

# BOARD OF ZONING APPEALS

## MEETING MINUTES

Tuesday, June 11, 2019 at 4:30 PM

### BZA 19-05 – Appeal to Zoning Administrator’s Decision for 125 West Clinton Street

(Meeting continued after consideration of BZA 19-04)

<b>PRESENT</b>	
Board Members	Tom Mack-Chairman, Laurie Sans, Lynn Rausch
Recording Secretary	Roxanne Dietrich
Zoning Administrator	Mark Spiess
City Staff	Billy D. Harmon-City Law Director, Clayton O’Brien-Acting City Manager, David J. Mack-Chief of Police, Jason Maassel-Mayor, Jeff Mires-Councilmember, Lori Sicclair-Councilmember
Others	Northwest Signal, Tom Manahan, Todd Burton, Katie Meyers
<b>ABSENT</b>	
BZA Members	Steve Small, David Dill
<b>BZA 19-05 Background</b>	Mack read the background for BZA 19-05: An application for public hearing has been filed by Dolgen Midwest, LLC (Dollar General) 100 Mission Ridge, Goodlettsville, TN 37072. The applicant is requesting an appeal to the Zoning Administrator’s decision to deny a zoning permit in a C-1 General Commercial Zone. The appeal process is pursuant to code section 175.04 Appeals of the Codified Ordinances.
<b>Research and Findings</b>	Spiess read his Research and Findings: Upon review of the zoning application, it was determined a Dollar General store falls under the definition of a “Grocery Store” as defined in code section 1101.01 Definitions. <u>GROCERY STORES</u> . Stores where most of the floor area is devoted to the sale of food products for home preparation and consumption, which typically also offer other home care and personal care products, and which are substantially larger and carry a broader range of merchandise than convenience stores. According to section 1145.01 Table of Permissible Uses, a grocery store is not permitted in a C-1 Zone. (See Attached) Spiess explained the discrepancy is the definition, whether the store falls under it or not, my determination is they do as the definition is written.  Mack stated as a point of clarification, I asked the City Law Director to be here as this appeal is a different matter than what we’ve had before us, we do not have latitude to say that this doesn’t make sense to us, that it is not logical, I want the committee to be aware this is much different than what we have looked at before.  Harmon stated under Section 175.04 it specifies grounds for the appeal should be listed, I will note there were no grounds listed in the documentation I received just today, that was too quick for my office to fully respond. Spiess said they have a quicker timeline than we do and I wanted to get this in front of you otherwise, they would have to wait until July and I did not want to put this off any longer. Mack stated basically this comes down to either it is defined as a grocery store or retail operation or am I overly simplifying.

Spiess replied you are not overly simplifying, you have to find in the table grocery store and it did not fit and to me that is where they fall.

Mack clarified you are saying it did not fit in the zoning? Spiess said it does not in C1, that is why this came to you to get a decision to see am I interpreting the definition correctly or not. Mack asked what made your interpretation that it is a grocery store?

Spiess said the definition. Mack asked Spiess to pull up the definition of a grocery store for all to see. Spiess read the definition *stores where most of the floor area is devoted to the sale of food products for home preparation and consumption, which typically also offer other home care and personal care products, and which are substantially larger and carry a broader range of merchandise than convenience stores.* Mack asked Spiess did you think there were any other options to classify other than a grocery store? Spiess said he has not found anything. Harmon intercepted what Mark is saying he scheduled this very quickly in an attempt to get this in front of you, upon bringing it to my attention today it was determined, at least in my opinion, in order to give everyone a fair shake it might be helpful to have a little bit more time. I do not feel like I had a sufficient amount of time to look at this particular issue in order to say it was fair one way or another, unfortunately this information come to me at the last minute and it seems the grocery store definition fits but to give advice one way another to say absolutely was too short of time, to give everyone a fair shake I would ask that this be tabled.

Mack said since we are here let's go ahead and hear from the parties that are here and see if we can form some conclusion today or if we have to table it. If someone would like to speak on behalf of this request, please come to the mike and state your name.

**Testimony**  
**Tom Manahan**

I have Todd Burton from Dollar General here to answer any specific questions you may have on the floor plan things. I want to let you know Mark Spiess has been very helpful and tried to work with us to get things taken care of, I do want to clarify this has not been in just the last week or two I think the process started over a month or two ago that we have been trying to work with this, again Mark has always gotten back with me and always tried to be helpful. Our contention is the grocery store definition doesn't fit and again it's a matter of how you read it, the way we read it, the definition really does not fit our scenario and that is why Todd will answer any questions as far as the grocery store aspect of the definition. We have a timeline and with due diligence we can't truly wait another month or so unless we get permission from Family Video is my understanding. I understand what Mr. Harmon is saying, I think we just interpret that section a little differently.

**Todd Burton**  
**Dollar General**

I'm the real estate manager for the State of Ohio. To give some additional context Mark, and I spoke before we started the portfolio process around two months ago when I made the initial call to get on the zoning. This is the actual merchandise plan the store plan areas are the red hash-mark areas, actual sales area of space is 5,593 sq. ft., the total area for food is 1,680 sq. ft., that's 30% and does not meet the majority threshold is how we are interpreting it on our end, to me 50% majority. Wall Street defines Dollar General as a mixed merchant that's a 32 billion-dollar organization that has people investing in its stock and the analysts are calling us a mixed merchant not a grocer. We operate 16,000 stores only 134 of those are what we call gain markets and they are 21,000 sq. ft. with a full meat department and a full produce department, this is not what this store is, it is more of a convenience store. Dollar General has a new format that we call the DG Urban, you take a 7-Eleven and you take a standard Dollar General and mix the two is probably the best way to describe it. Frankly, in our opinion, we can see Walgreens as a greater competitor to us than a grocery store is, if you take the pharmacy out of the CVS and

Walgreens the assortment mix are similar. That is where the disconnect is on our interpretation relative to what Mark's is and again it is not to be combative it is just stating the facts at this point and why I was asked to come out to this meeting to explain and answer any questions the public or Council might have.

Mack asked if anybody had any questions or wanted to speak on behalf of the request? Manahan said I think if you look around town and look around the cities the single purpose store is gone it is always going to be a multi-purpose type of store so if you take the interpretation of that code section and they sold 5% of food would it still qualify under their interpretation of a grocery store. You look at WalMart, the new Krogers they have everything so we are asking you to realize what is happening in today's world, they are trying to offer a service to the community downtown.

Harmon stated we understand some of the complications, the issue with Family Video, based on this new information some that is coming to me today I feel it is prudent to try to get more information to potentially work this out one way or another.

Mack stated Billy help me out, the definition says *stores where most of the floor area is devoted to the sale of food products for home preparation and consumption* that is what is defining the 30% right, so the rest of his statement is inclusive of that percentage or is that just helping to define what a grocery store usually is.

Harmon responded in my opinion I would say it is conjunctive I could see this to be we are looking at a grocery store definition and in my opinion, at this point would be offering sale of food products for preparation and consumption along with

Mack-so you are saying in your interpretation that is inclusive.

Harmon-I would say that.

Mack-I have a real problem with grocery stores, I went into one the other day and the first thing I came across is flowers and mulch so is that a grocery store, a hardware or a garden center? I had a conversation with somebody if you go into most stores and they have food in there, could be 5% and with the rest of those items that would get them over 50% so all of a sudden that is a grocery store?

Harmon-as Mark stated perhaps there is a need for some updating for some of the code, maybe not, the way I read it I think it is inclusive of all those items.

Sans-to me it looks like a list.

Mack-every time I have looked at this, and admittedly I have spent more time than I wanted to, I keep coming back to *defined as grocery or retail* you talk about more time would it come down to something different, are there other options that I'm not seeing here?

Harmon-there is the potential for other options I can't speculate exactly what I might find these two options do seem to be the logical start based on this code, again I would ask for some time.

Manahan-and again we don't have time.

**Katie Meyers**

Why does this matter I'm confused I'm going to be his neighbor, I hope to be his neighbor because I own a business downtown also, I look at the wording and I think that stores where most is also a trigger question because it could also be some and why does this little glitch matter so much he wants to have his business here and we are looking at holding them up getting there and that building is not in use now and I'm befuddled that you just don't say can we just go ahead and then fix this, unless there is somebody who doesn't want them there, but I'm not hearing that at all.

Sans asked when was the last time you think, if you know, something did not fit the definition but was still allowed to put their business in without changing the zoning? Spiess replied I cannot speak before me, I've been in the chair for two years now I do not want to set a precedent is my fear, if we let this one slide it becomes a slippery slope why do we have rules at all, it's not I'm trying to stop it I wanted to get this in front of you and did not realize their timeframe was tomorrow.

Sans added I know there was an instance some years back when Walmart put in their gas station, it was not zoned for it they moved it a few feet and said let's change the zoning there to accommodate Walmart.

Mack said we need to stay within the guidelines, when we come back will it hinge on a grocery store and what all gets included. What is the definition of most? I would say it is 51%, to include all items I'm not sure that was intended other than for definition purpose.

Manahan asked about zoning on West Washington Street.

Spiess replied it is a C1 zone.

Manahan said I don't want to throw anyone under the bus, but the places selling donuts, cupcakes, coffee and candy are they a grocery store?

Spiess said there may be another definition they fell under we used.

Mack asked if there were any other questions or comments. Being none, Mack said he appreciates and respects the good faith everybody has worked on this project with and I think that in the end this just comes down to people reading that phrase and determining what that means to them and I think it falls on us to make that determination. I think the other option that you have is to table and I don't think that resolves the issue before us today.

Rausch commented if you look at the fact that they are only 30% food consumption they are not a grocery store, I don't know who came up with that regulation to begin with, years ago was there was a hospital there, it's not like we are asking to put a junkyard in place, we're utilizing an existing building and the adjoining people and businesses are not against it and personally I do not have anything against it.

**Motion to Approve the Appeal and Overturn the Zoning Administrator's Decision for BZA 19-05**

Motion: Rausch Second: Sans  
to Approve the Appeal and Overturn the Zoning Administrator's decision to deny a Zoning Permit for 125 West Clinton Street.

**Passed**  
**Yea-3**  
**Nay-0**

Roll call vote on the above motion:  
Yea-Mack, Rausch, Sans  
Nay-

**Adjournment**

Motion: Sans Second: Rausch  
to adjourn the Board of Zoning Appeals meeting at 5:03 p.m.

**Passed**  
**Yea-3**  
**Nay-0**

Roll call vote on the above motion:  
Yea-Mack, Rausch, Sans  
Nay-

**Approved:**

**July 09, 2019**

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Tom Mack, Chairman

DRAFT