could not place the expansion on the other side, it has to be in that general location.

Ms. Pfeufer said this Board is approving the conceptual idea of where the new addition is supposed to be.

Mr. Todd said yes.

Chairman Tsumas verified that the landscaping and buffering requirements would be for a commercial site versus residential site.

Mr. Todd said yes.

Chairman Tsumas asked if this was originally built before zoning was established.

Ms. Meadows said yes.

Chairman Tsumas asked if there were any further questions for staff.

There were no further questions for staff.

Chairman Tsumas asked if the applicant would like to come forward to add anything to the presentation.

THOSE SPEAKING ABOUT THE CASE

Mr. Fred Blake, 128 Cyprus Lane, Statesville said he is the owner of the property and lives about two miles away. Currently they have about 3,100 square feet under roof. They have to leave units outside sometimes because they don't have the storage space and are afraid of the units getting stolen due to the copper, which is the reason they want to expand in order to keep everything inside and also keep the site a lot cleaner. Mr. Blake said they have been fortunate business has been good.

Chairman Tsumas asked if there were any questions for Mr. Blake.

There were no questions for Mr. Blake.

Chairman Tsumas then asked if there were any to speak in opposition of this request.

There were none to speak in opposition of this request.

Chairman Tsumas asked if there were any further questions for staff.

There were no further questions for staff.

After no further discussion, Mr. Burnette made a Motion to recommend approval of the request for expansion of the non-conforming use and to advise that it meets the criteria of Non-Conforming Uses, Section 15.4, of the Iredell County Land Development Code. Mr. Holland seconded said motion and all were in favor.

VOTE: 9-0

Mr. Todd presented the following:

CONSIDERATION OF TEXT AMENDMENT (for information only) (minutes reflect the discussion by Board).

- **Update entire code to match the new 160D enabling statutes.**

Mr. Todd said these text amendments stem from some new legislation that came about a couple of years ago and have been in the works for the past five years.

Mr. Todd said with everything we do, the NC State statutes that exist for zoning, building inspections, etc., there were county regulations and city regulations. They cross-referenced each other often, with some differences in what the cities could do versus the counties. About five years ago, different individuals got involved (several agencies' attorneys) and looked into consolidating those into one chapter that would be consistent to help everyone that is involved in the development business to understand and be consistent language throughout, whether it was county or city. Also, trying to create some consistency between the way jurisdictions handle things in general.

Mr. Todd said after a much drawn out process, the legislation finally did get approved. Technically, 160D was to take effect January 2021, but was delayed because many jurisdictions were having trouble amending their ordinances to meet these requirements with COVID issues. Thus, effective date has been extended it until July 2021. For the most part, the changes presented tonight are coming directly from those statutes, and basically have to do them. They will be in effect regardless if we change them or not.

Mr. Todd said there will be other text amendments brought before this Board, hopefully this year, but did not want to complicate things with basically what the legislation is saying we have to do anyway at this time. The other text amendments will be more opinion based and more for discussion. Tonight's text amendments are for the most part, mandated by the new statutes.

Chairman Tsumas asked what was the basis of this new legislation. Chairman Tsumas said he understands from a developer's perspective where you would be going into different municipalities and jurisdictions and trying to figure out each of their regulations, but what is the catalyst for these amendments?

Mr. Todd said they have brought in different court case rulings where certain policies were being practiced already. Now, they have put these policies in the legislation and mandating that they be placed in the ordinances.

Mr. Todd gave examples of the types of situations where these changes stem from and said as they move further into the staff report, he may be able to explain some other changes taking place. Again, a lot of these are just referencing the correct statutes, where before it was one statute number, and now it is a new statute number. It does seem odd to have to take it through the text amendment process, but that is the only way the ordinance can be changed, is by coming through the process.

Mr. Todd said there is not a lot of context change with what has been done, it is mostly wording things to match the statutes. Mr. Todd said he will point out the sections that are more than just a text change. Mr. Todd said county statutes were known as 153, now everything will be known as 160.

Mr. Todd said when it comes to subdivisions, the only thing that has really changed is wording in Chapter 29 regarding wills/probate that had to be added per the statute. The vested rights policy with zoning permits, we were already practicing, but this is just putting it in writing in local ordinances.

Mr. Todd spoke of the statutory vesting process and said again, that is not new. The statute already existed but was a requirement to be entered into the actual ordinance. This way, people aren't having to refer to general statutes to find out what options are out there. Now they will be able to find it in the code.

Mr. Todd said Chapter 160D, is probably fifty or sixty pages, and staff has gone through it and tried to make the changes that must actually be in the ordinance. This was quite the undertaking to go through and the County Attorney has reviewed it as well, just for reference.

Mr. Todd also said with the vesting process, it was treated as a public hearing before. They have changed the wording to say an evidentiary hearing, meaning to go through the vested process, you will have to provide some type of evidence more like what you would see with the Board of Adjustment in a quasi-judicial hearing. Some of the hearsay will be taken out of the process.

Mr. Todd said several years ago, legislation came out and said the elected body had to read all Motions. Staff went ahead and adopted that practice so the Planning Board was adopting a similar Motion statement to create consistency. Now, the statutes are requiring the Planning Board to read the Motion statement. Thus, Iredell County was ahead of the game, but now it has to be stated in the ordinance. Also, the new term for a straight rezoning is Conventional and again, will be to create some consistency.

Mr. Todd said with a Conditional rezoning, if conditions are added to the application, statutes now require the applicant to give written consent regarding conditions. It could possibly happen at the Planning Board level, or potentially, at the Commissioner level. It will be odd if a new condition is added at the last minute. Mr. Todd said logistically, the details have not been decided. It could possibly be tabled at the Commissioner level due to being able to put conditions in writing so it is very clear with no confusion years down the road. Mr. Todd said staff wants to be very careful with how conditions are written, because typically, there is time to word conditions between when they are mentioned and when they go to vote, rather than on the spot.

Ms. Pfeufer asked if it would be the applicant and the landowner or one or the other.

Mr. Todd said it would be whoever signed the application.

Chairman Tsumas asked if you have an applicant that has a Conditional Use zoning, and the landowner understands what the applicant is requesting on the application, but does not necessarily understand the conditions the applicant is placing on the rezoning, which he/she is not obligated to by contract, that could potentially cause some problems. Chairman Tsumas said it would be his suggestion before the official votes are cast, that a landowner has to sign consent also.

Mr. Todd said that is a good point, to be safe, have both sign and of course, one or the other could table the request. Normally, you would only have one or the other in attendance, the landowner or the applicant. Mr. Todd said he isn't really sure it would have to be done at Planning Board, but definitely by the time it was sent to Commissioners for the official vote. This is one that staff will discuss and settle shortly. Obviously, even though the County Attorney has reviewed these text amendments, this specific one hasn't been discussed with her about implementation.

Mr. Santoni said he feels it could be dangerous if Planning Board votes on the intent of conditions and then the intent is changed, and a member doesn't like the intent change but has already voted on it. He feels maybe it would be good to table the vote until clarification is made.

Mr. Todd said that would be no different than the way it already is. Sometimes, conditions have been added and from a staff perspective it is understood, but the next day at work, it is unclear when listening back to the recording. It is then discussed until we arrive at a conclusion and move forward. That is why when a condition is added, staff is trying to hone in the specifics so it's as clear as can be.

Mr. Santoni said he feels if conditions were added to the application, staff should encourage both the applicant and the owner to come to the meeting. Therefore, would be involved in getting it approved.

Mr. Todd said thankfully, conditions are not added after the fact very often.

Mr. Santoni said it only takes one mistake. He feels it should be standard practice, that staff encourage both the applicant and owner to attend.

Chairman Tsumas said that is not feasible. Many times, the owners are out of town owners and they will not come.

Mr. Todd said it is something that will take some thought. It may be that there are differences in the way consent is handled if they're out of town owners that will not show up.

Mr. Todd said there were numerous things in the statutes that are not necessarily text amendments, but changing the way the County does business. One being, within the next couple of months, everyone on the Board will have to take an Oath of Office. That is not something that needed to be put in the ordinance, but something the County will have to start practicing.

Mr. Todd said with a Conditional Zoning District, in the past, the county had what was called a minor change option, which allowed some flexibility with a request. With the statute changes, anything related to density with a request can no longer be considered a minor change. Some of the language had to be removed.

Mr. Todd said with General Rules for Board members/Staff, it had to be added that no Board member shall participate in the hearing or determination, if any of the reasons listed on the staff report, or other associational relationships with an affected person. It is easy to determine a financial interest or fixed opinion, but this is specifically for Board of Adjustment. The Planning Board has the same terminology of associational relationship.

Ms. Pfeufer asked if the affected person would be the property owner or the applicant.

Mr. Todd said it could be either.

Chairman Tsumas asked if associational relationship pertains to the applicant or opposition to the applicant.

Mr. Todd said he would definitely get guidance from the attorney on this to see how it would be interpreted.

Chairman Tsumas said with having new members on the Board, it is important to note that if a member doesn't feel they can be impartial, always come and say something to the Chairman and a decision can be made whether or not to be recused.

Mr. Todd then spoke pertaining to the Board of Adjustment changes, regarding the Board of Adjustment can continue a hearing without going back through the advertisement process if they identify at the current hearing, a specific date that the next meeting would be held. This has been practiced for years here.

Mr. Todd said the section pertaining to the four Findings of Facts for granting a variance, staff has tried to match the wording specifically with the statutes. There is nothing content-wise that has changed, but thought it would be better to go ahead and fully match the statutes word for word. Mr. Todd also clarified that you cannot get a variance for a use, which has always been the case. But now, it is spelled out in the code. Also wanting to remind the Board of Adjustment that they can impose additional appropriate conditions for variances that would be related.

Chairman Tsumas asked concerning Item 3 under Section 12.3.3 Variances in the staff report, is that saying if the person buys a piece of property knowing there is a problem with it, and request a variance, the fact they bought it knowing/thinking it had a problem, would not mean the applicant caused the problem?

Mr. Todd said if they bought it unknowingly without a survey, the hardship would be they didn't do it themselves because the previous owner did it. If you had a survey completed and knew about it, then it's saying it is not a hardship. That will be for the Board of Adjustment to debate. It is now worded the way it reads in the statute.

Chairman Tsumas said people buy stuff and then survey it afterward all the time. That is when they find out there are issues.

Mr. Davis said he suspects the intention is in a case where landowners have been living there for a long time and didn't know there was a problem, so they can freely sell their land. The idea is that the developers can still buy land and try to do something with it. He feels the idea is to not punish people that have had family land for many years.

Chairman Tsumas said that is probably right.

Mr. Todd said with Findings of Fact for the Special Use Permit, staff has marked out what the code currently says, and added word for word to match what is in the statutes. Also with this section that we didn't have in the ordinance, there is something that needed to be addressed for a while. Not necessarily related to 160D changes, but related to this section 160D regarding a way to address minor changes once the Board of Adjustment has approved a site. What staff has encountered many times with a Special Use Permit, is they request it, they get approval, then start the development process and find out they have to shift the building because of the septic system, or some other thing they did not plan to spend the money on. Understandably so, when it is not a guaranteed process. In the past, staff has managed minor changes for a rezoning, but this would now allow minor changes to those Special Use Permits without having to go back through the Board of Adjustment process.

Mr. Todd said the next amendment is related back to conflict of interest. This one is specifically for the Planning Board. Unlike the Board of Adjustment where there was more guidance, staff had to add more to the Planning Board section. It has the same statement at the end about other associational relationships.

Ms. Pfeufer verified that Mr. Todd will get a definition concerning associational relationships.

Mr. Todd said yes, or guidance as to what we should be looking at. It may be beneficial since there are so many new members, that the county attorney come and do a semi-training for the Board, and also help administer the Oaths.

Mr. Todd said with the last amendment, it relates to the Floodplain Ordinances, with an added definition to the ordinance coming from the model ordinance for the Floodplain. In the Floodplain ordinance, there is a lot of references to the term "limited storage". This would be more the residential type uses, and not commercial. Therefore, only clarifying that commercial storage should be protected in the regulatory flood protection. As for residential storage, it doesn't necessarily have to be.

In closing, Mr. Todd said every jurisdictions' ordinances are different by having to add some things or remove some things, but overall, this county was doing a lot of the things already and some aspects have minimal changes compared to others. This will have everyone in the state using the same terminology. Mr. Todd said he will follow up on the comments that were made and hopefully bring it back to the next meeting for a vote.

OTHER BUSINESS: None

UNFINISHED BUSINESS: None

MINUTES: Mr. Santoni made a motion to approve the January 6, 2021 meeting minutes, seconded by Mr. Jenkins, all were in favor.

MONTHLY COMMITTEE ASSIGNMENTS: Site visits: Friday, February 12, 2021.

ADJOURNMENT: There being no further business, Chairman Tsumas declared the meeting adjourned at 7:58 p.m.

Cindy Nicholson
Administrative Assistant

Date Read and/or Approved