

**Town of Maggie Valley  
Zoning Board of Adjustment  
Maggie Valley Town Board Room  
December 6, 2010  
5:30 p.m.  
MINUTES**

**Members Present:** Chairman Bill Banks, Jim Hasseler, Marion Hamel, Nancy Fish, Caroline Edwards, Candice Way and Lyndia Massey

**Staff Present:** Manager Tim Barth, Planning Director Nathan Clark, and Deputy Clerk Shayne Wheeler

**Others Present:** Aldermen: Phil Aldridge, Scott Pauley, Colin Edwards, and Saralyn Price and 10 others in the audience

**Meeting Called to Order**

Chairman Banks called the meeting to order at 5:35 p.m. in the Town Hall Boardroom.

**1. Approval of the Minutes: November 11, 2010**

**MS. HAMEL MADE A MOTION TO APPROVE THE MINUTES FROM  
NOVEMBER 11, 2010.**

**MS. MASSEY SECONDED THE MOTION.  
MOTION CARRIED UNANIMOUSLY.**

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

Director Clark provided the following information regarding the property.

The property is located at 1560 Soco Road and has operated as an office and a small retail store in the past. Mr. Chris Higel and Bill Alvarez submitted a request for a special exception to use the property as an office and storage facility for towed and impounded vehicles. A storage facility for towed or impounded vehicles is not a permitted use in the Commercial 1 District. There is a 25-foot trout buffer stream to the rear of the property along Jonathan Creek. Flood plain and flood way guidelines would also apply. There are two hotels and residential uses directly across the street. There is vacant land beside the property to the right and a restaurant to the left of the property. Single-family homes and a utility sub/switching station are located across Jonathan Creek at the rear of the property.

Chairman Banks opened the public hearing at 5:40 p.m.

Director Clark reported the response from the Planning Board meeting held December 2, 2010.

*Excerpt from Planning Board Meeting*

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*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?*

*Chairman Brede felt the impact of the business is very low. Due to words like storage and towing, people have gotten upset. With proper fencing and screening one could not tell it was a storage area, again due it being a low impact business. Maggie Valley wants to see new businesses move into town but due to the economy business is slow. This is not a junk yard but rather a nice looking building with an attractive fence behind it. This business could only be a good neighbor. There are modular homes/ mobile homes stored to the east of the property that have been in place for years. This business will fit in with the adjoining properties.*

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

*There is to be a 6-foot high wooden fence constructed to screen the vehicles with enough space between the fence and creek for landscaping to soften the look of the fence from the residential parcel across the creek. There should be minimum signage. The lighting should be directed down as to not hamper the adjoining businesses or residents. There should be restrictions on the amount of vehicles that can be stored (Nathan will provide the number). The site should be cleared and gravel poured for the parking area. Only operative vehicles are to be stored for no longer than 30 days. The hours of operation should be 8 a.m. until 10 p.m.*

**CHAIRMAN BREDE MADE A MOTION TO RECOMMEND THE ZONING  
 BOARD OF ADJUSTMENTS APPROVE THE SPECIAL EXCEPTION.  
 MR. MATTHEWS SECONDED THE MOTION.  
 MS. JOHNSON AND MR. BENOIT VOTED IN THE AFFIRMATIVE.  
 MS. PAULEY OPPOSED THE MOTION.  
 MOTION CARRIED BY MAJORITY.**

A packet of letters was distributed to the board members from adjoining property owners as well as other concerned citizens.

Ms. Way was very concerned about leakage from the vehicles seeping into the groundwater.

Under oath, Mr. Chris Higel testified that only repossessed vehicles would be located on the property. The vehicles would be no older than five years, and would not create any more leakage than a new vehicle parked outside.

Ms. Way was also concerned about adjoining properties and the impact this business would have.

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Mr. Higel stated that he would be constructing a 6 to 8 foot wooden fence blocking the view from all adjoining properties.

Ms. Edwards questioned how many cars would be in the lot at any given time.

Since this is not a prescribed use in the Commercial District, there is not a parking requirement. The guidelines would then fall under 154-091 entitled OFF-STREET AUTOMOBILE PARKING AND STORAGE. The requirements would be 1 space for each 2 employees at maximum employment on a single shift, plus 2 spaces for each 300 square feet of repair or maintenance space.

Ms. Way was also concerned about how this facility would fit in a tourist town. Mr. Higel assured her that no one would know what is behind the fence.

Chairman Banks felt that there was a conceivable issue with the right-of-way setback as well as the trout buffer and the flood plain issues. The board members need to know how much area would remain for storage after the setback/buffer/right-of-way guidelines are met.

Mr. Higel felt he could place 10 to 15 vehicles in the remaining area.

Ms. Hamel asked how the repossession business worked and if there were regular hours of operation.

Mr. Higel stated that he would only be repossessing vehicles during the daylight hours.

Mr. Higel will be taking out a few of the trees to make more room. The vehicles will be parked side-by-side and back-to-back. Mr. Higel added that he knew the right-of-way would have to remain open. He too will be using the right-of-way to access the rear of the property. As for signage, it will be very low-key using the existing frame on the property. It is a low-key business.

When questioned by Ms. Hamel on why Mr. Higel changed his plan from his original appearance before the Zoning board of Adjustments, Mr. Higel stated that Mr. Bill Alvarez has several repossession businesses in Florida and mainly wants to expand the business to Haywood County. Mr. Higel stated that he has another storage lot for wrecked cars.

Mr. Jay Ring questioned how enforcement would be handled. If Mr. Higel does not meet the expectations of the special exception. "How are you going to address making sure all of the provisions are met?"

A special exception was granted to Mr. Ring's adjacent neighbor and he feels it has now turned into a mess. Mr. Ring felt that it was not the adjacent property owners'

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responsibility to expend money going to court to resolve the matter because the Town cannot enforce the rules. "How are you going to remedy this problem?"

Colin Edwards, a resident and Vice-President of Leatherwood Cottages Homeowner's Association agreed with Mr. Ring, "Who is going to enforce the stipulations?" "All of the homeowners at Leatherwood Cottages will be very disappointed if this special exception is granted."

Carol Henry, owner of a single-family home behind the property stated that she opposes the use. From her bedroom, she can see the lot. There are no fences tall enough to hide the unsightly lot. Ms. Henry has a rental cottage so the renters would be impacted as well. As for leakage, all water is going to run down into Jonathan Creek taking any residuals with it. "This is not a good location, especially with the Town trying to begin a beautification program."

Larry DeBuke, owner of Tanglewood Motel and log cabins, located across the street from the proposed property addressed the board stating that it has taken him and his wife 14-years to bring Tanglewood Motel and Cabins to where they are today. Most of the clientele are older in age that likes to sit out in the evenings and look at their surroundings. "This would hurt my business and property values, especially during this economy. Do not do this to Maggie Valley."

Joe Kilgore, owner of Butts on the Creek BBQ Restaurant, stated that the road is actually a cart path as stated on his deed. "How could this be good for Maggie Valley? " This will destroy the property value and the restaurant business." A fence cannot be high enough to hide the cars from the people eating at the restaurant.

Alderman Saralyn Price questioned Mr. Higel on the number of cars to be stored, as well as the condition of the vehicles in storage.

Mr. Higel replied that there would be no wrecked vehicles stored on the lot.

Alderman Pauley asked that the board consider how this use would be if it were locating beside their property.

The Public Hearing closed at 6:20 p.m.

Jay Ring again addressed the board stating that last month Mr. James Harden, owner of Service Quest, adjacent to Mr. Ring's property was giving instructions about bringing a professionally drawn parking plan. The special exception was not granted. The parking situation and the clearing of the road right-of-way continue to be a problem.

The biggest issue the board felt needed to be addressed is this use compatible to the existing uses.

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**MS. MASSEY MADE A MOTION TO TABLE THE DECISION UNTIL THE MEMBERS CAN MEET ON THE PROPERTY, THIS MEETING WILL RECONVENE AT 3:30 P.M. ON DECEMBER 15, 2010.**

**MS. HAMEL SECONDED THE MOTION.  
MOTION CARRIED UNANIMOUSLY.**

**CHAIRMAN BANKS MADE A MOTION TO RECOMMEND NANCY FISH TO THE BOARD OF ALDERMEN FOR A POSITION ON THE COMMUNITY APPEARANCE COMMITTEE.**

**MS. WAY SECONDED THE MOTION.  
MOTION CARRIED**

**MS. MASSEY MADE A MOTION TO RECOMMEND MARION HAMEL TO THE COMMUNITY APPEARANCE COMMITTEE.**

**MS. EDWARDS SECONDED THE MOTION.  
MOTION CARRIED.**

**3: Adjournment**

**AT 6:40 P.M., MS. MASSEY MADE A MOTION TO RECONVENE THE MEETING ON DECEMBER 15, 2010 AT 1560 SOCO ROAD AT 3:30 P.M.**

**MS. FISH SECONDED THE MOTION.  
MOTION CARRIED.**

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**Chairman William Banks**

**ATTEST:**

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**Vickie Best, CMC, Town Clerk**

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**Town of Maggie Valley  
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5:30 PM  
Maggie Valley Town Board Room**

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”. At the November 11, 2010 ZBOA, meeting Mr. Higel made several statements that indicated to the board that his special exception request would be a traditional tow and store facility. For example, he would get an accident call, answer this call and place the vehicle within the confines of his property. However, at the December 2, 2010 Planning Board meeting Mr. Higel indicated that his proposed business would not handle such calls but be used solely as a storage lot for repossessed vehicles. (Please review the minutes from each meeting. The Planning Board voted 4-1 in favor of this use. The one dissenting vote believed it was not a compatible land use with surrounding properties. As expected there have been several letters submitted to the Town by adjacent/close property owners. All of these submitted letters have been critical of the proposed special exception. Although all the letters the Town has received believed the proposed special exception use would be for a junkyard or traditional tow yard.

***(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  
Flood Map  
Chris Higel/Bill Alvarez Use Statement  
Letters from adjacent property owners

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§ 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 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.**

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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.**
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: As answered by the Planning Board on December 2, 2010 by a 4-1 vote.**

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.**