

Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
November 11, 2010
MINUTES

Members Present: Chairman Bill Banks, Lyndia Massey, Marion Hamel, Caroline Edwards, Jim Hasseler, and Candy Way
Members Absent: Nancy Fish
Staff Present: Planning Director Nathan Clark and Town Clerk Vickie Best
Others Present: Alderman Phil Aldridge, Chris Higel, James Harden Sr, and Jr. with two others

Meeting Called to Order

Chairman Banks called the meeting to order at 5:32 p.m. in the Town Hall Boardroom.

Approval of Minutes: October 14, 2010

**MS. HAMEL MADE A MOTION TO APPROVE THE MINUTES
OF OCTOBER 14, 2010 AS PRESENTED.
MS. WAY SECONDED THE MOTION.
MOTION CARRIED UNANIMOUSLY.**

Special Exception: Residential Use in C1, 977 Soco Road

As part of the process, the Planning Board must provide their input on the requested special exception.

Excerpt from November 11, 2010 Planning Board Meeting

2. Relation of the special exception to applicable elements of the planning program
The 2007 Land Use Plan indentifies this area for Mixed Used, placing a heavy emphasis on commercial activity where size of parcel allows.

2. Appearance of the special exception relative to location, structure, and design.
When viewing the structure it is hard to imagine it being used for any other purpose than for residential use or professional office space. The structure's design resembles that of a small cottage that looks as it has never been used for commercial purposes. The site has limited parking potential due to the small lot size, 0.16 acres, which coincidently is the smallest allowable lot size

The parcel will remain zoned Commercial 1, but with a special exception allowing residential use. The 1946 structure was built as a single family home. The structure has a full size bathroom and kitchen.

Mr. Benoit was familiar with the request due to the similarities of the Benitez Homes changing from a construction office to apartments. Due to the economic times, requests like this, when suitable, will become more prevalent.

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The tax rate will not change due to the change in use. Tax rates are applied to value, not zoning.

CHAIRMAN BREDE MADE A MOTION TO RECOMMEND APPROVAL OF THE SPECIAL EXCEPTION TO ALLOW THE RESIDENTIAL USE DUE TO PREVIOUSLY BEING A RESIDENCE PRIOR TO BEING AN ATTORNEY'S OFFICE, IN REFERENCE TO QUESTION 1 THE AREA IS A MIXED USE AREA, AND QUESTION 2 THE STRUCTURE WAS CONSTRUCTED AS A RESIDENCE. THE SIGN FRAME IS TO BE REMOVED, IF THE ZONING BOARD OF ADJUSTMENTS ALLOWS THE SPECIAL EXCEPTION.

MR. KNOEDLER SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

MS. MASSEY MADE A MOTION TO GRANT THE SPECIAL EXCEPTION FOR 977 SOCO ROAD AS A RESIDENTIAL USE BECAUSE IT IS THE BEST USE FOR THE PROPERTY.

MS. HAMEL SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

Special Exception: Tow Truck & Vehicle Storage, 1560 Soco Road

Excerpt from Director Clark's agenda information:

Chris Higel and Bill Alvarez have submitted their special exception request for 1560 Soco Road to operate an "office and storage facility for towed and impounded vehicles." This use is not specifically listed among the 61 allowed C-1 Uses thus must be reviewed by the ZBOA. Below is the criteria for which the special exception can be judged.

(62) Uses not otherwise named herein upon the approval of the Zoning Board of Adjustment provided that no use shall be permitted in this section which is likely to be dangerous, offensive or detrimental to the health, safety, welfare, or general character of this zoning district or the community be reason of dust, gas, smoke, noise, fumes, odors, vibration, glare, or otherwise.

Attached: Tax Map of property

Chris Higel/Bill Alvarez Use Statement

§ 154.172 POWERS AND DUTIES.

(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

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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. **Building is existing.**

(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; **Property will be accessed from US-19. There is a small parking area located on the front lot, adjacent to the building. A deeded 14 ft R/W connects the upper/lower parcels. A larger parking/storage area could be constructed on rear parcel.**
2. Refuse and service areas, with particular reference to the items in division (B)(3)(b)1. above. **Commercial properties are responsible for their trash disposal. Commercial structures are required to screen dumpster areas on three sides. If business does not generate “dumpster” amounts of trash one is not required.**
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; **Property will be accessed from US-19. There is a small parking area located on the front lot, adjacent to the building. A deeded 14 ft R/W connects the upper/lower parcels. A larger parking/storage area could be constructed on rear parcel.**
4. Utilities, with reference to location, availability, and compatibility; **YES**
5. Screening and buffering, with reference to type, dimensions, and character; **Due to the proposed used, advanced screening and buffering requirements could be utilized similar to what is expected and outlined in the ordinance for construction/heavy equipment.**
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; **Sign frame currently in place, meets Town Standards.**

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7. Required yards and other open spaces; **25 feet trout buffer requirement as well as Flood Plain Development Ordinance will apply.**

8. General compatibility with adjacent property and other property in the district. Adjacent properties include: **There are two hotel and one residential cottage community located directly across the street from this building. The rear adjacent uses included vacant property (zoned C-2), restaurant, electric/phone sub/switching stations and single family home.**

(c) Within 90 days of being granted any approval by the Zoning Board of Adjustment, a property owner or developer must obtain a building permit or variance will expire.

(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; and**
2. **Appearance of the special exception relative to location, structure, and design.**

Director Clark went on to explain that this is a preliminary meeting. Testimony will be provided, under oath, at the next Zoning Board of Adjustment Meeting.

Mr. Hasseler asked if a certain number of allowed vehicles that can be stored is noted in the ordinance.

Towing/storage are not an allowed use; thus the reason for a special exception request.

Mr. Chris Higel stated that he will install a chain-link fence that is screened similar to the county's trash collection areas. There will be no more than 20 cars stored at a time. The length of time the cars will remain in storage is 60 to 80 days. Office hours will be 8 to 5 p.m.

The Zoning Board questioned what Mr. Higel would do to protect the creek and ground water from leaking fluids/oils. Mr. Higel responded that screening would be placed under the vehicles. A mixed of repo and damaged vehicles will reside on the lot.

MS. HAMEL MADE A MOTION TO SEND THE ISSUE TO THE PLANNING BOARD FOR A RECOMMENDATION, AND FOLLOW THE GUIDELINES FOR ADVERTISING A PUBLIC HEARING.

MS. WAY SECONDED THE MOTION.

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MOTION CARRIED UNANIMOUSLY.

Due to Director Clark being in school on December 9th in Chapel Hill, the regularly scheduled Zoning Board of Adjustment meeting will be held at 5:30 p.m. on Monday December 6.

Other Business: James Harden

Mr. Harden asked for clarification on what he needs to present to the board in order to open his business and return to work. What is a professional parking plan? Mr. Harden contends that the zoning ordinance does not state licensed professional nor is a definition provided.

Has a decision been made if a Recreational Vehicle falls in a separate category? Mr. Harden contends that Recreational Vehicles are titled the same as an automobile.

Why has enforcement on the Mize/Alexander Easement not been equally enforced? The right-of-way stops at the neighbor's gate. Mr. Harden contends the easement should be assessable to both properties on Bennett Drive.

A registered land surveyor can provide the parking plan and provide a seal on the plan. The surveyor would need to be able to read the zoning requirements and implement them in a parking plan.

Aldermen Aldridge questioned why Recreational Vehicles were part of the discussion. "We have had RV service in Maggie Valley for years.

Mr. Harden stated that he mostly does minor repairs to RVs; his shop could not facilitate a major repair. Mr. Harden went on to ask if the parking plan had to accommodate parking for RVs and automobiles. "It does not take a CDL's to drive a RV and RVs are titled the same as an automobile.

Chairman Banks explained that due to the complication with the road right-of-way, the Zoning Board of Adjustment must have a professionally drawn (sealed) parking plan that shows the road right-of-way, the required setbacks, and the green space in order to determine how the regulations create a hardship.

Ms. Way concurred, adding that the issue is not with the type of business being conducted but having a parking plan that shows the clear right of way and how the parking spaces can be utilized without encroachment onto the right of way.

Chairman Banks explained that it was totally up to Mr. Harden on how those parking spaces are utilized.

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Mr. Harden again expressed his concern on how the required green space will fit with gravel and how the green space eliminates five parking spots at the tightest part of the property along the apartments.

Chairman Banks again informed Mr. Harden that a professional parking plan must be submitted in order to establish if relief is needed.

It is not the Board of Adjustment that determines Mr. Harden's right to use an easement (Mize/Alexander). The Board of Adjustment only needs to see where the easement lies and the impact of applying parking standards to the Harden property.

AT 6:10 P.M. MS. MASSEY MADE A MOTION TO ADJOURN, SECONDED BY MS. EDWARDS, WITH ALL IN FAVOR.

Chairman William Banks

ATTEST:

Vickie Best, Town Clerk, CMC