

TOWN OF WEAVERVILLE
ZONING BOARD OF ADJUSTMENT
MINUTES – MAY 23, 2016

The Town of Weaverville Zoning Board of Adjustment held a meeting on May 23, 2016 at 7:00 pm in the Council Chambers at 30 South Main Street.

Present: Chairman Al Root, Vice-Chairman Jeff McKenna, Member Warren Alcorn, Member Paul Clauhs, Town Attorney Jennifer Jackson, Town Manager Selena Coffey, Planner James Eller and Clerk Shelby Shields. Absent: Member Cindy Wright

Chairman Al Root called the meeting to order at 7:00pm.

The minutes of the Board's meeting on May 9, 2016 were reviewed. Motion to approve the minutes was made by Member Alcorn, seconded by Member Clauhs and unanimously approved.

Chairman Root then announced that the Zoning Board of Adjustment would be holding a quasi-judicial hearing on a special use permit application for a unified housing development application for 97 Lakeshore Drive. Chairman Root explained that a quasi-judicial hearing is much like a court proceeding when an individual's rights and interests are being decided under specific rules of procedure. Parties to this case have the right to present evidence and cross examine witnesses. The burden of proof in this case lies with the Applicant. The extent to which the Rules of Evidence used in courts apply is up to the discretion of the Board. Quasi-judicial proceedings are different than other public hearings in that not everyone has the right to present evidence before this Board or to become a party to this proceeding. Only those who can demonstrate that they will be affected by the outcome of the hearing may become parties. After a description of the person's interest in this case, the Board will determine whether they will be allowed to present evidence as a party. You do not have to be a party to testify if someone who is a party calls you as a witness.

Chairman Root stated for the benefit of all attending that when the Board considers special use permit applications like the one before it the Board must be able to make the following findings: (1) the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare; (2) the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood; (3) the establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district; (4) the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or with the character of the applicable district as to cause a

substantial depreciation in the property values within the neighborhood; (5) adequate utilities, access roads, drainage and/or other necessary facilities have been, are being or will be provided; (6) adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and (7) the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instances, be modified by the Zoning Board of Adjustment.

Chairman Root then asked if there was a motion to open the quasi-judicial hearing. Member Alcorn made that motion, Member Clauhs seconded and all voted in favor to open the quasi-judicial hearing.

The Applicant, Mayfair Partners, LLC, through Greg Phillips was acknowledged as a party. Chairman Root asked if there was anyone in attendance that wished to be made parties to the matter. There was uncertainty as to what this meant and Chairman Root explained that if you were made a party then you would be entitled to testify, call witness and ask questions of any other witness. The following persons indicated that they wished to participate as a party:

Tom Plaut – residing at 16 Riddle Ridge Drive and overlooking the subject property
Marion Plaut – residing at 16 Riddle Ridge Drive and overlooking the subject property
Jim Proffitt – residing at 16 Saint Browns Place, neighboring the subject property
Edith Brown – residing at 12 Saint Browns Place, neighboring the subject property
Thomas Veasey – residing at 69 Lakeshore Drive
Brittany Howard – residing at 25 Riddle Ridge Drive and overlooking the subject property
Barbara Glee Banner – residing at 87 Lakeshore Drive
Bernie Koesters – residing at 37 Lakeshore Drive
Phillip Hyer – residing at 91 Lakeshore Drive
Jennifer Brandt – residing at 85 Lakeshore Drive

Mr. Kosters stated that he was concerned that the area of people that were entitled to receive notice was not large enough and should be community wide. It was confirmed that the statutes required that legal notice be provided to all property owners within 500 feet of the boundary of the subject property and that such notice was mailed out and the meeting was properly advertised in accordance with state statute.

There was discussion concerning whether Bernie Koesters was an appropriate party to this proceeding as his property was located more than 1500 feet away from the subject property. Town Attorney advised that unless special circumstances exist at some distance a property owner would feel more of an indirect effect from the proposed development as opposed to a direct effect and that you must be directly affected in order to have standing to participate in the proceeding. James Eller said that it appeared that his property was about a quarter mile away and the Board felt like that was too far removed from the subject property to have standing to participate as a party and by motion of Vice-Chairman McKenna, seconded by Member Alcorn, the Board voted to not accept Bernie Koesters as a party to the proceeding for

lack of standing. Mr. Koester was told that he was welcome to testify and have his concerns expressed to the Board if a party were to call him as a witness.

By consensus all other persons wishing to be made parties were accepted as parties to the proceeding.

Planner JAMES ELLER introduced the project as a unified housing development in which 21 houses were proposed on small clustered lots on 3.54 acres of property at 97 Lakeshore Drive having a Parcel Identification Number of 9732-94-3657. Planner Eller stated that the project meets all of the development standards required for a unified housing development and that the project density is less than 8 dwelling units per acre and meets the density requirement. All parties were offered an opportunity to ask questions.

A question was raised as to whether the R-12 zoning district was applicable on this property. It was clarified that the Town Council has recently modified the Zoning Ordinance to allow for R-12 zoning which will allow up to 12 dwellings per acre but that no area of the Town has been rezoned to R-12, so there is no part of the Town that has an allowable density of 12 dwelling units per acre at this time. It was restated that the density allowed on the subject property is up to 8 dwelling units per acre as allowed by the unified housing development standards and that the Applicant's plan has an acceptable density.

The Applicant called JESSE GARDNER of Civil Design Concepts as his first witness. Mr. Gardner was sworn in and reviewed the project in more detail. The project shows 21 small homes on 3.54 acres located at 97 Lakeshore Drive. The residential density was discussed and it was confirmed that the project is showing a density of less than 8 per acre. All parties were offered an opportunity to ask questions. Mr. Gardener was asked whether a traffic study had been done and the answer was that it had not been as that was not a requirement. Mr. Gardner was asked how big the lots were for these dwellings. He indicated that they were small lots, 5 feet around the footprint of the dwelling but that the density was calculated based on the size of the subject property due to the clustering of residences that the unified housing development regulations allow.

The Town Attorney said that it would be appropriate for the Board to accept into evidence the application materials and the plan that was presented showing a slight reconfiguration to accommodate a greenway area and the striping of the fire lane. Upon motion by Chairman Root, seconded by Vice-Chairman McKenna, and unanimous vote of the Board the following were accepted into evidence: UHD Application dated April 18, 2016; UHD General Plan Requirements checklist; Development Plan, Existing Conditions and Demo Plan, Concept Site & Landscape Plan, Rough Grading & Erosion Control Plan, Fine Grading & Storm Drainage Plan, Utility Plan, all dated March 21, 2016; and UHD Application dated May 19, 2016, with Concept Site and Landscaping Plan dated March 21, 2016 showing striping of fire lane and Stormwater

Bulletin Exhibit dated May 2016 showing a greenway space as an additional recreational area, attached.

GREG PHILLIPS was sworn in and testified that he and his engineers have worked hard to develop a plan that is consistent with the regulations of a unified housing development and that his plan meets all of those requirements. He stated that the homes will be single-family two-story detached houses and will be for sale. These houses have been designed as moderate income housing. This is a cluster development with a small foot print for each lot, all of which have lake views. The project will be on public water and sewer, having secured allocations from the Town of Weaverville and from MSD. The project has been designed to meet stormwater regulations. A fire pit and grill area has been provided as an amenity and recreational area and a greenway area is also shown and is consistent with the Town's Greenway Plan. This site is adjoining another unified housing development and an industrial site. Two parking spaces have been allotted for each of the 20 homes without garages and an enclosed garage area is shown for Lot 6. There are no additional spaces for visitor or overflow parking provided. There are no plans for the Applicant/Developer to widen Quarry Road. There were questions about why Lot 6 shows a much larger house and it was explained that a one-story residence was requested by the person that the developer is purchasing the property from. All parties were offered an opportunity to ask questions.

The Applicant called Town Manager SELENA COFFEY as a witness. She testified that a Street Improvement Plan is in the Town's proposed budget which is due for adoption by Town Council on June 20, 2016, and that Quarry Road is on the list for street improvements including widening and other improvements such as curbs and gutters. Lakeshore Drive is slated for repairs as well. On a question concerning where the money for these street projects would come from Ms. Coffey said that Powell Bill funds are available for funding the improvement of Quarry Road and Lakeshore Drive. Powell Bill funds do not require any Town money. She could not state when exactly these roads would be improved but that they were on the list. All parties were offered an opportunity to ask questions.

TOM PLAUT was sworn in and testified that he thought that the project was radical in its housing density. He thought that the project as proposed would create a huge problem with parking. He questioned whether a fire pit met the definition of recreational amenities. He stated that this is not the best use of the land as it should be a park. Traffic issues are getting worse. This project alone isn't going to affect too much but added to all other development it will cause a problem. Greg Phillips on behalf of the Applicant asked if Mr. Plaut was a traffic engineering, architect or real estate appraiser. Mr. Plaut confirmed that he did not hold any of those degrees and that his statements were opinions as a resident in the area and not as an expert. All parties were offered an opportunity to ask questions.

Tom Plaut called BERNIE KOESTERS who was sworn and testified that there wasn't enough of a recreational area provided and questioned whether a fire pit was really a recreational amenity. He expressed that the parking needs to be addressed for visitors otherwise there will be parking on the road which will endanger the safety of others. He acknowledged that he does

not hold any degrees in traffic engineering, fire safety or building safety. All parties were offered an opportunity to ask questions.

MARIAN PLAUT was sworn and expressed concern about the project injuring the values of the residences in the neighborhood. She thinks that the project is setting a precedent for high density development. She acknowledged that her opinions are hers as a resident and that she holds no license of any kind that would allow her to testify as an expert. All parties were offered an opportunity to ask questions.

TOM VEASEY was sworn and testified that the traffic patterns at Lake Louise are already bad and will get worse, that parking at Lake Louise is at capacity since the park is at capacity and will get worse as the Town of Weaverville continues to grow. He acknowledged that he is not a traffic engineer, and not a real estate appraiser. All parties were offered an opportunity to ask questions.

JIM PROFFITT was sworn and testified that parking is going to be a nightmare and stated that he already has had people parking in his driveway due to no parking spaces being available around Lake Louise. He believes that the project doesn't provide enough on-site parking and that the neighborhood will not be able to accommodate the overflow parking. He is concerned about the width of Quarry Road which only allows 2 cars to barely pass. He wants answers to the issue of widening of Quarry Road. Mr. Proffitt thinks there are too many unanswered questions on this project for it to move forward. He volunteered that he is not a traffic engineer or an expert on real estate values but just offering his opinion as a resident. All parties were offered an opportunity to ask questions.

Chairman Root asked if there was anyone left that wanted to testify or ask any other question of any of the witnesses that had previously testified. No one indicated by any means that they did.

Chairman Root entertained a motion to close the quasi-judicial hearing. Member Alcorn made the motion, Member Clauhs seconded it, and all voted to close the hearing.

The Board began to discuss the matter.

There was some discussion as to whether the Board could consider the testimony they heard from the neighbors concerning the impact on traffic and the decrease in valuation of their homes due to this project. Town Attorney Jackson reminded the Board that expert testimony is required on those issues and that she had not heard anyone qualified as an expert in those areas.

Member Clauhs stated that he is in favor of the project and believes that it meets all of the 7 standards that the Board must find before approving a special use permit. Member Alcorn said that he was having trouble with several of the findings based on safety and parking issues caused by the density. He is concerned about not hearing from the safety officials. Vice-

Chairman McKenna said that he was also concerned about inadequate parking spaces for visitor and overflow parking but was otherwise in favor of the project.

Member Alcorn made a motion to deny the special use permit application. There was no immediate second on his motion. The Board discussed whether a second was necessary. The Town Attorney said that in the absence of a policy then the Board should be guided by its previous practice. Member Alcorn said that the Board has always required a second. There was no second to Member Alcorn's motion so it was not properly before the Board for consideration and was withdrawn.

There was Board discussion on conditioning approval of the special use permit on the Applicant providing additional parking spaces. They discussed the number of additional spaces and agreed that 10 spaces would be enough.

Member Alcorn then made a motion to approve the special use permit with the condition that the Applicant provide an additional 10 parking spaces. Vice-Chairman McKenna asked if Member Alcorn would accept a friendly amendment to say that the 10 additional parking spaces could not compromise the recreational and greenway areas shown on the plan. Member Alcorn accepted that amendment to his motion. The motion was seconded by Chairman Root and approved by all members.

Staff will work on the written order and bring it back before the Board within the next 60 days.

Member Clauhs moved that the meeting be adjourned, seconded by Member Alcorn, and all voted to adjourn the meeting at around 10:15pm.

Selena D. Coffey, Clerk/Secretary