

NOTICE OF SPECIAL- CALLED MEETING AND PUBLIC HEARING

Public Notice is hereby given that the **Town of Weaverville Zoning Board of Adjustment** will hold a special called meeting on **Monday, April 24, 2017 at 7:00p.m.**, within Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC, to consider the following items:

Approval of minutes from the February 13, 2017 meeting of the Zoning Board of Adjustment and all matters on remand from the Superior Court concerning the Mayfair Partners, LLC, application for a special use permit for 97 Lakeshore Drive, PIN 9732-94-3657 and 9732-94-6485, including consideration of a proposed consent order for a modified plan that has been agreed to by all parties to this matter.

If you would like additional information or to review the content related to this matter you may contact Town Planner and Deputy Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org.

Al Root,
Chairman of the Zoning Board of Adjustment



**Town of Weaverville
Zoning Board of Adjustment
Council Chambers
Monday, April 24, 2017**

**Special Called Meeting
Agenda**

1. Call to Order – Chairman Al Root.
2. Approval of the Minutes from the February 13, 2017 meeting of the Zoning Board of Adjustment.
3. All matters on remand from the Superior Court concerning the Mayfair Partners, LLC, application for a special use permit for 97 Lakeshore Drive, PIN 9732-94-3657 and 9732-94-6485, including consideration of a proposed consent order for a modified plan that has been agreed to by all parties to this matter.
4. Adjournment.

Town of Weaverville
Zoning Board of Adjustment
Minutes – Monday, February 13, 2017

The Zoning Board of Adjustment of the Town of Weaverville met for its regularly scheduled monthly meeting at 7pm on Monday, February 13, 2017 in council chambers at Town Hall at 30 South Main Street, Weaverville.

Present: Chairman Al Root, Board Members Paul Clauhs, Tycer Lewis, Jeff McKenna and Cynthia Wright, Alternate Members Roger Parkin and Jan Rector, Town Planner James Eller.

1. Call to Order

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

2. Approval of the minutes from the December 12, 2016 meeting of the Board

Mr. Clauhs motioned to approve the minutes presented from the December 12, 2016 meeting of the Zoning Board of Adjustment. Ms. Wright seconded and all voted unanimously.

3. Approval of an Order Overruling a Decision of the Zoning Administrator Regarding 18 Moore Street.

Mr. McKenna motioned to approve the order as presented. Mr. Clauhs seconded and all voted unanimously.

4. Any Other Business to Come Before the Board.

5. Adjournment.

Mr. McKenna motioned to adjourn. Mr. Clauhs seconded and all voted unanimously.

**Al Root, Chairman
Zoning Board of Adjustment**

ATTEST:

**James W. Eller
Town Planner / Deputy Town Clerk**

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 17 CVS 246

MAYFAIR PARTNERS, LLC;

Petitioner,

v.

TOWN OF WEAVERVILLE, a North
Carolina municipal corporation;
MICHAEL WATKINS; THOMAS
PLAUT and MARIAN PLAUT; JAMES
PROFFITT and SHARON PROFFITT;
THOMAS VEASEY and SARA VEASEY;
LAKE LOUISE PRESERVATION
ASSOCIATION; and CONLEY HYER,

Respondents.

ORDER:

[Handwritten signatures and dates]
3/27/17
Clerk

THIS MATTER coming on to be heard and being heard before the undersigned Superior Court Judge presiding over the Superior Court Division, Buncombe County, North Carolina during the 3/27/17 term of court, upon notice of hearing given by Petitioner in this cause. Having reviewed the administrative record and pleadings and having heard arguments of counsel, the Court is of the opinion that entry of this Order is warranted. The Court makes the following FINDINGS OF FACT:

1. Mayfair Partners, LLC, (herein "Petitioner" or "Applicant") possessed and still has a contract to purchase two parcels of land located at 97 Lakeshore Drive within the Town of Weaverville with the following Parcel Identification Numbers: 9732-94-3657 and 9732-94-6485 (herein "Site"). The Site consists of approximately 3.54 total acres. Approximately 2.67 acres comprise the parcel with PIN No. 9732-94-3657 ("First Parcel"). Approximately .87 acres comprise the other parcel with PIN No. 9732-94-6485 ("Second Parcel"), which is separated from the First Parcel by one (1) lot.

2. Petitioner submitted an application dated July 22, 2016 to the Town for a special use permit for a unified housing development on the Site ("Project"), consisting of 21 dwelling units to be located on the First Parcel, as provided in Sec. 36-241 of the Town's zoning ordinance, which application was later amended to account for there being exclusively on-site storm water drainage management ("Original Plan").

3. The Site is zoned R-1, primary residential district. At all relevant times hereto, unified housing developments ("UHD") were allowed in R-1, subject to the issuance of a special use permit. The UHD provisions of the Town's zoning ordinance, as amended, allowed for a maximum density on the Property of 12 dwelling units per acre. The proposed density for the Site was less than 8 dwelling units an acre.
4. The Project is proposed as a cluster development overlooking and within easy walking distance of Lake Louise, a prime recreational area owned and operated by the Town.
5. The Site includes significant portions of Reems Creek, a major creek flowing through the Town's municipal limits, designated as trout waters by the State of North Carolina. Both the First Parcel and Second Parcel have direct access to Reems Creek. The development plans for the Project include preserving a significant area adjoining and including Reems Creek as a greenway for recreational use. A sewer easement for the Metropolitan Sewerage District runs along this proposed greenway. The development plans for the Project included the option of the Town accepting a dedication of proposed greenways along Reems Creek on the First Parcel and Second Parcel, which greenways are consistent with the Town's master plan for this area.
6. Access to the Site is via Town-maintained roads, including Lakeshore Drive and Quarry Road. Quarry Road is a public road that was dedicated to the Town as the northern 30-foot-wide open space on a subdivision plat for lots in the vicinity of Lake Louise (formerly known as Lake Juanita), which plat is recorded in Plat Book 154, Page 118, Buncombe County Registry ("Subdivision Plat"). This Subdivision Plat is in the chain of title for the Site. The lot lines bordering this road go to the edge of this 30-foot-wide open space. The Town accepted the dedication of Quarry Road and has for many years been maintaining its dedicated right of way but not to its full width of thirty (30) feet. Quarry Road runs from its intersection with Lakeshore Drive to at least the driveway of the Town's public works building, which is West of and beyond the property of Respondent Hyer.
7. The Town, by and through James Eller, the Town's planner, accepted Petitioner's application for a special use permit as being complete and that all information showing compliance with Sec. 36-241(e) of the Town's zoning ordinance was provided.
8. The technical requirements in the Town's zoning ordinance for approval of a unified housing development are set forth in Sec. 36-241 of the Town's code. The Project complied with all of the technical requirements in this section.
9. Sec. 36-238 of the Town's zoning ordinance establishes additional general standards for the issuance of a special use permit related to unified housing development. Based on the testimony of several documented experts in real estate and traffic

engineering presented on behalf of Petitioner, Petitioner has satisfactorily proven the Project's adherence to the standards in Sec. 36-328.

10. As a condition of its special use permit, Petitioner offered to widen at its expense Quarry Road from its existing 12 feet of pavement to 18 feet of pavement.

11. During the public hearings related to the Project before the Town's zoning board of adjustment ("BOA"), persons opposed to the Project presented generalized, nonspecific concerns about the Project, including lighting, noise from Project residents, smoke from grilling outside within the Project boundaries, and storm water drainage.

12. Respondent Hyer testified of his concern that the proposed widening of Quarry Road would negatively impact his front "yard" even though he admitted that the proposed widening improvements were to be done within the 30-foot-wide public right of way boundaries and not on his actual property. There was no competent, material and substantial evidence that contradicted the testimony from both Town representatives and Petitioner's witnesses that the Quarry Road widening project would take place within the 30-foot-wide public right of way.

13. During the public hearings, several members of the BOA and the Town attorney acknowledged the Town's right to improve Quarry Road, including widening same within the 30 feet of right of way width.

14. The proposal to widen Quarry Road to eighteen (18) feet of paving is within the right of way of said road in the direction of but not on the Hyer property a maximum of 5.5 feet tapering off to zero. To get to eighteen (18) feet of width, the remaining additional feet is planned for within the right of way in the direction of the Site.

15. According to the plans for the Project and testimony at the public hearings from Petitioner's representatives, the total area set aside for recreational purposes for Project residents is 1.67 acres, not including a greenway along Quarry Road. It includes the entire Second Parcel, which parcel is reasonably accessible to the Project residents. This 1.67 acres is out of a possible 3.54 acres consisting of the entire Project Site.

16. There is an existing trail running in the vicinity of the Southwestern portion of the First Parcel that goes from the planned dwelling units on the Site down to Reems Creek. The existing trail is in good condition and useable. The Petitioner offered to the BOA to improve that trail to make it even more user friendly.

17. The existing topography along Reems Creek is essentially level, being mainly 0% to 20%. The Town's greenway master plan for this area champions the use of riparian greenways as recreational areas. The Town's zoning ordinance and greenway plan encourage cluster development such as the Project to preserve environmentally

sensitive areas like Reems Creek and to promote recreational opportunities along said waterway.

18. Petitioner also proposes a fire pit and sitting area around it on the First Parcel as a recreational amenity to the Project's residents, which is reasonably accessible via a simple walking trail with a few steps leading from the planned dwelling units.

19. The only objective standard in the Town's zoning ordinance concerning the amount of recreational area that should be required as part of a unified housing development is in Sec. 36-241(e)(7), which provisions grant the BOA the authority to require up to 10% of the land to be dedicated to public recreation use. While the 10% threshold is inherently arbitrary, setting a conclusive amount without regard to actual development impacts, the Petitioner easily satisfied this standard. 10% of the Project acreage is .35 acres. Petitioner's plan for the Second Parcel's use as a greenway and trails being .87 acres, standing alone, greatly exceeds that threshold. By combining the .87 acres with the greenways along Quarry Road and Reems Creek on the First Parcel and the fire pit area, together with the developer's willingness to impose reasonable conditions related to the improvement of those areas, the Petitioner substantially complied with any reasonable requirements for the provision of recreational space.

20. During the public hearings, the Petitioner repeatedly offered to impose any reasonable conditions on the Project that the BOA would desire, including dedicating all .87 acres of the Second Parcel to the Town as a greenway, clearing the Second Parcel to improve its use for trails and other recreation uses, improving the existing trail providing access to Reems Creek on the First Parcel, specifying in greater detail access to the fire pit on the plans, installing more landscaping, imposing lighting conditions, complying with all applicable state and county erosion control and storm water regulations, reducing density, etc.

21. After closing the public hearings, the BOA voted 5-0 to deny Petitioner's special use permit for the Project, which was the opposite conclusion reached by said Board at a May 23, 2017 hearing based on substantially the same Project application. The May 23, 2017 decision was vacated due to the Town not posting required signage for said hearing.

22. The BOA denied the special use permit for the Project based on the perceived impact of the Quarry Road expansion on Respondent Hyer and perceived inadequacies in the provision of recreational areas for Project residents, including the unimproved condition of the Second Parcel or existing "thicket" interfering with the usefulness of said acreage. On December 12, 2016, the BOA adopted a written decision, concluding therein that the Project did not comply with subparagraphs (1), (2), (5), (6) and (7) of Sec. 36-238 of the Town's zoning ordinance. The Petitioner timely appealed this Order to Buncombe County Superior Court.

23. The Petitioner has standing to bring this action as a result of being the applicant before the decision-making board whose decision is being appealed and for having a contract to purchase the property that is the subject of the decision being appealed as provided for in N.C. Gen. Stat. §160A-393(d)(1).

24. The Petitioner and Town have presented to the Court a revised plan, showing 14 dwelling units, on the First Parcel ("Revised Plan"), which greatly reduces the scope of the Project. The parties have also presented to the Court a proposed Consent Order for the BOA ("BOA Consent Order") which outlines the terms and conditions of a settlement of this existing controversy, which the Court finds to be reasonable, especially in light of the Court's findings and conclusions regarding the original Project's compliance with the Town's zoning requirements.

Based on the above FINDINGS OF FACT, the Court makes the following CONCLUSIONS OF LAW:

1. The Revised Plan for 14 dwelling units is a reasonable plan that satisfies the terms and conditions of the Town's zoning ordinance related to unified housing developments. The Original Plan for 21 dwelling units, with the conditions set forth in Exhibit "1", is also a reasonable plan that satisfies the terms and conditions of the Town's zoning ordinance related to unified housing developments.

2. The Petitioner presented competent, material and substantial evidence to the BOA, showing a *prima facie* entitlement to the issuance of the special use permit for the Project as shown on the Original Plan with the conditions set forth on Exhibit "1". There was no competent, material and substantial evidence in the record to the contrary justifying denial of the permit.

3. The BOA acted arbitrarily and capriciously in denying the special use permit for the Project as shown on the Original Plan with the conditions set forth on Exhibit "1" based on the perceived impact of the Quarry Road expansion on Respondent Hyer since the widening work was planned to be done within the existing right of way of said road and Hyer does not have a reasonable expectation, arising to the level of being a property interest, in preventing the maintenance, repair and/or improvement of said right of way to its full legal width. The Town holds its streets in trust not only for the municipality and its citizens, but also for the general public. Consequently, the Town cannot, in the absence of statutory power, grant to any one the right to obstruct the street to the inconvenience of the public. The Town lacks statutory authority to grant to Hyer or any one property owner the right to obstruct Quarry Road within any portion of its 30-foot-wide dedication without a sufficient public purpose and in keeping with the purposes of the dedication. An owner of the Site, including Petitioner, would have the legal right or easement to use Quarry Road as depicted on the Subdivision Plat along its entire length and width for its intended purpose of ingress, egress and regress to and

from the Site to public Lakeshore Drive and to install improvements such as paving thereon that are necessary or incidental to the enjoyment of said easement.

4. The BOA acted arbitrarily and capriciously in denying the special use permit for the Project as shown on the Original Plan with the conditions set forth on Exhibit "1" based on perceived inadequacies with the provision of recreational areas to Project residents since 1.67 acres out of a possible 3.54 acres are proposed for said purpose and the Petitioner offered to improve at its expense reasonable access to said acreage, including clearing the "thicket" on the Second Parcel to make it more user-friendly and improving the existing walking trail leading to the proposed greenway on the First Parcel.

5. The BOA lacked competent, substantial and material evidence to support its denial of the Project as shown on the Original Plan with the conditions set forth on Exhibit "1" and, as a result, acted arbitrarily and capriciously. Based on the above findings and conclusions, the BOA's decision should be reversed and the Petitioner is entitled to the issuance of the special use permit for the 21-unit Project with the conditions set forth on Exhibit "1".

6. Notwithstanding the Court's findings and conclusions regarding the 21-unit Project, the Petitioner and Town have presented to the Court a reasonable plan to settle this matter based on the Revised Plan showing 14 units as depicted in the BOA Consent Order. This matter should be remanded to the BOA to either issue the special use permit for the 21-unit Project with the conditions set forth on Exhibit "1" or, in lieu thereof, to adopt the BOA Consent Order with its conditions.

7. This Order is a final judgment as to the merits of Petitioner's appeal regarding the BOA's denial of a special use permit for the Project.

BASED ON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW,
IT IS HEREBY ORDERED THAT:

The BOA's decision is hereby REVERSED. This matter is hereby remanded to the BOA for the issuance of a special use permit for the Project with the Exhibit "1" conditions or, in lieu thereof, the adoption and entry of the BOA Consent Order.

This 27 day of March, 2017



Superior Court Judge Presiding

EXHIBIT "1" TO COURT ORDER
Original Project Terms and Conditions

1. The Applicant shall widen at its expense Quarry Road to eighteen (18) feet of paving within the right of way of said road.
2. The Applicant shall improve at its expense a walkable trail to the fire pit shown on the plans for the Project.¹
3. The Applicant shall improve at its expense a walkable trail on the First Parcel to and from the greenway shown on the plans for the Project for the First Parcel along Reems Creek.
4. The Applicant shall improve at its expense a walkable trail on the Second Parcel to and from the greenway for the Project to be located on the Second Parcel along Reems Creek.

4822-4589-2932, v. 1

¹ All capitalized terms have the same meaning as shown in the Petition for Writ of Certiorari.

PROPERTIES WITHIN 500' OF SITE:

PIN#	OWNER
9732-94-6485	JAMES H. & PAT A. REESE TRUST
9732-94-8311	TOWN OF WEAVERVILLE
9732-94-8312	WILLIAMSON HOLDINGS, LLC
9732-93-8982	KING HOLDINGS I, LLC
9732-95-5071	BARBARA C. BANNER
9732-95-6051	STEVEN K. & CATHERINE M. BRANDY TRUST
9732-94-8948	SARA WILLIAMS VEASEY
9732-95-9138	BETTY M. SHEPPARD
9732-95-9139	WILLIAM M. SHEPPARD
9732-95-2148	THOMAS PLAUT & MARIAN PLAUT
9732-95-6119	JAMES L. & SHARON D. PROFFITT
9732-95-4282	EDITH M. BROWN GORBY BRUCE HENDERSON
9732-95-6412	STEVEN D. & BRITANNY HOWARD

VICINITY MAP
(NOT TO SCALE)

DEVELOPMENT DATA

OWNER/DEVELOPER: MAYFAIR PARTNERS, LLC
 168 PATTON AVENUE
 ASHEVILLE, NC 28815
 GREG PHILLIPS
 (828) 775-3001

CONTACT: CIVIL DESIGN CONCEPTS, P.A.
 168 PATTON AVENUE
 ASHEVILLE, NC 28801
 JESSE GARDNER, P.E.
 (828) 252-5388

SURVEYOR: ED HOUDES & ASSOCIATES, P.A.
 200 RIDGEFIELD COURT, SUITE 215
 ASHEVILLE, NC 28806
 JEFFREY W. PILES
 (828) 252-6882

CONTACT: 9732-94-6485; 9732-94-6485
 97 LAKESHORE DRIVE
 4882/0603
 3.54± ACRES
 R-1 PRIMARY RESIDENTIAL

UHD PERMITTED DENSITY: 8 UNITS/ACRE
 PROPOSED DENSITY: 3.95 UNITS/ACRE
 14 UNITS/3.54 ACRES = 3.95 UNITS/ACRE
 14 UNITS/2.67 ACRES = 5.24 UNITS/ACRE

TOTAL PARKING SPACES: 34

SETBACKS:
 10' (QUARRY ROAD)
 9' (LAKESHORE DRIVE)
 FRONT
 10'
 SIDE
 10'
 REAR

• PIN # 9732-94-6485 (0.87 ACRES) IS INCLUDED IN SITE ACREAGE
 • PIN # 9732-94-6486 (2.67 ACRES)
 • ** MODIFIED SETBACK REQUESTED

DISTURBED AREA: 1.39± AC

IMPERVIOUS CALCULATIONS:
 IMPERVIOUS 0.25 ACRES (7%)
 PRE-DEVELOPMENT: 0.25 ACRES (7%)
 POST-DEVELOPMENT: 0.66 ACRES (19%)
 RECREATIONAL AREA CALCULATIONS:
 PROVIDED: 5,527 SF (4%)

LANDSCAPING REQUIREMENTS: SEE C201 SITE & LANDSCAPE PLAN
 SOIL TYPES: EZE2, R9a, U4, Wd2
 SOIL GROUP: C

PROJECT DATA

PIN: 9732-94-6485; 9732-94-6485
 ADDRESS: 97 LAKESHORE DRIVE
 DEED BOOK/PAGE: 4882/0603
 SITE ACREAGE: 3.54± ACRES
 ZONING: R-1 PRIMARY RESIDENTIAL

UHD PERMITTED DENSITY: 8 UNITS/ACRE
 PROPOSED DENSITY: 3.95 UNITS/ACRE
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 PROVIDED: 5,527 SF (4%)

LANDSCAPING REQUIREMENTS: SEE C201 SITE & LANDSCAPE PLAN
 SOIL TYPES: EZE2, R9a, U4, Wd2
 SOIL GROUP: C

PLANTING SUMMARY:

STREET TREES (S2)
 REQUIREMENT: 1 TREE FOR EACH 40 LF OF STREET
 RIGHT-OF-WAY FRONTAGE

LAKESHORE DRIVE 236 LF
 QUARRY ROAD 375 LF

STREET TREES REQUIRED: 16 TREES
 STREET TREES PROVIDED: 16 TREES

LOT LANDSCAPING
 REQUIREMENT: 5% OF THE LOT OR PARCEL SHOULD BE LANDSCAPED

LOT AREA 164,202 SF
 REQUIRED LANDSCAPED AREA: 7,770 SF
 PROVIDED LANDSCAPED AREA: 12,071 SF

*TYP = TYPICAL

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 REQUIRED LANDSCAPED AREA: 7,770 SF
 PROVIDED LANDSCAPED AREA: 12,071 SF

*TYP = TYPICAL

DATE: MARCH 21, 2016
 DRAWN BY: AMP
 CDC PROJECT NO.: 21549
 SHEET

811
 Know what's below.
 Call before you dig.

CONCEPTUAL SITE & LANDSCAPE PLAN

GRAPHIC SCALE
 (IN FEET)
 1 inch = 40 ft.



NOTES

- ALL SITEWORK SHALL BE IN ACCORDANCE WITH ALL LOCAL, STATE, AND NATIONAL REGULATORY STANDARDS AND ALL REQUIREMENTS IN THE PROJECT TECHNICAL SPECIFICATIONS.
- SINGLE-PHASE CONSTRUCTION.
- ALL WORK MUST BE PERFORMED BY A NORTH CAROLINA LICENSED CONTRACTOR.
- CONTRACTOR IS RESPONSIBLE FOR LOCATING AND VERIFYING THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION. ANY DISCREPANCIES, THE LOCATION OF SOME UTILITIES SHOWN ON THE PLANS HAVE BEEN APPROXIMATED. ALL BURIED UTILITIES HAVE BEEN LOCATED BY THE CONTRACTOR. THE CONTRACTOR HAS RESPONSIBILITY TO DETERMINE THEIR LOCATION PRIOR TO CONSTRUCTION.
- CONTRACTOR SHALL PROTECT EXISTING SITE FEATURES (SHOWN AS DASHED LINES) FROM DAMAGE DURING OR RESULTING FROM CONSTRUCTION. ANY DAMAGE INCURRED DURING OR RESULTING FROM CONSTRUCTION IS THE RESPONSIBILITY OF THE CONTRACTOR AND IS TO BE REPAIRED IN ACCORDANCE WITH THE REQUIREMENTS OF APPROPRIATE AGENCIES AT THE CONTRACTOR'S EXPENSE.
- THE CONTRACTOR IS TO NOTIFY ALL UTILITY COMPANIES AT LEAST 48 HOURS BEFORE CONSTRUCTION BEGINS. THE CONTRACTOR SHALL NOTIFY 811 AT 1-800-632-4848 OR 811, 48 HOURS BEFORE CONSTRUCTION BEGINS.
- ALL ROAD MARKINGS, LOT IMPROVEMENTS, STRIPING AND SIGNAGE SHALL BE IN ACCORDANCE WITH THE LATEST MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). CONTRACTOR MAY USE A PAINT SUITABLE FOR ASPHALT APPLICATION IN LIEU OF THERMOPLASTIC WITH PRIOR APPROVAL FROM THE ENGINEER.
- PROPOSED ROADS TO BE PRIVATELY OWNED AND MAINTAINED BY THE ADJACENT PROPERTY OWNERS.
- A PORTION OF THIS PROJECT LIES WITHIN THE 100-YR FEMA FLOODPLAIN ACCORDING TO FEMA FIRM 3708972000 DATED JANUARY 6, 2010.

PLANT SCHEDULE #

Key	Quantity	Botanical Name	Common Name	Caliper	Height	Root	Comment
RMAP	4	Acer rubrum	Red Maple	2" min.	50-80'	CONT./B&B	Straight trunk; dense, uniform branching
BCYP	8	Toxodendron distichum	Bald Cypress	2" min.	50-70'	CONT./B&B	Straight trunk; dense, uniform branching
AHOL	16	Ilex Opaca	American Holly	1.5" min.	25-30'	CONT./B&B	Straight trunk; dense, uniform branching
SPEP	39	Clethra Alnifolia	Summersweet Pepperbush		18" min	CONT./B&B	Straight trunk; uniform branching
ABEA	30	Colicapsa Americana	American Beautyberry		18" min	CONT./B&B	Straight trunk; uniform branching

*SUBSTITUTION OF SPECIES TO BE APPROVED BY ENGINEER

FOR REVIEW ONLY

PRELIMINARY

NOT RELEASED FOR CONSTRUCTION

CONCEPTUAL SITE & LANDSCAPE PLAN FOR LAKE LOUISE PROPERTY

MAYFAIR PARTNERS, LLC - WEAVERVILLE, NORTH CAROLINA

**TOWN OF WEAVERVILLE
STATE OF NORTH CAROLINA**

**SPECIAL USE PERMIT FOR
UNIFIED HOUSING DEVELOPMENT**

**IN THE MATTER OF
THE UNIFIED HOUSING DEVELOPMENT APPLICATION
OF MAYFAIR PARTNERS, LLC, APPLICANT
TO THE ZONING BOARD OF ADJUSTMENT, PERMIT AUTHORITY
FOR A SPECIAL USE PERMIT FOR THE FOLLOWING PROPERTY:
97 LAKESHORE DRIVE; PIN 9732-94-3657, 9732-94-6485**

CONSENT ORDER

THIS MATTER came on to be heard by the **WEAVERVILLE ZONING BOARD OF ADJUSTMENT** (hereinafter "Board") on _____ upon remand from the Superior Court of Buncombe County in 17 CVS 246 for an entry of a consent order in this matter; and the Board, having heard arguments from said parties, agrees that the entry of a consent order is proper and makes the following **FINDINGS OF FACT** and draws the following **CONCLUSIONS**:

1. This Board previously entered an Order dated December 12, 2016, in which the Board denied Mayfair Partners, LLC, (the "Applicant") application for a special use permit for a 21-unit unified housing development project at 97 Lakeshore Drive due to findings of the Board that the following standards could not be met with the project that was shown on the application:
 - a. Standards 1, 2, 5 and 6 of Section 36-238 could not be met given that the widening of Quarry Road that is necessary for the project and as previously shown by the applicant would have taken a large portion of Conley Hyer's property; and
 - b. Standard 7 of Section 36-238 was not met in that an adequate amount of safe and usable recreational area for the 21-unit project had not been shown as required by 36-241(e)(7).
2. The Applicant appealed the Boards 12 December 2016 Order, but is also pursuing any avenue to resolve the matter by agreement between all parties.
3. The Applicant has revised its plan in order to reasonably address the perceived inadequacies of its original plan as identified by the Board in its 12 December 2016 Order.
4. The Conceptual Site and Landscape Plan that is attached hereto as Exhibit A and incorporated herein by reference ("Site Plan"), shows 14 single-family dwelling units ("Revised Project") on 2.67 acres located at 97 Lakeshore Drive and bearing Buncombe County Parcel Identification Number 9732-94-3657, (the "Primary Property").

Exhibit "B"

5. Reducing the number of dwelling units from 21 to 14 allows for more space on the Applicant's property for the widening of Quarry Road such that the impact on the Conley Hyer property is minimized. The Site Plan shows an area on the Primary Property that will be deeded to the Town of Weaverville as necessary for the widening of Quarry Road to an 18-foot width plus curb and gutter and construction to Town street specifications. For and in consideration of the Applicant's conveyance of the 0.87 acre parcel of land bearing Buncombe County Parcel Identification Number 9732-94-6485 (previously referred to as the "Secondary Property") to the Town of Weaverville for passive recreational/park use, the Town of Weaverville has agreed to undertake the widening of Quarry Road with the understanding that the widening and improvements on Quarry Road will occur at the Town's expense at such time as funds are available for that purpose; but in no event shall the delay in the widening interfere with or preclude Applicant's commencement of construction related to or use of the Revised Project authorized by this Order.
6. Reducing the number of single family dwelling units from 21 to 14 allows for more space on the Primary Property for the Applicant to locate an appropriate amount of safe and usable recreational space. The reduction of the number of dwelling units also reduces the concentration of residential occupancy which the Board must consider when evaluating the adequacy of recreational area. The Site Plan shows the greenway area easement that is to be dedicated by the Applicant. The Site Plan also shows a community garden to be used as a recreational area on the Primary Property. It is noted by the Board that there are also multiple recreational opportunities a short walk from the Primary Property, including walking paths around Lake Louise, playground and fitness equipment at Lake Louise, picnic tables and direct access to Reems Creek and the Reems Creek Greenway from the Primary Property.
7. The Applicant has also agreed to convey in fee the 0.87 acre parcel of land bearing Buncombe County Parcel Identification Number 9732-94-6485 (previously referred to as the "Secondary Property") to the Town of Weaverville for passive park/recreational use, thus increasing the amount of public park property that will be available for use by the public, including the residents of this project. The Applicant's agreement concerning the conveyance of the Secondary Property to the Town of Weaverville for passive park/recreational use is included in this Consent Order as a requirement.
8. With the recreational area shown on the Site Plan and the additional recreational activities in close proximity to the Primary Property the Board finds and concludes that an adequate amount of safe and usable recreational area has been provided for the 14 single family dwelling units to be constructed and that Section 36-241(e)(7) and, consequently Standard 7 of Section 36-238, can be met with the Site Plan and conditions stated herein.
9. The Site Plan shows 22 parking spaces for the 11 smaller single-family dwelling units and shows 2-car garages with additional parking in front of the garages for each of the 3 larger homes. The Site Plan also shows an additional 6 parking spaces

that can be used for overflow parking. The Board finds that the Applicant has shown adequate parking on the Site Plan.

10. The Site Plan shows that the Applicant has redesigned the project so that the impact on the neighboring properties is minimized, including specifically the removal of dwelling units from close proximity to Michael Watkins property and the widening of Quarry Road related to the Conley Hyer property.
11. Based on the evidence and testimony presented at the hearings held on 8 August 2016, 10 October 2016 and 19 October 2016 ("Existing Record"), and on the motion for consideration of a Consent Order which was heard on _____, and based on the arguments of the parties, and upon motion properly made, seconded, and unanimously approved by the Town of Weaverville Zoning Board of Adjustment it appeared to the Board that a special use permit for the modified UHD project of the Applicant should be granted subject to the conditions imposed in this Consent Order.

Therefore, based on the foregoing **FINDINGS OF FACT** and **CONCLUSIONS** drawn by the Weaverville Zoning Board of Adjustment, the Special Use Permit application for the Revised Project at 97 Lakeshore Drive as shown on the Site Plan, which is attached hereto as Exhibit A, is hereby **GRANTED** subject to the conditions stated herein.

IT IS THEREFORE ORDERED by the Weaverville Zoning Board of Adjustment as follows:

1. That the Order adopted by the Zoning Board of Adjustment on December 12, 2016, is **RESCINDED**;
2. That a Special Use Permit is hereby **GRANTED** to the Applicant for the development of 97 Lakeshore Drive as depicted on the Site Plan and subject to the following conditions:
 - a. This Special Use Permit will allow the construction of 14 single-family residential homes as shown on the Site Plan and which are to be sold as improved lots to individual owners.
 - b. The exterior design of the dwelling units shall be substantially similar in look and quality to those dwellings shown on Exhibit 16 and Tab 3 of Exhibit 4A of the Existing Record.
 - c. The greenway easement shown on the Site Plan shall be dedicated to the Town of Weaverville for inclusion as a portion of the Reems Creek Greenway.
 - d. The Applicant will by special warranty deed convey to the Town of Weaverville such portions of the Primary Property as are necessary to allow the Town of Weaverville, at Town expense and timeline, to widen

Quarry Road to a travel width of 18 feet and to Town street standards, including curb and gutter.

- e. The Applicant will construct a community garden on the property for use by its dwelling units as recreational area.
- f. The Applicant will convey by special warranty deed the property referred to as the Secondary Property to the Town of Weaverville for use by the public as a passive recreational area or other public park/recreational use as the Town may deem reasonable.
- g. The Applicant shall make reasonable efforts to preserve and protect as much existing vegetation as possible, including the mature trees that are currently on the property, and shall plant such trees/shrubs as are shown on the Site Plan.
- h. The Applicant shall develop an outdoor lighting plan that is designed to provide the minimum lighting necessary to ensure adequate safety, vision and comfort, and not create or cause excessive glare onto adjacent properties or public street rights-of-way.
- i. The Applicant shall manage its stormwater through construction and/or installation of an engineered underground system located entirely on the Primary Property that is properly permitted by the Buncombe County Stormwater Management Office. In the alternative, the Applicant can manage its stormwater through an engineered above-ground system to be constructed and/or installed, at Applicant's sole cost and expense and as an improvement to the Town's current stormwater catch basin located at the Town's Public Works Facility, if and only if the Applicant first secures consent of Town Council (and conveyance of an easement to the Applicant) and receipt of a properly issued permit from the Buncombe County Stormwater Management Office.
- j. The Unified Housing Development sections of the Town Code remain applicable to this Special Use Permit.
- k. The Applicant must comply with all requirements set forth in Town Code after approval, including but not limited to former § 36-241(h).

THIS the ____ day of _____, 2017.

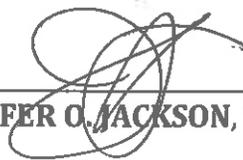
AL ROOT, Chairman

JAMES ELLER, Deputy Town Clerk/Secretary to the Board

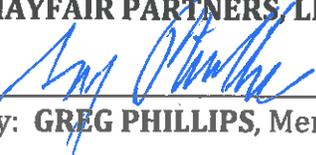
The signatures below indicate the unanimous agreement to all terms and conditions stated in the foregoing Consent Order and the Board's adoption and entry of said Consent Order. Each party signing below acknowledges that he/she executes this Consent Order as a voluntary act (free from any coercion, duress or promises outside of the terms of this Consent Order) and agrees to be bound by the terms and conditions of the Consent Order. The corporate parties acknowledge that they have valid authority to bind the corporate party to the terms and conditions of this Consent Order.

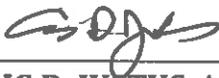
TOWN OF WEAVERVILLE


By: **DOTTIE SHERRILL**, Mayor


JENNIFER O. JACKSON, Town Attorney

MAYFAIR PARTNERS, LLC

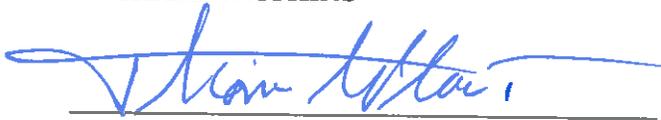

By: **GREG PHILLIPS**, Member Manager


CRAIG D. JUSTUS, Attorney for Applicant

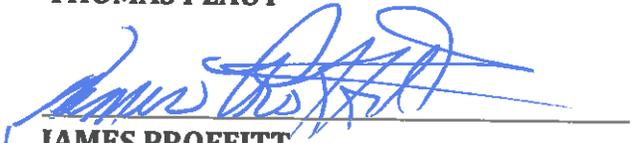
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MICHAEL WATKINS


CONLEY HYER

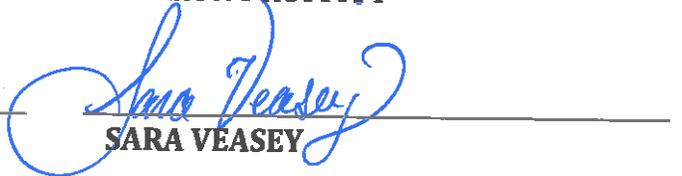

THOMAS PLAUT


MARIAN PLAUT

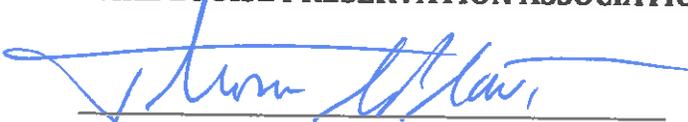

JAMES PROFFITT

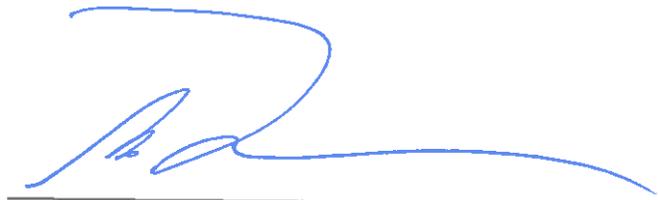

SHARON PROFFITT


THOMAS VEASEY


SARA VEASEY

LAKE LOUISE PRESERVATION ASSOCIATION


By: THOMAS PLAUT, President


W.O. BRAZIL, III, Attorney for LLPA,
Hyer, Watkins, Plaut, Proffitt and Veasey

