

**Town of Maggie Valley  
Zoning Board of Adjustment  
Town Board Room  
Thursday July 10, 2008  
5:30 p.m.  
MINUTES**

Members Present: Chairman Ron DeSimone, Connie Dennis, Dean Tomlinson, Candy Way, Caroline Edwards, Nancy Fish, Bill Banks, and Lyndia Massey

Staff Present: Attorney Chuck Dickson, Planning Director Nathan Clark, and Town Clerk Vickie Best

Planning Board Members Present: Chairman Billy Brede, Bob Knoedler, and Bill Chamberlin

Others Present: Aldermen: Colin Edwards & Phil Aldridge, Jim Newland, Torry and Jo Pinter

Chairman DeSimone called the meeting to order at 5:38 p.m.

**1. Approval of the Minutes: May 8, 2008 & June 12, 2008**

**MS. FISH MADE A MOTION TO APPROVE THE MINUTES AS PRESENTED.**

**MS. DENNIS SECONDED THE MOTION.**

**MOTION CARRIED UNANIMOUSLY.**

**2. Special Exception: Jim Newland**

Director Clark provided the history of Mr. Newland's request to date.

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.

The mission statement for the Community Attraction District:

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.

On July 2, 2008, the Planning Board provided their recommendation:

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Is contrary to the Land Use Plan of 2007. The Land Use Plan does not envision residential only projects for the Community Attraction District. It does allow the possibility for mixed-use master developments to occur blending residential and commercial aspects. Mr. Newland's conceptual designs only allow 36 dwelling units (new construction) and leaving Garlic Knots Restaurant-which falls short of a true mixed-use development.

The Planning Board reviewed the 2008 Preliminary Flood Maps and could tell that this project would be impacted by those new maps. However Mr. Newland has not delineated the new flood lines on his plans. Thus the Planning Board could only speculate how much of the new project would be affected by the new maps. Using an engineering scale it can be assumed that the back two building of the proposed project would be in the Floodway. They encouraged the ZBOA to require the new flood lines be placed upon any new site plan developed by Mr. Newland so that the boards would have the best available information at their disposal. Another suggestion agreed to by the Planning Board was the scale of the project. Members believed that the 3 story size (although permitted by the ordinance) was too overwhelming for the parcel relative to building location via the sidewalk. The suggested the buildings on the front should be two stories and could become three stories as they moved farther from the road, closer to the creek.

The final motion from the planning board was to reject Mr. Newland's Special Exception Request in its current presented form. However the Board stated that it was open to alternative site plans to be submitted Mr. Newland that incorporate more mixed use elements that fit the Land Use Plan vision.

The Zoning Board of Adjustment members began reviewing the criteria for gaining a special exception.

- The timeline for obtaining a building permit has expired.
- Ingress/ egress are satisfactory.
- The refuse and service areas are satisfactory.
- The project requires 72 parking spaces, after removing 6 parking spaces for greenspace/buffering, 20 spaces will remain for guest/visitors/ restaurant parking.
- Utilities are satisfactory.
- Screening/buffering is satisfactory
- Required yards/ open space are satisfactory.
- Falls under the guidelines of C1 but not the Land Use Plan

Chairman DeSimone questions Attorney Dickson on the liability of not considering the new flood maps as material facts.

Attorney Dickson responded that the Zoning Board of Adjustment members are not the sole decision makers. The ZBOA is not the one issuing the building permits. It should be

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noted that new flood maps are anticipated in the near future, but currently FEMA is in the appeals process and the new maps have not been adopted. If Mr. Newland started building now it would be legal. Attorney Dickson went on to suggest that the ZBOA should set conditions such “in the event that a permit is not obtained then the project will comply with all applicable laws and regulations”.

Alderman Edwards stated that the 2008 maps are not accurate and will need to be redone by the State. The Board should use the existing flood maps.

Alderman Aldridge agreed. The new proposed project is not involved with flood plain issues to a great extent. There may be some impact to the building proposed for the rear of the property.

Chairman Brede addressed the ZBOA stating that the Planning Board of course took the flood maps into consideration but the biggest issue was that the proposed project does not fit the Land Use Plan. Neither the project nor the appearance of the project fit in with the mission statement for the Community Attraction Area. Residential use would be permitted if more commercial were added.

Mr. Banks added that everyone wants the highest and best use for their property. This is why any potential projects should be analyzed as to the highest and best use.

Ms. Edwards felt that if more and more of the motels turn into condominiums then Maggie Valley will cease being a tourist town and become a retirement community.

Ms. Way agreed with Ms. Edwards adding that she liked the mixed-use initiative.

Mr. Banks felt the Town should require that retail be part of the project.

Mr. Newland restated that the area is zoned Commercial 1. If a 36-unit extended stay motel were to replace the current motel, he would not have to go through all of this with the Planning Board and Zoning Board of Adjustments. Mr. Newland felt that was little difference in an extended stay motel and condominiums. The structures will meet the height requirements and will not be sitting right on the road. The first building will sit behind what is now being used as the office. Mr. Newland agreed to make the siding what ever the Planning Board desired.

Mr. Tomlinson reminded the Board that the ZBOA is here to hear the concept, after that it is up to the Planning Board and the Building Inspections Department up adhere to the laws. There would be no negative impact on the public.

Ms. Way felt that it was just as important to adhere to the LUP.

The integrity of the adopted Land Use Plan should be maintained.

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Ms. Dennis agreed with Mr. Newland in that she would like to see some of the older motels come down. It makes Maggie Valley look as if it is progressing. She too, saw very little difference in motels and condominiums.

Mr. Tomlinson felt the difference is that his project was caught up in the LUP. Chairman DeSimone agreed.

**MS DENNIS MADE A MOTION TO APPROVE THE SPECIAL EXCEPTION FOR RESIDENTIAL USE IN A COMMERCIAL ZONE BASED ON FINDING OF FACTS AND THAT HE INCLUDE BOTH THE 1984 AND 2008 FLOOD LINES ON THE SITE PLAN.**

**MR. BANKS SECONDED THE MOTION.**

**MS. WAY AND MS EDWARDS OPPOSED.**

**MOTION FAILED BY NOT HAVING A 4/5 VOTE.**

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

Ms. Massey rescued herself due to working for the Pinter family.

Director Clark reviewed the details leading Mr. Pinter appearing before the board today. Mr. Pinter would like the ZBOA of 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 have changed his plans. This PUD is a fresh attempt at what was originally approved by both the ZBOA and Planning Board.

The Planning Board recommended the following:

1. Relation of the special exception to applicable elements of the planning program; This plan is compatible with the Town of Maggie Valley Land Use Plan 2007. The vision for the Soco Road Mixed Use District would encourage business activity along the roadside and focus residential development along the creek. This plan would reduce the number of dwelling units from 48 approved multifamily dwelling units to 9 single family detached units.

The Planning Board reviewed the 2008 Preliminary Flood Maps as well as the 1984 FIRM Maps while deliberating on this development proposal. Flood Information was prepared by both Haywood County and Kevin Alford PE/Randy Herron PLS. The members were able to view the relationship of the Flood Lines to the 9 proposed units. Knowing that the Pinter's were already approved for 48 condominium units spread out over 3 (3 story) buildings that were elevated only +1BFE they felt that 9 single family dwelling units raised +3BFE would be a better fit for the property and could tell that this project would be impacted by those new maps.

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Finding of Facts:

(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. **The maximum allowed density is 21 single family units for this site. The Pinters are proposing 9 single family units.**

(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. **9 Single Family Detaches Homes, Commercial/Retail/Office Space along Soco Road**

(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. **Single Ownership by Tory Pinter.**

(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. **The maximum allowed density is 21 single family units for this site. The Pinters are proposing 9 single family units.**

(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)**

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(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.*

(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, Planning Board recommends +3BFE)**

(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.*

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(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**

(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;

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- (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;
  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.

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Chairman Brede stated that if Mr. Pinter wanted to build the 48-units he could with breakaway walls and parking underneath the structures.

Mr. Pinter Jr. addressed the board stating that the family has filed an appeal with the state due to the new flood maps. The Pinter family will be glad to build the structures above flood plain elevations and meet all of the flood plain requirements with no living space on the bottom. Flood insurance drops significantly when built to these specs.

The plan meets the LUP requirements. There will be a mixed use by having the commercial i.e. Real Estate Office, Ice Cream Shop, open space and a large commercial building for rent.

**MS. WAY MADE A MOTION TO APPROVE THE SPECIAL EXCEPTION AS A  
PLANNED UNIT DEVELOPMENT HAVING RESIDENTIAL USE IN A  
COMMERCIAL DISTRICT, THE STRUCTURES MUST BE THREE FEET  
ABOVE BASE FLOOD PLAIN ELEVATION.  
MR. BANKS SECONDED THE MOTION.  
MOTION CARRIED UNANIMOUSLY.**

Chairman DeSimone thanked Attorney Dickson for attending the meeting.

**ON MOTION OF MR. TOMLINSON, SECONDED BY MS. FISH, WITH ALL IN  
FAVOR THE MEETING ADJOURNED AT 7:20 P.M.**

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**Chairman Ron DeSimone**

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Vickie Best, CMC, Town Clerk

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