

Town of Maggie Valley  
Zoning Board of Adjustment  
Flossie White Room  
Thursday June 12, 2008  
5:30 p.m.

## MINUTES

Member Present: Chairman Ron DeSimone, William Banks, Nancy Fish, Catherine Young, Lyndia Massey, Connie Dennis, Candy Way, Dean Tomlinson, and Caroline Edwards  
Staff Present: Manager Tim Barth, Planning Director Nathan Clark and Town Clerk Vickie Best  
Others Present: Aldermen: Phil Aldridge and Colin Edwards, Planning Board Members: Chairman Billy Brede and June Johnson Others: Torry and Jo Pinter, and Jim Newland

Chairman DeSimone called the meeting to order at 5:32 p.m.

### **1. Approval of the Minutes: May 8, 2008**

The May 8 meeting consisted of the members watching an educational film.

### **2. Special Exception: Jim Newland**

Director Clark provided the following background information:

#### **Zoning Board of Adjustments: March 2007**

In March of 2007 Jim Newland appeared before the ZBOA to request a C-1 *Special Exception* that would allow him to transform his property from an existing motel to a 36 unit condominium project. At that time, Mr. Newland's project received a favorable review from town staff. Staff believed it was a suitable use for Maggie Valley's "downtown area" for a couple of reasons. It would bring new life to a dated motel property. Secondly, it would introduce a high residential density into the downtown area, giving existing restaurants and shops new costumers within walking distance.

#### **Planning Board: August 2007**

As a required condition of the C-1 Special Exception permit the applicant must obtain a building permit within 90 days (see language in below section). In this case, Mr. Newland still needed to gain preliminary/final plat approval from the Planning Board before he would be able to pull a building permit. He received preliminary plat approval at the August 2007 Planning Board meeting by a 4-1 vote. Scott Pauley cast the dissenting vote based upon the Planning Board's development of the Land Use Plan (which was still a working document and had yet to be approved at this time). The August 2007 version of the plan prohibited multifamily projects-it envisioned the district, which Mr. Newland is located in to be the tourism hub of Maggie Valley. As is the case with special exception permits, preliminary plats also have an expiration date-1 year.

#### **Land Use Plan: November 2007**

In November 2007, The Town of Maggie Valley Board of Aldermen unanimously approved the Land Use Plan (LUP). The purpose of the LUP is to assist the local

Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

government in making decisions regarding future town development and to provide a framework on which to base zoning decisions. It is an advisory plan, which has no regulatory bite, but should be considered in the decision making process. The LUP has placed Mr. Newland's property in the Community Attraction District. The vision for the district is: *The civic and cultural center for the town, the Community Attraction category is designed to preserve traditional tourism related businesses and activities that have been a staple in the Town's economy since it was chartered. This land use category should promote family-oriented establishments and attractions, and uses that support and complement these establishments. Commercial infill opportunities respecting the historic fabric of the area are envisioned. Residential uses (condos, lofts) may be permitted as a component of a planned development or master plan on a conditional basis.* This is contradictory to what Mr. Newland is proposing for his property.

**The Request**

Mr. Newland would like the ZBOA of to renew his C-1 Special Exception allowing him the opportunity to construct 36 dwelling units ( spread out over four, three story multifamily condo structures) on the current site of Smoky Mountain Lodge (PIN7686-28-0780, 7686-28-2730). This request meets all current Town of Maggie Valley C-1/R-3 Zoning Guidelines. This request is inconsistent with the Town of Maggie Valley Land Use Plan/Community Attraction District.

See Newland Attached Documents (site plan and architectural elevations)

**Zoning Board Judgment Criteria:**

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. **(Original Special Exception Granted March 2007)**

(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:

Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

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 **(satisfied by site plan)**
2. Refuse and service areas, with particular reference to the items in division (B)(3)(b)1. above; **(satisfied by site plan)**
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 **(The number of parking spaces required for this project is 72 spaces as currently drawn the project contains 98 however, 6 of those spaces are within the Town's Greenspace Buffer Zone. Removing these 6 spaces from the buffer will yield this project a total of 92 spaces which will leave 20 spaces for guest/visitor/ restaurant parking. Satisfied by site plan)**
4. Utilities, with reference to location, availability, and compatibility; **(satisfied by site plan)**
5. Screening and buffering, with reference to type, dimensions, and character **(satisfied by site plan)**
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 by site plan)**
8. General compatibility with adjacent property and other property in the district. **(Per the C-1 Zoning Ordinance yes, Town Land Use Plan no)**
  - (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. **(Has expired, original special exception granted in March 2007-preliminary plat will expire August 2008)**
  - (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; **Is contrary to the Land Use Plan of 2007. The Planning Board will be at the meeting to address the ZBOA on this issue.**
    2. Appearance of the special exception relative to location, structure, and design.

Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

Director Clark provided floodway/plain maps for review. The floodplain maps (1984) used during the first approval process has now been revised and will be adopted in 2008. The parcels (7686-28-0780 & 7686-28-2730) have changed with the revised mapping. The floodway is closer than shown on the 1984 maps. A portion of the existing building is in the flood plain. Any new buildings will need to be raised one-foot above flood plain elevation. The owners will be required to carry flood insurance, and a no-rise certificate will need to be issued if fill dirt is brought onto the area to show that there would not be an impact on areas down stream.

The new FEMA maps have not been adopted, therefore have yet to become law, but the new maps should be considered in the decision process.

Ms. Dennis had concerns about ending up with a project half completed after the adoption of the new flood maps.

If the building has started prior to the maps being adopted, the project would be grandfathered.

Mr. Newland was uncertain about the time frame of the project. The request is to construct 36 condominiums that according to the site elevations will be 34'7". The Zoning Ordinance prohibits structures above 45-feet with a 7/12 roof pitch.

Chairman DeSimone had concerns about the structures blocking the waters and causing more widespread flooding. An overlay would be helpful in the decision making process.

Per the Zoning Ordinance: Under # 8 letter 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.*

Attorney Dickson advised that the issue of allowing review and recommendations from the planning board is not optional. The word shall, makes it a requirement.

Mr. Newland stated that he has not seen the new floodplain maps. He would need to go back to his engineers. Mr. Newland stressed that new condominiums would be a nice feature in the town. Economics held back the project last year. Mr. Newland felt that he needed to be able to begin the project before the new maps are adopted. He must have the Town's approval prior to going to the bank for financing.

The restaurant will be refurbished. The parking will be located toward the rear of the property. The buildings will be located to the front, with some green space. There will be a lot of green area in the back of the condominiums. The condominiums will be single

Town of Maggie Valley  
 Regularly Scheduled Zoning Board of Adjustment Meeting  
 June 12, 2008  
 MINUTES

family, two bedrooms, two baths, approximately 1000 square feet, and sell for under \$275,000. Every condominium will have two parking spaces.

Mr. Tomlinson questioned the third building being behind the motel and still maintaining the setbacks. Landscaping is not shown on the plan.

The structures could not be rebuilt in the event of a disaster.

Mr. Tomlinson felt that a timeframe should be included because the Planning Board and Zoning Board could bounce the issue back and forth indefinitely.

The issue will go before the Planning Board on July 2, 2008. Director Clark stated that this was a formal feedback loop, the Zoning Board members can take into consideration the Planning Board's input, but it does not have to be reflected in their decision.

Chairman DeSimone felt the maps were a material fact and that the Zoning Board members could be walking a legal line in their decision. Chairman DeSimone asked that an attorney be present at the next meeting to provide legal advice.

Mr. Newland felt it unfair to people wanting to develop now having to depend on what may happen in the future.

Chairman DeSimone agreed that there were valid arguments on both sides of the issue. The Zoning Board will await the Planning Board's recommendations as directed by the town ordinance.

**MR. TOMLINSON MADE A MOTION TO ACCEPT THE PROPOSAL TO  
 EXTEND THE CONDITIONAL USE, SUBJECT TO HEARING THE PLANNING  
 BOARD'S RECOMMENDATIONS. MR. BANKS SECONDED THE MOTION.  
 MOTION CARRIED UNANIMOUSLY.**

**3. Planned Unit Development: Torry Pinter**

Director Clark provided the following history:

**The Background**

**Zoning Board of Adjustments: April 2006**

The ZBOA granted Mr. Pinter a Special Exception in the C-1 District for a 42 unit condominium complex. The decision was based upon the size of Mr. Pinter's tract which exceeds 7 acres in size. Half of the tract would be dedicated to commercial (the half adjacent to Soco Road) and half would be developed residentially (the section along Jonathan Creek)

**Planning Board: June 2007**

Mr. Pinter received unanimous final plat approval for his Smoky Mountain Creekside Condominium Project from the Planning Board. As stated above this for whatever

Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

reasons Mr. Pinter has failed to record this plat, which is set to expire without Town Planning Director and Planning Board Chairman's signatures in August 2008 because of a parking lot revision.

**Land Use Plan: November 2007**

In November 2007, The Town of Maggie Valley Board of Aldermen unanimously approved the Land Use Plan (LUP). The purpose of the LUP is to assist the local government in making decisions regarding future town development and to provide a framework on which to base zoning decisions. It is an advisory plan, which has no regulatory bite, but should be considered in the decision making process. The LUP has no impact on this project because the Soco Road Mixed Use District does envision a mixture of commercial and residential development, with residential development occurring along the creek.

**Flood Maps: 2008**

All development in Maggie Valley must reference the Flood Insurance Rate Map (1984). These maps identify Special Flood Hazard Areas (Flood Plain and Flood Way) which regulate the type of development that can occur. As better technological/scientific tools have become available and more watershed development has occurred the Special Flood Hazard Areas have increased throughout the Valley (although some areas have seen a decrease in SFH). For instance Mr. Pinter's property has seen a dramatic increase in the amount of floodway from the 1984 maps to the 2008 (preliminary maps). Although available to the public, the 2008 maps are not official and cannot be used to make decisions on in AE Zones (Mr. Pinter's property is in an AE zone). They should become official as early as November 2008.

**The Request**

Mr. Pinter would like the ZBOA to receive a Planned Unit Development distinction for his 16 single family dwelling unit community named Serenity Creek. Originally Mr. Pinter had planned for condominium development to occur on this property; but because of market forces and new flood maps his plans have changed. This PUD is a fresh attempt at what was originally approved by both the ZBOA and Planning Board.

**154.110 PLANNED UNIT DEVELOPMENTS.**

(A) *Purpose.* The purpose of this section is to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building siting, mixtures of housing types and land use. Residential densities are calculated on a project basis, thus allowing the clustering of buildings in order to create useful open spaces and preserve natural site features.

Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

(B) *Planned unit development defined.* Where more than 1 principal building or use is proposed to be constructed on a single lot, or any building with a gross floor area of 5,000 square feet or more, or any multi-family residential complex of 5 or more units, shall be deemed a planned unit development (PUD). Residential units within a planned unit development may include single-family detached or attached units, townhouse developments, garden apartments, patio homes, and other type residential units including mobile homes and mobile home parks.

(C) *Land development standards.* The following land development standards shall apply for all planned unit developments. Planned unit developments may be located in all districts as a special exception, subject to a finding by the Board of Adjustment that certain conditions be met.

(1) *Ownership control.* The land in a planned unit development shall be under single ownership or management by the applicant before final approval and/or construction, or property assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

(2) *Density requirements.* There are no density requirements for nonresidential uses as long as the proposed project does not violate the intent of the district in which it is located. The proposed residential density of the planned unit development (land area per dwelling unit as shown in §§ [154.055](#) *et seq.* shall conform to that permitted in the district in which the development is located. If the planned unit development lies in more than 1 district, the number of allowable dwelling units must be separately calculated for each portion of the planned (unit) development that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire planned unit development.

(3) *Frontage requirements.* Planned unit developments shall have access to a highway or road suitable for the scale and density of development being proposed. **Road access will be off of US 19 Soco onto Rushing Lane (18ft paved, virtually flat grade)**

(4) *Land uses.* A mixture of land uses may be allowed in any planned unit development. However, within residential districts, nonresidential uses shall be primarily for the use of the PUD residents and shall not constitute the primary use in the planned unit development, and nonresidential uses shall be carefully designed to compliment the residential uses within the planned unit development. All planned unit developments must be compatible with and not violate the intent of the zoning district. **(Single family detached units in rear of property, front of property is commercial. Current commercial uses real estate office, vacation rental, ice cream/coffee shop all are compatible uses with residential.**

(5) *Minimum requirements.*

Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008

MINUTES

(a) The normal minimum lot size, setbacks, and frontage requirements are hereby waived for the planned unit development, provided that the spirit and intent of this section are complied with in the total development plan, as determined by the Board of Adjustment. The Board of Adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section. **Units are at least 20 feet apart internally and respect all perimeter side yard setbacks**

(b) No building or structure shall exceed the height limitations of the district in which it is located. **Building height has yet to be determined. Max allowed height is 45ft. Building will need to be raised due to floodplain elevation requirements (finish flood elevation needs to be at 1+ ft above BFE)**

(c) The minimum distance between buildings shall be 20 feet or as otherwise specified by the Board of Adjustment to ensure adequate air, light, privacy, and space for emergency vehicles. **Yes**

(d) Every dwelling unit shall have access to a public or private street, walkway, or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties, in order to ensure acceptable levels of access for emergency vehicles. **Yes**

(6) *Privacy.* Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views of uses, and reduction of noise. Multi-level buildings shall be located within a planned unit development in such a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of the low-rise buildings. **Yes**

(7) *Perimeter requirements.*

(a) Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provisions of this chapter controlling the district within which the property is situated.

(b) Structures other than single-family detached units, located on the perimeter of the development may require screening in a manner which is approved by the Board of Adjustment. **Only single family detached units**

(8) *Water and sewer systems proposed.* Plans and accompanying documentation to ensure that the water and sewer systems proposed for the planned unit development have been approved by the appropriate local and state agencies and submitted as part of the application. **Water and Sewer were approved for the original condo plan. This project requires less capacity than the original approved project**

Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

(9) *Copy.* At least 1 week prior to the date when the Board of Adjustment is scheduled to consider the development, the developer shall submit a copy of the development plan to the Code Enforcement Officer. The development plan shall contain, where applicable, the following information:

(a) Existing site conditions, including contours, watercourses, identified flood hazard areas, any unique natural or human-made features;

(b) Boundary lines of the proposed development, proposed lot lines, and plot designs;

(c) Proposed location and use of all existing and proposed structures;

(d) Location and size of all areas to be conveyed, dedicated, or reserved as common open space, parks, recreational areas, school sites, and similar public and semi-public uses;

(e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. When more than 1 use is located in the planned unit development, the minimum required parking shall be the sum of the required parking for each use within the development. Notations of proposed ownership of the street system (public or private). Documentation from the Maggie Valley Volunteer Fire Department of the adequacy of the development's facilities for emergency medical and fire services;

(f) Documentation of an approved Sedimentation and Erosion Control Plan shall be submitted where required;

(g) Location and/or notation of existing and proposed easements and rights-of-way;

(h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;

(i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features; and

(j) Where applicable, the following written documentation shall be submitted:

1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;

2. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;

10  
Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

3. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;
4. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; gross residential densities; and total amount of open space;
5. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities; and
6. Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Code Enforcement Officer or the Board of Adjustment may waive a particular requirement if in its opinion the inclusion is not essential to a proper decision of the project.

(10) *Pedestrian and bicycle path.* Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.

(11) *Layout.* Layout of parking areas, service areas, entrances, exits, yards, courts and landscaping, and control of signs, lighting, noise, or other potentially adverse influences shall be such as to protect the residential character within the PUD district and desirable character in any adjoining district.

(12) *Open space.* Conveyance and maintenance of open space, recreational areas and communally-owned facilities shall be in accordance with the Unit Ownership Act (G.S. Chapter 47A) and/or any other appropriate mechanisms acceptable to the Board of Adjustment.

(Ord. 265, Ch. 1, passed 9-18-2001) [Penalty, see § 154.999](#)

As shown on the maps provided, the flood maps affect the Pinter property significantly. If construction were started, the structures would be grandfathered. If under the 2008 FEMA maps, more pervious surface would be required, and the units would be back away from Jonathan Creek. Mr. Pinter is on the protest petition list with the FEMA representatives.

Mr. Pinter emphasized that only the footprint would be sold. 3.882 acres will be used for dwellings with the rest remaining in common area.

Pad #13 would need to be adjusted due to the separation from the existing building.

Director Clark stated that the same requirements for getting Planning Board recommendations would apply to the Pinter project.

11  
Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

Mr. Pinter stated that due to the real estate market and the FEMA guidelines, the format of his project has changed to single-family homes. There is a 4-foot difference in the FEMA elevations and the engineer's estimations. The footprints will range from 2200 to 2500 square feet. The units will be system built homes. The model currently on the Pinter's property is 1 ½ stories. The market for smaller second homes seems to be more active.

The residential area will be buffered from the commercial.

Director Clark stated that if the Zoning Board of Adjustments granted the planned unit development designation, the Planning Board will make sure the plat is done correctly. As with Mr. Newland's project, the building permit must be issued prior to adoption of the FEMA maps.

The projected adoption date of the FEMA maps is between November 2008 and February 2009. Each municipality has a short window of time to adopt the new flood maps or the entire town loses their flood insurance.

**MR. BANKS MADE A MOTION TO FOLLOW THE SAME PROTOCOL AS WITH THE NEWLAND ISSUE, SEND TO THE PLANNING BOARD FOR A RECOMMENDATION. MS. WAY SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

As with the Newland issue, Chairman DeSimone wanted a legal advisor present. Chairman DeSimone also asked that the information packet be delivered earlier with in-depth information in order to provide the time for members to research and visit the sites in question.

**MR. DESIMONE MADE A MOTION TO MOVE THE DEADLINE FOR ADDING TO THE AGENDA TO THE LAST THURSDAY OF EACH MONTH IN ORDER TO PROVIDE MEMBERS MORE TIME TO STUDY THE ISSUES. MR. BANKS SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

**MR. BANKS MADE A MOTION TO ADJOURN AT 6:58 P.M. MS. FISH SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

---

Ron DeSimone, Chairman

---

Vickie Best, CMC, Town Clerk

12  
Town of Maggie Valley  
Regularly Scheduled Zoning Board of Adjustment Meeting  
June 12, 2008  
MINUTES

4. Other Business

5. Adjournment