

Town of Maggie Valley
Zoning Board of Adjustment
Town Board Room
Thursday January 8, 2009
5:00 p.m.
MINUTES

Members Present: Chairman Ron DeSimone, Catherine Young, Caroline Edwards,
Nancy Fish, Candy Way, Connie Dennis, and William Banks
Staff Present: Manager Tim Barth, Attorney Chuck Dickson, Planning Director
Nathan Clark, and Town Clerk Vickie Best
Others Present: Seven

The Zoning Board of Adjustment members met at the Quest Services property to enable the members to have an actual visual of the layout of the properties in question, as well as building locations.

After an examination of the area, the members returned to the Boardroom to open the meeting.

Chairman DeSimone called the meeting to order at 5:30 p.m. in the Town Hall Boardroom.

1. Approval of the Minutes: December 9, 2008

Director Clark asked that page 3, 2nd paragraph from the bottom be revised to include the validated drawing from Moore's Land Surveying (Drawing # 01-A-05-08-766).

Mr. Banks corrected page 6 paragraph 2 to say: Again, the Planning Board determined that any vehicle not requiring a CDL should be considered an automobile.

During Mr. Harden's testimony he clarified that he has 1800 square feet of repair area and 600 feet of office space. The clarification will be made on page 5 paragraph 5.

MS. DENNIS MADE A MOTION TO APPROVE THE MINUTES AS AMENDED.
MR. BANKS SECONDED THE MOTION.
MOTION CARRIED.

2. Special Exception: James Harden

Under oath, the following testimony was provided to the Zoning Board of Adjustments.

Mr. Harden failed to bring a new parking plan. Moore's Land Surveying has a parking plan ready; but due to Mr. Moore following the ordinance and including green space that Mr. Harden had not approved, the plan was not purchased.

Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 8, 2009
MINUTES

Due to not having a new parking plan presented, Ms. Way stated that she was confused, as was other members. One of the reasons for visiting the property was to get a visual and review the revised plan to see how it would fit on the property.

Mr. Harden stressed that he had been left out of the loop and that the Town was advising Mr. Moore on how to draw his parking plan. Mr. Harden felt the board had already decided on a map that he has not yet seen. He felt this was very unfair.

Mr. Harden felt there was a conflict of interest due to Chairman DeSimone working with Jim Blyth, Ms Dennis being a former employee of Mr. Blyth's, and Mr. Ring currently being in the paving business with Mr. Blyth. Another topic of concern was the lack of landscaping and fencing to block the heavy equipment from view of Soco Road. Maggie Valley Excavating belongs to Jim Blyth. Mr. Harden felt that if the Board is going to scrutinize his business, the same should apply across the board to all businesses.

Mr. Harden stated that the easement should run the entire length of all properties located on Bennett Drive. The plaza uses the easement to get to the back of their building. Mr. Harden asked for clarification on what is considered green space; going on to emphasize that Maggie Valley has no intention of maintaining Ferndale Road or Bennett Drive. Mr. Harden showed the members a map entitled Mize/Alexander. **See Attachment 1**

The Town has the authority to set criteria on all roads within the corporate limits.

Director Clark read aloud the definition of green space from the Zoning Ordinance.

Again, Mr. Harden stated that either the staff or board members authorized Mr. Moore to draw in the green space along the easement. He did not. It was also stated that the Town had a letter from Mr. Moore that he did not receive a copy of until today.

Mr. Clark read the letter in question at the last meeting and it became an official part of the minutes. Director Clark explained that he talks with surveyors all the time when they call and ask specific questions about the Zoning Ordinance.

Mr. Harden stated, "There is a fee [for the parking plan] and someone needs to pay it".

Chairman DeSimone explained that a variance could not be grandfathered. Mr. Harden continues to request his business be grandfathered.

Mr. Harden reported that Mr. Ring has removed a garage door and put in living space. This is a change of use. Mr. Harden presented the members a copy of questions that he would like to have answered. **See Attachment 2**

Ms. Way responded that she was in full support of anyone trying to make a living, especially during these economic times. The Board requested a map showing the parking

3
Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 8, 2009
MINUTES

to review after visiting the property so the board could envision how the plan would work. Ms. Way assured Mr. Harden that she has not spoken with anyone and resented being accused of already having a predetermined vote; particularly since she had lost an hour of work to meet on the property.

Ms. Edwards agreed, adding there are many things she would like to do with her property, but cannot, because she too, has to follow the rules. The member's hands are tied to a certain extent, which is why Mr. Harden was asked to provide a new drawing.

Mr. Harden presented an enlarged copy of Mr. Ring's business card showing Bennett Drive as his address. **See Attachment 3**

Mr. Harden explained that the new map with green space would eliminate parking spaces.

Mr. Banks responded that was the reason for requesting the new parking plan. The Board could then look at the plan and ask, "Do we grant a variance on the green space"? None of the old maps are sufficient.

Under oath, Mr. Steve Hughes questioned the board on their understanding of the pending lawsuit. Requiring green space now would be in direct dispute of the lawsuit.

Chairman DeSimone responded that the only issue before the board today is if he has enough parking spaces to operate his businesses. That decision would have been made today if a new parking plan had been presented.

Mr. Hughes reminded the board that the moving business is not conducted on the property. The trucks are only being parked on the property.

Chairman DeSimone responded that the board was going to use Mr. Harden's figures to determine the number of parking spaces required. The new plan was to reflect those spaces.

Under oath, Mr. Jay Ring stated that the map brought into evidence today means nothing. Mr. Ring felt that he did not have to comply with the required green space because his property was there prior to the ordinance being adopted. As for removing a garage door and replacing it with a regular door, Mr. Ring stated that he moved his office to the garage.

Chairman DeSimone stated that he too took exception to the Board's integrity being questioned. Chairman DeSimone asked if the remaining members felt there was a conflict of interest because Ms. Dennis once worked for Mr. Blyth. It seemed to Mr. DeSimone that the relationship between him, Ms. Dennis, and Mr. Blyth is far removed from Mr. Ring.

4
Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 8, 2009
MINUTES

The remaining board members agreed. The only issue of relevance is sufficient parking for the businesses being conducted.

After Ms. Way and Ms. Edwards were assured that Mr. Harden could come back at a later date with a new parking plan, the board began to review the criteria for each business being conducted on the property.

Attorney Dickson agreed. The members need to make specific findings for each use (business) being conducted.

Criteria A

(1) Automobile service and repair, provided that the applicant demonstrate to the Zoning Board of Adjustment by written and oral presentations including necessary drawings and plats how he or she will comply with following:

- (a) Must be in compliance with all federal, state, and local environmental regulations;
- (b) Parking regulations must adhere to those set forth in § [154.091](#);
- (c) No more than 90% of the allowable parking spaces may be occupied by vehicles repaired or awaiting repair. In no case shall a vehicle remain on the premises for more than 30 days; and
- (d) No open storage of new or used parts including tires, sheet metal, batteries, cans, boxes, and the like shall be allowed.

Criteria B

2) *Special exceptions.* To hear and decide special exceptions to the terms of this chapter upon which the Board of Adjustment is required to pass under this chapter. To decide the questions as are involved in determining whether a special exception should be granted. To grant special exceptions with the conditions and safeguards as are appropriate under this chapter, or to deny special exceptions when not in harmony with the intent of this chapter and would adversely affect the public interest. A special exception may be granted by the Board of Adjustment only after making the following findings.

(3) *Building permit.* Within 90 days of being granted a special exception or a variance, a building permit must be obtained if a building permit is required. **Never obtained, believed business was grandfathered when he purchased the property, only automotive repair was conducted by previous property owner.**

Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 8, 2009
MINUTES

(a) That the Board of Adjustment is empowered under a specific section of this chapter to grant the special exception and that the granting of the special exception will not adversely affect the public interest.

(b) Before any special exception shall be issued, the Board shall make written findings certifying compliance with all specific rules governing the individual special exception and that satisfactory provision and arrangement has been made concerning the following wherever applicable:

1. Ingress and egress to property and proposed structure with particular reference to automotive and pedestrian safety, convenience, traffic flow and control, and access in case of fire or catastrophe. **Appears to be compromised. 10 feet right of way (Bennett Drive) is consistently blocked, right of way believed to be middle-right of parking lot.**

2. Refuse and service areas, with particular reference to the items in division (B)(3)(b)1. above; **Two major problems have been indentified by staff**

3. Off-street parking and loading areas where required with particular attention to the items in division (B)(3)(b)1. above and to the economic, noise, glare, or odor effects of the special exception on adjoining properties and generally in the district. **Parking is a concern. Per Town requirements for an automotive repair business: 1 space for each 2 employees at maximum employment, plus 2 spaces for each 300 square feet of repair or maintenance area. There also appears to be 3 apartments that are being utilized on site for a total of 6 needed parking spaces. Moving Company is not an approved use, thus has no set standard, the board will need to create one if they so choose.**

4. Utilities, with reference to location, availability, and compatibility; **(satisfied)**

5. Screening and buffering, with reference to type, dimensions, and character **(none)**

6. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district; and **(N/A)**

7. Required yards and other open spaces **(satisfied)**

8. General compatibility with adjacent property and other property in the district. **(Per the C-1 Zoning Ordinance with special exception yes, Town Land Use Plan No)**

Ms. Edwards felt that due to the family living in the apartments it is not the traditional renting of apartments. A reasonable person can find six spaces to park vehicles.

Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 8, 2009

MINUTES

In the Zoning Ordinance, the auto repair has a specific number of parking spaces attached. Without a plan there is no way to approve the repair shop. The existing drawing Mr. Harden has presented does not show setbacks, green space, stream buffer, etc. The board must be able to see how the required parking affects the property.

CHAIRMAN DESIMONE MADE A MOTION THAT THE BOARD CAN SUMMARIZE THAT THE CRITERIA FOR THE APARTMENTS IS MET, BASED ON CRITERIA GRANT THE SPECIAL EXCEPTION FOR THE APARTMENTS AND DENY THE OTHER USES [BUSINESSES].

**MR. BANKS SECONDED THE MOTION.
MOTION CARRIED UNANIMOUSLY.**

Director Clark will draft the written findings and the members can vote on those findings at the next meeting.

Ms. Edwards asked that Mr. Clark provide Mr. Harden with written details of what the Zoning Board of Adjustments needs in order to make a determination.

3. Special Exception: Dan Crawford

Dan Crawford, proprietor of Crawford Pawn (located 2971 Dellwood Road) approached the Town in the summer of 2007 inquiring about “what he needed to do to build mini storage units.” I had to inform Mr. Crawford that he was zoned C-1 (General Business) and that mini storage units are specifically not allowed in this district. This statement confused him because two mini storage facilities are located within a stones throw of his property. These businesses were grandfathered in sometime ago. The ordinance is in place to prevent mini storage units from popping up all over town, since a large portion of the Town is zoned C-1. It would be inappropriate for a mini storage building to exist next to Town Hall or between two hotels in our Central Business Area. When creating the Land Use Plan, the Town Planning Board was sensitive to the plight of Mr. Crawford and others like him, whose property is located on the outskirts of town and offer a service that some people would argue is a “necessary evil” of life. They created the open air land use district to allow such business as mini storage and car dealerships. This district would give them highly visible road frontage but require them to operate this business along the Town’s perimeter. In December 2007 Mr. Crawford approached the ZBOA about granting him a special exception based upon his location in the Land Use Plan Open Air Commercial District to build and operate a mini storage business. At that time the ZBOA told Mr. Crawford he would need to submit more formal plans before they could rule on his request.

Open Air Commercial as defined by the Land Use Plan

This land use category would allow predominantly open air uses such as dealerships, model home sales, and businesses with outdoor storage needs. These uses would be concentrated in areas on the outskirts of town, outside of the main gateway into town, where aesthetic impacts are at a minimum

7
Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 8, 2009
MINUTES

Mr. Dan Hyatt, representing Broadlooks Associates P.A. was present to answer any question. Mr. Hyatt stated that he followed the ordinance when drawing the plan.

The Board commended Mr. Hyatt on the plan.

The issue will be referred to the Planning Board to answer the two questions required by the ordinance. *(d) The Board of Adjustment shall request the Maggie Valley Planning Board to review and make recommendations concerning the special exceptions relative to the following considerations:*

1. *Relation of the special exception to applicable elements of the planning program.*
2. *Appearance of the special exception relative to location, structure, and design.*

CHAIRMAN DESIMONE MADE A MOTION THAT THE ZONING BOARD AGREES WITH THE MINI STORAGE PROJECT AT THIS POINT AND TO REFER THE SUBJECT TO THE PLANNING BOARD.

MS. WAY SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

4. Other Business

Due to several members being out of town at the next regularly scheduled meeting, the members were encouraged to email Mr. Clark the days they can attend a meeting. The members will also consider a time in February when the members can meet for their Christmas lunch.

5. Adjournment

MR. BANKS MADE A MOTION TO ADJOURN AT 7:04 P.M.

MS. FISH SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

Chairman Ron DeSimone

Vickie Best, CMC, Town Clerk