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Town of Maggie Valley
Zoning Board of Adjustments
August 20, 2020
MINUTES

Members Present: Chairman Bill Banks, Marion Hamel, Allen Alsbrooks, Alternate David Lybrand, Alternate Tinker Moody, Evans Duncan, and Extra Territorial Jurisdiction (ETJ) member Joshua Hoogerwerf

Staff Present: Town Planner- Ron Hancock, AICP and Town Manager- Nathan Clark

Others Present: 15 members of general public

1. **Call to Order**

With a quorum present, Chairman Banks called the meeting to order at 5:33 pm in the pavilion (adjacent to Town Hall) on Thursday August 20, 2020.

2. **Approval of Minutes**

The minutes for the July 16, 2020 Zoning Board of Adjustment Meeting were not provided; these minutes will be provided at the September ZBOA Meeting; no action taken by the Board.

3. **Application for Special Exception: Linson Ridge**

(Action Required)

Chairman Banks asks for those wishing to provide testimony regarding the "Linson Ridge Case" to be sworn in. Chairman Banks swears in Brenda Lang, President of Linson Ridge Home Owners Association and Michael Lovoy, PE representing Bodis, Inc (the applicant).

Chairman Bank reminds the Board members and the audience that 4/5 Affirmative vote is needed to grant this variance request. He also explains the rules and procedures of a quasi-judicial decision meeting and hearing.

All ZBOA Board members are present; a determination is made that the voting members for this case will be Banks, Hamel, Duncan, Alsbrooks and Moody. While the voting members for the Raven Ridge case will be Banks, Hamel, Duncan, Alsbrooks and Lybrand.

Facts for Special Exception Application #2_19_20.SE1

Chairman Banks asks the Town Planner Hancock to provide the Board the Facts of the Case:

1. Bodis, Inc. (Darell Bowen) is the owner of property located off Destination Drive in the Town of Maggie Valley, NC with PIN 8606-68-8911.
2. This 12.8 acre tract is zoned R-3: High-Density Residential and is intended to be developed as Phase 4 of the Linson Ridge subdivision. Phase 4 would potentially allow development of seven new home sites for single family residences that have both public water and public sewer service available.

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3. Mr. Bowen believes that strict adherence to the Town's Subdivision Regulations will create an unnecessary hardship and is seeking a variance from a design standard for subdivision road construction.
4. The Town's adopted policy on "Minimum Construction Standards" for subdivision roads requires that new streets have a maximum grade of eighteen percent (18%).
5. From the northern boundary of the subject tract there currently exists a 30 foot right-of-way which provides private street access to a single family residence located at 363 Destination Drive. Sections of Destination Drive currently exceed twenty percent (20%).
6. The private section of Destination Drive would be upgraded, improved and built to meet all Minimum Construction Standards except for maximum grade, which in some sections may reach 19.5%.
7. Mr. Bowen, represented by Advantage Civil Engineering, has submitted an application to the Town of Maggie Valley Board of Adjustment seeking a variance from the requirement that new subdivision roads have a maximum grade of 18%.
8. Construction of the subdivision roads, as proposed, would be consistent with a variance granted by the Town of Maggie Valley in 2004 allowing construction of subdivision roads with grades greater than 18%.
9. Upon being granted a variance, the developer must apply to the Maggie Valley Planning Board for approval of a major subdivision plat which details the road improvements and all other requirements of the Town's Subdivision Regulations, including storm water management.
10. As required by law, all adjacent property owners have been notified of this hearing and the property has been posted with a hearing notice.

After the facts were presented, Chairman Banks asked Board members if they had any questions for Mr. Hancock.

Mr. Alsbrooks asked if the variance is granted, will these roads be publicly or privately maintained. According to Mr. Hancock who cited the Town of Maggie Valley's Street/Road Standards that the roads would remain privately maintained because roads exceeding 18% grade are not eligible for inclusion based upon the current Town policy.

Ms. Hamel asked why the developer needed the variance and why they cannot achieve 18% grade in roads. Mr. Lovoy, the developer's engineer, said the reason why 18% grade cannot be achieved is to limit and minimize land disturbance in the surrounding neighborhood.

Mr. Duncan asked if there were any inherent safety concerns in issuing the variance. Mr. Hancock responded no because the planned road would have adequate width and suitable turnarounds; also the Fire Department reviewed the plans and voiced no objections.

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As a follow up to his previous question, Mr. Alsbrooks asked about the process of how private roads become publicly maintained roads. Mr. Hancock said the plat would include a statement on the approved plat stating "roads shall remain private, not eligible for inclusion into Town Street System" or similar language to that effect. Mr. Clark provide background context to the question explaining how private streets became publicly maintained streets stressing the fact the proposed streets would not be eligible due to their grade exceeding 18%.

Ms. Hamel asked how many new homes would be built as a result of the new subdivision- Mr. Hancock answered, seven new single family lots.

Brenda Lang, President of the Linson Ridge HOA, relayed the HOAs concerns regarding the new development phase. The top concern is stormwater management. She provided several examples where stormwater runoff was negatively impacting homes within the neighborhood so much so that homeowners had to add additional stormwater measures to protect their property. She added that the current ditch system does not capture an adequate amount of stormwater instead stormwater just sheets along the asphalt adversely impacting downslope property owners.

Mr Hancock suggested that one solution that could address this problem would be to elevate and pitch the new paved road section to ensure that stormwater would be directed to the ditches and not allowed to sheet uncontrolled- this an issue the Planning Board is required to examine in their plat approval process. Mr. Lovoy confirmed that Bodis Inc intended following this recommendation.

Ms Hamel, asked if the stormwater issue had been addressed by the Town. Mr. Hancock assured Ms. Hamel that staff was well aware of the problem and was involved in the Town's installation of a number of water breaks within the community's street system.

Chairman Banks asked the Board if they had any additional questions- none were stated

Mr. Alsbrooks made a motion that the excessive road grade variance be given to Bodis Inc as indicated in the proposed plat. Additionally the plat needs to contain a clear notation that indicates the roads within this phase of Linson shall remain private due to this variance and not eligible for inclusion into the Town's Street System. He also requested that the Planning Board pay special attention to stormwater management when submitted for their review. Ms. Hamel seconded the motion.

The motion passed unanimously 5-0 vote.

Application for Variance: Jim Booher, 244 Raven Ridge, side yard setback

Chairman Bank reminds the Board members and the audience that 4/5 Affirmative vote is needed to grant this variance request. He also explains the rules and procedures of a quasi-judicial decision making and hearing. Additionally he informs the public that the voting members for this case are Banks, Hamel, Duncan, Alsbrooks and Lybrand.

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Chairman swears in the applicant Jim Booher and Raven Ridge HOA president Greg Hoogerwerf.

ZBOA ETJ member Josh Hoogerwerf asks to be recused from this case due to his father Greg's position as president of Raven Ridge HOA. Mr. Alsbrooks makes the motion to recuse Josh Hoogerwerf with Ms. Hamel providing a second.

The motion to recuse Josh Hoogerwerf passes unanimously 5-0.

Chairman Banks recognizes Ron Hancock, Town Planner to present facts of the case which are the following:

1. James E. Booher is the owner of lot #10 located in the Raven Ridge neighborhood in Maggie Valley, NC. More specifically, the property is described as 244 Raven Ridge Road having PIN 7696-88-4027, and consisting of a single family residence situated on .08 acres, or approximately 3,500 square feet.
2. Raven Ridge subdivision lot #10 was recorded with the Haywood County Register of Deeds on October 13, 1981. This parcel is adjacent to a 30 foot street right of way containing a 14 foot wide paved private street known as Raven Ridge Road.
3. The Raven Ridge neighborhood has access to a public road known as Soco Road near the traffic light at the intersection of Soco Road with Moody Farm Road and Cardinal Drive.
4. Lot #10 has approximately 36 feet of frontage on Raven Ridge Road and is currently zoned R-2, a Medium-Density Residential zoning district with a side yard setback requirement of 10 feet.
5. The building setback is measured from the property boundary (Zoning Ordinance Section: 154.055).
6. In June 2020, Mr. Booher inquired about receiving a zoning permit from the Town in order to construct a 20' x 24' open carport on the east side of the house.
7. The Town Planner informed Mr. Booher that one corner of the proposed structure would encroach on the side yard setback area on the northeast portion of the lot.
8. Mr. Booher has submitted an application to the Town of Maggie Valley Zoning Board of Adjustment seeking a variance from the required side yard setback area on the northeast portion of the lot.
9. The Applicant has stated that:
 - a. The variance will not change the character of the neighborhood, which has several other carports which encroach on setback areas; and

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- b. The construction of the carport in the side yard will only consist of 80 square feet of encroachment into the setback area and will not have a negative impact on adjoining property; and
- c. The construction of the carport will maintain public safety and have no effect on the use of the private road by surrounding landowners.

10. As required by state statute, the property has been posted with a zoning hearing notice and all adjacent property owners have been notified of this hearing.

Mr. Hancock provided letters to the ZBOA that he received from community members that could not attend the meeting.

Chairman Banks recognized Mr. Booher to provide his testimony as it related to his variance request.

Mr. Booher said he would like to build a 20' x 24' open carport on the east side of the house so he could store two of his classic cars at his residence instead of an offsite location. Mr. Booher provided the Board with pictures of Raven Ridge to help provide background context to his application.

Mr. Duncan asked if there were any anomalies with this lot; Mr. Hancock replied no it is the second largest lot within the neighborhood. Additionally, he asks Mr. Booher if he has an unnecessary hardship, excluding a financial hardship that could be used to justify his variance request. Mr. Booher stated that he did not have a hardship also saying we was not trying to create a hardship on anyone else

Ms. Hamel asks Mr. Booher to explain his pictures. Mr. Booher states that these pictures show existing carports within Raven Ridge. Mr. Hancock points out these carports are in fact smaller than what Mr. Booher has requested through his application.

Greg Hoogerwerf provides the ZBOA members with a four page document that outlines the Raven Ridge HOA opposition to this variance request.

Chairman Bank swears in Steve Pulliam, Past President of Raven Ridge HOA.

Mr. Alsbrooks says this case reminds him of the Malpeli / Brannon Forest case where there was not harmony between the applicant and HOA; Chairman Banks agrees with his assessment.

Chairman Banks asked why can't the carport be built as a tandem, make it narrower so the width is consistent with the other neighborhoods carports? Mr. Booher said that other HOA members had suggested that same idea however he viewed the width necessary since it was a continuation of his oversized driveway unlike those of his neighbors.

Mr. Booher once again details his need for the carport as a place to protect his classic cars from the weather, he would like to have his cars located at his residence and no longer stored off site. Additionally this would only be a constructed carport and not a garage.

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Mr. Hancock provides the ZBOA members with the definition of "hardship" since the concept of hardship is so important to the case.

Mr. Alsbrooks suggested that the ZBOA could always table the case until the applicant can satisfy his HOA issues; to move forward without HOA support seems counterproductive.

Ms. Hamel provides an alternate assessment stating regardless of the HOA's position, Mr. Booher cannot provide a satisfactory response in regards to his hardship that is causing him to seek this variance. Mr. Lybrand concurred with this assessment.

Ms. Hamel made a motion to deny the variance application as presented; Mr. Alsbrooks seconded the motion. The motion passed unanimously by a 5-0 vote.

5. **Adjourn**

With the no other business the Chairman asked for a motion to adjourn.

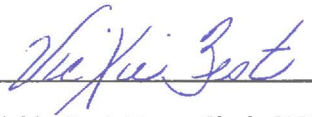
Ms. Hamel made a motion to adjourn, seconded by Mr. Alsbrooks. The motion passed unanimously by a 5-0 vote.

Meeting adjourns at 7:02PM.

The next Zoning Board of Adjustment meeting is scheduled for September 17, 2020.



Chairman Bill Banks



Vickie Best, Town Clerk, NCCMC, CMC

