

Town of Maggie Valley
Zoning Board of Adjustment
Town Board Room
Thursday September 11, 2008
5:30 p.m.

MINUTES

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

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

Others Present: Jay Ring, James Harden, Dan Massey, Jim Newland, Jim Blyth, and Torry Pinter

1. Approval of the Minutes: July 10, 2008

MS. DENNIS MADE A MOTION TO APPROVE THE MINUTES AS PRESENTED

MR. BANKS SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

2. Special Exception: Jim Newland

Director Clark provided the history of the Newland project.

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.

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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 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.

Zoning Board of Adjustment Hearing: July 10, 2008

At this meeting the Zoning Board of Adjustment ruled in a split decision of 3 (DeSimone, Dennis, Banks) votes to 2 (Edwards, Way) in favor of Mr. Newland's four building, 36 unit condominium project. However a 4/5 majority vote is needed to obtain a special exception, so Mr. Newland's request failed to pass the ZBOA.

Planning Board : August 7, 2008

Mr. Newland approached the Town Planning Board at their August 7, 2008 meeting to discuss changes he had made to his development plan based on their recommendations over the past few months. Mr. Newland had reduced the building height on two building, reducing the two front structures from 3 stories to 2 stories. The reduction in height results in a net loss of six total units which translates into twelve parking spaces which he replaced with more greenspace. A final change was that he committed that the current motel office space would be transformed into useable commercial space giving the property almost 6,000 square feet in commercial space. Without a true "mixed use" definition in place, the Planning Board felt that Mr. Newland changes were sufficient enough to gain their unanimous endorsement.

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

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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:

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 condo project is 60 spaces. That leaves 20 for the restaurant space and new commercial area to share. This development scenario lends itself to share parking arrangements. 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)**

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8. General compatibility with adjacent property and other property in the district. **(Per the C-1 Zoning Ordinance yes, Town Land Use Plan yes)**

(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:

Planning Board advisory recommendations: To Be Conducted at October Meeting

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.

Planning Board Chairman Brede reiterated that the biggest issue was not having the side elevation beside the street. Mr. Newland has made every effort to conform to the Planning Board desires.

Mr. Newland felt there was little more that he could do to meet the request of the Planning Board.

MS. DENNIS MADE A MOTION TO SEND THE ISSUE TO THE PLANNING BOARD FOR THEIR OFFICIAL RECOMMENDATION AS TO THE PROJECT RELATES TO THE LAND USE ORDINANCE.

MS. MASSEY SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

3. **Special Exception: James Harden**

The Background

James Harden is the owner operator of Quest Services, a multifaceted business specializing in automotive repair, recreational vehicle repair and a moving company. During the summer of 2008 it was brought to the Town Staff's attention that Mr. Harden never obtained a special exception permit for Quest Services based upon the "grandfather clause." When he purchased the property in 2004, the business vacating the property was also an automotive repair business so naturally Mr. Harden assumed it was an allowed use. As most of you know special exceptions are given to a particular person for a particular business and are non transferable. These are unlike variances which are given to the land not the individual.

Staff Comments

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One of the more troubling issues from the staff's perspective is the relationship between usable space and the space needed adequately run these businesses. The garage tract is only 0.35 acres. Mr. Harden owns a second parcel which two recreational vehicles and a single family house. Provided in your packet are several pictures that illustrate a typical working day at this facility. Another area of concern is the use of Bennett Drive, which is a 10 foot right of way that runs through the property. This right of way is rarely kept open for proper ingress and egress through the property.

James Harden & Jay Ring

There will be three distinct decisions that the ZBOA will need to rule on.

- 1) Special Exception Automobile Service & Repair Area using (criteria A)
- 2) Recreational Vehicle Repair (using criteria B)
- 3) Moving Company (using criteria B)

Criteria A

(1) Automobile service and repair, provided that the applicant demonstrate to the Zoning Board of Adjustment by written and oral presentations including necessary drawings and plats how he or she will comply with following:

- (a) Must be in compliance with all federal, state, and local environmental regulations;
- (b) Parking regulations must adhere to those set forth in § [154.091](#);
- (c) No more than 90% of the allowable parking spaces may be occupied by vehicles repaired or awaiting repair. In no case shall a vehicle remain on the premises for more than 30 days; and
- (d) No open storage of new or used parts including tires, sheet metal, batteries, cans, boxes, and the like shall be allowed.

Criteria B

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.

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(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. **Never obtained, believed business was grandfathered when he purchased the property, only automotive repair was conducted by previous property owner.**

(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. **Appears to be compromised. 10 feet right of way (Bennett Drive) is consistently blocked, right of way believed to be middle-right of parking lot.**

2. Refuse and service areas, with particular reference to the items in division (B)(3)(b)1. above; **To major problems have been identified by staff**

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 is a concern. Per Town requirements for an automotive repair business: 1 space for each 2 employees at maximum employment, plus 2 spaces for each 300 square feet of repair or maintenance area. There also appears to be 3 apartments that are being utilized on site for a total of 6 needed parking spaces. Moving Company is not an approved use, thus has no set standard, the board will need to create one if they so chose.**

4. Utilities, with reference to location, availability, and compatibility; **(satisfied)**

5. Screening and buffering, with reference to type, dimensions, and character **(none)**

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)**

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8. General compatibility with adjacent property and other property in the district. **(Per the C-1 Zoning Ordinance with special exception 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.

(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:

Planning Board advisory recommendations will be made at October 2008 meeting.

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.

Under Oath, Mr. Harden stated that he had not received a violation or citation from the town and that he had not had access to the pictures distributed to the board members.

The pictures were taken in July and were given to the Zoning Board members to be used as a reference. Mr. Harden was given the pictures to review. Mr. Harden went on to state that the building has been use as a repair facility for 20-plus years. When Mr. Ring owned the property he ran heavy equipment out of the shop.

Mr. Harden also questioned Ms. Dennis sitting on the board that would ultimately decide the fate of his business due to an earlier business encounter between him, Ms. Dennis and her daughter.

When members were questioned about Ms. Dennis participating in the hearing, the Zoning Board of Adjustment members felt it was not a conflict of interest. If Ms. Dennis sitting on the board becomes pivotal to making a final decision, then the remaining board members will discuss the issue again.

Mr. Harden and Mr. Ring are in a civil lawsuit due to the road right-of-way. The Town has no jurisdiction over that matter. The members will only consider what is relevant to the case.

Mr. Harden displayed a plat of the area and an outline of events and uses. (see attachment 1)

There is no open storage of parts or tires, the waste oil is put into special containers and Auto Zone picks it up on a regular basis. Due to the height of the doors, the garage does not accommodate RVs so only the front is pulled into the shop.

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A neighbor had written to Mr. Harden requesting that he clear the property so that she may place it on the market to sell. He immediately complied. Mr. Harden has now cleaned up and straiten up the entire property.

As for working on vehicles outside, a friend had brought his vehicle to Quest Services to work on it himself but use Quest owned tools, there was no charge or change of money.

Mr. Harden felt that the issue was brought to the town because of the pending lawsuit with Mr. Ring whom initiated the problems by not being a good neighbor.

Under oath, Mr. Ring provided the following testimony. Again, only the facts relevant to the matter will be considered. Mr. Ring provided the history of the area and stated that Mr. Hogan the previous owner did have a special exception for the auto repair. Special exceptions go with the property owner not the property. Mr. Ring also provided a plat of the property, adding that Mr. Harden has dug up the road base and graded the property and installed speed bumps on the right of way.

Excerpt from Ordinance:

Any property owner/developer, individual, business, or corporation grading lands or making improvements within the Town limits of Maggie Valley, North Carolina, will be required to submit information prepared by a registered engineer or a registered land surveyor sufficient for the Town to adequately review the existing and proposed drainage for the project.

This information must include a plat of the property showing a metes and bounds survey, existing and proposed sub-surface drainage facilities, estimated increased surface drainage following project completion and plans for transfer and disposal of the additional drainage resulting from the development. No building permit will be issued until this information has been submitted, analyzed and the Town is confident that the drainage will not result in damage to adjacent properties or violate NC General Statutes that prohibit illegal transfer of water from one drainage area onto another.

The purpose of this ordinance is to protect the property owner/developers within the Town limits from unplanned construction, inexperienced developers, and others that are not aware of the shallow water table throughout the Town and the increasing difficulties in protecting property rights and our existing drainage facilities.

Mr. Ring felt parking was the biggest issue. In addition, a moving company and storage of RVs is forbidden in the Commercial 1 District. The multi-family housing is not addressed. There should be two parking spaces for each living quarters. The vehicles should be set back five feet from road right-of-way. The repairs must be performed inside the building.

Excerpt from Ordinance

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4) *Automobile and Recreational Vehicle Sales, Rental and Consignment lots provided that:*

a) No vehicle shall be parked as to impede the pedestrian or vehicular traffic flow. Vehicles shall be setback at least five (5) feet from the property line or the street right-of-way line, whichever is greater.

b) All vehicles must display a valid North Carolina inspection sticker where required.

c) No major repair shall be conducted on the premises.

d) There shall be no outside storage of parts.

Mr. Ring stated that Mr. Harden is renting out RVs.

Excerpt from Ordinance:

Recreational vehicles may be stored or used on business or residential lots provided that: (1) no more than two recreational vehicles are stored or used on any one lot other than at a campground; (2) recreational vehicles may be used on a temporary basis but not to exceed one month unless in a RV park; (3) recreational vehicles shall not be used as a single family residence.

Mr. Ring ended his presentation stating that he has a problem with roaring engines at 9 p.m. at night. The ordinance requirements are not being met.

Chairman DeSimone stated that he has been overwhelmed with data that he and his fellow board members need time to study the information as well as the issue of any special exception being required to go before the Planning Board for their recommendation.

MR. BANKS MADE A MOTION TO HAVE THE PLANNING BOARD ADDRESS THE ISSUE AND COME BACK WITH A RECOMMENDATION AND TO HAVE THE BUILDING INSPECTOR LOOK AT THE APARTMENTS AND THEN REPORT HIS FINDINGS BACK TO THE ZONING BOARD OF ADJUSTMENTS. MS. EDWARDS SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Moore's Surveying is doing a new survey.

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Ms. Way stressed the need to be fair and to allow both parties access to all the information and pictures. Mr. Clark should be answering any questions that Mr. Harden may have due to his lack of knowledge of town procedures. Ms. Way also questioned the Board's position since there is a pending lawsuit.

The Haywood County property card does not register zoning on their records. The tax office looks at the use at the time. The same applies to Alderman Price's home being zoned commercial but is used as a home.

4. Amendment of Special Exception: Torry Pinter

Director Clark provided the background information. The State has notified the town that the new flood maps are not valid and the area will be revisited for new mapping. Mr. Pinter was given approval based on the 2008 flood maps thus agreeing to place the structures three feet above base flood plain elevation. If the 1984 maps were used Mr. Pinter would not have to go to the expense of raising the structures to such a height.

MR. BANKS MADE A MOTION TO REMOVE THE ORIGINAL THREE FOOT ABOUT BASE FLOOD ELEVATION WITH THE CURRENT PLAT AND MAP AND TO MEET THE GUIDELINES REQUIRED NOW.

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

4. Other Business

No other business was discussed.

5. Adjournment

MR. BANKS MADE A MOTION TO ADJOURN AT 7:48 P.M. MS. FISH SECONDED THE MOTION, MOTION CARRIED UNANIMOUSLY.

Chairman Ron DeSimone

Attest:

Vickie Best, CMC, Town Clerk