

Regularly Scheduled Zoning Board Meeting

February 25, 2021

MINUTES

Members Present: Chairman Bill Banks, Marion Hamel, Josh Hoogerwerf, David Lybrand, and Evans Duncan

Staff Present: Town Planner Ron Hancock and Town Clerk Vickie Best

Others Present: 15 people

Call to Order.

Chairman Banks called the meeting to order at 5:31 pm on Thursday February 25, 2021 in the Town Hall Boardroom.

Approval of Minutes: January 21, 2021

MS. HAMEL MADE A MOTION TO APPROVE THE MINUTES OF JANUARY 21, 2021 AS PRESENTED. MOTION CARRIED UNANIMOUSLY.

Application for a Special Exception: Alert Towing Impound Lot

Chairman Banks explained how a Quasi-Judicial Board operates like a Court of Law.

Several members of the audience wishing to speak or those who might speak, along with Planner Hancock, were sworn in under oath.

The area in question belongs to Joseph Duke. The area is located within the Extra Territorial Jurisdiction at 3365 Dellwood Road. J. Creek Fabrics, PK Restoration and Garage, DD Outlet and an appliance repair service are located along the road frontage of the Duke Center. The property has three (3) levels-two (2) levels above the street level. The impound lot is proposed for the third (3rd) level. This level cannot be seen from Dellwood Road.

If approved, the Alert Towing Impound Lot will share a restroom with the appliance repair shop.

Included in the Zoning Board of Adjustment's members packet copies of the lease agreement and pictures of the location. The structure to be used for an office is being remodeled.

Planner Hancock provided the facts of the case.

1. Brent Brinson is the lessee of a portion of a parcel located off Dellwood Road (Hwy 19) with PIN 8606-38-4915.
2. This approximately one acre portion of the lot is located within the Town of Maggie Valley's ETJ and is zoned C-1: General Business.

2
Regularly Scheduled Zoning Board Meeting
February 25, 2021
MINUTES

3. On January 26, 2021 Mr. Brinson applied for a Special Exception to use the property for commercial purposes, specifically a vehicle impound lot.
4. The Town's Zoning Ordinance does not address this specific use but provides that, "uses not otherwise named" are allowed upon the approval of the Zoning Board of Adjustment.
5. The most similar land use in the Zoning Ordinance is Automobile Services and Repair, which requires a Special Exception to be granted by the Zoning Board of Adjustment prior to operation.
6. The proposed use is in accordance with the Town's adopted Future Land Use Plan for the area.
7. The proposed location will provide adequate space for parking and loading, includes a vegetative buffer for adjoining properties, and will meet the required building setbacks.
8. All other requirements of the Town's Zoning Ordinance and all standards for Special Exceptions shall be met.
9. The Planning Board has reviewed this application for the following considerations:
 - a) Relation of the special exception to applicable elements of the planning program; and
 - b) Appearance of the special exception relative to location, structure, and design.
10. As required by the Zoning Ordinance, this proposal has been reviewed by the Planning Board and has recommended approval of the special exception, with the further recommendation that there be a restroom added to the building.
11. 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.

Chairman Banks clarified that an impound lot is not on the list of uses and will therefore be compared to an automobile service and repair shop. The board will look at the ways this use compares to an automobile shop.

Regularly Scheduled Zoning Board Meeting

February 25, 2021

MINUTES

Special Exception for 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 the 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;
- (d) No open storage of new or used parts including tires, sheet metal, batteries, cans, boxes, and the like shall be allowed.

As included in the Agenda Packet, Brent Brinson, 178 Ladderback Ridge, informed the board that he has a lease on the property. This is not a repair facility, but more of a "catch and release yard". Mr. Brinson wants to get on the Haywood County Sheriff's Department Wrecker Rotation. That is where you go pick up cars after an accident or an arrest. The owners generally pick up the vehicles within hours or up to 3 or 4 days. Mr. Brinson thought the maximum would be 15 days. After 30 days the vehicle would belong to him. When on rotation with the Sheriff's Department, you generally get 1 to 2 calls per week. Certain criteria must be met to be on the Sheriff's Wrecker Rotation such as an 8-foot fence.

While Mr. Brinson makes his living in Buncombe County, he will not be bringing vehicles to Haywood County. In Buncombe County, Mr. Brinson responds to many AAA calls.

Because customers pick up their vehicle by appointment only, there will not be someone at the impound lot all day.

The lease for the lot is \$700 per month. Thus far, Mr. Brinson confirmed he has put \$6,000 in gravel on the lot.

Mr. Russell Baur, 54 Anglers Ridge, HOA President, and friends with Joe Duke, the owner of the Duke Center questioned how fluids leaking from vehicles will be mitigated. The lot is gravel and where it is located both watersheds could be contaminated by oils/fluids leaking from vehicles. The drainage ditches eventually end up in Lake Junaluska.

Mr. Baur distributed pictures to the board members of the proposed site and the associated drainage ditch and drain field. "There are no guarantees the fluids will be mitigated." Mr. Baur added that a vehicle holds up to 5-gallons of

4
Regularly Scheduled Zoning Board Meeting
February 25, 2021
MINUTES

fluid and then multiply that by the number of vehicles on the lot and the amount of time they will remain on the lot. There are 3 wells located nearby below grade.

According to Mr. Baur the location is not harmonious with the community. The lot cannot be seen from Soco Road but can be seen and heard from the surrounding homes.

Larry Hersey addressed the board stating that he spent 20-years in the car business and is now in real estate. One of Mr. Hersey's objections is wreckers coming up and down a one lane road. After turning off Dellwood Road onto Zemry Caldwell Road, the road is very narrow. He too had concerns about a vehicle leaking fluids. Oil filters alone hold one quart of oil. The vehicles will not only be sitting on the lot but will be dragged up and down Zemry Caldwell Road. They will be contaminating "our" pristine water supply.

Mr. Hersey is not an adjoining property owner, so he did not receive the notice.

Doug Hipps, 43 Jade Street (owns two lots and two wells) stated his objections are due to ground water contamination and decreased property values.

The proposed impound lot is not accessed via Zemry Caldwell Road. The proposed lot is accessed through the Duke Center.

The Board discussed delaying a decision until next month so that an environmental expert could provide their opinion.

Carol Hersey addressed the Board saying she has seen a lot in her years and that after nine years of seeing every state in the US they decided to retire here for the true seasons and the mountain beauty as well as the opportunity to get away from the ocean. Her property is already surrounded by junk, now an impound lot would be in her area. "Try selling your property with all this around it."

Stacy Barry, 50 Teresa Trail, is a military veteran that was deployed twice, lives alone and the noise would be very disturbing to her, especially during the night hours. Ms. Barry is in the process of closing on the house. The vehicles can be seen from her front porch making it an unsightly view. Ms. Barry had her well tested and found that it is 305-feet deep. The value of her home would be substantially decreased if this impound lot is allowed.

Chairman Banks recommended taking this case under advisement and waiting until additional information can be obtained. The Board should have all the facts when answering the questions required for a Special Exception.

5
Regularly Scheduled Zoning Board Meeting
February 25, 2021
MINUTES

Chairman Banks recommended the Board delay acting until the next board meeting.

Again, this is a difficult case because impound lots are not on the list of uses.

Before a 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:

Chairman Banks read each of the 8 questions.

Of the utmost importance to Ms. Hamel is consistency "regardless of how we handle this case". Again, Ms. Hamel clarified that the Board has not had a case like this come before them before.

Mr. Lybrand stated that although he has environmental concerns, he could be convinced otherwise if he saw a report from an environmental expert. Other uses must have containment for fluids; a gravel lot does not contain contaminants.

Mr. Duncan agreed, he too would like to have an opinion of the hazards leaking fluids could produce. The other issue is the general compatibility with adjacent property and other properties in the district. "The sentence says and other property; it does not say or other property."

Chairman Banks explained that the board cannot go en masse to visit the property, but can go each on their own.

Ms. Hamel concurred; more information is needed. Members cannot discuss the case, nor can they travel together to look at the area in question. The Zoning Board of Adjustment is like a court of law; having a partly judicial character by possession of the right to hold hearings on and conduct investigations into alleged infractions of rules and regulations and to make decisions in the general manner of quasi-judicial bodies. Mr. Hoogerwerf agreed.

Planner Hancock informed the Board that the applicant has the burden to provide evidence that the standards of the ordinance will be met. On the flip side, the opposition has the burden to provide expert testimony to prove the opposing evidence.

The Board must determine if the impound lot is similar enough to an auto repair station to make the comparison.

MINUTES

Ms. Hamel added that regardless of what the environmental experts say, there are other issues to consider. Mr. Lybrand responded that if it is not compatible to the area, the environmental concerns would not matter.

Mr. Brinson again informed the board that Alert Towing would not be working on the vehicles.

Compatibility is the question being discussed now.

Allen Alsbrooks, resident of 3376 Dellwood Road, the motel across the street from the Duke Center (speaking as an adjacent property owner rather than a Zoning Board member) stated that Alvarez could have a repo lot at 1560 Soco Road adjacent to Butts on the Creek and Jonathan Creek. That precedence has already happened. This is a C1 property and the folks that spoke today are residential.

Mr. Brinson reminded the board that PK's Garage and Steve Davis's place are right there in the same area. PK's stores vehicles waiting to be restored. The lot cannot be seen from Soco Road and the lot is accessed through the Duke Center Parking Lot.

Again, Planner Hancock explained that this is a tiered parcel. There is a vacant lot below the lot being discussed with a couple of vehicles. Bill Alvarez had a repo lot with vehicles being loaded and unloaded. If the compatibility standard is going to be used, the board must clearly state how the impound lot is compatible or incompatible.

The incompatibility is being located next to a subdivision.

Mr. Alsbrooks asked that the board think back to the rock yard that located on Jonathan Creek next to a subdivision. Rock yards was a use not otherwise named. The board looked at dust, gas, smoke, glare, etc.

Mr. Brinson informed the board that he was still going to continue renting the lot so that he can park his company trucks there and his employees can leave their vehicles there while out on the road for Alert Towing.

If the use were to change from an impound lot to a parking lot, Mr. Brinson would still need to come back before the board.

Mr. Hersey stated from the floor that the board should go down there and look at the lot while everyone is here. "You are trying to make a square peg fit into a round hole."

Ms. Hamel explained that these members have been on this board for a long time and do not need the audience telling them about the rules. The board

cannot go en masse or discuss the case, other than after testimony has been provided.

MR. LYBRAND MADE A MOTION TO NOT COMPARE THE IMPOUND LOT TO AN AUTOBILE SERVICE AND REPAIR SHOP.

The board went over the eight questions required for the consideration of a Special Exception.

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; **DOES**
2. Refuse and service areas, with particular reference to the items above; **DOES**
3. Off-street parking and loading areas where required with particular attention to the items above and to the economic, noise, glare, or odor effects of the special exception on adjoining properties and generally in the district; **DUE TO NOISE BEING OFFENSIVE. DOES NOT BECAUSE OF ADJOINING RESIDENTIAL PROPERTIES**
4. Utilities, with reference to location, availability, and compatibility; **DOES**
5. Screening and buffering, with reference to type, dimensions, and character; **CURRENTLY DOES NOT**
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; **DOES NOT**
7. Required yards and other open spaces; and **DOES.**
8. General compatibility with adjacent property and other property in the district. **DOES NOT**

Ms. Hamel stated that question #8 is enough, there is no need for question #3.

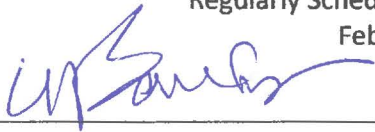
MR. HOOGERWERF MADE A MOTION TO DENY THE SPECIAL EXCEPTION BASED ON COMPATIBILITY. MR. LYBRAND SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

ON MOTION OF MR. LYBRAND, SECONDED BY MR. DUNCAN WITH ALL IN FAVOR THE MEETING ADJOURNED AT 7:13 PM.

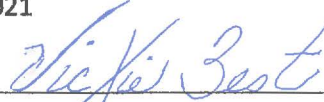
Regularly Scheduled Zoning Board Meeting

February 25, 2021

MINUTES



Chairman Bill Banks



Vickie Best, CMC, Town Clerk

