

**TOWN OF MAGGIE VALLEY
REGULARLY SCHEDULED ZONING BOARD OF ADJUSTMENT MEETING
AUGUST 20, 2009
MINUTES**

Members Present: Chairman Ron DeSimone, Connie Dennis, William Banks, Lyndia Massey, Caroline Edwards, Candice Way, Catherine Young, and Nancy Fish

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

Others Present: approximately 40 people

Meeting Called to Order

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

Approval or Corrections of Minutes: July 9, 2009

**MR. BANKS MADE A MOTION TO APPROVE THE MINUTES AS
PRESENTED.**

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

Special Exception: Maggie Valley Health Investors, LLC

Chairman DeSimone asked that the Planning Director be sworn in before addressing the Zoning Board of Adjustments.

Under oath, Director Clark provided the following information.

The Background

Maggie Valley Health Investors LLC is seeking an R-1 Special Exception to construct and operate a 114 bed assisted living facility. The project will be located on a 5 acre section of a 16 acre tract (PIN 7686-07-1348) in the Campbell Creek Area. Visually this area can be identified by the vacant field between Crockett's Meadow and Joey's Pancake House. This area may be accessed by taking Campbell Creek Road, making a right turn on Fisher Loop, the property starts just past Amos Court. The developer is part of Third Street Management LLC who own and operate 31 similar assisted living facilities across the Southeast.

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

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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. **The developer understands and is prepared to comply with this requirement.**

(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. **General access to the property will be safe and efficient. Traffic will be funneled off of Soco Road and then onto Campbell Creek Road before reaching Fisher Loop. Access to the property will be provided by an extension of Fisher Loop. By Town Street Standards this road will be required to be 18 feet paved, with three feet paved shoulder. This requirement is reflected in the developer's conceptual plan submission by the dark gray shaded area titled "24 feet Paved Roadway."**

2. Refuse and service areas, with particular reference to the items in division (B)(3)(b)1. above; **Refuse service area meets and exceeds minimum Town requirements. Dumpster area will be screened on all four sides by fence and then will be shielded on 3 sides by a vegetative buffer**

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 guidelines are found in 154.091(B)(15) which reads "Sanitarium, rest and convalescent homes, homes for the aged and similar institution. 1 space for each 6 patient beds, plus 1 space for each staff or visiting doctor, plus one space for each four employees."**

**114 beds/6= 19 required spaces
 60 employees/4= 15 required spaces
 2 Doctors= 2 required spaces**

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Total required spaces= 36 spaces

Total proposed spaces= 50 spaces

4. Utilities, with reference to location, availability, and compatibility; **Sewer and Water have already been installed to the proposed development site. Utilities have been run along Fisher Loop. Adequate capacity is available from both the Town's sewer system and MVSD water system.**
 5. Screening and buffering, with reference to type, dimensions, and character **Landscaping notes on the conceptual site plan meet the town standards for screening and landscaping. The developer worked closely with the Planning Board and Town Staff to help incorporate suggestions from the public when designing two buffers that exceed minimum town standards. A fifteen foot buffer along the south end, will provide a dense deciduous/evergreen buffer from those living in Crockett's Meadow. A similar ten foot buffer will be installed along the east end, nearest to Amos Court.**
 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; **A sign location has been indentified. The proposed sign size/type can be found in your photo packet. Lighting concerns have been identified on the conceptual plan and satisfy Town requirements. Additional information can be found in the developers packet that indicates full cut off fixtures that limit light pollution by directing light downward.**
 7. Required yards and other open spaces. **The site plan meets the minimum required yards and open spaces. The pervious area provided by the site plan is 2.9 acres (58%)**
 8. General compatibility with adjacent property and other property in the district. **Is a pre authorized special exception for the R-1 Zoning District thus meeting current R-1 zoning guidelines. The 2007 Land Use plan does not address this specific use however does elevate the density of this 16 acre parcel from low residential density to medium residential density. The parcel's adjacent location to the C-1 Zoning District and R-3 Zoning District is worth noting. The predominate surrounding land use is for single family homes.**
- (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:

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Staff Answers that were agreed upon a unanimous (5-0) vote by the Town of Maggie Valley Planning Board on August 6, 2009

1. Relation of the special exception to applicable elements of the planning program:

Zoning Ordinance: The first special exception listed under R-1 is *(1) Hospitals, sanitariums, rest and convalescent homes, homes for the aged, and similar institutions, and dental offices and clinics not used primarily for the treatment of contagious diseases, alcoholism or drug addicts.* It is important to note that at no time has the treatment of contagious diseases, alcoholism or drug addicts been discussed as a proposed practice by this facility however rumors of such treatment options persist in the community. Other special exceptions in R-1 include PUDs, public parks, playgrounds, libraries etc. Interestingly enough Public Elementary and Secondary Schools are an allowed as a by right use. This facility would have very similar size to an elementary school as well as have lower traffic counts.

The Land Use Plan does not specifically address this use in any explicit or implicit fashion. The property does benefit from a density increase from low residential density to medium residential density.

1. Appearance of the special exception relative to location, structure, and design.

Location: The selected site for this facility is in a vacant field surrounded on three sides by residential zoning districts R-1 and R-3. The final side of the property abuts the C-1 zoning district. Due to this fact I feel that the site has transitional use potential. Allowing the facility here in Maggie Valley at this location is very similar to two nursing home examples in the Town of Waynesville.

The Brian Center located at the gateway of Waynesville's Main Street District is surrounded on three sides by residential development; almost serving as a physical reminder of the transition between commercial and residential along N. Main Street. The second example is found along Shelton Street in the Auburn Park/Hendrix Park area. This center has coexisted with this single family residential area for nearly 50 years. The center shares similar architectural elements (ranch style) as the homes in this area. However the uniqueness of Maggie Valley's topography having the selected site in an open field on the valley floor makes this property more easily seen by a greater number of homes than the aforementioned nursing homes because of the rising elevation is worth noting. Another question that has arisen over the past month about the location of this site is what is going to stop another nursing home from locating in all R-1 Neighborhoods? That question is simply answered by stating that all sites are evaluated independently—all R-1 Neighborhoods are not created equal. A proposed nursing home in Horseshoe Cove (R-1) would receive a unfavorable response based upon transportation access. In contrast this site receives a favorable review because it possesses good

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transportation access, lies outside of the Special Flood Hazard Area, lies outside of a critical watershed and is not in a designated landslide hazard area.

Structure & Design: This is one of the most important questions the Town considered when examining this application. Knowing its location in close proximity to an existing neighborhood, Town Staff informed the developer early on this element of the special exception would be crucial to their approval success. The Town would not have such a favorable view of this project if the facility was a multiple story, gray building with a flat roof and a chain link fence that surrounds the perimeter. As strange as that example may sound to you, the Town has received several calls from concerned citizens that this is what is being proposed at this site. However this image is not the proposed building for this site. Maggie Valley Health Investors has designed a building that meets and exceeds the draft Design & Appearance Standards the Town of Maggie Valley Planning Board has been diligently working on. Residential Mountain Vernacular Design Features (including high pitch 7/12+ roofline, dormers, front porch, stacked stoned, cedar shakes, architectural setbacks etc) have been incorporated in this facility's design. Additionally the developer has taken the Planning Board's advice from the July 16, 2009 meeting and has added aggressive rear and side yard buffers to go along with a dense existing vegetative buffer. The addition of this buffer shows the developers continued willingness to work with Town as well as being sensitive to the neighboring property owners concerns.

Planning Board Chairman Brede then addressed the Zoning Board under oath.

Chairman Brede explained that at the first meeting that Maggie Valley Health Investors LLC. did their presentation there were only four Planning Board members present. Chairman Brede explained that although there was a quorum present, he wanted input from the entire board. The investors were asked to return to the next scheduled Planning Board meeting. The whole board was in-favor of the facility with the changes requested.

The requests were:

1. Have the mountain vernacular
2. Increase the setbacks
3. Have a densely planted buffer
4. Have protection around the Alzheimer wing

Chairman DeSimone reminded Chairman Brede how that just a few years ago the Planning Board was adamant that the area be zoned Residential One.

Chairman Brede remembered the issue well. In the current zoning, there could be 15 homes built on the five acres. Impervious surface for 15 homes, driveways and roads would be considerable. As for traffic, the nursing facility will produce less traffic than 15 single family homes. Predominately the most traffic would be at the end of each 12-hour shift. Families would be traveling more than twice within 24-hours. The service vehicles deliver weekly. Housekeeping supplies are delivered monthly. The dumpsters will be located in the rear of the property and will be screened. The buffer and the setbacks have

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been enlarged. The Crockett Meadows Subdivision views the remaining property, not the five acres where the facility is proposed.

Ms. Dennis questioned doctors, hairdressers, etc. coming in and out.

Mr. Trefzger asked that Ms. Dennis excuse herself due to a conflict of interest. Ms. Dennis spoke at the Maggie Valley Planning Board meeting stating that she personally would be adversely affected.

Chairman DeSimone read an excerpt from the July 16, 2009 Planning Board Minutes.

Connie Dennis: a resident on Campbell Creek Road with rental property located in the Crockett Meadows Subdivision adjacent to the proposed project, and a member of the Maggie Valley Zoning Board of Adjustments stated that she would be more affected than anyone here would. Ms. Dennis, a realtor by trade, stated that she would not show property located next to a facility like this due to the unpredictability. Ms. Dennis has a friend that lived off US-209; when the rehab facility was located near her home in Junaluska Meadows, she had to take a \$60,000 loss, even after installing a privacy fence. Ms. Dennis understood the concerns over traffic, noise, and light pollution.

Excerpt from the Zoning Board of Adjustment Bylaws:

IV. RULES OF CONDUCT FOR MEMBERS

Members of the Board may be removed for cause, including violation of the rules stated below.

- A. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Any member who misses 3 consecutive meetings automatically forfeit membership. **The Chairman will make determinations on excused absences.** A member terminated for lack of attendance may appear before the Board of Alderman and request reinstatement.*
- B. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested.*
- C. No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.*
- D. No Board member shall discuss any case with any parties' thereto before the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from any other member of the Board, its secretary, or clerk before the hearing.*
- E. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties' thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.*

Ms. Dennis stated that she went to the Planning Board meeting to hear what the investors had to say after missing the presentation at the Zoning Board meeting. Ms. Dennis felt

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that she was capable of listening and making a sound decision based on testimony. "This is a small town, everyone knows someone that is going to be affected." Ms. Dennis felt she should not have to recues herself from the vote.

Attorney Dickson read the state law pertaining to Quasi-judicial boards. The statute gives examples of conflict of interest but it is not inclusive.

Ms. Massey asked if that was the opinion of the folks on US-209 or was it the facts.

Ms. Dennis was unsure; there is the possibility that the buyers would not have purchased the home nevertheless.

Mr. Banks felt that a quasi-judicial member should not have attended another meeting and put oneself on record. Mr. Banks apologized, but felt Ms. Dennis should recues herself.

Ms. Edwards agreed; that way the board is covering itself. Ms. Way concurred.

**MR. BANKS MADE A MOTION TO EXCUSE MS. DENNIS.
MS. MASSEY SECONDED THE MOTION.
MS. WAY AND MS. EDWARDS VOTED IN THE AFFIRMATIVE.
MS. DENNIS OPPOSED.
MOTION CARRIED BY MAJORITY.**

Chairman DeSimone stated that he would allow Ms. Dennis to participate in the discussion the same as the ETJ members are allowed to participate.

A 4/5 vote is required to grant a special exception or variance.

Mr. Trefzger went on to give his presentation.

1. The facility in Canton is over 40 years old.
2. A certificate of need has been issued by the State
3. The Alzheimer patients will be secured.
4. \$12.1 million dollar investment wants to come to the community. (Includes cost of land and construction of building).
5. The facility will create 80 full time jobs.
6. It is in the best interest of the facility to fit in with the community.
7. Maggie Valley Health Investors LLC have made the revisions requested by the Planning Board.
8. There will be ancillary benefits to the community by having the facility.

Patrick Bradshaw P.E. addressed the board stating that the investors have developed more than a dozen of these facilities. The Maggie Valley Waste Water Treatment Facility, the Maggie Valley Sanitary District, and the NC Department of Transportation have all

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stated that they have no issue with the facility locating off Campbell Creek Road. It would be hard for the developers to find a more desirable piece of property. The property is flat, there are no flood plain issues and municipal water and sewer is available.

Mr. DeSimone questioned the plans for drainage.

Mr. Bradshaw responded that a comprehensive drainage plan has not been completed. Drainage plans normally have a swell between the parking and the building with embellishments of landscaping. Velocity of water will not be an issue.

Mr. Trefzger informed Chairman DeSimone that upon the closure of these meetings, if given approval, the investors will conduct the necessary soil sampling and will meet the erosion control guidelines set forth by the State and County.

Ms. Dennis questioned the landscape plan.

Standard landscaping plans allow the planting of 2" in diameter deciduous trees. The scrubs will be 4-foot tall. The investors want the facility to fit with the surrounding area. Mr. Bradshaw assured the board that the investors would not be sparing with the landscaping. The Planning Board requested that the structure be similar to the Yancey House.

Ms. Dennis asked if the memory walk would be facing US-19 and if so what type of fencing would be installed.

Mr. Bradshaw guaranteed the board that the fence will be 8-feet tall constructed to contain people and will be well landscaped. There will not be a bare fence. It will not be an eyesore. There will be a mixture of mulch beds, brick or concrete pavers, plantings and benches. This will not be a concrete playground. The area will be more pervious than impervious.

Ms. Massey, a knowledgeable landscaper, and having experience with Alzheimer patients felt that privacy was a necessity for people suffering from the disease.

Chairman DeSimone then opened the floor for comments. Chairman DeSimone asked that the comments remain relevant to the issue. The level of care is not relevant. The comments should pertain to this particular service on this particular property.

Brenda O'Keefe: a resident and business owner in Maggie Valley addressed the Zoning Board stating that both of her properties adjoin the property in question. She has no objections. She or her family may need this service. Respite Care would be such a benefit to many people in the area. Ms. O'Keefe stated that she respects all people's opinion but it was not long ago that there were discussions about putting a shopping center on the property. That would have created much more traffic. "Nursing homes are

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very lonely places. There might be five visitors on a good day. As for the Alzheimer patients, I will be happy to say hey to them. This facility will help make us become more of a town.”

Ernestine UpChurch: a member of the Edwards family that settled here in 1794, a volunteer for Council on Aging, and a retired Social Service worker was in favor of the facility locating to Maggie Valley. Ms. UpChurch felt diversity is what the town needs. “There is a waiting list for skilled nursing care here in Maggie Valley. People need to be able to stay in Haywood County. Beds are not just doled out to every county.”

Chairman DeSimone asked that Ms. UpChurch comment on the relevance of the facility on this particular property.

Billy Case: a realtor, and long time resident of the community opposes the location. He felt there were several locations that would be a better fit. Mr. Case could not understand the “hurry up” attitude. Staff needs to investigate the firm and the effects of having the facility located on this property. Home values will decrease by at least 20%. Mr. Case reminded the Zoning Board how not long ago the residents were trying to stop dense development. What happens if the facility does not fill with patients? Mr. Case also discussed his fears of storm water runoff going into Campbell Creek. Has anyone been to the Canton facility? Why would anyone want to tie up one of the last green spaces left in Maggie Valley? Maggie Valley is a resort town and a second home community. Does anyone want Maggie Valley to be known as the place to come to spend your last days before dying?

Burton Edwards: a businessman, member of the Planning Board and a life long resident stated that he was saddened by people caring more for green space than life. This facility will improve Maggie Valley. The realtors should market homes to the families of people staying at the facility. This is not about the pocketbook, but rather providing care for the elderly.

Carol Avera: a resident and owner of an historic home on Campbell Creek Road was in favor of the facility being located on the property in question. His home will be in clear view of the complex. The people he has spoken with on Campbell Creek do not object. Mr. Avera asked the board to approve the facility.

Judith Frampton: the director of nursing at the Canton facility and owner of a bed and breakfast located on Main Street in Waynesville stated that she was offended that anyone would question the care provided to the patients. A criminal background check is done on each employee. Creditability is important to the staff. From the nurses to the housekeeping staff, the patients are treated with respect. Staff protects the rights and dignity of the residents. Ms. Frampton understood about the neighbors wanting a buffer. Mr. Frampton had to plant Maple Trees at her bed and breakfast to improve the view and cut down on traffic noise from Main Street.

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Again, Chairman DeSimone reminded the audience that the issue is not what is the noble thing to do, but rather is this type of facility suitable for this particular property.

Richard Boro: The owner of the campground and resident of the corner property on Soco Road and Campbell Creek Road stated that he welcomed the facility to be located near his business. Mr. Boro felt the facility would not have a negative impact on the business community.

With no more comments offered from the floor the public portion of the meeting was closed at 7:24 p.m.

Ms. Way questioned what entity makes sure the developer complies with all laws and regulations pertaining to drainage runoff.

Director Clark responded that the property is not located within the water shed area. Haywood Waterways had no recommendations. The Town and the State will oversee the project. This is the first project to comply with the 10% rule. Director Clark also reminded the Zoning Board members that they do have the latitude to request stricter requirements.

Mr. Bradshaw, the engineer for the project stated that the same runoff control was implemented at the new Bethel Middle School. Soft landscaping acts as a filter. It requires many participants and inspections to bring this method to fruition.

Shirley Pinto: asked to address the board. Ms. Pinto was involved in a landslide study conducted a few years ago. Maggie Valley has 15 fans. This is where slides begin and fan out as they come down the mountain sides. The surface water runoff from impervious surfaces is detrimental to the fan effect. If a shopping center or dense housing development were located on the property, the impact would be much greater.

Ms. Dennis commented that if a special exception were granted for this facility, then the next request for a special exception on the remaining acreage would have to be granted.

Director Clark explained that each application is weighed on its own merits. If the developers wanted to come into Maggie Valley and build a three-story nursing facility without the mountain vernacular, the project could easily be denied.

Chairman DeSimone stated that the drainage is one aspect that needs to be better defined. Pervious parking is not defined. Mr. DeSimone stated that he has seen flooding along Campbell Creek, especially when a number of spring heads have gotten out of control and overflowed.

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Ms. Edwards felt the County and State will monitor the project. The developers will be required to comply to all laws pertaining to surface water runoff and erosion control.

MR. BANKS MADE A MOTION TO GRANT THE SPECIAL EXCEPTION.

MS. MASSEY SECONDED THE MOTION.

MS. EDWARDS VOTED IN THE AFFIRMATIVE.

MS. WAY VOTED IN THE AFFIRMATIVE.

Chairman DeSimone declined to vote due to wanting more detailed information on drainage and erosion control.

MOTION CARRIED.

Other Business

Chairman DeSimone asked that the board rescind the variance granted to Mr. Harden. He has failed to present a parking plan and continues to conduct business in the same manner as before. Ms. Young concurred. She too has seen direct violations.

**CHAIRMAN DESIMONE MADE A MOTION TO RESCIND THE VARIANCE
BECAUSE THE PROPERTY OWNER HAS NOT MET THE REQUIREMENTS
OF THE VARIANCE.**

MR. BANKS SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

**ON MOTION OF MS. FISH, SECONDED BY MS. MASSEY, WITH ALL IN
FAVOR THE MEETING ADJOURNED AT 7:38 P.M.**

Chairman Ron DeSimone

Vickie Best, CMC, Town Clerk